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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

AMERICAN AIRLINES FLOW-THRU PILOTS COALITION, *et al.*, Plaintiffs, v. ALLIED PILOTS ASSOCIATION, *et al.*, Defendants.	Case No. 3:15-cv-03125-RS **COMPENDIUM OF EXHIBITS IN SUPPORT OF DEFENDANT ALLIED PILOTS ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, FOR PARTIAL SUMMARY JUDGMENT** Fed. R. Civ. P. 56 Date: April 21, 2016 Time: 1:30 p.m. Courtroom: 3 - 17th Floor Judge: Hon. Richard Seeborg

Exhibit number	Name	Sponsor and declaration reference
1	Flow Through Agreement (Supplement W)	**McDaniels (¶ 17)**
2	Relevant excerpts from 2015 Joint Collective Bargaining Agreement between American Airlines, Inc. and the Airline Pilots in the service of American Airlines, Inc., and US Airways, Inc., as represented by the Allied Pilots Association ("2015 CBA")	**Brown (¶ 14)**
3	Memorandum of Understanding Regarding Contingent Collective Bargaining Agreement	**Brown (¶ 8)**
4	Relevant excerpts from 2012 Collective Bargaining Agreement between American Airlines, Inc. and the Airline Pilots in the service of American Airlines, Inc., as represented by the Allied Pilots Association ("2012 CBA")	**Brown (¶ 6)**
5	American Airlines FAA Operating Certificate	**McDaniels (¶ 16)**
6	Envoy Air FAA Operating Certificate	**McDaniels (¶ 16)**
7	Relevant excerpts from 2003 Collective Bargaining Agreement between American Airlines, Inc. and the Airline Pilots in the service of American Airlines, Inc. as represented by the Allied Pilots Association ("2003 CBA")	**McDaniels (¶ 19)**
8	Letter OO	**McDaniels (¶ 45)**
9	Opinion and Award in FLO-0203	**McDaniels (¶ 49)**
10	Opinion and Award in FLO-0903	**McDaniels ¶ 50)**
11	Supplemental Opinion and Remedy Award in FLO-0903	**McDaniels (¶ 51)**
12	Opinion and Award in FLO-0108	**McDaniels (¶ 52)**
13	Agreement implementing Opinion and Award in FLO-0108	**McDaniels (¶ 53)**
14	Opinion and Award in FLO-0107	**McDaniels (¶ 55)**

Exhibit number	Name	Sponsor and declaration reference
15	Collected correspondence between Flow-Through Pilots and APA regarding length of service and related issues	**McDaniels (¶ 62)**
16	Supplement CC	**Duncan (¶ 11)**
17	*Naugler v. Air Line Pilots Ass'n*, No. 05-4751 (E.D.N.Y. April 11, 2012)	**Duncan (¶ 24)**
18	Seniority Integration Protocol Agreement	**Duncan (¶ 26)**
19	Pre-Hearing Position Statement of American Airlines Pilots Seniority Integration Committee (June 19, 2015)	**Duncan (¶ 29)**
20	USAPA Merger Committee Position Statement (June 19, 2015)	**Duncan (¶ 29)**
21	Pre-Hearing Brief on behalf of the West Pilots' Merger Committee (June 19, 2015)	**Duncan (¶ 29)**
22	Opinion regarding Procedural Questions Submitted Pursuant to Protocol Agreement ¶ 7	**Duncan (¶ 32)**
23	Letter from Edgar James to Arbitration Panel (Aug. 3, 2015)	**Duncan (¶ 34)**
24	Pre-Hearing Position Statement of American Airlines Pilots Seniority Integration Committee (Sept. 19, 2015)	**Duncan (¶ 35)**
25	Prehearing Position Statement of the US Airways (East) Pilot Seniority Integration Committee (Sept. 19, 2015)	**Duncan (¶ 35)**
26	Pre-Hearing Brief on behalf of the West Pilot Merger Committee (Sept. 19, 2015)	**Duncan (¶ 35)**
27	Stipulations (June 19, 2015)	**Duncan (¶ 37)**
28	Stipulations (Sept. 19, 2015)	**Duncan (¶ 39)**
29	Revised stipulations (Jan. 15, 2016)	**Duncan (¶ 39)**
30	Email from Bill Wilder (August 27, 2015)	**Duncan (¶ 39)**

Exhibit number	Name	Sponsor and declaration reference
31	Opinion and Award in the Matter of the Seniority Integration of the Pilots of US Airways, Inc. and the Pilots of America West Airlines, Inc. (May 1, 2007)	**Duncan (¶ 46)**
32	Opinion and Award in the Matter of the Seniority Integration Arbitration Between the Pilots of Continental Airlines and the Pilots of United Air Lines (Sept. 3, 2013)	**Duncan (¶ 47)**
33	Opinion and Award in the Matter of the Seniority Integration Dispute Between the Pilots of Republic Airlines, Inc. and the Pilots Formerly Employed by Hughes Air-West, Inc. (April 13, 1981)	**Duncan (¶ 49)**
34	Relevant excerpts of transcript from AA-USAir Seniority Integration Hearing, Sept. 29, 2015	**Duncan (¶ 52)**
35	Letter from Christopher Katzenbach to Mark Stephens (June 3, 2015)	**Duncan (¶ 65)**
36	Letter from Wesley Kennedy to Christopher Katzenbach (June 10, 2015)	**Duncan (¶ 66)**
37	Letter from Christopher Katzenbach to Wesley Kennedy (June 25, 2015)	**Duncan (¶ 67)**
38	Letter from Wesley Kennedy to Christopher Katzenbach (July 9, 2015)	**Duncan (¶ 68)**
39	Letter from Christopher Katzenbach to Wesley Kennedy (July 13, 2015)	**Duncan (¶ 69)**
40	Letter from Wesley Kennedy to Christopher Katzenbach (Aug. 13, 2015)	**Duncan (¶ 70)**
41	Letter from Christopher Katzenbach to Wesley Kennedy (Oct. 9, 2015)	**Duncan (¶ 71)**
42	Letter from Edgar James to Christopher Katzenbach (Oct. 15, 2015)	**Duncan (¶ 72)**
43	Letter from Christopher Katzenbach to Wesley Kennedy (Dec. 21, 2015)	**Duncan (¶ 73)**
44	Letter from Edgar James to Christopher Katzenbach (Jan. 7, 2016)	**Duncan (¶ 74)**
45	Letter CC	**Brown (¶ 18)**
46	Letter CC(2)	**Brown (¶ 18)**

Exhibit number	Name	Sponsor and declaration reference
47	Agreement Between United Airlines, Inc. and the Air Line Pilots in the Service of United Airlines, Inc. as Represented by the Air Line Pilots Association, International (2012)	**Brown (¶ 19)**
48	Agreement Between Delta Air Lines, Inc. and the Air Line Pilots in the Service of Delta Air Lines, Inc. as Represented by the Air Line Pilots Association, International (2012-2015)	**Brown (¶ 19)**
49	Tentative Agreement by and between Southwest Airlines Co. and the Southwest Airlines Pilots' Association (2009)	**Brown (¶ 19)**
50	Plaintiffs' Initial Disclosures under Rule 26(a)	**Demain (¶ 2)**
51	Relevant excerpts of transcript from AA-USAir Seniority Integration Hearings, June 30, 2015	**Duncan (¶ 33)**

EXHIBIT 1

SUPPLEMENT W

SUPPLEMENTAL
AGREEMENT
between and among
AMERICAN AIRLINES, INC.
and the
AIRLINE PILOTS
in the service of
AMERICAN AIRLINES, INC.
as represented by
THE ALLIED PILOTS ASSOCIATION
AND
AMR EAGLE, INC.
EXECUTIVE AIRLINES, INC.
FLAGSHIP AIRLINES, INC.
SIMMONS AIRLINES, INC.
WINGS WEST AIRLINES, INC.
and the
AIR LINE PILOTS
in the service of
EXECUTIVE AIRLINES, INC.
FLAGSHIP AIRLINES, INC.
SIMMONS AIRLINES, INC.
WINGS WEST AIRLINES, INC.
as represented by
THE AIR LINE PILOTS ASSOCIATION, INTERNATIONAL

American Airlines Employment Opportunities and Furlough Protection

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THIS LETTER OF AGREEMENT is made and entered into by, between, and among AMERICAN AIRLINES, INC., and the pilots in the service of AMERICAN AIRLINES, INC., as represented by the ALLIED PILOTS ASSOCIATION, and AMR EAGLE, INC., EXECUTIVE AIRLINES, INC., FLAGSHIP AIRLINES, INC., SIMMONS AIRLINES, INC., and WINGS WEST AIRLINES, INC., and the pilots in the service of EXECUTIVE AIRLINES, INC., FLAGSHIP AIRLINES, INC., SIMMONS AIRLINES, INC., and WINGS WEST AIRLINES, INC., as represented by the AIR LINE PILOTS ASSOCIATION, INTERNATIONAL.

I. Preamble

A. This Supplemental Agreement governs American Airlines, Inc. ("AA") employment opportunities for a pilot employed at any commuter carrier (or its successor) which is majority owned by AMR Eagle, Inc., or any successor(s) to AMR Eagle, Inc. (hereinafter referred to as "AMR Eagle, Inc."). All commuter carriers which are majority owned by AMR Corp. or an affiliate shall be operated within AMR Eagle, Inc. and shall be governed by this Supplemental Agreement.

B. This Supplemental Agreement also governs employment opportunities at AMR Eagle, Inc. for furloughed AA pilots.

C. This Supplemental Agreement supplements and makes certain exceptions to the Basic Agreements between the parties. The provisions of the Basic Agreements will continue to apply, except as modified herein and, in the event of a conflict, the provisions herein shall apply.

D. To the extent that any provision of this Supplemental Agreement requires that any specific pilot(s) of any AMR Eagle, Inc. carrier(s) be identified by those carriers, the mechanism for identifying such pilot(s) shall be effected by separate agreement(s) among the Air Line Pilots Association, International (“ALPA”), AMR Eagle, Inc., and the AMR Eagle, Inc. carriers. However, any such agreement(s) must be consistent with this Supplemental Agreement.

E. This Supplemental Agreement is being entered into as an accommodation among independent parties. The parties agree that the Supplemental Agreement may not be cited or used in any proceeding other than the proceedings described in Section VI. below or in any action concerning the enforcement of the rights under this Agreement.

II. Definitions

A. As used herein, the term “commuter jet” is synonymous with the term “regional jet” and describes turbojet aircraft with at least forty-five (45) passenger seats but not more than seventy (70) seats.

B. As used herein, the term “CJ Captain” is synonymous with the term “RJ Captain” and describes the captain’s position on commuter jet aircraft.

C. As used herein, the term “training freeze” is synonymous with the term “lock-in” and describes a period of restricted bidding to which a pilot is subjected as a consequence of receiving training for a bid status.

III. Employment Opportunities at AA for AMR Eagle, Inc. Pilots

A. At least one (1) out of every two (2) new hire positions per new hire class at AA will be offered to CJ Captains who are line pilots and who have completed their IOE at AMR Eagle, Inc. Such positions will be offered to the CJ Captains who are line pilots in order of their AMR Eagle, Inc. seniority.

B. If a CJ Captain is unable to fill a new hire position at AA in accordance with Paragraph III.A. above, due to a training freeze or other operational constraint, (see Paragraph III.J. below), such CJ Captain will be placed on the AA Pilots Seniority List and will count toward the number of new hire positions. The pilot’s AA occupational seniority date and number will be established as if he were able to fill such new hire position at AA and had attended the new hire training class referenced in Paragraph III.A. above. Such pilot’s length of service for pay purposes, date of hire for pension purposes, and length of service for vacation accrual will be established in accordance with III.C. below. The number of such CJ Captains will not exceed the difference between the number of CJ Captains who are able to fill new hire positions at AA and the number of new hire positions which must be offered to CJ Captains in accordance with Paragraph III.A. above.

C. A CJ Captain’s (1) placement on the AA Pilots Seniority List (except as provided in Paragraph III.B. above which is only applicable for placement on the AA Pilots Seniority List in order to establish an AA occupational seniority date and number), (2) length of service for pay purposes, and (3) “date of hire” for pension purposes will be based on the date such pilot is entered on the AA payroll. Such pilot’s length of service for vacation accrual will be based on the cumulative total of the pilot’s service at AMR Eagle, Inc. and AA.

D. If a CJ Captain is placed on the AA Pilots Seniority List per III.B. above, such CJ Captain will receive priority based on his AA seniority in filling a new hire position in the next new hire class, following release from a training freeze or other AMR Eagle, Inc. imposed operational constraint. Such CJ Captains will not count toward the number of new hire positions offered to CJ Captains at AMR Eagle, Inc., under Paragraph III.A. above.

E. Each of the first 125 AMR Eagle, Inc. pilots who successfully complete transition training as a CJ Captain must fulfill a training freeze for a period of eighteen (18) months from the date said pilot completes IOE. All other pilots who successfully complete transition training as CJ Captains must fulfill a training freeze for a period of two (2) years from the date each pilot completes IOE, unless released from such training freeze by AMR Eagle, Inc.

F. An AMR Eagle, Inc. pilot may, not later than the completion of IOE for a CJ Captain position or at such time as the pilot is able to demonstrate hardship, elect to forfeit the opportunity to secure a position on the AA Pilots Seniority List as provided by this Supplemental Agreement. Such pilot will hereinafter be referred to as an “Eagle Rights CJ Captain," and will not be eligible for a future new hire position at AA which may otherwise become available under Paragraph III of this Supplemental Agreement. The existence of a hardship for this purpose shall be approved by the ALPA AMR Eagle MEC Chairman and the appropriate management official(s).

G. A CJ Captain who is awarded a new hire position at AA will be issued the lowest seniority number at AA in the applicable new hire class, subject to AA’s policy concerning the assignment of seniority numbers to new hire pilots who have previous service in other employee classifications. AMR Eagle, Inc. pilots will receive their AA seniority number in order of their seniority at AMR Eagle, Inc.

H. A CJ Captain who accepts a new hire position at AA may bid and will be awarded a bid status vacancy based upon such pilot's AA seniority at the time of his transfer to AA. Such pilot must fulfill a one year lock-in in the bid status which is awarded or assigned. Such pilot will not be required to serve a probationary period at AA.

I. A CJ Captain who accepts a new hire position at AA must qualify for the initial bid status position which such pilot is awarded or assigned at AA. A pilot who meets the physical requirements at his AMR Eagle, Inc. carrier will be deemed to have met the physical requirements at AA, provided that a pilot who accepts a new hire position at AA must have an FAA First Class Medical Certificate, and must not be on the disability list or the long term sick list. In addition, at the time such pilot accepts a position at AA, he must meet AA's then current criteria for future promotion to Captain at AA.

J. A CJ Captain who accepts a new hire position at AA may be withheld from such position for operational reasons, provided the pilot is paid the greater of the rate of pay for the CJ Captain flying being performed at the applicable AMR Eagle, Inc. pay rates, or the highest equipment rate of pay for the AA bid status from which withheld up to the applicable AA monthly maximum. Such withholding will be limited to a maximum of six (6) months.

IV. Furlough Protection at AMR Eagle, Inc. for Pilots Furloughed from AA.

A. A pilot furloughed from AA may displace a CJ Captain at an AMR Eagle, Inc. carrier provided that the number of CJ Captain positions available to furloughed AA pilots will be limited to the total number of CJ Captain positions at AMR Eagle, Inc. less the number of Eagle Rights CJ Captains.

B. A furloughed AA pilot may displace

1. A CJ Captain, other than an Eagle Rights CJ Captain, who has not been awarded a seniority number at AA, in reverse order of AMR Eagle, Inc. seniority; and then

2. A CJ Captain who has accepted a position on the AA Pilots Seniority List pursuant to Paragraph III.B. above, or a CJ Captain who was previously furloughed from AA, in reverse order of AA seniority.

C. If no CJ Captain position at AMR Eagle, Inc. is available for a furloughed AA pilot, such pilot shall not have any further displacement rights at AMR Eagle, Inc. and shall be furloughed as an AA pilot, with the exception that a furloughed AA pilot who is displaced from CJ Captain status may elect either of the following options:

1. Such pilot may use seniority accrued at AMR Eagle, Inc. to bid a vacancy or displace at such carrier in accordance with the applicable collective bargaining agreement provided that no AMR Eagle, Inc. pilot on the current Eagle seniority list will be furloughed as a result of this provision consistent with Paragraph IV.K. below; or

2. Such pilot may relinquish his position at the AMR Eagle, Inc. carrier and will receive furlough pay due under the Basic Agreement between AA. and the Allied Pilots Association ("APA"). The rights and obligations of a furloughed AA pilot who relinquishes a position at AMR Eagle, Inc. will be the same as any other furloughed AA pilot , except that such pilot shall have a right of recall for ten years to any vacant CJ Captain position in the reverse order of displacement specified in Paragraph IV.B. above.

3. When a CJ Captain who has been furloughed under Paragraph IV.C.2. above is offered, by written notice from AMR Eagle, Inc., the opportunity to return to duty as a CJ Captain and such pilot elects, by written notice to AMR Eagle, Inc., not to return to duty, such pilot forfeits the right of recall to AMR Eagle, Inc. Such pilot shall maintain the seniority right of preference for recall to AA under the terms of the Basic Agreement between AA and APA.

D. Eagle Rights CJ Captains are not subject to displacement by furloughed AA pilots, or any pilot who has been awarded an AA seniority number pursuant to Paragraph III.B. above.

E. A furloughed AA pilot who accepts a CJ Captain position at AMR Eagle, Inc.

and has not completed the 12 month probationary period at AA will be subject to the following provisions.

1. 0 - 9 months of probation completed at AA when furloughed: the pilot shall complete the remaining months of probation at AMR Eagle, Inc.

2. 10 - 12 months of probation completed at AA when furloughed: no further probation required at AMR Eagle, Inc. or AA.

3. A furloughed AA pilot who fails to satisfactorily complete the probationary period at AMR Eagle, Inc. as specified above must complete the remaining months of the required AA probation period following recall to AA.

F. The rights and obligations of a furloughed AA pilot who accepts a position as a CJ Captain will be the same as any other furloughed AA pilot, except such pilot shall not be eligible for furlough pay while employed as a pilot at AMR Eagle, Inc. and any time served as CJ Captain will not be counted against the 10 year duration of such pilot's right to reemployment at AA.

G. A furloughed AA pilot's seniority for bidding purposes at AMR Eagle, Inc. will be based on length of service at AMR Eagle, Inc. accrued following furlough from AA. Such pilot's length of service for pay and benefit purposes shall be the combined length of service at AA and length of service at AMR Eagle, Inc. accrued following furlough from AA. The only pilot who can displace a furloughed AA pilot from the position of CJ Captain is a more senior furloughed AA pilot.

H. In the event of a reduction in the number of CJ Captain positions at AMR Eagle, Inc., displacements from CJ Captain status will be in the following order:

1. A CJ Captain who has not been awarded a seniority number at AA, in reverse order of AMR Eagle, Inc. seniority; and then

2. A CJ Captain who has been awarded a position on the AA Pilots Seniority List pursuant to Paragraph III.B. above, or a CJ Captain who was previously furloughed from AA, in reverse order of AA seniority; and then

3. An Eagle Rights CJ Captain, in reverse order of AMR Eagle, Inc. seniority.

I. If a CJ Captain on furlough from AA declines a recall to AA, such pilot's position at AMR Eagle, Inc., including such pilot's position as a CJ Captain, will from that time on for all purposes be based solely on the pilot's seniority with AMR Eagle, Inc. accrued following furlough from AA.

J. A CJ Captain who accepts a recall to AA may be withheld from such vacancy, provided the pilot is paid the greater of the rate of pay for the CJ Captain flying being performed at the applicable AMR Eagle, Inc. pay rates, or the highest equipment rate of pay for the AA bid status from which withheld up to the applicable AA monthly maximum. Such withholding will be limited to a maximum of six (6) months.

K. No Executive Airlines, Inc. pilot with a seniority number greater than G.A. Cruz's (#200), hired 3/19/97, and no Flagship Airlines, Inc. pilot with a seniority number greater than E.L. Kelley's (#552), hired 6/27/94, and no Simmons Airlines, Inc. pilot with a seniority number greater than M.E. Waggoner's (#829), hired 4/21/97, and no Wings West Airlines, Inc. pilot with a seniority number greater than D.B. Seay's (#414), hired 4/7/97, will be furloughed as a result of a furloughed AA pilot displacing into a CJ Captain position. This number will be reduced in the event that an airline operating entity of AMR Eagle, Inc., is no longer a part of AMR Eagle, Inc. (the "Disposed Operation"). In such event, the number of pilots who will not be furloughed at AMR Eagle, Inc. will be reduced by a number which equals the greater of (1) the number of AMR Eagle, Inc. pilots employed at the Disposed Operation on the date of this Supplemental Agreement, or (2) the number of pilots employed at the Disposed Operation on the effective date of the transaction which separates the Disposed Operation from AMR Eagle, Inc. Furlough protections provided by this paragraph will be applicable for a period of five (5) years from the date of this Supplemental Agreement, at which time furlough protection as provided by this paragraph will be extended to all the pilots who are on the AMR Eagle, Inc. system seniority list as of that date. AMR Eagle, Inc. pilots hired thereafter will not be afforded the protections of this paragraph.

1. If there is a reduction in the number of CJ Captains not due to an AA pilot

displacing a CJ Captain, the provisions of this paragraph do not apply.

V. Reporting Requirement

A. Six months following the effective date of this Supplemental Agreement and every six months thereafter, AA shall provide to APA, and AMR Eagle, Inc. shall provide to ALPA the information necessary to verify the employment opportunities and protections set forth in this Supplemental Agreement.

VI. Dispute Resolution Procedures

A. The parties to the Dispute Resolution Procedures will be AA, APA, ALPA, and AMR Eagle, Inc. (individually and as representative of Executive Airlines, Inc., Simmons Airlines, Inc., Flagship Airlines, Inc., and Wings West Airlines, Inc., and any other commuter carriers which are majority owned).

B. The parties agree to arbitrate any grievance alleging a violation of this Supplemental Agreement on an expedited basis directly before a single neutral arbitrator jointly selected by all the parties. The jurisdiction of the neutral shall be limited to disputes involving the interpretation or application of this Supplemental Agreement.

C. Any grievance concerning the interpretation or application of this Supplemental Agreement shall be stated in writing and set forth a full and complete statement of the facts, and it shall be served upon all of the other parties. During the course of the next fourteen (14) days after receipt of service by all parties, the parties shall meet and confer for the purpose of seeking to resolve the dispute. If all of the parties are unable to resolve the dispute to all parties' satisfaction, any party may submit the dispute, in writing, to the neutral by service of such submission upon the other parties within thirty (30) days thereafter. All of the parties shall convene for a hearing on the first hearing dates offered by the neutral selected by the parties. The hearing shall be completed within sixty (60) days, and the briefs, if any, shall be submitted to the neutral within seven (7) days of the close of the record and receipt of the transcript. The neutral shall render a written opinion and award no later than thirty (30) days after the conclusion of the hearing. The time limits may be extended by mutual agreement of the parties.

D. All of the parties agree to establish a list of five (5) neutrals as a permanent panel of arbitrators to resolve disputes over the interpretation and application of this Supplemental Agreement. AA, AMR Eagle, Inc., ALPA and APA may each sequentially strike a name from this list, and the remaining neutral shall hear and decide the dispute. The order of striking will be determined by lot. The neutral's decision on any matter within his jurisdiction may be enforced in federal court against any and all parties pursuant to the Railway Labor Act, as amended.

VII. Duration

A. This Supplemental Agreement shall be effective on signing and shall continue in full force and effect through the later of:

1. The amendable date of the next ensuing Basic Agreement between AA and APA.

2. Ten (10) years from the date of signing of this Supplemental Agreement, at which time this Supplemental Agreement shall become null, void and of no further force and effect.

B. Prior to the later of Paragraph VII.A.1. or VII.A.2. above, the parties will meet and confer regarding their desire, if any, to perpetuate this Supplemental Agreement for a further period of time; provided, however, that the fact that such discussions are ongoing will not extend the duration of this Supplemental Agreement. In the event that this Supplemental Agreement terminates, then all other provisions of the collective bargaining agreements between AA and APA, and AMR Eagle, Inc. and ALPA remain in full force and effect.

IN WITNESS WHEREOF, the parties have signed this SUPPLEMENTAL AGREEMENT this 5th day of May 1997.

For American Airlines, Inc. For the Allied Pilots Association

/*signed*/
Jane G. Allen
Vice President
Employee Relations

For AMR Eagle, Inc.

/*signed*/
James G. Sovich
President

For the Air Line Pilots Association

/*signed*/
Dan Garton
President

/*signed*/
J. Randolph Babbitt
President

/*signed*/
T.R. Del Valle, President
Executive Airlines, Inc.

/*signed*/
Homer H. Pugh, Jr.
Chairman, AMR EGL-MEC

/*signed*/
David Kennedy, President
Flagship Airlines, Inc.

/*signed*/
Ralph Richardi, President
Simmons Airlines, Inc.

/*signed*/
Robert Cordes, President
Wings West Airlines, Inc.

EXHIBIT 2

JOINT COLLECTIVE BARGAINING AGREEMENT (JCBA)

between

AMERICAN AIRLINES, INC.

and

THE AIRLINE PILOTS

in the service of

AMERICAN AIRLINES, INC.
and
US AIRWAYS, INC.

as represented by the

ALLIED PILOTS ASSOCIATION

EFFECTIVE: JANUARY 30, 2015

AGREEMENT
between
AMERICAN AIRLINES, INC.
and
THE AIR LINE PILOTS
in the service of
AMERICAN AIRLINES, INC. and US AIRWAYS, INC.
as represented by the
ALLIED PILOTS ASSOCIATION
Effective: January 30, 2015

THIS AGREEMENT is made and entered into in accordance with the provisions of the Railway Labor Act, as amended, by and between AMERICAN AIRLINES, INC., hereinafter known as the "Company", and the air line pilots in the service of AMERICAN AIRLINES INC. and US AIRWAYS, INC. as represented by the ALLIED PILOTS ASSOCIATION, hereinafter known as the "Association".

In making this Agreement the parties hereto recognize that compliance with the terms of the Agreement and the development of a spirit of cooperation is essential for mutual benefit and for the intent and purpose of this Agreement.

It is hereby mutually agreed:

Table of Contents
Sections

Note: Single vertical line in the table of Contents indicates the Section, Supplement or Letter was not contained in the Merger Transition Agreement (MTA).

Single vertical line in the body of this Agreement indicates a change from the MTA, revision 1.

Table of Contents
Supplements

Table of Contents
Letters

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Table of Contents
Numbered Letters of Agreement

SECTION 2

DEFINITIONS

A. Air Freight Feed Operation

A freight operation conducted with non-turbojet aircraft whose primary purpose is to "feed" the Company's aircraft and which is flown with active or furloughed pilots of the Company or under contract.

B. Bid Lines

1. "Bid line" means any monthly regular or reserve flying assignment.

C. Calendar Month

"Calendar month", as used herein, shall mean the period from the first day of, to and including the last day of each calendar month of the year, except that for pilot scheduling and pay purposes the following shall apply.

Calendar Month	Contractual Month	# Days in Contractual Month
January	January 1st – January 30th	30
February	January 31st – March 1st	30 (31 in Leap Year)
March	March 2nd – March 31st	30
April	April 1st – May 1st	31
May	May 2nd – June 1st	31
June	June 2nd – July 1st	30
July	July 2nd – July 31st	30
August	August 1st – August 30th	30
September	August 31st – September 30th	31
October	October 1st – October 31st	31
November	November 1st – December 1st	31
December	December 2nd – December 31st	30

D. Captain

"Captain" means a pilot who is in command of the aircraft and is responsible for the manipulation of, or who manipulates the flight controls of an aircraft while under way, including takeoff and landing of such aircraft, and who is properly qualified to serve as, and holds a current airman's certificate authorizing service as a Captain and who holds a Captain bid status.

E. Changeover pairings / prior removal sequence

Pairings on the next month allocation for trip sequences originating in the current contractual month. They may be longer or shorter which show a commitment for that particular month. Pay protection for any changes are limited to the current month's flying.

F. Classification date

A pilot's Classification Date is assigned concurrent with such pilots' occupational date and shall continue to accrue during such period of duty except as provided in Sections 11, 12, and 17 of this Agreement. Classification seniority is used to determine pay level and the timing of advancement to succeeding pay levels.

G. Company date

In most cases it is the same as your <XREF>date of hire since it is based on continuous service with AMR. A current AMR employee hired as an AA pilot will retain his/her original Company date. It is adjusted due to furloughs and leaves of absence as provided for in Sections 11 and 17.

H. Co-terminals as used in this Agreement shall mean:

1. Kennedy/Newark/LaGuardia
2. Midway/O'Hare
3. Dallas/Fort Worth International Airport/Love Field
4. Washington/Dulles International
5. Tampa/St. Petersburg
6. Miami/Fort Lauderdale

The above shall become and remain in effect when crew bases are maintained in the respective cities.

I. Contractual Month

"Contractual month" as used herein, shall mean the period of time, for pilot scheduling and pay purposes, during which allocated flying and the associated bid lines shall be effective, in accordance with Section 2.B.

J. Credited Projection (PROJ)

A pilot's total time for the month, including fly through time credited at the beginning of the month, the greater of scheduled or actual for flying already performed, scheduled time for flying yet to be performed, credits as provided in Section 15 Hours of Service (E.- minimum pay and credit for an on duty period, F. - minimum pay and credit for time away from base, and G.- minimum and average pay and credit for an on duty period), and credit for scheduled flight time when relieved of flying duties as provided in Section 5, [trips missed due to paid sick leave, a training program of more than five (5) days, vacation, jury duty, and Association leave] and credited time for any credit/no pay removals (for example, unpaid sick). Credited Projection (PROJ) is used in conjunction with Scheduled Projection (SPROJ) to determine a regularly scheduled pilot's legality in accordance with SECTION 15 Hours of Service.

K. Crew Tracking Trip Sequence(s)

Any pairing or repairing of a trip or trip sequence by Crew Tracking, or any flying that is not planned in advance to permit inclusion in a pilot's monthly trip selection, shall be called a "Crew Tracking Sequence".

L. Date of hire

The first day as an AA pilot. This date does not change for furloughs or leaves of absence.

M. Diversion

When a crew makes an unscheduled or scheduled landing at a destination other than planned, generally due to operational reasons such as (weather, mechanical, pick-up passengers, passenger emergency).

N. Divisions

1. Domestic Division

   The Domestic Division is comprised of only Domestic Sequences.

2. International Division

   The International Division is comprised of both Domestic and International Sequences, provided that where an International Division is co-located with a Domestic Division on the same Equipment, domestic sequences may be included only as necessary to:

   a. meet a particular month MALV, or

   b. provide opportunities to maintain currency, or

   c. minimize TDYs, or

   d. meet guidelines agreed to by the Joint Scheduling Committee.

O. Domicile

A common location where a group of pilots are based.

P. Duty day

A calendar day (0000-2400) in which any duty is performed for the company including sign-in and debrief.

Q. Duty period

The elapsed time between sign-in time and release time;

1. Sign-in time – shall not be less than one hour prior to scheduled or rescheduled departure time for a pilot flying the first flight of a duty period or thirty (30) minutes prior for a pilot deadheading.

2. Release time – shall apply to all scheduled flying and deadheading and shall be fifteen (15) minutes after the scheduled or actual block in time, whichever is later. (30 minutes for an International Sequence).

3. Deadheading to and from training does not require a thirty (30) minute sign-in or a fifteen (15) minute debrief.

R. First Officer

"First Officer" means a pilot who is second in command of the aircraft and any part of whose duty is to assist or relieve the Captain in the manipulation of the flight controls of the aircraft while under way, including takeoff and landing of such aircraft, and who is properly qualified to serve as, and holds a current airman's certificate authorizing service as a First Officer and who holds a First Officer bid status. On any international flight requiring more than a two (2) pilot cockpit crew, the First Officer(s) shall also be required to possess an ATPC and a type rating on the equipment flown. For purposes of displacement to an open position on international flights requiring more than a two (2) pilot cockpit crew, the FO, FB and FC positions will be considered interchangeable (e.g. a displaced FO may be assigned to an open FB or FC position.

S. Flight Time

1. Actual – that period of time beginning when an aircraft first moves from the ramp blocks for the purpose of flight and ending when the aircraft comes to a stop at the ramp for the purpose of loading or unloading at either intermediate stops or final destination.

2. Scheduled - the time published publicly by the Company from flight departure to flight arrival of the flight.

T. Fly-through

Time resulting from a trip or trip sequence which spans two contractual months and refers to the flight time including P&C for which a pilot is credited in the succeeding contractual month.

U. Furlough

"Furlough" means the removal of a pilot from active duty as a pilot with the Company without prejudice, due to a reduction in force, or the period of time during which such pilot is not in the active employ of the Company as a pilot due to such reduction in force.

V. Last Trip of the Month

The last active scheduled trip sequence in a pilot's contractual month, other than make up, regardless of when it was added to the pilot's schedule.

W. Management pilot

A pilot who occupies a management position in the Flight Department.

X. Midnight cutoff

When a change in a contractual month occurs en route, pay and credit for the time flown before midnight shall be paid and credited to the month in which the pilot involved originated the flight. Midnight shall be determined on the basis of local time at the point of last takeoff.

Y. Misconnect

Misconnect means that a particular segment, including deadhead, of a pilot's sequence operates sufficiently late into a station so as to cause such pilot to miss the next segment of such pilot's sequence. [See Q&A #105,15-39]

Z. Night Flying

Night flying" shall include all flying between the hours of 2300 and 0559 pilot's HBT.

AA. Occupational date

Generally occupational seniority shall begin to accrue from the date a pilot is first scheduled to complete initial new hire training with the Company and shall continue to accrue during such period of duty except as provided in Sections 11 and 12 of this Agreement. Occupational seniority is used for determining placement on the Pilot System Seniority list and for bidding purposes. Any references to seniority in this Agreement are to Occupational Seniority, unless otherwise specified.

BB. Pay or Compensation

"Pay" or "compensation", for purposes of this Agreement, means longevity, hourly and, if applicable, international override pay.

CC. Pay Projection (PPROJ)

A pilot's total paid time for the month based on fly through time applied to the Credited Projection (PROJ) at the beginning of the month, the greater of scheduled or actual for flying already performed, scheduled time for flying yet to be performed, credits as provided in SECTION 15 Hours of Service (E. - minimum pay and credit for an on duty period, F. - minimum pay and credit for time away from base, and G. - minimum and average pay and credit for an on duty period), for scheduled time when relieved of flying duties as provided in Section 5, [trips missed due to paid sick leave, a training program of more than five (5) days, vacation, jury duty, and Association leave], and for any pay/no credit applications [for example, trips missed due to a training program of five (5) days or less as provided in Section 6.D.1.a.]. Pay adjustments will be made at the end of the month for training pay (Section 6.D.), minimum guarantee (SECTION 4), apportionment pay (Section 6.C.2.)

DD. Pilot

"Pilot" shall include and mean Captain, First Officer, and International Officer.

EE. Proficiency Displacement

A qualified pilot about to lose a qualification may request to displace another pilot for proficiency flying. The displaced pilot, once removed from the trip, is no longer obligated for such trip. The displacing pilot assumes the obligation to cover the displaced pilot's trip. (See Q&A #28)

FF. Reassignment

A pilot who is legal in all respects for such pilot's next regularly scheduled flight/sequence, but is assigned by the Company to perform other flying instead of such regular flight/sequence. The pilot shall be paid for whichever of the two (2) flights/sequences produces the higher pay.

GG. Recurrent training

Training and any associated proficiency check(s) for a category in which the pilot is qualified and is for the purpose of retaining qualification before becoming non-current.

HH. Reschedule

A pilot shall be deemed rescheduled when assigned flying that is contained within the original sequence footprint or within the pilot's replacement flying window, as applicable, following a disruption to the pilot's scheduled sequence. The original sequence footprint or replacement flying window may be extended if the pilot flies or is deadheaded on the first available flight(s) to base. The "first available flight to base" is the flight(s) that arrives at the base the earliest. The flight(s) may be direct or indirect.

II. Requalification training

Training (ground and/or flight) and any associated proficiency check(s) for a category for which the pilot was qualified but is no longer currently qualified.

JJ. Satellite Base

A satellite base is a station other than the pilot's domicile which contains sequences that originate and terminate at the same station. Satellite base sequences may only be bid and awarded to pilots domiciled at the crew base to which the satellite base is assigned to. The following satellites shall become and remain in effect when crew bases are maintained in the respective cities:

Crew Bases	Satellites
Los Angeles	Ontario (ONT) / Santa Ana (SNA) / Long Beach (LGB)
San Francisco	Oakland (OAK)/San Jose (SJC)
Washington	Baltimore (BWI)
Tampa/St. Petersburg	Sarasota (SRQ)
Miami/Fort Lauderdale	West Palm Beach (PBI)

Any Los Angeles based reserve pilot who originates and terminates a trip sequence at a Los Angeles satellite will have the off duty periods immediately preceding and immediately following such trip sequence extended by one hour (1:00) each.

KK. Schedule

"Schedule" means the operating schedule used by the Company in its operations.

LL. Scheduled Trip or Trip Sequence

A "scheduled trip or trip sequence" is a published pairing of flying and/or deadheading, consisting of two or more flight segments, which originates and terminates at a crew base.

MM. Sequence

1. Domestic Sequence

   A Domestic Sequence is a series of flight segments solely comprised of flying between the 48 Contiguous states of the US, and including Canada, plus non-overwater flights to Mexico.

2. International Sequence

   An International Sequence is any sequence that is not a Domestic Sequence.

NN. Service

"Service" means the period of time assigned to active duty as a flight deck operating crewmember or supervisor with the Company.

OO. Sick if needed

A reserve pilot who is sick may call and so notify the Company. The pilot will not be charged sick leave until such pilot is assigned to fly. At the time the pilot is needed to fly (by assignment – not by proffer) such pilot will be so notified and will be placed on sick leave effective that date.

PP. Stand in stead displacement

A senior pilot can proffer to stand instead of a junior pilot being displaced from their respective bid status. In doing so, the senior pilot will be awarded a job from his/her bid preference list using the seniority number of the pilot who is most junior in such bid status at that point in the process. Once in the new bid status, pilots will use their own seniority number. The pilot is subject to a lock-in per Section 17L.

QQ. Supervisory displacement

When a crewmember is replaced on a whole or partial sequence by a Supervisory Pilot. Crewmember is paid schedule for displacement plus greater of schedule/actual time flown. If crewmember is scheduled to deadhead on displaced leg, the greater of scheduled or actual is paid.

RR. Supervisory Pilot

Any pilot listed on the American Airlines Pilot Seniority List who is serving in a managerial or instructional capacity and has not been awarded a monthly trip selection, except that a pilot may be utilized as a temporary supervisory pilot under the provisions of SUPPLEMENT O, or may be appointed to a supervisory position during the course of the month.

SS. 32 hour legality

FAR legality where an international crewmember of a two man unaugmented crew cannot be scheduled to fly over 32 hours in a seven day period.

FAR legality where a crewmember must be given a period of 24 hours free from all duty within a 7 calendar day period. This relief of duty may be given in the form of a calendar day off, a 24 hour period commencing at any time during the day and terminating 24 hours later (including a period free from all duty of 24 hours or more contained within a sequence), or by moving a reserve's movable duty free period in accordance with Section 15.J.13.j.

TT. Section 2 Question and Answers

2-1. Q. Is the pay and credit associated with a midnight cut-off considered to be "fly-through" time?

A. Yes

SECTION 3

PAY

A. Equipment Groups

1. Equipment shall be grouped as follows, with a single rate of pay for each Group:
   a. Group I: With the exception of aircraft identified in Groups II through V below, any aircraft configured (i.e. as operated by American Airlines) with greater than seventy-six (76) seats and less than one-hundred-eighteen (118) seats, including E190/195, CRJ-1000, MRJ-100, and Bombardier CS100.
   b. Group II: Bombardier CS300, A319, A319neo, B737-700, B737-7MAX, MD80, B737-800, B737-8MAX, B737-900, B737-9MAX, A320, A320neo, A321, A321neo
   c. Group III: B757, B767-200, B767-300, A300
   d. Group IV: B767-400, B777-200, B777-200ER, B777-200LR, B777-300, B777-300ER, B787-8, B787-9, B787-10, A332, A333, A340, A350
   e. Group V: A380, B747 (all variants)
2. New Fleet Types

   Any aircraft type, including a new aircraft type, not listed in Section 3.A.1. will be included in the appropriate Group based on the FAA maximum certificated seat configuration of such aircraft types as follows: an aircraft type with an FAA maximum certificated seat configuration of fifty (50) percent or less of the difference between the highest FAA maximum certificated seat configured aircraft type in one Group and the lowest FAA maximum certificated seat configured aircraft type in the next higher Group will be placed in the lower Group; an aircraft type with an FAA maximum certificated seat configuration of greater than fifty (50) percent of the difference between the highest configured aircraft type in one Group and the lowest configured aircraft type in the next higher Group will be placed in the higher Group.

B. Hourly Pay Rates

	Captain - December 2, 2014				
	Group I	**Group II**	**Group III**	**Group IV**	**Group V**
Year 1	$132.95	$202.37	$213.66	$253.50	$266.18
Year 2	$133.95	$204.02	$215.47	$255.56	$268.33
Year 3	$135.06	$205.68	$217.22	$257.65	$270.53
Year 4	$136.15	$207.36	$218.97	$259.72	$272.70
Year 5	$137.18	$209.07	$220.84	$261.79	$274.88
Year 6	$138.30	$210.75	$222.56	$263.86	$277.05
Year 7	$139.37	$212.41	$224.21	$265.93	$279.23
Year 8	$140.48	$214.10	$226.06	$268.00	$281.40
Year 9	$141.55	$215.76	$227.67	$270.08	$283.58
Year 10	$142.65	$217.56	$230.12	$272.14	$285.74
Year 11	$143.77	$219.39	$232.59	$274.21	$287.92
Year 12	$144.83	$221.20	$234.99	$276.28	$290.10

	First Officer - December 2, 2014				
	Group I	**Group II**	**Group III**	**Group IV**	**Group V**
Year 1	$72.85	$72.85	$72.85	$72.85	$72.85
Year 2	$72.85	$109.15	$115.27	$136.72	$143.56
Year 3	$83.87	$127.73	$134.89	$160.01	$168.01
Year 4	$85.91	$130.84	$138.17	$163.88	$172.07
Year 5	$87.95	$134.02	$141.55	$167.80	$176.19
Year 6	$90.17	$137.40	$145.10	$172.04	$180.64
Year 7	$92.69	$141.25	$149.10	$176.84	$185.68
Year 8	$94.83	$144.52	$152.59	$180.90	$189.94
Year 9	$95.83	$146.08	$154.15	$182.84	$191.98
Year 10	$97.15	$148.15	$156.71	$185.33	$194.60
Year 11	$98.06	$149.62	$158.62	$187.01	$196.36
Year 12	$98.91	$151.08	$160.50	$188.70	$198.14

	Captain - January 1, 2015 - 3% Increase				
	Group I	**Group II**	**Group III**	**Group IV**	**Group V**
Year 1	$136.94	$208.44	$220.07	$261.11	$274.16
Year 2	$137.97	$210.15	$221.93	$263.23	$276.39
Year 3	$139.11	$211.85	$223.74	$265.38	$278.64
Year 4	$140.23	$213.58	$225.54	$267.51	$280.88
Year 5	$141.30	$215.35	$227.47	$269.65	$283.13
Year 6	$142.45	$217.07	$229.23	$271.78	$285.37
Year 7	$143.55	$218.78	$230.94	$273.91	$287.60
Year 8	$144.69	$220.52	$232.85	$276.04	$289.84
Year 9	$145.80	$222.24	$234.50	$278.18	$292.09
Year 10	$146.93	$224.09	$237.02	$280.30	$294.31
Year 11	$148.08	$225.97	$239.56	$282.44	$296.55
Year 12	$149.18	$227.84	$242.04	$284.57	$298.80

	First Officer - January 1, 2015 - 3% Increase				
	Group I	**Group II**	**Group III**	**Group IV**	**Group V**
Year 1	$75.04	$75.04	$75.04	$75.04	$75.04
Year 2	$75.04	$112.43	$118.73	$140.83	$147.86
Year 3	$86.39	$131.56	$138.94	$164.81	$173.05
Year 4	$88.49	$134.77	$142.31	$168.80	$177.23
Year 5	$90.59	$138.04	$145.80	$172.83	$181.47
Year 6	$92.88	$141.52	$149.46	$177.20	$186.06
Year 7	$95.47	$145.49	$153.58	$182.14	$191.25
Year 8	$97.67	$148.86	$157.17	$186.33	$195.64
Year 9	$98.71	$150.46	$158.78	$188.33	$197.74
Year 10	$100.06	$152.60	$161.41	$190.89	$200.44
Year 11	$101.00	$154.11	$163.38	$192.62	$202.25
Year 12	$101.88	$155.61	$165.32	$194.36	$204.08

	Captain - January 1, 2016 - 3% Increase				
	Group I	**Group II**	**Group III**	**Group IV**	**Group V**
Year 1	$141.05	$214.69	$226.67	$268.94	$282.39
Year 2	$142.11	$216.45	$228.59	$271.12	$284.68
Year 3	$143.28	$218.20	$230.45	$273.34	$287.00
Year 4	$144.44	$219.99	$232.31	$275.54	$289.31
Year 5	$145.54	$221.81	$234.29	$277.74	$291.62
Year 6	$146.72	$223.59	$236.11	$279.93	$293.93
Year 7	$147.86	$225.35	$237.86	$282.13	$296.23
Year 8	$149.03	$227.14	$239.83	$284.32	$298.54
Year 9	$150.17	$228.90	$241.54	$286.53	$300.85
Year 10	$151.34	$230.81	$244.13	$288.71	$303.14
Year 11	$152.52	$232.75	$246.75	$290.91	$305.45
Year 12	$153.65	$234.67	$249.30	$293.11	$307.76

	First Officer - January 1, 2016 - 3% Increase				
	Group I	**Group II**	**Group III**	**Group IV**	**Group V**
Year 1	$77.29	$77.29	$77.29	$77.29	$77.29
Year 2	$77.29	$115.80	$122.29	$145.05	$152.30
Year 3	$88.98	$135.51	$143.11	$169.75	$178.24
Year 4	$91.14	$138.81	$146.58	$173.86	$182.55
Year 5	$93.30	$142.18	$150.17	$178.02	$186.92
Year 6	$95.67	$145.77	$153.94	$182.52	$191.64
Year 7	$98.33	$149.85	$158.18	$187.61	$196.98
Year 8	$100.60	$153.32	$161.88	$191.92	$201.51
Year 9	$101.67	$154.97	$163.54	$193.98	$203.68
Year 10	$103.06	$157.17	$166.25	$196.62	$206.45
Year 11	$104.03	$158.73	$168.28	$198.40	$208.32
Year 12	$104.93	$160.28	$170.27	$200.20	$210.20

	Captain - January 1, 2017 - 3% Increase				
	Group I	**Group II**	**Group III**	**Group IV**	**Group V**
Year 1	$145.28	$221.13	$233.47	$277.01	$290.86
Year 2	$146.37	$222.94	$235.45	$279.26	$293.22
Year 3	$147.58	$224.75	$237.36	$281.54	$295.61
Year 4	$148.77	$226.59	$239.28	$283.80	$297.99
Year 5	$149.91	$228.46	$241.32	$286.07	$300.37
Year 6	$151.13	$230.29	$243.19	$288.33	$302.74
Year 7	$152.29	$232.11	$245.00	$290.59	$305.12
Year 8	$153.50	$233.95	$247.03	$292.85	$307.49
Year 9	$154.68	$235.77	$248.79	$295.12	$309.87
Year 10	$155.88	$237.73	$251.46	$297.37	$312.24
Year 11	$157.10	$239.73	$254.15	$299.64	$314.61
Year 12	$158.26	$241.71	$256.78	$301.90	$316.99

	First Officer - January 1, 2017 - 3% Increase				
	Group I	**Group II**	**Group III**	**Group IV**	**Group V**
Year 1	$79.61	$79.61	$79.61	$79.61	$79.61
Year 2	$79.61	$119.28	$125.96	$149.40	$156.87
Year 3	$91.65	$139.57	$147.40	$174.84	$183.58
Year 4	$93.87	$142.97	$150.98	$179.08	$188.03
Year 5	$96.10	$146.44	$154.68	$183.36	$192.53
Year 6	$98.54	$150.14	$158.56	$187.99	$197.39
Year 7	$101.28	$154.35	$162.93	$193.23	$202.89
Year 8	$103.62	$157.92	$166.74	$197.67	$207.56
Year 9	$104.72	$159.62	$168.45	$199.80	$209.79
Year 10	$106.15	$161.89	$171.24	$202.52	$212.64
Year 11	$107.15	$163.49	$173.33	$204.35	$214.57
Year 12	$108.08	$165.09	$175.38	$206.20	$216.51

	Captain - January 1, 2018 - 3% Increase				
	Group I	**Group II**	**Group III**	**Group IV**	**Group V**
Year 1	$149.64	$227.76	$240.47	$285.32	$299.58
Year 2	$150.76	$229.63	$242.51	$287.64	$302.01
Year 3	$152.01	$231.49	$244.48	$289.99	$304.48
Year 4	$153.23	$233.38	$246.46	$292.32	$306.93
Year 5	$154.40	$235.31	$248.56	$294.65	$309.38
Year 6	$155.66	$237.20	$250.49	$296.98	$311.83
Year 7	$156.86	$239.07	$252.35	$299.31	$314.27
Year 8	$158.11	$240.97	$254.44	$301.64	$316.72
Year 9	$159.32	$242.84	$256.25	$303.97	$319.17
Year 10	$160.56	$244.87	$259.00	$306.29	$321.61
Year 11	$161.81	$246.92	$261.78	$308.63	$324.05
Year 12	$163.01	$248.96	$264.49	$310.96	$326.50

	First Officer - January 1, 2018 - 3% Increase				
	Group I	**Group II**	**Group III**	**Group IV**	**Group V**
Year 1	$81.99	$81.99	$81.99	$81.99	$81.99
Year 2	$81.99	$122.85	$129.74	$153.88	$161.58
Year 3	$94.40	$143.76	$151.82	$180.09	$189.09
Year 4	$96.69	$147.26	$155.51	$184.45	$193.67
Year 5	$98.99	$150.84	$159.32	$188.86	$198.30
Year 6	$101.49	$154.65	$163.32	$193.63	$203.31
Year 7	$104.32	$158.98	$167.82	$199.03	$208.98
Year 8	$106.73	$162.66	$171.74	$203.60	$213.78
Year 9	$107.86	$164.41	$173.50	$205.79	$216.08
Year 10	$109.34	$166.75	$176.38	$208.59	$219.02
Year 11	$110.37	$168.40	$178.53	$210.48	$221.00
Year 12	$111.32	$170.04	$180.64	$212.39	$223.00

	Captain - January 1, 2019 - 3% Increase				
	Group I	**Group II**	**Group III**	**Group IV**	**Group V**
Year 1	$154.13	$234.60	$247.69	$293.88	$308.57
Year 2	$155.28	$236.52	$249.78	$296.26	$311.07
Year 3	$156.57	$238.43	$251.82	$298.69	$313.62
Year 4	$157.83	$240.38	$253.85	$301.09	$316.14
Year 5	$159.03	$242.37	$256.01	$303.49	$318.66
Year 6	$160.33	$244.32	$258.00	$305.89	$321.18
Year 7	$161.57	$246.24	$259.92	$308.29	$323.70
Year 8	$162.85	$248.20	$262.07	$310.69	$326.22
Year 9	$164.10	$250.13	$263.94	$313.09	$328.74
Year 10	$165.38	$252.21	$266.77	$315.48	$331.25
Year 11	$166.66	$254.33	$269.63	$317.88	$333.77
Year 12	$167.90	$256.43	$272.42	$320.29	$336.30

	First Officer - January 1, 2019 - 3% Increase				
	Group I	**Group II**	**Group III**	**Group IV**	**Group V**
Year 1	$84.45	$84.45	$84.45	$84.45	$84.45
Year 2	$84.45	$126.54	$133.63	$158.50	$166.42
Year 3	$97.23	$148.07	$156.38	$185.49	$194.77
Year 4	$99.59	$151.68	$160.18	$189.98	$199.48
Year 5	$101.96	$155.36	$164.10	$194.53	$204.25
Year 6	$104.54	$159.29	$168.22	$199.44	$209.41
Year 7	$107.45	$163.75	$172.85	$205.00	$215.25
Year 8	$109.93	$167.54	$176.89	$209.71	$220.20
Year 9	$111.10	$169.35	$178.71	$211.97	$222.56
Year 10	$112.62	$171.75	$181.67	$214.85	$225.59
Year 11	$113.68	$173.45	$183.89	$216.80	$227.63
Year 12	$114.66	$175.15	$186.06	$218.76	$229.69

C. Determination of Hours

1. a. In determining the hours flown by pilots for pay purposes, the actual time from block to block and time credited for pay purposes as specified elsewhere in this Agreement shall be used; provided that on each sequence where scheduled times have been established, the pilot shall be paid for no less than such scheduled time.

   b. Subsequent to the start of a contractual month, the Company may add flight time to a scheduled segment by changing the scheduled arrival time for the sole purpose of correcting arrival performance. Such addition of flight time shall not be considered a reassignment under Section 15.N of this agreement. In a contractual month, the total number of such adjusted segments shall not exceed two percent (2%) of the total number of system scheduled segments. The difference between the credited time of the adjusted segment after having been flown and the time of the segment as originally scheduled shall be paid at the rate of one and one-half (1-1/2) minutes for each one (1) minute of credited flight time.

2. When the scheduled block to block time is found in actual operation to be improper, conferences shall be held at the request of the pilot representatives for the purpose of establishing proper scheduled times to be used for pay purposes.

D. A pilot who holds a Captain assignment shall receive international override pay at the rate of six dollars ($6.00) per hour for each hour of International flying actually performed. Except as provided elsewhere in this Agreement, International override shall not apply to the contiguous forty-eight (48) states and Canada.

E. A pilot who holds a First Officer assignment shall receive, in addition to pay computed as provided in Section 3.B of the Basic Agreement, international override pay based on a percentage of Captain international override for the same year of service as follows:

Year in Which Serving	Percentage of Comparable Year Captain International Override
2	50.0%
3	60.0%
4	61.0%
5	62.0%
6	63.0%
7	64.0%
8	65.5%
9	67.0%
10	68.0%
11	68.5%
12 and thereafter	69.0%

F. Pay Check Process

Pilots shall be paid on the 15th and 30th of each month. Pilot pay due on the thirtieth (30th) of the month shall be an amount approximately fifty percent (50%) of the previous month's total pay. The remainder shall be paid on the 15th of the following month along with any adjustments.

G. General

When a change in a contractual month occurs en route, pay and credit for the time flown before midnight shall be paid and credited to the month in which the pilot involved originated the flight. Midnight shall be determined on the basis of local time at the point of last takeoff.

H. Displacement Pay Protection

If any pilot, who was active on December 09, 2013, is involuntarily displaced to a Group 1 aircraft, the pilot's hourly pay rate shall not be reduced. This pay protection shall terminate if and when the involuntarily-displaced pilot can hold a position at the same or higher pay rate.

I. Section 3 Questions and Answers

SECTION 17

FILLING VACANCIES, DISPLACEMENTS, REINSTATEMENTS, FURLOUGHS, AND RECALLS

A. Bid Status

1. All pilot positions are identified by their bid status which consists of four elements:
   a. Base
   b. Category
   c. Equipment
   d. Division
2. Each bid status is ranked according to its elements. Bases have no ranking. Within a base, all Captain positions are higher than all First Officer positions. Within a base and category, bid status is ranked by equipment on the basis of certificated gross weight -- the higher the certificated gross weight, the higher the ranking. If two or more models exist within an equipment type, the average certificated gross weight of the models is used to determine the ranking. Within a base, category and equipment, a bid status is ranked according to division with International being higher than Domestic.

B. Change in Bid Status

A pilot's bid status can only change as follows:

1. A pilot may bid for and be awarded a vacancy in a different bid status, which may be higher, lower or lateral (lateral meaning the same category and equipment -- different division and/or base) than such pilot's current bid status.
2. A pilot who is displaced from a bid status, because the pilot's position was eliminated or because such pilot was displaced by a more senior pilot, may displace a more junior pilot.
3. A pilot may proffer and be awarded a displacement which would have otherwise affected a junior pilot.
4. A pilot who is displaced from a bid status may later be reinstated to a vacancy in that bid status.
5. A pilot may be awarded a vacancy as a result of an entitlement which was awarded while serving a lock-in.
6. A pilot may be assigned to a bid status by the Company.

C. Qualifications Required for Bidding and Filling a Vacancy

1. All pilots may bid for and be awarded any vacancy with the following exceptions:
   a. A probationary pilot cannot bid for a Captain vacancy.
   b. In order to be eligible to be awarded a bid status that requires or results in an Airline Transport Pilot Certificate, a pilot must possess such certificate or have previously entered the date of the successful completion of the required written examination for said certificate into the Company's computer database.
   c. As provided in L. of this Section, a pilot serving a lock-in may, at the Company's discretion, only be awarded an entitlement to fill a future vacancy.
   d. A pilot who is being withheld from occupying a bid status position in accordance with M.1.b. or c. of this Section, may only bid for a bid status lateral to (same category and equipment -- different division and/or base) or higher than the bid status from which withheld.
   e. If a pilot is awarded a different bid status, either as a result of bidding for or being assigned to a vacancy or as a result of being displaced, such pilot's bid(s) for other

vacancies processed prior to the effective date of the pending bid status award will be given consideration as follows:

(1) For a pilot who will be required to fulfill a lock-in in the pending bid status award,

(a) If such pilot is the successful bidder for a vacancy which is lateral (same category and equipment -- different division and/or base) to the pending bid status award, the pilot's bid for the lateral vacancy will be awarded, or

(b) If such pilot is the successful bidder for a vacancy in a bid status which is higher or lower than the pending bid status award, such pilot may only be awarded an entitlement to such bid status, in accordance with Section 17.L.5.

(2) If a pilot will not be required to fulfill a lock-in in the pending bid status award, such pilot may bid for and be awarded a vacancy in any other bid status.

2. A pilot who is awarded a different bid status, either as a result of bidding for or being assigned to a vacancy or as a result of being displaced, shall be afforded the opportunity to acquire the necessary route qualifications, equipment qualifications or ratings within a reasonable period of time.

D. Displacements

1. A pilot shall be considered displaced if any one of the following occurs:
   a. The Company eliminates all positions in a bid status, in which case all pilots holding a position in such bid status shall be considered displaced.
   b. The Company reduces the number of positions in a bid status, in which case, to the extent necessary to accomplish the reduction, the pilots within the bid status being reduced who have the least system seniority shall be considered displaced.
   c. A pilot who has been displaced under any provision of this section may displace a more junior pilot in accordance with 7. below, in which case the more junior pilot may then also be considered displaced.
2. Proffer of Displacements
   a. When a junior pilot is to be displaced from a bid status, the displacement shall be proffered in seniority order to all pilots in that bid status.
   b. Displacement into another bid status is based upon the junior pilot's seniority. (For example, junior pilot A would otherwise be displaced; senior pilot B in the same bid status proffers the displacement; senior pilot B displaces into a bid status indicated on senior pilot B's bid preference list based on junior pilot A's seniority. Once senior pilot B is in the new bid status, bidding trip selections, vacations, etc. will be done with pilot B's own seniority.)
   c. A pilot is eligible to proffer displacement provided:
      (1) The pilot must fulfill a lock-in in accordance with Section 17.L.1., unless waived at the Company's discretion, except that the lock-in for a pilot who displaces to a lower bid status and only requires a short requalification training program shall be the same as a pilot bidding to a higher bid status.
      (2) The pilot can fulfill the lock-in in c.(1). above prior to normal retirement unless waived at the Company's discretion.
      (3) A pilot fulfilling a lock-in may only proffer displacement to a lateral bid status (same category and equipment -- different division and/or base) unless released from the lock-in at the Company's discretion.
      (4) A probationary pilot cannot proffer displacement to a Captain bid status.
      (5) In order to be eligible to be awarded a bid status that requires or results in an Air Transport Pilot certificate, a pilot must possess such certificate or have previously entered the date of the successful completion of the required written examination for said certificate into the Company's computer data base.

(6) The pilot has not begun, or is not within five (5) days of beginning training for another bid status as a result of a previous award.

d. A pilot proffering displacement does not have a reinstatement right.

3. Each pilot shall have access to and shall be responsible for maintaining a displacement preference list as a part of his or her standing bid list. On the displacement preference list a pilot may list in order of preference any bid status to which the pilot would prefer to displace in the event such pilot is displaced. A pilot may add to, delete from, or rearrange the order of displacement preferences at any time prior to the date on which the bid award procedure is implemented.

4. Displacements may be processed during each vacancy bid run; simultaneously with reinstatements, entitlements and bid preferences for vacancies.

5. Displacements shall be effective on the published bid effective date, however a pilot displacing to a bid status with a higher pay rate, who completes OE prior to the published effective date, will be paid the higher rate commencing with the completion of OE.

6. The Company shall provide at least fifteen (15) days advance notice of the date on which displacements will be processed. Between the date on which advance notice is given and the date on which displacements are processed, pilots may continue to access and make changes to their displacement preference lists.

7. A displaced pilot may fill a vacancy or displace a more junior pilot. The vacancy or the position to which such pilot is displacing may be in a higher, lateral, or lower bid status than the bid status of the position from which such pilot was displaced. The order of awarding a new bid status to a displaced pilot is as follows:

   a. A displaced pilot shall fill a vacancy from such pilot's bid preference list.

   b. From such pilot's displacement preference list, the pilot shall be awarded the highest preference to which entitled by seniority.

      (1) Such pilot shall have a reinstatement right to the bid status from which displaced, and

      (2) Shall not incur a lock-in in the bid status awarded.

      (3) Such pilot who is awarded, from the displacement preference list, a bid status at a base other than the one from which displaced, will be eligible for moving expenses as provided in Section 8, provided:

         (a) Such pilot was not senior enough within his former base to have been awarded:

            (i) a lateral (same category and equipment - different division) displacement, or

            (ii) a displacement to a bid position of equal or greater pay;

         (b) Such pilot relocates to the base to which displacing;

         (c) Such pilot incurs a lock-in in the bid status to which displacing equal to the down-bid lock-in specified in Section 17.L.1.b; and

         (d) Such pilot forfeits any reinstatement right to the bid status from which displaced.

      (4) When such pilot is awarded a bid status from the displacement preference list, the junior pilot who held that bid status may then be considered displaced.

   c. If the seniority of a displaced pilot does not entitle such pilot to a bid status from either the bid preference list or the displacement preference list, such pilot shall be assigned to a different bid status at that pilot's base.

      (1) Such assignments shall be made in the following order:

         (a) The displaced pilot will be assigned a vacancy in the highest bid status above the displaced status to which entitled by seniority at that pilot's base.

         (b) The displaced pilot will displace a more junior pilot in the highest bid status above the displaced status to which entitled by seniority at that pilot's base.

(c) The displaced pilot will be assigned a vacancy in the next lower bid status if available at that pilot's base. If no vacancy is available, the pilot will displace a more junior pilot in that same next lower bid status at that pilot's base.

(d) Step (c) will be repeated at each successively lower bid status until the displaced pilot is assigned a bid status at that pilot's base.

(2) A pilot so assigned shall have a reinstatement right to the bid status from which displaced, and

(3) Shall not incur a lock-in in the bid status to which assigned.

d. If a displaced pilot cannot be awarded a vacancy at that pilot's base and there is no more junior pilot at that base, such pilot may be proffered those vacancies in the system for which there are no bidders, and then, if necessary, be assigned to such a vacancy.

(1) Such pilot shall have a reinstatement right to the bid status from which displaced, and

(2) Shall not incur a lock-in in the bid status awarded or to which assigned.

8. A pilot can only be displaced once in any contractual month, but a pilot who has been displaced may be displaced again in a later month. A pilot who has been displaced more than once may hold multiple reinstatement rights in accordance with E. of this Section.

E. Reinstatement Rights

1. A reinstatement right provides a displaced pilot with the right to be reinstated to a vacancy in the bid status from which displaced before such vacancy is awarded to any other pilot who does not have a reinstatement right.

2. When a pilot is displaced and is awarded another bid status, such pilot shall have a reinstatement right, unless the pilot is either awarded a bid status which was on the bid preference list or the pilot is entitled to receive moving expenses in accordance with D.7.b.(3) of this Section. As provided in D.2.d. of this Section, a pilot proffering displacement does not have a reinstatement right.

3. Duration of Reinstatement Rights

a. Any reinstatement right existing prior to January 1, 2013 shall not have an expiration date.

b. Any reinstatement right created on or after January 1, 2013 shall expire 36 months after the effective date of the event that created the reinstatement right. If, on the effective date of such event, the longest FAA-required training course for re-qualification to that reinstatement bid status is triggered in a period shorter than 36 months, then the reinstatement right will expire at the end of the shorter period (e.g., If the FAA requires the longest training course after a 30-month absence from the bid status, the reinstatement right will expire at the end of the 30th month following the effective date of the event that created the reinstatement right).

c. For purposes of this section, a furloughed pilot's reinstatement right, if any, is awarded and effective on the date of recall.

4. When two (2) or more pilots have a reinstatement right to the same bid status, their reinstatement rights will be honored in seniority order.

5. A pilot who has a reinstatement right to a bid status will automatically be reinstated if a vacancy becomes available in that bid status.

6. A pilot shall lose a reinstatement right to a bid status if reinstated to that bid status or if awarded any bid status which is on such pilot's bid preference list, except when awarded a lateral bid.

7. If a pilot has a reinstatement right, it will be included on the standing bid list and will be identified as a reinstatement right.

8. A pilot who has a reinstatement right may choose to forfeit such right at any time by deleting it from the standing bid list. If a pilot has more than one reinstatement right, such pilot may

choose to forfeit one or more such rights in this manner without affecting any other reinstatement rights.

9. A pilot who has been displaced more than once may have a reinstatement right to more than one (1) bid status. The reinstatement of such a pilot shall terminate reinstatement right(s) to any bid status which the pilot has ranked lower than the one to which reinstated but shall not affect reinstatement right(s) to any bid status which the pilot has ranked higher than the one to which reinstated. However, if such a pilot is awarded any bid status which is on such pilot's bid preference list, that pilot shall forfeit all reinstatement rights, except when awarded a lateral bid.

F. Advance Notice of Vacancies to be Filled [See Q&A 17-8]

1. At least fifteen (15) days before implementing the bid award procedure, the Company shall provide notification of the following:
   a. The date on which the bid award procedure will be implemented.
   b. The number of known vacancies identified by bid status.
   c. The effective date of all known vacancies.
   d. A forecast of the total number of positions in the system for the first, third and sixth months, with the first month being the first month in which the vacancies are effective.
      (1) The forecasts for the first and third months will be by bid status at each base or satellite base.
      (2) The sixth month forecast will be for the system by category, equipment and division.
2. The forecasts required in 1. shall be the best estimates which the Company can provide, but they shall be made available solely as a guide and shall not, in any way, represent a commitment that the number and/or distribution of forecasted bid status positions will actually develop or be maintained.
3. Following the notification required in 1., pilots may continue to access and make changes to their standing bid lists at any time prior to the date on which the bid award procedure is implemented.

G. Bid Award Procedure

1. When there are known vacancies and/or displacements, the Company shall, no less than three (3) times per calendar year, simultaneously award bids for vacancies, and process displacements, reinstatements, entitlements, and also process displacements and vacancies resulting from such awards. All awards shall be based on system seniority giving first priority to reinstatement rights, second priority to entitlements and then bids for vacancies. Only those bids or displacement preferences indicated on pilots' standing bid lists will be considered in the bid award procedure. [See Q&A 17-7]
2. With the exception of V. (Furloughs) and W. (Method of Recall) of this Section, none of the procedures in Section 17. (bidding for vacancies, displacements, etc.) shall apply to the Flight Test pilot positions.
3. The Company may accelerate the effective date of a bid to a given month if a pilot is scheduled to complete training during that month.
4. In the case of a change of bid status to a higher paying position, the Company will offer training in seniority order. In the event the Company chooses to bypass a pilot for a more junior pilot, then on a one-for-one basis, each bypassed pilot will be pay protected to the same effective date. [See Q&A 17-3]
5. In the case of a change of bid status due to a displacement, the Company will assign training in inverse seniority order.

H. Standing Bid List

1. Each pilot shall indicate preferences for any change in bid status on a standing bid list. A pilot's standing bid list shall be the only method of bidding for vacancies or expressing

preferences for bid status positions should such pilot be displaced. Each pilot's standing bid list may include any or all of the following:

a. Bid Preference List

(1) A pilot's bid preference list shall include all of that pilot's bids for any other desired bid status positions, listed in order of preference by the pilot. [See Q&A **17-4**]

(2) The bid status positions listed need not be vacant at the time they are placed on a pilot's bid preference list.

(3) If a pilot is displaced, such pilot shall be awarded the highest preference on his or her bid preference list to which such pilot is entitled by seniority, provided the position is vacant.

b. Displacement Preference List

(1) A pilot's displacement preference list shall include all of that pilot's preferences for bid status positions to which such pilot would displace in the event of displacement from his or her present bid status position.

(2) Displacement preferences shall be listed in order of preference by the pilot.

(3) If a pilot is displaced and a vacant bid status position cannot be awarded from such pilot's bid preference list, such pilot will displace to the highest preference on his or her displacement preference list to which entitled by seniority.

(4) If pilots are displaced and have expressed no bid or displacement preferences, or they are not entitled by seniority to a position on either their bid preference lists or their displacement preference lists, such pilots shall be assigned to positions by the Company in accordance with Section 17.D.7.c. or d.

c. Reinstatement Rights

(1) If a pilot has a reinstatement right to a bid status from which displaced, it shall appear on such pilot's bid preference list but it shall be identified as a reinstatement right.

(2) A pilot who has been displaced more than once may have more than one reinstatement right, in which case all such rights shall appear on such pilot's bid preference list.

(3) A pilot may arrange bid preferences and reinstatement right(s) in any order on the bid preference list.

(4) A pilot may forfeit a reinstatement right by deleting it from the bid preference list.

d. Entitlements

(1) If a pilot has an entitlement which was awarded while serving a lock-in, the entitlement shall appear on such pilot's bid preference list but it shall be identified as an entitlement.

(2) A pilot may have only one entitlement.

(3) A pilot serving a lock-in who already has an entitlement may be awarded another entitlement, in which case the previous entitlement will automatically be deleted from such pilot's bid preference list.

(4) Pilots may arrange their entitlements and bid preferences in any order on their bid preference lists.

(5) A pilot may forfeit an entitlement by deleting it from the bid preference list.

2. A pilot may add, delete, or otherwise alter the preferences on the standing bid list at any time prior to the date on which the bid award procedure is implemented. All preferences on a pilot's standing bid list on the date the bid award procedure is implemented shall be considered, and any resulting change in bid status shall be binding on the pilot.

I. Notice of Bid Status Positions Awarded

1. Following the implementation of the bid award procedure, the Company shall expeditiously provide electronic notification of all bid status positions which were awarded.

2. Each pilot whose bid status changed as a result of the bid award procedure shall be individually notified of such change.

3. Following the award/assignment of training associated with the results of the bid award procedure, the Company shall provide electronic notification of the dates of all such training awarded/assigned.

J. Effective Date Of Bid Status

1. The effective date of a bid status position shall be on the date the pilot completes OE training or the published bid effective date, whichever is earlier, except as provided in R. and S. of this Section for the introduction of new equipment or the opening or reactivation of a crew base.

2. A pilot not trained in seniority order in accordance with Section 17.G.4 above, will, on a one for one basis, be considered withheld for pay purposes. The withheld pilot shall be pay protected upon the OE completion date of the applicable junior pilot. In the event such junior pilot is removed or delayed in training the pay protection shall begin on the junior pilot's original estimated completion date.The withheld pilot will be paid in accordance with Section 17.M.4 below.

3. A pilot will be paid the applicable rates of pay for a bid status commencing with the effective date of such bid status. However, a pilot who is scheduled to fly or flies in more than one (1) bid status during a contractual month as the result of a fly through trip sequence shall be paid and credited on the basis of the bid status contained in the fly through trip sequence until the fly through sequence terminates.

K. Reporting To A Different Base

1. A pilot who receives a bid status award which involves transferring from one base to another, shall normally be given a period of not less than fifteen (15) days to report to such new base from the date on which notification of the bid award was made.

2. A pilot under 1. above who is required by the Company to report to another base in less than fifteen (15) days shall be afforded reasonable time off at a later date, not to exceed fifteen (15) days, at the time of such pilot's household move, to facilitate completing moving arrangements. The pilot's schedule will be so arranged at the new base as to minimize, insofar as is possible, loss of flying time during such reasonable time off in which moving arrangements are being completed. Such pilot shall be allowed actual reasonable expenses for himself or herself only at the new base station for the number of days equivalent to the difference between the standard fifteen (15) day reporting date and the date on which such pilot was actually required to report. Where Company Regulations or any provision of this Agreement provides additional moving expenses for specific moves, such expenses shall be in addition to, but not in duplication of, the expense provisions of this paragraph.

L. Lock-Ins

1. A pilot awarded a bid status from the bid preference list or who is assigned a bid status as provided in Section 17.N.1., 2., 3., 4., or 5., shall be subject to the following period of lock-in:
   a. If awarded/assigned a higher paid bid status -- twenty four (24) months,
   b. If awarded/assigned a lower paid bid status -- twenty four (24) months,
   c. If awarded/assigned a lateral bid status (same category and equipment -- different division and/or base) -- no new lock-in, but such pilot shall continue to serve the balance of any existing lock-in.
   d. A pilot awarded to a different bid status for aircraft operated with a common type rating will not incur a lock-in.
   e. A pilot who is serving a lock-in shall not be awarded a higher or lower bid status but may be awarded a lateral bid status (same category and equipment -- different division and/or base). However, a pilot who is serving a lock-in shall be released to initially upgrade to the next higher category after fulfilling six (6) months of such lock-in.

f. A pilot who is displaced from a bid status while serving a lock-in shall, if later reinstated to that same bid status, resume the lock-in and serve the balance which remained at the time of displacement. However, upon reinstatement, such pilot shall be credited with any time served in the same category and equipment while displaced.

g. A pilot who is displaced from a bid status shall not be required to serve a lock-in in the bid status assumed after displacement unless such bid status is awarded from the bid preference list.

h. A pilot who proffers a displacement from a bid status shall be required to serve a lock-in in the bid status assumed after displacement.

i. If a pilot, who is awarded/assigned a position in a lower bid status and is subject to the twenty four (24) month lock-in in b. above, is withheld from such bid status in accordance with M. of this Section, the lock-in shall be reduced by one (1) month for each month such pilot is withheld beyond the third (3rd) month after the effective date of the position from which withheld.

j. A pilot awarded/assigned a bid status on "new equipment" or at a newly opened or reactivated base shall be subject to the lock-in provisions of R. or S. of this Section, as applicable.

2. A newly hired pilot shall serve a six (6) month lock-in in the bid status of initial assignment.

   Such pilot may be awarded/assigned a lateral bid status (same category and equipment – different division and/or base), in which case the pilot shall not incur a new lock-in but shall continue to serve the balance of the existing lock-in.

3. Lock-ins shall become effective as follows:

   a. A lock-in shall not commence prior to the effective date of the award.

   b. A pilot who completes required training prior to the effective date of an award shall begin any applicable lock-in on the effective date of such award.

   c. A pilot who completes required training after the effective date of an award shall begin any applicable lock-in on the first day of the contractual month following the completion of training, but no later than the first day of the second (2nd) contractual month following the commencement of training.

   d. Any lock-in required for a pilot who has been withheld, shall begin when the pilot's period of withholding ceases, irrespective of when the pilot trains.

4. Lock-ins are a function of a change in bid status and are not mitigated or satisfied by previous or current qualifications or previous lock-ins.

5. A pilot who is serving a lock-in may bid for vacant bid status positions; however, if such pilot is the successful bidder such pilot may, at the Company's discretion, only be awarded an entitlement to the bid status. After such pilot has served the lock-in the entitlement may be exercised only when there is a vacancy in the bid status. Entitlements to a vacancy are awarded immediately after reinstatement rights. A pilot with an entitlement to a bid status will be awarded a vacancy before any pilot who does not have a reinstatement right or an entitlement. If more than one pilot has an entitlement to the same bid status, a single vacancy is awarded to the most senior.

6. Nothing herein shall prevent the Company from terminating a pilot's lock-in at its discretion.

M. Withholding From A Bid Status Position

1. A pilot who is eligible to be awarded a bid status position may, at the Company's discretion, be withheld from occupying such position under the following circumstances:

   a. Consideration of age,

   b. Anticipated eligibility for and commitment to occupy a higher bid status than that from which such pilot is being withheld, as indicated on that pilot's bid preference list at the time such pilot is withheld,

   c. Operational reasons, such as manning requirements or availability of training or equipment.

2. Withholding Time Limits - General
   a. If it is necessary to withhold a pilot from a bid status preference the following rules apply:
      (1) a first year pilot's withholding period from a lateral position is limited to a total of two (2) months.
      (2) A non-first year pilot's withholding period from a lateral position is limited to a total of six (6) months.
      (3) All other withholding periods shall be no greater than twelve (12) contractual months from the effective date of the bid status award. This twelve (12) month limit shall not apply to the following exceptions:
         (a) A pilot being withheld from a bid status preference in consideration of the pilot's age.
         (b) If fleet specific training facilities that are owned, leased, or operated by the Company or an affiliate are fully utilized for American Airlines pilot training and no contract training capacity exists at any outside training facility.
         (c) If necessary due to extraordinary circumstances, the Company and the Association will meet and agree on an appropriate duration for such withholding. Extraordinary circumstances, include but are not limited to:
            - An act of God,
            - A strike by any other Company employee group,
            - A national emergency,
            - Involuntary revocation of the Company's operating certificate(s),
            - Grounding of a fleet type or a substantial number of the Company's aircraft,
            - A reduction in the Company's operation resulting from a decrease in available fuel supply caused by either governmental action or the suppliers being unable to meet the Company's demands,
            - The unavailability of aircraft scheduled for delivery,
            - Start up of a new division (e.g., South America),
            - Elimination of a fleet type.

3. Withholding From A Displacement Preference
   a. A pilot may be withheld from a displacement preference bid status if, the Company projects the pilot will subsequently be displaced from the displacement preference, that the pilot is entitled to by seniority, within three (3) contractual months of the effective date of the displacement. If the pilot is withheld from a displacement preference and is assigned a displacement preference at the same base as the withheld displacement preference, the Company may, if the original three (3) month estimate is in error, extend the withhold period for up to three (3) additional months if the Company projects that the pilot will be displaced in that time period. For each bid status from which a pilot is withheld, the three (3) month limitation and the three (3) month extension provided for in this paragraph will apply beginning on the effective date of the pilot's withhold from each such bid status.
   b. A pilot who is withheld from a displacement preference, and is assigned a displacement preference at a different base from the withheld displacement preference, shall receive priority passes for travel between the pilot's base and the AA station nearest the pilot's residence to cover any flying obligation while that pilot is being withheld. The pilot does not qualify for priority passes after the pilot is either awarded a bid status preference, or is subsequently displaced from the withheld displacement preference.
   c. If a pilot does not have sufficient displacement preferences listed to indicate a displacement preference to a bid status other than from what the pilot would be withheld, the Company shall contact that pilot and obtain additional displacement preferences.
   d. A pilot withheld from a displacement preference shall be entitled to a reinstatement right to each displacement preference from which such pilot is being withheld. Multiple

reinstatement rights are permitted. Such pilot shall be paid for the highest four part bid status from which that pilot is being withheld.

e. If a pilot can occupy the withheld bid status position at the end of the time period outlined in Paragraph a. above, the pilot shall assume the bid status effective with the next contractual month.

4. Effective Date Of Withholding Pay
   a. A pilot will be considered withheld commencing with the effective date of the bid status position from which withheld, and shall as of that date, be paid the highest equipment rate of pay for the bid status from which withheld or the rate of pay for the flying actually performed, whichever is greater.
   b. Such pilot shall be advised at the time of withholding the reason for withholding and the estimated duration of withholding.
   c. Pilots being withheld shall retain their current bid status.
5. Termination Of Withholding/Withholding Pay
   a. Withholding pay protection shall cease:
      (1) When a pilot withheld under 1.a. above:
         (a) No longer has a more junior pilot flying in the withheld status, or
         (b) Is awarded a different bid status from the bid preference list.
      (2) When a pilot under 1.b. above:
         (a) Is assigned to a position in the withheld bid status, or
         (b) Is assigned to a position in the higher bid status which such pilot had committed to accept when withheld, or
         (c) No longer has a more junior pilot flying in the withheld bid status, or
         (d) Is awarded from the bid preference list a position in a bid status lateral to or higher than that from which withheld.
      (3) When a pilot under 1.c. above:
         (a) Is assigned to a position in the withheld bid status, or
         (b) Is awarded from the bid preference list a position in a bid status lateral to or higher than that from which withheld, or
         (c) Has a more senior pilot displaced from the bid status from which withheld.
   b. (1) When a pilot's period of withholding ceases in accordance with (1)(a), (2)(c), or (3)(c) above, the pilot will be considered displaced from the withheld bid status.
      (2) (a) Such pilot will then be awarded a bid status position in accordance with D. above (Displacements), or withheld from such bid status position in accordance with M. above (Withholding From A Bid Status Position).
         (b) The provisions of D.2. above (Proffer of Displacements) do not apply when a pilot is displaced from a withheld bid status, i.e., the displacement is not proffered to other pilots.
      (3) In accordance with E. above (Reinstatement Rights), such pilot will be eligible for a reinstatement right to the bid status for which withholding ceased.
6. When a pilot's period of withholding ceases, such pilot shall, as of that date begin serving any lock-in which may be required by the provisions of L. of this Section. If a pilot has been withheld from a lower bid status, the provisions of L.1.h. may apply.

N. Assignment to a Bid Status

The Company may assign a pilot to a bid status in the following circumstances:

1. If there are no bidders for a Captain vacancy, the Company will again proffer the Captain vacancy. If there are still no bidders for the Captain vacancy, the Company will assign the most junior qualified First Officer in that base to the Captain vacancy.
2. In accordance with the provisions of 17.D.7.c. and d., the Company may assign displaced pilots to a bid status.
3. Except for a newly hired pilot, a pilot assigned in accordance with 1. above shall serve a twenty-four (24) month lock-in in accordance with L.1.a. of this Section.
4. A newly upgraded Captain may be assigned First Officer flying to acquire experience. Such pilot will be given a temporary bid to that First Officer status and will bid for trip selections according to seniority within that First Officer status. Such pilot will be paid rates of pay according to that pilot's current status or the assigned status, whichever is greater.
5. Each month the Company shall provide the Association with information detailing the initial bid status assignments of all newly hired pilots and all pilots who were withheld from such bid status.

O. Reserved

P. Failure to Qualify

1. When a successful bidder fails to qualify for an awarded bid status within thirty (30) days from the effective date of the award -- subject to weather, equipment availability, or extent of qualification requirements -- such pilot shall forthwith return to his or her former bid status at such pilot's own expense. The unfilled vacancy shall then be considered a new vacancy.
2. The Company may, at its discretion, extend the thirty (30) day window to accommodate the continuation of training course already begun.
3. It is recognized that a pilot who has been awarded a bid status may be unable to commence or complete training to qualify for that new bid status due to circumstances beyond the pilot's control. In this case the following provisions apply:
   a. The pilot will be returned to his/her previous status and paid in accordance with that previous status.
   b. When the pilot is able to again commence training for the awarded bid status, or when such date can be reasonably determined, the pilot will notify the Company. Upon such notification, the pilot will be awarded a reinstatement right to the new bid status for a future vacancy award.

Q. Cancellation Of Vacancy

If the Company awards a pilot a bid status and then cancels that award prior to its effective date, the pilot shall be considered to have been displaced from the bid status awarded. If, as a result of such displacement, a pilot is awarded a vacancy from the bid preference list, the determination of any lock-in shall be based on the bid status the pilot held at the time the future award was canceled.

R. Introduction of New Equipment

1. When new equipment is introduced at a base, it will be considered "new equipment" for the first twelve contractual months following the effective date of the first vacancy, and the Company may award vacancies on such new equipment up to six (6) months in advance of their effective dates. However, if the Company makes no vacancies available on the new

equipment for any three (3) consecutive months, it will no longer be considered new equipment.

2. Vacancies on new equipment will be filled using pilots' standing bid lists and the regular bid status award procedure.

3. Pilots awarded or assigned a bid status on new equipment will serve a lock-in of twenty-four (24) months. A lock-in of twelve (12) months applies to those pilots who may have held a lateral bid status (same category and equipment -- different division and/or base).

4. Pilots who are serving a lock-in at the time the Company announces the introduction of new equipment may bid for vacancies on the new equipment. If they are awarded a bid status on the new equipment, their existing lock-in will terminate and they will begin a lock-in on the new equipment.

5. Once the Company has announced the introduction of new equipment, pilots who begin training or begin a lock-in not associated with a bid status on the new equipment can not bid for the new equipment until they complete their lock-in, unless they are bidding for the new equipment from a lateral bid status (same category and equipment -- different division and/or base). If such pilots are awarded a lateral bid status on the new equipment, their existing lock-in will terminate and they will begin a lock-in on the new equipment.

6. With respect to bid status on new equipment, as with all other bid status, the Company may terminate pilots' lock-ins at its discretion, and the Company has the option to withhold pilots from a bid status.

S. Opening, Reactivating, or Closing a Base

1. Opening or Reactivating a Base
   a. When a base is reactivated or a new base is opened, these procedures will be in effect for the first twelve contractual months following the effective date of the first vacancy.
   b. Vacancies at a new or reactivated base will be filled using pilots' standing bid lists and the regular bid status award procedure. However, pilots will be able to qualify their bids by indicating the lowest seniority position which will be acceptable to them in the status for which they are bidding, and the Company may award vacancies at such new or reactivated base up to six (6) months in advance of their effective dates.
   c. Pilots awarded or assigned a bid status at a new or reactivated base will serve a lock-in of twenty-four (24) months. A lock-in of twelve (12) months applies to those pilots who may have held a lateral bid status (same category and equipment -- different division and/or base). While serving a lock-in at a new or reactivated base, pilots may not assume a lateral bid status at a different base.
   d. Pilots who are serving a lock-in at the time the Company announces a new or reactivated base may bid for vacancies at the new or reactivated base. If they are awarded a bid preference at the new or reactivated base, their existing lock-in will terminate and they will begin a new lock-in.
   e. Once the Company has announced a new or reactivated base, pilots who begin training or begin a lock-in not associated with the new or reactivated base may not bid for the new or reactivated base until they complete their lock- in, unless they are bidding for a lateral bid status (same category and equipment -- different division and/or base). If such pilots are awarded a lateral bid status at the new or reactivated base, their existing lock-in will terminate and they will begin a new lock-in.
   f. With respect to bid status at a new or reactivated base, as with all other bid status, the Company may terminate pilots' lock-ins at its discretion, and the Company has the option to withhold pilots from a bid status.

2. Closing of a Base
   a. The Company will announce the closing date of a base at least six (6) months prior to the closing; except that such notice is not required when a base is closed due to unforeseeable circumstances.

b. During the period between the announcement of closing and the closing of the base, the Company will maintain the level of earnings of all pilots assigned to such base.

c. During the period between the announcement of the closing and the closing of the base, a pilot may bid and be awarded a position in another bid status, but such pilot may be withheld from such bid status.

d. Once the base closing is announced, each pilot assigned to such base should indicate to the Company, using the standing bid list, preferences for bid status assignment at a different base.

e. When vacancies and displacements are processed for the month in which the base will close, each pilot assigned to such base will indicate to the Company, using the standing bid list, preferences for bid status assignment at a different base.

f. The moving expenses of pilots who transfer to other bases in accordance with this provision will be paid by the Company in accordance with Section 8 of this Agreement.

T. Voluntary Mutual Bid Status Exchanges [See Q&A 17-2, 17-6]

The purpose of the Mutual Bid Status Exchange program ("Program") is to provide pilots at a base to be awarded their three-part bid status (category, equipment, division) at a different base.

The Association administers the Program solely as an accommodation to the Company. The Association assumes no special or new responsibility or liability to the Company, any pilot, or any other person or entity, as a result of its administration of the Program. The Company retains its authority and responsibility as employer under the Agreement.

A pilot, acting on his or her own behalf or through the Association as currently provided in the Agreement, has access to the existing grievance and arbitration processes set forth in Sections 21,22 and 23 of this Agreement, provided, however, that in any such grievance proceeding an arbitrator is without jurisdiction to enter relief against the Association.

After the normal monthly bid award process has been completed the Association will administer the Program subject to the following provisions and constraints:

1. Pilots who have indicated a preference to occupy their three-part bid status (category, equipment, division) at a different base will be identified. Pilots with pending bid statuses will not be included.

2. These pilots will be grouped by three-part bid status (category, equipment, division) and be sorted by seniority.

3. Pilots will be eligible for a mutual bid status exchange provided that each pilot is senior to the most junior pilot in their new respective bid status prior to the exchange. i.e. The mutual bid status exchange cannot result in a new more junior pilot in either one of the two statuses involved in an exchange.

4. Within each group, beginning with the most senior pilot, the Association will attempt to accommodate a mutual exchange with the next most junior pilot (or pilots, in the case of "Multi-Base" Exchanges), on the list, proceeding down the list and removing accommodated pilots until no further matches exist.

5. At the Company's option, mutual exchanges may be allowed based on a pilot's two-part bid status (category, equipment).

6. Pilots who are successfully matched in (4) above are awarded the respective bid status without incurring a lock-in.

   E.g.

Seniority #	Base	Proffers:	Matched With:	Result
1	LAX	CLT	5	Awarded CLT
2	ORD	CLT	3	Awarded CLT
3	CLT	ORD	2	Awarded ORD
4	DFW	CLT	None	Remains DFW
5	CLT	LAX	1	Awarded LAX

6	LGA	CLT	9	Awarded CLT
7	LAX	CLT	8	Awarded CLT
8	CLT	LAX	7	Awarded LAX
9	CLT	LGA	6	Awarded LGA

7. APA will normally provide Crew Resources with the list of bid status exchanges by the 6th of the month preceding the effective date of the new bid statuses.

U. Change of Base Due to Hardship

The Vice President-Flight of the Company and the President of the Allied Pilots Association will consider each request for a change of base due to hardship on a case-by-case basis, giving due consideration to the particular circumstances involved.

V. Furloughs

1. When a curtailment of operations results in fewer pilots being employed by the Company, the most junior pilots in the system, irrespective of their bid status or any rights that have accrued to them, shall be furloughed on a system-wide basis in reverse order of system seniority.

2. In the event of a furlough, the Company will notify all pilots that it will consider all requests for Leaves of Absence in order to mitigate the number of furloughs.

3. Pilots to be furloughed will be given thirty (30) days' notice before the effective date of the furlough. Such notice will not be applicable in cases of emergency which include, but are not limited to acts of God or a strike by employees of the Company.

4. A pilot furloughed by the Company due to a reduction in force shall continue to accrue seniority during the period of such furlough. Length of service for pay purposes shall not accrue during such period of furlough.

5. Furlough Pay

   a. A pilot who has completed one (1) or more years of service with the Company as a flight deck crewmember and who is furloughed shall receive furlough pay based upon such pilot's earnings for the last full month prior to the announcement of furlough, but not less than the average of Long Call and Short Call Reserve guarantee for the bid status such pilot held that month, for the period of time specified below, except that no furlough pay will be paid when furloughs are caused by an act of God, a national emergency, involuntary revocation of the Company's operating certificate(s), a strike by any Company employee group, or a reduction in the Company's operation resulting from a decrease in available fuel supply caused by either governmental action or by commercial suppliers being unable to meet the Company's demands.

If a pilot has completed:	
1 year of service	1 month furlough pay
2 years of service	1-1/2 month's furlough pay
3 years of service	2 month's furlough pay
4 years of service	2-1/2 months' furlough pay
5 years of service	3 months' furlough pay
6 years of service	3-1/2 months' furlough pay
7 years of service	4 months' furlough pay
8 years of service	5 months' furlough pay
9 years of service and thereafter	5-1/2 months' furlough pay

   b. A pilot eligible for furlough pay shall receive such pay starting at the time of furlough and such payments for the amounts due shall be at regular pay periods and continue until all furlough pay credit is used, except that in no event shall any such pay be due after the effective date of recall or, if such pilot elects to defer recall in accordance with W.3. of this Section, the effective date of such deferral.

W. Method of Recall

1. All pilots furloughed from the Company shall file proper addresses with the Vice President-Flight of the Company at the time of furlough. Any changes in address must be supplied promptly to the Vice President-Flight of the Company. A pilot shall not be entitled to preference in re-employment if such pilot does not comply with the foregoing requirements.

2. Furloughed pilots who are recalled to the employ of the Company shall be allowed a period of twenty-one (21) days to return to the service of the Company after date of postmark of reply-requested telegram or cablegram, or certified return-receipt-requested letter, of such pilot's reassignment to duty with the Company, sent to the last address on file with the Vice President- Flight of the Company.

3. Furloughed pilots referred to above who are recalled to the employ of the Company must respond to such recall in accordance with paragraph 2. above, provided, however, such recalled pilot may defer return to the active flight payroll for a period not to exceed two (2) years from the date of postmark on the notice of recall or the date the least senior furloughee is recalled, whichever date comes first, provided further that such deferring pilot may cancel such deferral, in writing, and become eligible for recall at the next recall date. When a pilot's deferral period has expired, such pilot will be eligible for recall and such pilot will be recalled when the needs of the Company require such recall. Pilots electing to defer their return to the Company in accordance with the above must notify the Company by telegram, cablegram, or certified letter, return-receipt-requested, of their decision and length of requested deferral, within twenty-one (21) days of postmark on their recall notice. Pilots electing to defer their return to active flight duty will continue to accrue occupational seniority, but length of service for pay purposes shall not accrue during such deferral period.

4. When a furloughed pilot is recalled and placed on active pilot status with the Company, such pilot shall have no prior right or claim to any vacancy or vacancies that have been filled during the period of such furlough. However, if the pilot had a reinstatement right at the time of furlough, the pilot may reclaim such reinstatement right. If more than one reinstatement right was held, the pilot may select one such reinstatement right.

X. Number of Bid Status Positions

1. The minimum number of monthly positions in each bid status shall be no less than:
   a. Total regularly scheduled flight time, plus
   b. Total scheduled flight time credit, plus
   c. Total charter and extra section flight time, plus
   d. Ten percent (10%) of the total of a., b., and c. above (reserve), plus
   e. Total anticipated hours of vacation, plus
   f. Total anticipated hours of training,
   g. Divided by the monthly average line value (MALV).

2. The above formula shall not prohibit the Company from increasing the number of pilot positions in a bid status above the minimums determined above.

3. By the fifteenth day of the month, the Company shall forward the Association a report of all flying planned and flown in the previous month.

Y. Pilot Status Listing

The Company shall publish a list each month on which shall appear the names and status of all of the pilots in the employ of the Company and the stations at which they are currently based. Such list shall include the bid status of pilots, their seniority numbers, the bid status for which reinstatement rights are held, entitlements, lock-ins, and deferrals. Three (3) current copies of such list shall be distributed monthly to the Flight Department offices at each base, one (1) additional current copy of such list shall be posted on the Bulletin Board at all bases and co-terminals, and one (1) current copy shall be furnished to the Chairman and Vice Chairman of each Domicile and the President of the Association. Such lists shall be made available at all times for examination by pilots, and no such list shall be removed from Company property.

Z. Section 17 Questions and Answers

17-1. Q. Can a newly hired pilot be assigned to a vacancy for which more senior pilots are bidding?

A. Yes. More senior pilots who have bid preferences for the bid status to which a newly hired pilot is assigned, and who are not awarded the vacancy, may be fulfilling a lock-in (for example, a 24 month lock-in as a 767 first officer), or they shall be withheld from the bid status to which a newly hired pilot is assigned. If the pilot is denied the vacancy as a result of a lock-in, such pilot shall be given an entitlement right to the position.

17-2. Q. While serving a lock-in a pilot is awarded a bid status for the same equipment, seat and division via the "Voluntary Mutual Base Exchange Program". Is such pilot released from the existing lock-in?

A. No. The pilot will continue to serve the balance of the existing lock-in.

17-3. Q. May a pilot request specific training dates?

A. Yes. A pilot will be assigned to training in system seniority order, however, pilots may request to defer training to a different available training class. All deferral requests will be considered and may be honored if manning permits. If a pilot voluntarily requests and receives a later training date the effective date of the bid for that pilot will be based on the earlier of the date the pilot completes OE or the published bid effective date.

17-4. Q. The Company has published a bid with an effective date of April 1. A pilot is awarded a vacancy yet a more junior pilot is assigned to training prior to the senior pilot. What is the status of the senior pilot?

A. The senior pilot will be pay protected from the date the junior pilot completes OE, or April 1, whichever is earlier. In the event such junior pilot is removed from or delayed completing training the pay protection shall begin on the junior pilot's original estimated completion date.

17-5. Q. Can a junior pilot fill a vacancy via a displacement preference ahead of a more senior pilot with the same bid listed as a bid preference?

A. Yes. If the junior pilot referred to above has the seniority to displace into the four (4) part bid status where the vacancy exists, such pilot will be awarded the displacement preference bid thereby eliminating the vacancy.

17-6. Q. Does a pilot awarded a bid status for the same equipment, seat and division via the "Voluntary Mutual Base Exchange Program" lose a previously awarded "Entitlement" or "Reinstatement Right(s)"?

A. No.

17-7. Q. What is the interpretation of the word "simultaneously" as it relates to the Bid Award Procedure in Section 17.G.1.?

A. The interpretation of the word "simultaneously" as written in Section 17.G.1. means "within the same bid run." The order of filling of positions are displacements, reinstatements, entitlements and preferences.

17-8. Q. Without a monthly bid award run how will pilots know when a vacancy bid run will occur and when training will be offered?

A. Section 17.F governs the Company's notification requirements for filling of vacancies.The Company is required to have three (3) or more vacancy runs per calendar year.The Company will provide notice prior to those vacancy runs. As an example, the Company may give notice in December for a vacancy run that will have an effective date of April 1. The vacancy bid will be run and awarded in December. Training will occur prior

to April 1. Some pilots may begin training shortly after the bid is awarded while others may not attend training until closer to the effective date of April 1.

SECTION 26

AMENDMENTS TO AGREEMENT, EFFECT ON PRIOR AGREEMENTS, AND DURATION

A. Amendments to Agreement

Either party hereto may at any time propose, in writing, to the other party any amendment which it may desire to make to this Agreement, and if such amendment is agreed to by both parties hereto, such amendment shall be stated, in writing, signed by both parties and the amendment shall then be deemed to be incorporated in and shall become a part of this Agreement.

B. Effect on Prior Agreements

This Agreement, including the Supplemental Agreements and Letters attached hereto, shall supersede and take precedence over all Agreements, Supplemental Agreements, Amendments, Letters of Understanding and other documents concerning the same subjects executed between the Company and the collective bargaining representative of the pilots in the service of American Airlines, Inc. prior to the signing of this Agreement. All rights and obligations, monetary or otherwise, which may have accrued because of services rendered prior to the effective date of this Agreement shall be satisfied or discharged.

C. Duration

This Agreement shall become effective on January 30, 2015, except as otherwise stated herein, and shall continue in full force and effect until January 1, 2020, and shall renew itself without change until each succeeding January 1 thereafter, unless written notice of intended change is served in accordance with Section 6, Title I, of the Railway Labor Act, as amended, by either party hereto at least thirty (30) days prior to January 1, 2020, or January 1 of any subsequent year.

D. Early Opener

If written notice is provided by either party at least thirty (30) days prior to January 1, 2019, the parties agree to commence negotiations in January 2019, in accordance with Section 6, Title I, of the Railway Labor Act, as amended.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement this the 30th day of January, 2015.

WITNESS:

FOR THE AIR LINE PILOTS
IN SERVICE OF
AMERICAN AIRLINES, INC.
AS REPRESENTED BY
THE ALLIED PILOTS ASSOCIATION

*/signed/*_____
Captain Keith Wilson
President

FOR AMERICAN AIRLINES, INC.

/signed/ _____
Paul Jones
Senior Vice President & General Counsel

*/signed/*_____
Norman G. Miller
Negotiating Committee Chairman

*/signed/*_____
Charles Hairston
Director, Pilot Contract Negotiations

*/signed/*_____
David C. Brown
Negotiating Committee Member

*/signed/*_____
Dean Colello
Negotiating Committee Member

*/signed/*_____
Carrie Giles
Negotiating Committee Member

*/signed/*_____
Ken Holmes
Negotiating Committee Member

*/signed/*_____
Brian Smith
Negotiating Committee Member

*/signed/*_____
Jeff Thurstin
Negotiating Committee Member

/signed/ _____
Beth Holdren
Managing Director Labor Relations, Flight

*/signed/*_____
Todd Jewett
Senior Manager Labor Relations, Flight

*/signed/*_____
Keith Austin
Manager, Labor Relations, Flight

*/signed/*_____
James Eaton
Senior Manager - Pilot Negotiations

*/signed/*_____
Lyle Hogg
Vice President, Flight Operations, US Airways Inc.

LETTER G

January 30, 2015

Captain Keith Wilson
President – Allied Pilots Association
14600 Trinity Boulevard, Suite #500
Fort Worth, TX 76155 – 2512

Re: Furlough Length of Service (LOS)

Dear Captain Wilson,

All "New American Airlines" Pilots (LUS and LAA) furloughed after September 11, 2001 will have the length of time they were on furlough added to their total accredited service in accordance with the following guidelines:

1. Pilots involuntarily furloughed after September 11, 2001 who have returned to active status or accepted recall by January 30, 2015 shall have up to two (2) years Company service restored for vacation accrual and pay (LOS credit).
2. Furlough Stand in Stead pilots shall receive LOS credit for the time spent on furlough prior to their first offer of recall.
3. Furloughed pilots will not receive LOS credit for time on deferred status.
4. Nothing contained in this letter shall impact furloughed pilots contractual rights under Letter T of the 2013 MTA dated December 9, 2013.

American Airlines will provide LOS credit as described in this letter based on a final spreadsheet provided by APA. The spreadsheet shall include, at a minimum, names, employee numbers, and amount of credit.

American Airlines will apply the length of service credit associated with this provision within 60 days after the receipt of the spreadsheet from APA. All provisions are fully retroactive to December 2, 2014 and distribution of the retroactive components will be coordinated with the Association.

Sincerely,

By: __/ *signed* /____
Beth Holdren
Managing Director
Labor Relations - Flight

AGREED

ALLIED PILOTS ASSOCIATION

By: __/ *signed* /____
Captain Keith Wilson
President

EXHIBIT 3

MEMORANDUM OF UNDERSTANDING

REGARDING

CONTINGENT COLLECTIVE BARGAINING AGREEMENT

Pursuant to this Memorandum of Understanding Regarding Contingent Collective Bargaining Agreement (this "Memorandum"), US Airways, Inc. and any successor (collectively, "US Airways"), American Airlines, Inc. ("American"), Allied Pilots Association ("APA"), and US Airline Pilots Association ("USAPA", and with US Airways, American, and APA, the "Parties"), hereby agree as follows:

1. US Airways and APA agreed to a Conditional Labor And Plan Of Reorganization Agreement executed April 13, 2012 and as amended from time-to-time (the "CLA"). Upon the Memorandum Approval Date (as defined in Paragraph 18), this Memorandum shall supersede and replace the CLA. This Memorandum provides a process for reaching:

(a) a Merger Transition Agreement (the "MTA") between APA and an entity ("New American Airlines") formed in connection with a plan of reorganization ("POR") for such of those AMR Corporation-related debtors required to effectuate a combination of American and US Airways (the "Merger"). The MTA shall consist of the collective bargaining agreement between American and APA approved on December 19, 2012 by the Bankruptcy Court in In Re AMR Corporation, et al., jointly administered Ch. 11 Case No. 11-15463 (SHL) (the "2012 CBA"), as amended pursuant to the provisions of this Memorandum;

(b) a Joint CBA (the "JCBA") to apply to a merged workforce composed of pilots employed by American and US Airways.

2. The negotiation and interest arbitration processes provided in this Memorandum will be binding and apply to all Parties as of the Memorandum Approval Date. The results of the negotiation and interest arbitration processes will be binding and apply to all Parties as provided herein. Notwithstanding the foregoing, any changes made to the MTA prior to the implementation of the JCBA will apply with equal force to all pilots.

3. Beginning on the effective date of the POR (the "Effective Date"), pilots employed by US Airways shall be paid in accordance with the provisions of the MTA that are generally applicable to pilots employed by New American Airlines. The eligibility of US Airways pilots for a defined contribution plan accrual shall commence on the Effective Date, and US Airways' contribution to the retirement plan beginning on the Effective Date shall be calculated by multiplying an eligible pilot's eligible compensation under the applicable retirement plan by the percentage contribution made by New American Airlines to its pilots' defined contribution retirement plan.

4. It is the intent of the Parties that, as of the Effective Date, the terms and conditions of employment for pilots employed by New American Airlines and US Airways will be set by the MTA (as defined in Paragraph 1(a)) and in accordance with the process specified herein. The Parties further understand,

however, that it will take some period of time for those terms to be implemented. Accordingly, except for those terms specifically identified in Paragraph 3, the Parties agree that each term of the MTA shall be applicable to all US Airways pilots at the earliest practicable time for each such term, and such terms, when applicable, shall govern and displace any conflicting or wholly or partially inconsistent provision of the former US Airways pilot agreements or the *status quo* arising thereunder. Once the MTA has been fully implemented, it shall fully displace and render a nullity any prior collective bargaining agreements applicable to US Airways pilots and any *status quo* arising thereunder.

5. US Airways, and its successors, if any, shall continue to recognize and treat with USAPA as the representative of the pilots employed by US Airways until another representative for the pilot craft or class is certified by the National Mediation Board (the "NMB"). Subject to the provisions of Paragraph 27, negotiations to convert this Memorandum and the MTA into the JCBA and any implementation or other interim agreement, if any, shall be conducted with USAPA and APA jointly, until such time as one union is certified by the NMB to be the collective bargaining representative of the combined pilot craft or class. At that time, the duly-certified representative shall have exclusive authority to negotiate on behalf of the pilots with respect to the JCBA. It is the Parties' intention that the JCBA shall replace any and all prior collective bargaining agreements for USAPA; however, for APA, the JCBA shall be an amendment to the MTA.

6. During the period US Airways is obligated to bargain with USAPA, it will provide information requested by duly authorized representatives of USAPA's Negotiating Advisory and Merger Committees that is reasonably related to the Merger, subject to the execution of standard confidentiality agreements by USAPA and/or affected individuals upon US Airways' request. US Airways will similarly provide such information on such conditions to APA. Notwithstanding the foregoing, US Airways shall continue to supply information pursuant to Attachment M of the Basic East Agreement in matters unrelated to the Merger.

7. US Airways shall reimburse USAPA for expenses incurred after May 1, 2012, as well as for all flight pay loss, incurred in developing and carrying out the functions specified in this Memorandum. The reimbursement provided to USAPA pursuant to the preceding provisions shall not be more than $1.5 million. In addition, 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. However, any such reimbursement shall not include expenses or flight pay loss associated with litigation against US Airways, American, New American Airlines, or their affiliates, related entities or successor(s), if any, or with respect to the current seniority dispute at issue in the United States District Court for the District of Arizona or to influence the representation choices of their employees or affect their organization rights under Section 2, Ninth of the Railway Labor Act. The reimbursement for expenses related to seniority list integration shall be made no later than 30 days after presentation of an integrated seniority list to US Airways and New American Airlines that complies with the provisions of Paragraph 10, including the obligation to produce an integrated seniority list within the time limitations in Paragraph 10 unless such failure is caused by the airline(s). Reimbursement for expenses, other than for seniority list integration, shall be made no later than 30 days after submission of an invoice in a suitable form so long as USAPA or APA have submitted the invoice within 45 days of the later of the date when the expense was incurred or the date when APA's Board of Directors approves this Memorandum, or USAPA's membership ratifies this Memorandum, as applicable. All expenses for flight pay loss shall be paid directly by the airlines and USAPA and APA shall provide supporting information to support the flight pay loss claim. US Airways and New American Airlines shall also make positive space transportation available to members of USAPA's

Merger and Negotiating Advisory Committees, and similar APA committee members, when engaged in activities related to seniority list integration and contract negotiations.

8. The protections in this Paragraph begin on the Effective Date and last until the earlier of eighteen (18) months after US Airways and the New American Airlines obtain a single operating certificate, or the date on which a JCBA and integrated seniority list are in effect. From the Effective Date until the effective date of the JCBA, the terms and conditions of employment of the New American Airlines and US Airways pilots shall be governed by the MTA.

a. The New American Airlines pilots and US Airways pilots will perform work in accordance with the MTA, including flying and training, and neither airline will interchange pilots between their operations. Neither New American Airlines nor US Airways may utilize in its flight operations or flight training operations a pilot employed by the other airline, except : (i) for pilots hired from one airline by the other pursuant to Paragraphs 8(i) and 8(j); (ii) as may be needed to comply with conditions prescribed by the Federal Aviation Administration for the purpose of transition to, and eventual operation under, a single operating certificate; or (iii) to train pilots who will make up the initial cadre of check airmen for a new fleet type. APA and USAPA, as applicable, shall support the efforts of US Airways and New American Airlines to obtain regulatory approval for the Merger and issuance of the single operating certificate.

b. Except for the circumstances described in paragraph (a) above, no pilot of New American Airlines or US Airways will fly as a crewmember on an aircraft in the Fleet of the other airline. The "Fleet" of each airline shall be defined to include all aircraft in the service of or stored by the airline, or on order or option by the airline, on the Memorandum Approval Date. A list of all aircraft in the respective Fleets of American and US Airways as of the Memorandum Approval Date is included as Attachment A. All orders, options, and anticipated returns set forth in the airlines' fleet plans as of the Memorandum Approval Date are included as Attachment B.

c. In the event that American/New American Airlines or US Airways acquires aircraft not listed in Attachments A or B as a replacement for an existing aircraft, that aircraft shall be designated as American Airlines or US Airways based upon the aircraft being replaced. For purpose of this section, "replacement" means that the newly acquired aircraft can be matched, on a one-to-one basis, to an aircraft that has left or will leave the service of the airline within six (6) months before or after the new aircraft enters service.

d. With respect to new aircraft not listed on Attachments A or B and not assigned under Paragraph 8(c) above, the pilots of each airline will operate any of their respective unique aircraft types. As to all other aircraft, the following procedure will be applied: the airline will provide notice to APA and USAPA, if applicable, of its intent to acquire any such aircraft not less than 270 days prior to such aircraft entering service, and will inform the organization(s), to the extent known, of the type, model and number of such aircraft, the type of engines on them, their ETOPS capability, if any, and the extent to which such aircraft will be used as replacements for other aircraft then or previously operated. The representative(s) of the New American Airlines and US Airways pilots will promptly determine which pilot group will operate such aircraft or will implement binding arbitration, if necessary, to determine the allocation of such flying; the pilot representative(s) shall notify the airlines of the results of this process no later than thirty (30) days after receiving notice from the airlines. If the airlines do not agree with the position of the labor representative(s), the dispute will be resolved pursuant to final and binding interest arbitration with a decision issued no later than 120 days prior to the date when the aircraft is scheduled to be placed in service. The standard to be applied by the arbitrator will be the fair and equitable allocation of flying between the two pilot groups giving

due consideration to the airline business plans. Nothing in this Paragraph will delay or prevent the planned implementation of such aircraft into revenue service.

e. The total number of aircraft block hours scheduled to be flown by mainline US Airways East pilots (excluding Group I aircraft) during any rolling 12-month look-back period shall be no less than 664,426. The total number of aircraft block hours scheduled to be flown by mainline US Airways West pilots during any rolling 12-month look-back period shall be no less than 436,850. The number of widebody positions, either maintained or pay protected, for US Airways pilots shall be no less than 291 US Airways widebody captain positions and 475 US Airways widebody first officer positions. A pay-protected pilot under this Paragraph 8(e) shall not be eligible for additional pay protection under Paragraph 12(a). In the event a pilot is eligible for pay protection under both Paragraphs 8(a) and 12(a), such pilot shall be entitled to whichever pay protection produces the higher pay and shall also fulfill one of the minimum number of widebody positions required herein.

f. The total number of aircraft block hours scheduled to be flown by mainline New American Airlines pilots (excluding Group I) in any rolling twelve month look back period shall be no less than 1,995,663 hours.

g. Commencing when the total number of US Airways aircraft in Equipment Group I equals 31, subsequent Group I aircraft shall be delivered on a ratio of two (2) Group I aircraft to New American Airlines for every one (1) Group I aircraft to US Airways.

h. For purposes of this Paragraph 8, block hours scheduled to be flown for a given month shall be determined by reference to an airline's flight schedule as published for sale 30 days prior to the first day of the month. US Airways shall furnish the block hour data to USAPA, if applicable, and APA no later than 30 days prior to the first day of each month.

i. New American Airlines will not hire new pilots if pilots at US Airways are on furlough unless the most junior pilot on the American Airlines Pilots' System Seniority List has been offered a position at the New American Airlines.

Effective when the most junior pilot on the American Airlines Pilots' System Seniority List has been offered a position at New American Airlines, future positions at New American Airlines will be offered to furloughed US Airways pilots to the extent consistent with the terms of the April 9, 2010 Opinion and Award in FLO-0108 and September 14, 2011 Preferential Hiring Agreement entered into pursuant to that Award. Prior to making offers under this provision, US Airways, New American Airlines and the pilot representative(s) shall agree to the order in which any such offers shall be made to US Airways pilots. A furloughed US Airways pilot who declines a position as a New American Airlines pilot retains the right to be offered a position in a future New American Airlines new-hire class and also retains the right to be recalled to, or otherwise offered a position with, US Airways.

A US Airways pilot who accepts a position at New American Airlines:

(1) will be treated as junior to all pilots who are on the American Airlines Pilots' System Seniority List on the Effective Date, but pilots on the US Airways seniority list employed by New American Airlines under this provision will be ranked among themselves in the order of their acceptance of positions with New American Airlines, and

(2) will be considered an employee of New American Airlines during the period prior to the expiration of the protections in this Paragraph 8 and be subject to the MTA, and

(3) will retain, accrue and be entitled to use his/her combined longevity at both airlines for all purposes, including but not limited to, pay (excluding furlough pay, which will be calculated based on time at New American Airlines only), benefits, vacation accrual, and eligibility towards retirement contributions and health and welfare participation, and

(4) cannot return to US Airways for up to eighteen (18) months from the date of employment as a pilot for New American Airlines, and

(5) will retain his/her position on the US Airways seniority list, and

(6) will not be required to serve a probation period as a pilot for New American Airlines, and

(7) will not receive furlough pay from US Airways with respect to the period of service as a pilot for New American Airlines, and

(8) will be subject to any applicable background checks and employment requirements for New American Airlines pilots returning from furlough.

j. US Airways will not hire new pilots if pilots at New American Airlines are on furlough unless the most junior US Airways pilot has been offered recall or another position with US Airways and all New American Airlines pilots on furlough have been offered a position at US Airways.

Effective when the most junior US Airways pilot has been offered recall or another position with US Airways, future positions at US Airways will be offered to furloughed New American Airlines in seniority order. A furloughed New American Airlines pilot who declines a position as an US Airways pilot retains the right to be offered a position in a future US Airways new-hire class and also retains the right to be recalled to New American Airlines in accordance with his/her American Airlines seniority.

A New American Airlines pilot who accepts a position at US Airways:

(1) will be treated as junior to all pilots who are on the US Airways seniority list on the Effective Date, but pilots on the American Airlines Pilots' System Seniority List employed by US Airways under this provision will be ranked among themselves in seniority order, and

(2) will be considered an employee of US Airways during the period prior to the expiration of the protections in this Paragraph 8 and be subject to the terms and conditions set forth in the MTA (as provided in Paragraphs 3-4 of this Memorandum), and

(3) will retain, accrue and be entitled to use his/her combined longevity at both airlines for all purposes, including but not limited to, pay (excluding furlough pay, which will be calculated based on time at New American Airlines only), benefits, vacation accrual, and eligibility towards retirement contributions and health and welfare participation, and

(4) cannot return to New American Airlines for up to eighteen (18) months from the date of employment as a pilot for US Airways, and

(5) will retain his/her position on the American Airlines Pilots' System Seniority List, and

(6) will not be required to serve a probation period as a pilot for US Airways, and

(7) will not receive furlough pay from New American Airlines with respect to the period of service as a pilot for US Airways, and

(8) will be subject to any applicable background checks and employment requirements for US Airways pilots returning from furlough.

k. No pilot base other than St. Louis shall be closed prior to October 1, 2013.

l. Neither New American Airlines nor US Airways will establish TDY positions at a pilot domicile of the other airline.

m. All Shuttle flying between DCA, LGA and BOS shall be performed by US Airways pilots.

n. All existing flying between PHX and Hawaii shall be performed by US Airways pilots.

o. All Trans-Pacific (Asia) flying shall be performed by pilots on the American Airlines Pilots' System Seniority List.

p. All of the provisions of this Paragraph 8 shall be subject to Paragraph 21.

9. Nothing herein shall prevent placement of the "US" code on flights operated by American or New American Airlines (or by any other airline when displaying the "AA" code), or placement of the "AA" code on flights operated by US Airways (or by any other airline when displaying the "US" code), immediately upon the Effective Date, and it is expressly agreed that US Airways and American or New American Airlines may do so. Subject to the provisions of this Memorandum, immediately upon the Effective Date, US Airways and New American Airlines or their successors (if any) may move forward with obtaining and utilizing a single operating certificate, and otherwise combining the operations of the two carriers, except for those measures that are dependent upon implementation of an integrated seniority list.

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 will be designated within fifteen (15) days to resolve the dispute, pursuant to the authority and requirements of McCaskill-Bond. That arbitration proceeding will commence no later than 60 days after the designation of the arbitrators, or as soon thereafter as practicable given the availability of the designated arbitrators, provided that it is understood that, in no event, shall the seniority integration arbitration proceeding commence prior to final approval of the JCBA pursuant to the deadlines and procedures in Paragraph 27 below. The panel of arbitrators will render its award within six (6) months of the commencement of the arbitration, and in any event not later than 24 months after the Effective Date.

b. The panel of arbitrators may not render an award unless it complies with all of the following criteria: (i) the list does not require any active pilot to displace any other active pilot from the latter's position; (ii) furloughed pilots may not bump/displace active pilots; (iii) except as set forth in Paragraphs 12 and 13 below, the list does not require that pilots be compensated for flying not performed (e.g., differential pay for a position not actually flown); (iv) the list allows pilots who, at the time of implementation of an integrated seniority list, are in the process of completing or who have completed initial qualification training for a new category (e.g., A320 Captain or 757 First Officer), or who have successfully bid such a position but have not been trained because of conditions beyond their control (such as a company freeze), to be assigned to the positions for which they have been trained or successfully bid, regardless of their relative standing on the integrated seniority list; and (v) it does not contain conditions and restrictions that materially increase costs associated with training or company paid move as specified in the JCBA.

c. The integrated seniority list resulting from the McCaskill-Bond process shall be final and binding on APA and USAPA (and/or the certified bargaining representative of the combined pilot group), the company(ies) and its(their) successors (if any), and all of the pilots of American/New American Airlines and US Airways.

d. During the McCaskill-Bond process, including any arbitration proceeding, US Airways, American or New American Airlines, or their successors (if any), shall remain neutral regarding the order in which pilots are placed on the integrated seniority list, but such neutrality shall not prevent said carriers from insuring that the award complies with the criteria in Paragraph 10(b)(i)-(v).

e. The obligations contained in this Paragraph shall be specifically enforceable on an expedited basis before a System Board of Adjustment in accordance with Paragraph 20, provided that the obligations imposed by McCaskill-Bond may be enforced in a court of competent jurisdiction.

f. A Seniority Integration Protocol Agreement ("Protocol Agreement") consistent with McCaskill-Bond and this Paragraph 10 will be agreed upon within 30 days of the Effective Date. The Protocol Agreement will set forth the process and protocol for conducting negotiations and arbitration, if applicable, and will include a methodology for allocating the reimbursement provided for in Paragraph 7. The company(ies) will be parties to the arbitration, if any, in accordance with McCaskill-Bond. The company(ies) shall provide information requested by the merger representatives for use in the arbitration, if any, in accordance with requirements of McCaskill-Bond, provided that the information is relevant to the issues involved in the arbitration, and the requests are reasonable and do not impose undue burden or expense, and so long as the merger representatives agree to appropriate confidentiality terms.

g. This Memorandum is not a waiver of any argument that participants may make in the seniority integration process. Nor do the provisions of this Memorandum constitute an admission as to the appropriate allocation of flying following the expiration of the protections in Paragraph 8 of this Memorandum, or the manner in which the respective pre-merger carriers would have operated in the absence of a merger, or the job entitlements or equities that arguably underlie the construction of an integrated seniority list, or for any other purpose. This Memorandum may be offered into evidence or shown to a mediator as background information and to describe the actual operations of the separate carriers prior to expiration of the protections in Paragraph 8 of this Memorandum.

h. US Airways agrees that neither this Memorandum nor the JCBA shall provide a basis for changing the seniority lists currently in effect at US Airways other than through the process set forth in this Paragraph 10.

i. Nothing in this Paragraph 10 shall modify the decision of the arbitration panel in Letter of Agreement 12-05 of the 2012 CBA.

11. a. During the term of the MTA, US Airways shall not furlough any pilots who have established and maintain seniority on the US Airways mainline system as of the Effective Date. USAPA will

provide, by name, East Pilot "X" and West Pilot "Y" who will be the most junior US Airways pilots afforded this furlough protection. US Airways shall not furlough any such pilot in anticipation of the transaction that results in the formation of New American Airlines or of the operationally merged carrier consisting of New American Airlines and US Airways. The parties intend that this furlough protection will be part of the status quo during contract negotiations pursuant to Section 6 of the Railway Labor Act for a successor agreement to the JCBA.

b. New American Airlines shall not furlough any pilots during the term of the MTA whose names appear on the American Airlines' Pilots System Seniority List as of the Effective Date and who are not: (i) on furlough as of the Effective Date; (ii) junior to the least senior active pilot on the Effective Date. This protection includes American Eagle pilots with American Airlines seniority numbers when they flow up and become active employees at New American Airlines and who are senior to the most junior active pilot on the Effective Date. The parties intend that this furlough protection will be part of the status quo during contract negotiations pursuant to Section 6 of the Railway Labor Act for a successor agreement to the JCBA.

c. This Paragraph 11 is subject to Paragraph 21.

12. a. Any US Airways pilot as of the Effective Date who is thereafter involuntarily displaced to a lower paying position shall be pay protected. The pay protections of this Paragraph shall continue unchanged if the affected pilot(s) suffer(s) multiple displacements, but shall end whenever such pilot(s) can hold the position from which the pilot was originally displaced or an equivalent or greater pay position. USAPA will provide, by name, East Pilot "X" and West Pilot "Y" who will be the most junior US Airways pilots afforded this pay protection. The final version of this pay protection provision, including its duration, will be substantively the same as in the MTA.

b. If any currently-active New American Airlines pilot is involuntarily displaced to a Group I aircraft, the pilot's hourly pay rate shall not be reduced. This pay protection shall terminate if and when the involuntarily-displaced pilot can hold a position at the same or higher pay rate.

If any currently-active New American Airlines pilot is displaced from his bid position to another bid position within his base, or to a bid position at a different base, that pilot will be pay protected against a pay rate reduction unless:

1. That pilot could have been awarded a displacement within his base to a bid position of equal or greater pay, but elected a displacement to a lower paying bid position. (A lateral displacement (International / Domestic, and vice versa) is considered a displacement of equal pay); or

2. No bid position of equal or greater pay was available at his current base, and that pilot elected not to be awarded a displacement at a new base to a bid position which would have provided that pilot equal or greater pay when compared to the bid position displaced from. (A lateral displacement to a different base (International / Domestic, and vice versa) is considered a displacement of equal pay).

This pay protection shall terminate if and when the displaced pilot could return or advance to a position in any base at the same or higher pay rate from which the pilot was initially displaced.

The value and treatment of this pay protection shall be governed by Paragraph 24.

13. Commencing on the date of single operating certificate for US Airways and New American Airlines or their successors (if any), all pilots, who have established and maintain seniority on the US Airways mainline system and who are eligible for furlough protection pursuant to Paragraph 11 above, will be paid in accordance with the Group I pay rates as set forth in Paragraph 22 when flying a Group I aircraft except for the following pay protection: a Group I captain shall be paid at Group III first officer pay rates unless the captain can hold a Group III first officer or higher-paying position; a Group I first officer shall be paid at Group II first officer pay rates unless the first officer can hold a Group II first officer or higher-paying position.

14. USAPA agrees to waive all change of control provisions, including, but not limited to, Section 1.D in the East collective bargaining agreement, LPPs, daily minimum utilization, and minimum fleet requirements in the East and West collective bargaining agreements and in the Transition Agreement conditioned upon the occurrence of the Effective Date.

15. US Airways agrees that it will comply with the East and West CBAs and the Transition Agreement until the Effective Date.

16. US Airways shall provide a bridge of Short Term Disability ("STD") coverage for thirty-six (36) months for eligible former America West pilots who remain employed by US Airways and have not forfeited their seniority rights as of the Effective Date. This STD coverage shall begin at the time the eligible former America West pilots are covered by New American Airlines' long-term disability plan. Eligibility for this coverage shall be determined according to the terms of the America West STD plan; the coverage shall contain, at a minimum, the plan design features in Appendix B of the current America West collective bargaining agreement except that the Maximum Benefit Duration shall be up to 90 days of a disability.

17. Any US Airways pilot with a sick leave balance in excess of 1000 hours as of the Effective Date shall be allowed to use the sick leave for illness or injury in excess of 1000 hours until the pilot's sick leave balance is reduced to 1000 hours or less. For US Airways pilots with a sick leave balance in excess of 1000 hours, their sick leave accruals on or after the Effective Date will be treated the same as American Airlines pilots under the MTA.

18. a. This Memorandum shall become effective (the "Memorandum Approval Date") upon the date when all of the following have occurred: (i) approval by APA's Board of Directors; (ii) approval by US Airways' Board of Directors; and (iii) approval by AMR Corporation's Board of Directors. If all of these approvals do not occur, this Memorandum shall be null and void in its entirety and as to all Parties.

b. This Memorandum shall become applicable to USAPA upon the later of (i) the

Memorandum Approval Date; and (ii) USAPA's Board of Pilot Representatives' recommending that USAPA's membership ratify this Memorandum and USAPA's membership's subsequent ratification of this Memorandum. USAPA will inform the Parties whether its Board of Pilot Representatives has agreed to recommend that its membership ratify the MTA on or before January 4, 2013. If recommended, the ratification vote of USAPA's membership shall be completed no earlier than approval of the Merger by AMR Corporation's Board of Directors and no later than 60 days after such approval (if any). If such recommendation and ratification do not timely occur, this Memorandum shall be of no force or effect as to USAPA but shall remain in full force and effect as to the other parties.

c. For purposes of clarity, this Memorandum shall be null and void in its entirety and as to all Parties if the Merger is not consummated.

d. This Memorandum will only apply to this Merger, and will apply to this Merger regardless of its corporate structure. This Memorandum shall not affect or have any applicability to American's stand-alone plan or any merger or transaction other than this Merger.

e. If this Memorandum or the MTA is deemed to be unenforceable or nullified, in whole or in part, for any reason after the Effective Date, USAPA and APA agree that the terms and conditions of employment for the pilots employed by US Airways and New American Airlines will be as provided in the 2012 CBA as modified by the process in Paragraph 24 of this Memorandum.

19. It is the intent of the Parties that, notwithstanding anything to the contrary in this Memorandum, Paragraphs 8, 9, 18(e), and the results obtained through the process identified in Paragraph 24, shall remain in effect after the Effective Date even if this Memorandum is subsequently deemed to be unenforceable or nullified for any reason, and that these provisions are severable from the other terms of this Memorandum. The parties shall meet and confer within fifteen (15) days after this provision is triggered to agree upon replacement protections for the provisions held to be unenforceable or nullified, and provided further that if replacement protections are not agreed upon by the Parties within thirty (30) days thereafter, either party may submit the dispute to binding arbitration on an expedited basis in accordance with the procedure described in Paragraph 20 of this Memorandum. The interest arbitrator shall be charged with constructing alternatives having the same economic value as, and operating effects comparable to, the unenforceable or nullified MOU provisions they are replacing.

20. Except as expressly provided otherwise in this Memorandum, any dispute over the interpretation or application of this Memorandum shall be resolved in accordance with this provision. Any such dispute shall be arbitrated on an expedited basis directly before a specially-created one-person System Board of Adjustment consisting of arbitrator Richard Bloch or Ira Jaffe, whoever shall be available to hear the dispute earliest. If Arbitrator Bloch or Jaffe declines to serve in this capacity or is not available to resolve the dispute, another neutral arbitrator shall be selected. The dispute shall be heard no later than thirty (30) days following the submission to the System Board (subject to the availability of the arbitrator), and shall be decided no later than thirty (30) days following the first day of the hearing, unless otherwise agreed to in writing.

21. The provisions described in Paragraphs 8 and 11 shall not apply in circumstances where the Company's non-compliance is caused in substantial part by Conditions Beyond The Company's Control. "Conditions Beyond The Company's Control" shall include, but not be limited to, the

following: (1) an act of God; (2) a strike by any other company employee group or the employees of a Commuter Air Carrier operating pursuant to an authorized codeshare arrangement with the company; (3) a national emergency; (4) involuntary revocation of the company's operating certificate(s); (5) grounding of a substantial number of the company's aircraft; (6) a reduction in the company's operation resulting from a decrease in available fuel supply caused by either governmental action or by commercial suppliers being unable to meet the company's demands; and (7) the unavailability of aircraft scheduled for delivery.

22. Pilot hourly pay rates shall be in accordance with the 2012 CBA Section 3 and Supplement A.

23. Section 9 of the 2012 CBA shall be modified as follows: (1) vacation accrual and value (i.e., how accrual translates to days off) shall be computed in accordance with the existing program for US Airways (West) pilots; and (2) New American Airlines minimum monthly vacation obligation will be 5.0% of the awarded vacations for the year (i.e., total accrued vacations less floated vacations), or 2.75% of the total accrued vacation, whichever is lower.

24. a. APA is entitled to modifications to the 2012 CBA valued at an average of $87 million/year over six years.

b. APA will provide its list of proposed modifications, and corresponding valuations with underlying documentation and modeling, within twenty-one (21) days of APA's Board of Directors' approval of this Memorandum. APA, American, and US Airways will negotiate with respect to the means by which the modifications identified in Paragraph 24(a) will be achieved and the appropriate valuation of each APA proposed modification. To the extent the parties are unable to reach an agreement as to the appropriate modifications and valuations, US Airways and American shall offer final and binding interest arbitration, and the APA shall accept such proffer, to resolve the dispute. Richard Bloch shall serve as the arbitrator. If Arbitrator Bloch declines to serve in this capacity or is not available to resolve the parties' dispute, the parties shall select another arbitrator. The arbitration decision on any contested modifications or valuation issues shall be issued no later than 60 days after APA provides its list of proposed modifications and corresponding valuations with underlying documentation and modeling; provided, however, that the arbitrator shall not have jurisdiction to modify any of the provisions of Paragraph 25 of this Memorandum. In resolving contested valuation issues, the arbitrator will take into consideration economic cost and, where warranted, balance sheet liability. For example, with regard to an item such as retiree medical benefits, balance sheet liability will be considered in addition to economic cost.

c. APA agrees that Supplement X regarding profit sharing is hereby eliminated from the 2012 CBA, and that profit sharing shall not be part of APA's proposed modifications referred to in this Paragraph.

d. The pay protection described in Paragraph 12 shall be valued at $12 million for each year of protection, and shall count against the total value of the modifications provided for in Paragraph 24(a).

e. Flights over sixteen (16) hours will be manned with two (2) Captains and two (2) First Officers.

25. Section 1 (Recognition and Scope) of the MTA shall be the 2012 CBA as modified in a. through f. below.

a. The maximum number of commuter aircraft as a percentage of the Mainline Narrow-Body Fleet shall not exceed 75%.

b. The maximum number of large regional commuter aircraft as a percentage of the Mainline Narrow-Body Fleet shall not exceed 30% through 2014, 35% in 2015 and 40% thereafter.

c. Codeshare modified to accommodate full AA/US codesharing plus 15% codesharing with domestic air carriers, both exclusive of AS and HA carve outs.

d. Existing CRJ900s and E175s fleet in operation at US grandfathered from 76 seat limitation.

e. Accommodate US Shuttle as provided in CLA.

f. Baseline for international flying set to number of international block hours scheduled during the previous 12 months by AA/US combined.

26. APA shall file a single carrier petition with the NMB as soon as practicable after the Effective Date, when APA determines that the facts support the legal requirements for the filing of a petition but in no event later than four months after the Effective Date. If and when the NMB makes a single-carrier finding, the single carrier acknowledged by the NMB and the certified representative shall be governed by this Memorandum.

27. If and when the NMB makes a single-carrier finding, the organization certified to represent the pilots of the single carrier, the single carrier acknowledged by the NMB and the certified organization shall promptly engage or re-engage in negotiations to achieve a JCBA to be applicable to the carrier that will be the product of the Merger. In the event that such negotiations are not completed within 30 days of the NMB's certification, New American Airlines will offer final and binding interest arbitration under Section 7 of the RLA, and the organization will accept such proffer, to resolve once and for all the terms of the JCBA. The arbitration decision shall be issued no later than 60 days after the close of the 30-day negotiation period. A panel of three arbitrators led by Richard Bloch shall serve as the arbitrators for this process. If Arbitrator Bloch declines to serve in this capacity or is unable to resolve the parties' dispute, the parties shall select another arbitrator. The arbitrator's jurisdiction and award will be limited to fashioning provisions which are consistent with the terms of the MTA, including provisions which implement the terms of the MTA or facilitate the integration of pilots under the terms of the MTA. The arbitrator's award specifically shall adhere to the economic terms of the MTA and shall not change the MTA's Scope terms (Paragraph 25 of this Memorandum) or the modifications generated through the process set forth in Paragraph 24 of this Memorandum.

28. US Airways and USAPA agree to be bound and abide by the arbitration decision contemplated by Letter of Agreement 12-05 of the 2012 CBA. Nothing in the MTA shall modify the decision of the arbitration panel thereunder.

29. Attachment C summarizes the timelines prescribed by this Memorandum for the creation of the MTA, JCBA, and integrated seniority list and shall not prevent the Parties from developing the JCBA earlier.

30. This Memorandum is ultimately subject to approval by the Bankruptcy Court in In Re AMR Corporation, et al., jointly administered Ch. 11 Case No. 11-15463 (SHL) in connection with the Merger.

APA:

ALLIED PILOTS ASSOCIATION

By: _____
Name: KEITH C. WILSON
Title: PRESIDENT

USAPA:

US AIRLINE PILOTS ASSOCIATION

By: _____
Name: _____
Title: _____

American:

AMERICAN AIRLINES, INC.

By: _____
Name: _____
Title: _____

US Airways:

US AIRWAYS, INC.

By: _____
Name: _____
Title: _____

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APA:

ALLIED PILOTS ASSOCIATION

By: _____
Name: _____
Title: _____

USAPA:

US AIRLINE PILOTS ASSOCIATION

By: _____
Name: GARY HUMMEL
Title: PRESIDENT

American:

AMERICAN AIRLINES, INC.

By: _____
Name: _____
Title: _____

US Airways:

US AIRWAYS, INC.

By: _____
Name: _____
Title: _____

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APA:

ALLIED PILOTS ASSOCIATION

By: _____
Name: _____
Title: _____

USAPA:

US AIRLINE PILOTS ASSOCIATION

By: _____
Name: _____
Title: _____

American:

AMERICAN AIRLINES, INC.

By: Denise Lynn
Name: DENISE LYNN
Title: SVP, People

US Airways:

US AIRWAYS, INC.

By: _____
Name: _____
Title: _____

30. This Memorandum is ultimately subject to approval by the Bankruptcy Court in In Re AMR Corporation, et al., jointly administered Ch. 11 Case No. 11-15463 (SHL) in connection with the Merger.

APA:

ALLIED PILOTS ASSOCIATION

By: _____
Name: _____
Title: _____

USAPA:

US AIRLINE PILOTS ASSOCIATION

By: _____
Name: _____
Title: _____

American:

AMERICAN AIRLINES, INC.

By: _____
Name: _____
Title: _____

US Airways:

US AIRWAYS, INC.

By: _____
Name: J. Scott Kirby
Title: President

ATTACHMENT A

A list of all aircraft in the service of or stored by American Airlines, Inc., and US Airways, Inc. as of the Memorandum Approval Date will be provided to APA and USAPA within two days after the Memorandum Approval Date and be made a part of this Memorandum.

ATTACHMENT B

A list of all aircraft orders, options, and anticipated returns set forth in the fleet plans of American Airlines, Inc. and US Airways, Inc. as of the Memorandum Approval Date will be provided to APA and USAPA within two days after the Memorandum Approval Date and be made a part of this Memorandum.

ATTACHMENT C

COMMENCE JCBA PRE MERGER POR	MOU Execution	Board Approval -AMR -US Airways -APA → 21 Days For List of Valuation Modifications -USAPA→ Recommendation Decision by 01/04/13; If Recommended, Membership Ratification Vote Completed Between AMR Board Approval Of Merger and 60 Days Thereafter	60 Days From APA list Of Valuation Modifications Agreement Reached On Valuation - Or - Conclusion Of Interest Arbitration	= MTA By agreement - Or - Arbitrator's Decision

* JCBA NEGOTIATIONS *

ON AND AFTER MERGER POR	POR	4 months	At NMB Discretion, But Projected 6-8 Months From Petition	30 days	60 days	= JCBA
	MTA in effect For APA and USAPA If USAPA Ratifies or MTA In Effect For APA and USAPA Under Status Quo JCBA Negotiations Begin	APA Petition For Single Carrier Status	NMB Single Carrier Finding	* JCBA Negotiation Complete -Or- If Not Complete →	JCBA Interest Arbitration Before Panel of 3 Arbitrators	

* JCBA negotiations shall begin as soon as practicable after the POR and may be completed anytime between the POR and the deadline of 30 days past NMB Single Carrier finding.

ON AND AFTER MERGER POR	POR	30 days	90 days From POR	15 Days	60 Days But Not Before JCBA Effective	6 Months and No Later Than 24 Months After POR	= Integrated Seniority List
	Seniority Integration Process Begins	APA and USAPA Seniority Integration Protocol Agreement	Direct Negotiations Between APA and USAPA	Panel of 3 Arbitrators Designated	Integrated Seniority List Arbitration Commences	Arbitration Panel Renders Award	

EXHIBIT 4

AGREEMENT

between

AMERICAN AIRLINES, INC

and

THE AIRLINE PILOTS

in the service of

AMERICAN AIRLINES, INC.

as represented by the

ALLIED PILOTS ASSOCIATION

EFFECTIVE: JANUARY 1, 2013

Revision 2.0 - May 24, 2013

Table of Contents
Sections

Note: Single vertical line in the table of Contents indicates the Section, Supplement or Letter was not contained in the printed Agreement dated May 1, 2003.

Single vertical line in the body of this Agreement indicates a change from the printed agreement dated May 1, 2003.

Table of Contents
Supplements

Table of Contents
Letters

Table of Contents
Numbered Letters of Agreement

SECTION 2

DEFINITIONS

A. Air Freight Feed Operation

A freight operation conducted with non-turbojet aircraft whose primary purpose is to "feed" the Company's aircraft and which is flown with active or furloughed pilots of the Company or under contract.

B. Bid Lines

1. "Bid line" means any monthly regular or reserve flying assignment.

C. Calendar Month

"Calendar month", as used herein, shall mean the period from the first day of, to and including the last day of each calendar month of the year, except that for pilot scheduling and pay purposes the following shall apply.

Calendar Month	Contractual Month	# Days in Contractual Month
January	January 1st – January 30th	30
February	January 31st – March 1st	30 (31 in Leap Year)
March	March 2nd – March 31st	30
April	April 1st – May 1st	31
May	May 2nd – June 1st	31
June	June 2nd – July 1st	30
July	July 2nd – July 31st	30
August	August 1st – August 30th	30
September	August 31st – Septemer 30th	31
October	October 1st – October 31st	31
November	November 1st – December 1st	31
December	December 2nd – December 31st	30

D. Captain

"Captain" means a pilot who is in command of the aircraft and is responsible for the manipulation of, or who manipulates the flight controls of an aircraft while under way, including takeoff and landing of such aircraft, and who is properly qualified to serve as, and holds a current airman's certificate authorizing service as a Captain and who holds a Captain bid status.

E. Changeover pairings / prior removal sequence

Pairings on the next month allocation for trip sequences originating in the current contractual month. They may be longer or shorter which show a commitment for that particular month. Pay protection for any changes are limited to the current month's flying.

F. Classification date

A pilot's Classification Date is assigned concurrent with such pilots' occupational date and shall continue to accrue during such period of duty except as provided in Sections 11, 12, and 17 of this Agreement. Classification seniority is used to determine pay level and the timing of advancement to succeeding pay levels.

G. Company date

In most cases it is the same as your <XREF>date of hire since it is based on continuous service with AMR. A current AMR employee hired as an AA pilot will retain his/her original Company date. It is adjusted due to furloughs and leaves of absence as provided for in Sections 11 and 17.

H. Co-terminals as used in this Agreement shall mean:

1. Kennedy/Newark/LaGuardia
2. Midway/O'Hare
3. Dallas/Fort Worth International Airport/Love Field
4. Washington/Dulles International
5. Tampa/St. Petersburg
6. Miami/Fort Lauderdale

The above shall become and remain in effect when crew bases are maintained in the respective cities.

I. Contractual Month

"Contractual month" as used herein, shall mean the period of time, for pilot scheduling and pay purposes, during which allocated flying and the associated bid lines shall be effective, in accordance with Section 2.B.

J. Credited Projection (PROJ)

A pilot's total time for the month, including fly through time credited at the beginning of the month, the greater of scheduled or actual for flying already performed, scheduled time for flying yet to be performed, credits as provided in Section 15 Hours of Service (E.- minimum pay and credit for an on duty period, F. - minimum pay and credit for time away from base, and G.- minimum and average pay and credit for an on duty period), and credit for scheduled flight time when relieved of flying duties as provided in Section 5, [trips missed due to paid sick leave, a training program of more than five (5) days, vacation, jury duty, and Association leave] and credited time for any credit/no pay removals (for example, unpaid sick). Credited Projection (PROJ) is used in conjunction with Scheduled Projection (SPROJ) to determine a regularly scheduled pilot's legality in accordance with SECTION 15 Hours of Service.

K. Crew Tracking Trip Sequence(s)

Any pairing or repairing of a trip or trip sequence by Crew Tracking, or any flying that is not planned in advance to permit inclusion in a pilot's monthly trip selection, shall be called a "Crew Tracking Sequence".

L. Date of hire

The first day as an AA pilot. This date does not change for furloughs or leaves of absence.

M. Diversion

When a crew makes an unscheduled or scheduled landing at a destination other than planned, generally due to operational reasons such as (weather, mechanical, pick-up passengers, passenger emergency).

N. Domicile

A common location where a group of pilots are based.

O. Duty day

A calendar day (0000-2400) in which any duty is performed for the company including sign-in and debrief.

P. Duty period

The elapsed time between sign-in time and release time;

1. Sign-in time – shall not be less than one hour prior to scheduled or rescheduled departure time for a pilot flying the first flight of a duty period or thirty (30) minutes prior for a pilot deadheading.
2. Release time – shall apply to all scheduled flying and deadheading and shall be fifteen (15) minutes after the scheduled or actual block in time, whichever is later. (30 minutes for International trip sequence).
3. Deadheading to and from training does not require a thirty (30) minute sign-in or a fifteen (15) minute debrief.

Q. First Officer

"First Officer" means a pilot who is second in command of the aircraft and any part of whose duty is to assist or relieve the Captain in the manipulation of the flight controls of the aircraft while under way, including takeoff and landing of such aircraft, and who is properly qualified to serve as, and holds a current airman's certificate authorizing service as a First Officer and who holds a First Officer bid status. On any international flight requiring more than a two (2) pilot cockpit crew, the First Officer(s) shall also be required to possess an ATPC and a type rating on the equipment flown. For purposes of displacement to an open position on international flights requiring more than a two (2) pilot cockpit crew, the FO, FB and FC positions will be considered interchangeable (e.g. a displaced FO may be assigned to an open FB or FC position.

R. Flight Time

1. Actual – that period of time beginning when an aircraft first moves from the ramp blocks for the purpose of flight and ending when the aircraft comes to a stop at the ramp for the purpose of loading or unloading at either intermediate stops or final destination.
2. Scheduled - the time published publicly by the Company from flight departure to flight arrival of the flight.

S. Fly-through

Time resulting from a trip or trip sequence which spans two contractual months and refers to the flight time including P&C for which a pilot is credited in the succeeding contractual month.

T. Furlough

"Furlough" means the removal of a pilot from active duty as a pilot with the Company without prejudice, due to a reduction in force, or the period of time during which such pilot is not in the active employ of the Company as a pilot due to such reduction in force.

U. [Reserved]

V. Last Trip of the Month

The last active scheduled trip sequence in a pilot’s contractual month, other than make up, regardless of when it was added to the pilot’s schedule.

W. Management pilot

A pilot who occupies a management position in the Flight Department.

X. Midnight cutoff

When a change in a contractual month occurs en route, pay and credit for the time flown before midnight shall be paid and credited to the month in which the pilot involved originated the flight. Midnight shall be determined on the basis of local time at the point of last takeoff.

Y. Misconnect

Misconnect means that a particular segment, including deadhead, of a pilot's sequence operates sufficiently late into a station so as to cause such pilot to miss the next segment of such pilot's sequence. [See Q&A #105, #106]

Z. Night Flying

Night flying" shall include all flying between the hours of 2300 and 0559 pilot's HBT.

AA. Occupational date

Generally occupational seniority shall begin to accrue from the date a pilot is first scheduled to complete initial new hire training with the Company and shall continue to accrue during such period of duty except as provided in Sections 11 and 12 of this Agreement. Occupational seniority is used for determining placement on the Pilot System Seniority list and for bidding purposes. Any references to seniority in this Agreement are to Occupational Seniority, unless otherwise specified.

BB. Pay or Compensation

"Pay" or "compensation", for purposes of this Agreement, means longevity, hourly, gross weight, mileage and, if applicable, international override pay.

CC. Pay Projection (PPROJ)

A pilot's total paid time for the month based on fly through time applied to the Credited Projection (PROJ) at the beginning of the month, the greater of scheduled or actual for flying already performed, scheduled time for flying yet to be performed, credits as provided in SECTION 15 Hours of Service (E. - minimum pay and credit for an on duty period, F. - minimum pay and credit for time away from base, and G. - minimum and average pay and credit for an on duty period), for scheduled time when relieved of flying duties as provided in Section 5, [trips missed due to paid sick leave, a training program of more than five (5) days, vacation, jury duty, and Association leave], and for any pay/no credit applications [for example, trips missed due to a training program of five (5) days or less as provided in Section 6.D.1.a.]. Pay adjustments will be made at the end of the month for training pay (Section 6.D.), minimum guarantee (SECTION 4), apportionment pay (Section 6.C.2.)

DD. Pilot

"Pilot" shall include and mean Captain, First Officer, and International Officer.

EE. Proficiency Displacement

A qualified pilot about to lose a qualification may request to displace another pilot for proficiency flying. The displaced pilot, once removed from the trip, is no longer obligated for such trip. The displacing pilot assumes the obligation to cover the displaced pilot's trip. (See Q&A #28)

FF. Reassignment

A pilot who is legal in all respects for such pilot's next regularly scheduled flight/sequence, but is assigned by the Company to perform other flying instead of such regular flight/sequence. The pilot shall be paid for whichever of the two (2) flights/sequences produces the higher pay.

GG. Recurrent training

Training and any associated proficiency check(s) for a category in which the pilot is qualified and is for the purpose of retaining qualification before becoming non-current.

HH. Reschedule

A pilot shall be deemed rescheduled when assigned flying that is contained within the original sequence footprint or within the pilot's replacement flying window, as applicable, following a disruption to the pilot's scheduled sequence. The original sequence footprint or replacement flying window may be extended if the pilot flies or is deadheaded on the first available flight(s) to base. The “first available flight to base” is the flight(s) that arrives at the base the earliest. The flight(s) may be direct or indirect.

II. Requalification training

Training (ground and/or flight) and any associated proficiency check(s) for a category for which the pilot was qualified but is no longer currently qualified.

JJ. Satellite Base

A satellite base is a station other than the pilot's domicile which contains sequences that originate and terminate at the same station. Satellite base sequences may only be bid and awarded to pilots domiciled at the crew base to which the satellite base is assigned to. The following satellites shall become and remain in effect when crew bases are maintained in the respective cities:

Crew Bases	Satellites
Los Angeles	Ontario (ONT) / Santa Ana (SNA) / Long Beach (LGB)
San Francisco	Oakland (OAK)/San Jose (SJC)
Washington	Baltimore (BWI)
Tampa/St. Petersburg	Sarasota (SRQ)
Miami/Fort Lauderdale	West Palm Beach (PBI)

Any Los Angeles based reserve pilot who originates and terminates a trip sequence at a Los Angeles satellite will have the off duty periods immediately preceding and immediately following such trip sequence extended by one hour (1:00) each.

KK. Schedule

"Schedule" means the operating schedule used by the Company in its operations.

LL. Scheduled Trip or Trip Sequence

A "scheduled trip or trip sequence" is a published pairing of flying and/or deadheading, consisting of two or more flight segments, which originates and terminates at a crew base.

MM. Service

"Service" means the period of time assigned to active duty as a flight deck operating crewmember or supervisor with the Company.

NN. Sick if needed

A reserve pilot who is sick may call and so notify the Company. The pilot will not be charged sick leave until such pilot is assigned to fly. At the time the pilot is needed to fly (by assignment – not by proffer) such pilot will be so notified and will be placed on sick leave effective that date.

OO. Stand in stead displacement

A senior pilot can proffer to stand instead of a junior pilot being displaced from their respective bid status. In doing so, the senior pilot will be awarded a job from his/her bid preference list using the seniority number of the pilot who is most junior in such bid status at that point in the process. Once in the new bid status, pilots will use their own seniority number. The pilot is subject to a lock-in per Section 17L.

PP. Supervisory displacement

When a crewmember is replaced on a whole or partial sequence by a Supervisory Pilot. Crewmember is paid schedule for displacement plus greater of schedule/actual time flown. If crewmember is scheduled to deadhead on displaced leg, the greater of scheduled or actual is paid.

QQ. Supervisory Pilot

Any pilot listed on the American Airlines Pilot Seniority List who is serving in a managerial or instructional capacity and has not been awarded a monthly trip selection, except that a pilot may be utilized as a temporary supervisory pilot under the provisions of SUPPLEMENT O, or may be appointed to a supervisory position during the course of the month.

RR. 32 hour legality

FAR legality where an international crewmember of a two man unaugmented crew cannot be scheduled to fly over 32 hours in a seven day period.

FAR legality where a crewmember must be given a period of 24 hours free from all duty within a 7 calendar day period. This relief of duty may be given in the form of a calendar day off, a 24 hour period commencing at any time during the day and terminating 24 hours later (including a period free from all duty of 24 hours or more contained within a sequence), or by moving a reserve's movable duty free period in accordance with Section 15.J.13.j.

SECTION 3

PAY

A. Equipment Groups

1. Equipment shall be grouped as follows, with a single rate of pay for each Group:
   a. Group I: With the exception of aircraft identified in Groups II through V below, any aircraft configured (i.e. as operated by American Airlines) with greater than seventy-six (76) seats and less than one-hundred-eighteen (118) seats, including E190/195, CRJ-1000, MRJ-100, and Bombardier CS100.
   b. Group II: Bombardier CS300, A319, A319neo, B737-700, B737-7MAX, MD80, B737-800, B737-8MAX, B737-900, B737-9MAX, A320, A320neo, A321, A321neo
   c. Group III: B757, B767-200, B767-300, A300
   d. Group IV: B767-400, B777-200, B777-200ER, B777-200LR, B777-300, B777-300ER, B787-8, B787-9, B787-10, A332, A333, A340, A350
   e. Group V: A380, B747 (all variants)
2. New Fleet Types

   Any aircraft type, including a new aircraft type, not listed in Section 3.A.1. will be included in the appropriate Group based on the FAA maximum certificated seat configuration of such aircraft types as follows: an aircraft type with an FAA maximum certificated seat configuration of fifty (50) percent or less of the difference between the highest FAA maximum certificated seat configured aircraft type in one Group and the lowest FAA maximum certificated seat configured aircraft type in the next higher Group will be placed in the lower Group; an aircraft type with an FAA maximum certificated seat configuration of greater than fifty (50) percent of the difference between the highest configured aircraft type in one Group and the lowest configured aircraft type in the next higher Group will be placed in the higher Group.
3. Transition to Equipment Groups - Incumbent Pay

   A pilot in the B737 or B767 bid status as of January 1, 2013 qualifies for up to three (3) years at incumbent rates of pay beginning on January 1, 2013. Such pilot will be paid at the applicable pay rate under the prior Agreement, adjusted for increases, while in the B737 or B767 bid status for the protected period, or until the pilot voluntarily moves into another bid status (excluding lateral bids, i.e. 737 Domestic to 737 International or DFW 737 FO to LGA 737 FO), whichever occurs first.
4. Equipment Group Pay Relationship

   Neither party shall, without the written consent of the other party, seek to modify the pay relationship (i.e. ratio) set forth in this Section 3 between Group I and Groups II - V through the processes of the Railway Labor Act for a period of two (2) contract cycles or ten (10) years from January 1, 2013, whichever is later.

B. Captain Pay

1. Base hourly pay rates for Captains with twelve (12) or more years of total accredited service with the Company as a pilot year shall be as follows:

	January 1, 2013	January 1, 2014	January 1, 2015	January 1, 2016	January 1, 2017	January 1, 2018
Group I	$114.02	$116.30	$118.63	*	+2.0%	+2.0%
Group II	$167.68	$171.04	$174.46	*	+2.0%	+2.0%
Group III	$180.76	$184.38	$188.06	*	+2.0%	+2.0%
Group IV	$213.02	$217.28	$221.63	*	+2.0%	+2.0%
Group V	$223.67	$228.14	$232.71	*	+2.0%	+2.0%

*Per Supplement A, January 1, 2016 rates will be the greater of 2.0% or rate determined by the Industry Comparable Pay Rate Adjustment.

2. Captains with less than twelve (12) years shall receive the hourly rate in B.1. above multiplied by the following percentages applicable to their total accredited service with the Company as a pilot:

2nd year	92.50%
3rd year	93.25%
4th year	94.00%
5th year	94.75%
6th year	95.50%
7th year	96.25%
8th year	97.00%
9th year	97.75%
10th year	98.50%
11th year	99.25%
12th year & thereafter	100.00%

C. First Officers

1. First year First Officers shall be paid at the day hourly rate of $40.00
2. Base hourly pay rates for First Officers with twelve (12) or more years of total accredited service with the Company as a pilot year shall be as follows:

	January 1, 2013	January 1, 2014	January 1, 2015	January 1, 2016	January 1, 2017	January 1, 2018
Group I	$ 77.54	$ 79.09	$ 80.67	*	+2.0%	+2.0%
Group II	$ 114.02	$ 116.30	$ 118.63	*	+2.0%	+2.0%
Group III	$ 122.92	$ 125.38	$ 127.88	*	+2.0%	+2.0%
Group IV	$ 144.85	$ 147.75	$ 150.71	*	+2.0%	+2.0%
Group V	$ 152.10	$ 155.14	$ 158.24	*	+2.0%	+2.0%

3. Each First Officer who has completed one (1) year of service, but less than 12 years of service with the Company as a pilot, shall be paid at a rate based on a percentage of Captain pay for the same year of service as follows:

Year In which serving	
2	50.0%
3	60.0%
4	61.0%
5	62.0%
6	63.0%
7	64.0%
8	65.0%
9	66.5%
10	67.5%
11	68.0%
12 and thereafter	68.0%

The percentages above shall be used to calculate hourly pay rates.

D. Determination of Hours

1. a. In determining the hours flown by pilots for pay purposes, the actual time from block to block and time credited for pay purposes as specified elsewhere in this Agreement shall be used; provided that on each sequence where scheduled times have been established, the pilot shall be paid for no less than such scheduled time.

   b. Subsequent to the start of a contractual month, the Company may add flight time to a scheduled segment by changing the scheduled arrival time for the sole purpose of correcting arrival performance. Such addition of flight time shall not be considered a reassignment under Section 15.N of this agreement. In a contractual month, the total number of such adjusted segments shall not exceed two percent (2%) of the total number of system scheduled segments. The difference between the credited time of the adjusted segment after having been flown and the time of the segment as originally scheduled shall be paid at the rate of one and one-half (1-1/2) minutes for each one (1) minute of credited flight time.

2. When the scheduled block to block time is found in actual operation to be improper, conferences shall be held at the request of the pilot representatives for the purpose of establishing proper scheduled times to be used for pay purposes.

E. A pilot who holds a Captain assignment in the International Operation shall receive international override pay at the rate of six dollars ($6.00) per hour for each hour of International flying actually performed. Additionally, International override shall not apply to the contiguous forty-eight (48) states, Canada and Mexico.

F. A pilot who holds a First Officer assignment shall receive, in addition to pay computed as provided in Section 3.C of the Basic Agreement, international override pay based on a percentage of Captain international override for the same year of service as follows:

Year in Which Serving	Percentage of Comparable Year Captain International Override
2	50.0%
3	60.0%
4	61.0%
5	62.0%
6	63.0%
7	64.0%
8	65.5%
9	67.0%
10	68.0%
11	68.5%
12 and thereafter	69.0%

G. General

When a change in a contractual month occurs en route, pay and credit for the time flown before midnight shall be paid and credited to the month in which the pilot involved originated the flight. Midnight shall be determined on the basis of local time at the point of last takeoff.

H. Hourly Pay Rates

	Captain - January 1, 2013				
	Group I	**Group II**	**Group III**	**Group IV**	**Group V**
Year 1					
Year 2	$105.47	$155.11	$167.20	$197.04	$206.90
Year 3	$106.33	$156.36	$168.56	$198.64	$208.57
Year 4	$107.18	$157.62	$169.92	$200.24	$210.25
Year 5	$108.04	$158.88	$171.27	$201.84	$211.93
Year 6	$108.89	$160.14	$172.63	$203.43	$213.61
Year 7	$109.75	$161.39	$173.98	$205.03	$215.28
Year 8	$110.60	$162.65	$175.34	$206.63	$216.96
Year 9	$111.46	$163.91	$176.69	$208.23	$218.64
Year 10	$112.31	$165.17	$178.05	$209.82	$220.32
Year 11	$113.17	$166.42	$179.41	$211.42	$221.99
Year 12	$114.02	$167.68	$180.76	$213.02	$223.67

	First Ofiicer - January 1, 2013				
	Group I	**Group II**	**Group III**	**Group IV**	**Group V**
Year 1					
Year 2	$52.74	$77.55	$83.60	$98.52	$103.45
Year 3	$63.80	$93.82	$101.14	$119.18	$125.14
Year 4	$65.38	$96.15	$103.65	$122.15	$128.25
Year 5	$66.98	$98.50	$106.19	$125.14	$131.40
Year 6	$68.60	$100.89	$108.75	$128.16	$134.57
Year 7	$70.24	$103.29	$111.35	$131.22	$137.78
Year 8	$71.89	$105.72	$113.97	$134.31	$141.02
Year 9	$74.12	$109.00	$117.50	$138.47	$145.39
Year 10	$75.81	$111.49	$120.18	$141.63	$148.71
Year 11	$76.95	$113.17	$122.00	$143.77	$150.96
Year 12	$77.54	$114.02	$122.92	$144.85	$152.10

	Captain - January 1, 2014				
	Group I	**Group II**	**Group III**	**Group IV**	**Group V**
Year 1					
Year 2	$107.58	$158.21	$170.55	$200.98	$211.03
Year 3	$108.45	$159.49	$171.93	$202.61	$212.74
Year 4	$109.33	$160.77	$173.31	$204.24	$214.46
Year 5	$110.20	$162.06	$174.70	$205.87	$216.17
Year 6	$111.07	$163.34	$176.08	$207.50	$217.88
Year 7	$111.94	$164.62	$177.46	$209.13	$219.59
Year 8	$112.82	$165.90	$178.84	$210.76	$221.30
Year 9	$113.69	$167.19	$180.23	$212.39	$223.01
Year 10	$114.56	$168.47	$181.61	$214.02	$224.72
Year 11	$115.43	$169.75	$182.99	$215.65	$226.43
Year 12	$116.30	$171.04	$184.38	$217.28	$228.14

	First Ofiicer - January 1, 2014				
	Group I	**Group II**	**Group III**	**Group IV**	**Group V**
Year 1					
Year 2	$53.79	$79.10	$85.27	$100.49	$105.52
Year 3	$65.07	$95.69	$103.16	$121.57	$127.65
Year 4	$66.69	$98.07	$105.72	$124.59	$130.82
Year 5	$68.32	$100.47	$108.31	$127.64	$134.02
Year 6	$69.97	$102.90	$110.93	$130.73	$137.26
Year 7	$71.64	$105.36	$113.58	$133.84	$140.54
Year 8	$73.33	$107.84	$116.25	$137.00	$143.85
Year 9	$75.60	$111.18	$119.85	$141.24	$148.30
Year 10	$77.33	$113.72	$122.59	$144.46	$151.69
Year 11	$78.49	$115.43	$124.44	$146.64	$153.97
Year 12	$79.09	$116.30	$125.38	$147.75	$155.14

	Captain - January 1, 2015				
	Group I	**Group II**	**Group III**	**Group IV**	**Group V**
Year 1					
Year 2	$109.73	$161.37	$173.96	$205.00	$215.25
Year 3	$110.62	$162.68	$175.37	$206.67	$217.00
Year 4	$111.51	$163.99	$176.78	$208.33	$218.74
Year 5	$112.40	$165.30	$178.19	$209.99	$220.49
Year 6	$113.29	$166.61	$179.60	$211.65	$222.24
Year 7	$114.18	$167.91	$181.01	$213.32	$223.98
Year 8	$115.07	$169.22	$182.42	$214.98	$225.73
Year 9	$115.96	$170.53	$183.83	$216.64	$227.47
Year 10	$116.85	$171.84	$185.24	$218.30	$229.22
Year 11	$117.74	$173.15	$186.65	$219.96	$230.96
Year 12	$118.63	$174.46	$188.06	$221.63	$232.71

	First Ofiicer - January 1, 2015				
	Group I	**Group II**	**Group III**	**Group IV**	**Group V**
Year 1					
Year 2	$54.87	$80.69	$86.98	$102.50	$107.63
Year 3	$66.37	$97.61	$105.22	$124.00	$130.20
Year 4	$68.02	$100.03	$107.84	$127.08	$133.43
Year 5	$69.69	$102.48	$110.48	$130.19	$136.70
Year 6	$71.37	$104.96	$113.15	$133.34	$140.01
Year 7	$73.08	$107.47	$115.85	$136.52	$143.35
Year 8	$74.80	$109.99	$118.57	$139.74	$146.72
Year 9	$77.11	$113.40	$122.25	$144.07	$151.27
Year 10	$78.87	$115.99	$125.04	$147.35	$154.72
Year 11	$80.06	$117.74	$126.92	$149.58	$157.05
Year 12	$80.67	$118.63	$127.88	$150.71	$158.24

	Captain - January 1, 2016				
	Group I	**Group II**	**Group III**	**Group IV**	**Group V**
Year 1					
Year 2	$111.93	$164.60	$177.44	$209.10	$219.56
Year 3	$112.84	$165.93	$178.88	$210.80	$221.34
Year 4	$113.74	$167.27	$180.32	$212.50	$223.12
Year 5	$114.65	$168.60	$181.75	$214.19	$224.90
Year 6	$115.56	$169.94	$183.19	$215.89	$226.68
Year 7	$116.47	$171.27	$184.63	$217.58	$228.46
Year 8	$117.37	$172.61	$186.07	$219.28	$230.24
Year 9	$118.28	$173.94	$187.51	$220.97	$232.02
Year 10	$119.19	$175.28	$188.95	$222.67	$233.80
Year 11	$120.10	$176.61	$190.39	$224.36	$235.58
Year 12	$121.00	$177.95	$191.82	$226.06	$237.36

	First Ofiicer - January 1, 2016				
	Group I	**Group II**	**Group III**	**Group IV**	**Group V**
Year 1					
Year 2	$55.96	$82.30	$88.72	$104.55	$109.78
Year 3	$67.70	$99.56	$107.33	$126.48	$132.80
Year 4	$69.38	$102.03	$109.99	$129.62	$136.10
Year 5	$71.08	$104.53	$112.69	$132.80	$139.44
Year 6	$72.80	$107.06	$115.41	$136.01	$142.81
Year 7	$74.54	$109.61	$118.16	$139.25	$146.21
Year 8	$76.29	$112.19	$120.95	$142.53	$149.66
Year 9	$78.66	$115.67	$124.69	$146.95	$154.29
Year 10	$80.45	$118.31	$127.54	$150.30	$157.82
Year 11	$81.66	$120.10	$129.46	$152.57	$160.20
Year 12	$82.28	$121.00	$130.44	$153.72	$161.41

Section 3 - Pay - Transition to Equipment Groups Q & A

Q: What will incumbent pay rates be for eligible B737 and B767 pilots? (See Q&A below)

A: The table below specifies incumbent rates for eligible B737 and B767 pilots:

	12-Year Rate		
	Jan. 1 2013	**Jan. 1 2014**	**Jan. 1 2015**
Captain			
B-763 Incumbent	$186.57	$190.30	$194.10
B-762 Incumbent	$184.51	$188.20	$191.96
B-738 Incumbent	$172.33	$175.77	$179.29
First Officer			
B-763 Incumbent	$126.87	$129.40	$131.99
B-762 Incumbent	$125.47	$127.97	$130.53
B-738 Incumbent	$117.18	$119.53	$121.92

Q: Who will qualify for incumbent rates versus base rates?

A: The following table specifies pilots who will qualify for incumbent or base rates:

Pilot Circumstance (examples apply to CA and FO)	Applicable Rate
Pilot holds current bid status in 767 or 738	Incumbent
Pilot involuntarily displaced from higher paying bid status into 767 or 738	Incumbent
Pilot displaced from higher paying bid status into 767 or 738 as a result of a SIS	Base
Pilot currently holds 767 or 738, but is displaced to lower paying equipment other than 767 to 738	Base
Pilot from above example, when reinstated to 767 or 738	Incumbent
Pilot is reinstated to 738 or 767 bid status from a displacement that occurred prior to DOS	Incumbent
Pilot awarded preference bid for 767 or 738 after DOS	Base
S80 pilot awarded lateral preference bid to 737 after DOS	Base
Incumbent 738 pilot awarded lateral preference bid to A321	Base
After DOS, Pilot returns from Personal leave of absence into 737 or 767	Base
After DOS, Pilot returns from Military leave of absence into 737 or 767	(USERRA)
After DOS, Pilot returns from Family Leave, LT Sick, or LTD into 737 or 767	Base

SECTION 17

FILLING VACANCIES, DISPLACEMENTS, REINSTATEMENTS, FURLOUGHS, AND RECALLS

A. Bid Status

1. All pilot positions are identified by their bid status which consists of four elements:
   a. Base
   b. Category
   c. Equipment
   d. Division
2. Each bid status is ranked according to its elements. Bases have no ranking. Within a base, all Captain positions are higher than all First Officer positions. Within a base and category, bid status is ranked by equipment on the basis of certificated gross weight -- the higher the certificated gross weight, the higher the ranking. If two or more models exist within an equipment type, the average certificated gross weight of the models is used to determine the ranking. Within a base, category and equipment, a bid status is ranked according to division with International being higher than Domestic.

B. Change in Bid Status

A pilot's bid status can only change as follows:

1. A pilot may bid for and be awarded a vacancy in a different bid status, which may be higher, lower or lateral (lateral meaning the same category and equipment -- different division and/or base) than such pilot's current bid status.
2. A pilot who is displaced from a bid status, because the pilot's position was eliminated or because such pilot was displaced by a more senior pilot, may displace a more junior pilot.
3. A pilot may proffer and be awarded a displacement which would have otherwise affected a junior pilot.
4. A pilot who is displaced from a bid status may later be reinstated to a vacancy in that bid status.
5. A pilot may be awarded a vacancy as a result of an entitlement which was awarded while serving a lock-in.
6. A pilot may be assigned to a bid status by the Company.

C. Qualifications Required for Bidding and Filling a Vacancy

1. All pilots may bid for and be awarded any vacancy with the following exceptions:
   a. A probationary pilot cannot bid for a Captain vacancy.
   b. In order to be eligible to be awarded a bid status that requires or results in an Airline Transport Pilot Certificate, a pilot must possess such certificate or have previously entered the date of the successful completion of the required written examination for said certificate into the Company's computer database.
   c. As provided in L. of this Section, a pilot serving a lock-in may, at the Company's discretion, only be awarded an entitlement to fill a future vacancy.
   d. A pilot who is being withheld from occupying a bid status position in accordance with M.1.b. or c. of this Section, may only bid for a bid status lateral to (same category and equipment -- different division and/or base) or higher than the bid status from which withheld.
   e. If a pilot is awarded a different bid status, either as a result of bidding for or being assigned to a vacancy or as a result of being displaced, such pilot's bid(s) for other

vacancies processed prior to the effective date of the pending bid status award will be given consideration as follows:

(1) For a pilot who will be required to fulfill a lock-in in the pending bid status award,

(a) If such pilot is the successful bidder for a vacancy which is lateral (same category and equipment -- different division and/or base) to the pending bid status award, the pilot's bid for the lateral vacancy will be awarded, or

(b) If such pilot is the successful bidder for a vacancy in a bid status which is higher or lower than the pending bid status award, such pilot may only be awarded an entitlement to such bid status, in accordance with Section 17.L.5.

(2) If a pilot will not be required to fulfill a lock-in in the pending bid status award, such pilot may bid for and be awarded a vacancy in any other bid status.

2. A pilot who is awarded a different bid status, either as a result of bidding for or being assigned to a vacancy or as a result of being displaced, shall be afforded the opportunity to acquire the necessary route qualifications, equipment qualifications or ratings within a reasonable period of time.

D. Displacements

1. A pilot shall be considered displaced if any one of the following occurs:
   a. The Company eliminates all positions in a bid status, in which case all pilots holding a position in such bid status shall be considered displaced.
   b. The Company reduces the number of positions in a bid status, in which case, to the extent necessary to accomplish the reduction, the pilots within the bid status being reduced who have the least system seniority shall be considered displaced.
   c. A pilot who has been displaced under any provision of this section may displace a more junior pilot in accordance with 7. below, in which case the more junior pilot may then also be considered displaced.

2. Proffer of Displacements
   a. When a junior pilot is to be displaced from a bid status, the displacement shall be proffered in seniority order to all pilots in that bid status.
   b. Displacement into another bid status is based upon the junior pilot's seniority. (For example, junior pilot A would otherwise be displaced; senior pilot B in the same bid status proffers the displacement; senior pilot B displaces into a bid status indicated on senior pilot B's bid preference list based on junior pilot A's seniority. Once senior pilot B is in the new bid status, bidding trip selections, vacations, etc. will be done with pilot B's own seniority.)
   c. A pilot is eligible to proffer displacement provided:
      (1) The pilot must fulfill a lock-in in accordance with Section 17.L.1., unless waived at the Company's discretion, except that the lock-in for a pilot who displaces to a lower bid status and only requires a short requalification training program shall be the same as a pilot bidding to a higher bid status.
      (2) The pilot can fulfill the lock-in in c.(1). above prior to normal retirement unless waived at the Company's discretion.
      (3) A pilot fulfilling a lock-in may only proffer displacement to a lateral bid status (same category and equipment -- different division and/or base) unless released from the lock-in at the Company's discretion.
      (4) A probationary pilot cannot proffer displacement to a Captain bid status.
      (5) In order to be eligible to be awarded a bid status that requires or results in an Air Transport Pilot certificate, a pilot must possess such certificate or have previously entered the date of the successful completion of the required written examination for said certificate into the Company's computer data base.

(6) The pilot has not begun, or is not within five (5) days of beginning training for another bid status as a result of a previous award.

d. A pilot proffering displacement does not have a reinstatement right.

3. Each pilot shall have access to and shall be responsible for maintaining a displacement preference list as a part of his or her standing bid list. On the displacement preference list a pilot may list in order of preference any bid status to which the pilot would prefer to displace in the event such pilot is displaced. A pilot may add to, delete from, or rearrange the order of displacement preferences at any time prior to the date on which the bid award procedure is implemented.

4. Displacements may be processed once during each month; simultaneously with reinstatements, entitlements and bid preferences for vacancies.

5. Displacements shall always be effective on the first day of a contractual month, and they shall never be effective earlier than the first day of the first contractual month following the date on which they are processed.

6. The Company shall provide at least fifteen (15) days advance notice of the date on which displacements will be processed. Between the date on which advance notice is given and the date on which displacements are processed, pilots may continue to access and make changes to their displacement preference lists.

7. A displaced pilot may fill a vacancy or displace a more junior pilot. The vacancy or the position to which such pilot is displacing may be in a higher, lateral, or lower bid status than the bid status of the position from which such pilot was displaced. The order of awarding a new bid status to a displaced pilot is as follows:

   a. A displaced pilot shall fill a vacancy from such pilot's bid preference list.

   b. From such pilot's displacement preference list, the pilot shall be awarded the highest preference to which entitled by seniority.

      (1) Such pilot shall have a reinstatement right to the bid status from which displaced, and

      (2) Shall not incur a lock-in in the bid status awarded.

      (3) Such pilot who is awarded, from the displacement preference list, a lateral bid status (same category and equipment -- different division and/or base) or the highest bid status in the system to which entitled by seniority shall, if the location of the bid status position is at a base other than the one from which displaced, be eligible for moving expenses as provided in Section 8, provided:

         (a) Such pilot relocates to the base to which displacing.

         (b) Such pilot incurs a lock-in in the bid status to which displacing equal to the down-bid lock-in specified in Section 17.L.1.b.

         (c) Such pilot forfeits any reinstatement right to the bid status from which displaced.

      (4) When such pilot is awarded a bid status from the displacement preference list, the junior pilot who held that bid status may then be considered displaced.

   c. If the seniority of a displaced pilot does not entitle such pilot to a bid status from either the bid preference list or the displacement preference list, such pilot shall be assigned to a different bid status at that pilot's base.

      (1) Such assignments shall be made in the following order:

         (a) The displaced pilot will be assigned a vacancy in the highest bid status above the displaced status to which entitled by seniority at that pilot's base.

         (b) The displaced pilot will displace a more junior pilot in the highest bid status above the displaced status to which entitled by seniority at that pilot's base.

         (c) The displaced pilot will be assigned a vacancy in the next lower bid status if available at that pilot's base. If no vacancy is available, the pilot will displace a more junior pilot in that same next lower bid status at that pilot's base.

(d) Step (c) will be repeated at each successively lower bid status until the displaced pilot is assigned a bid status at that pilot's base.

(2) A pilot so assigned shall have a reinstatement right to the bid status from which displaced, and

(3) Shall not incur a lock-in in the bid status to which assigned.

d. If a displaced pilot cannot be awarded a vacancy at that pilot's base and there is no more junior pilot at that base, such pilot may be proffered those vacancies in the system for which there are no bidders, and then, if necessary, be assigned to such a vacancy.

(1) Such pilot shall have a reinstatement right to the bid status from which displaced, and

(2) Shall not incur a lock-in in the bid status awarded or to which assigned.

8. A pilot can only be displaced once in any contractual month, but a pilot who has been displaced may be displaced again in a later month. A pilot who has been displaced more than once may hold multiple reinstatement rights in accordance with E. of this Section.

E. Reinstatement Rights

1. A reinstatement right provides a displaced pilot with the right to be reinstated to a vacancy in the bid status from which displaced before such vacancy is awarded to any other pilot who does not have a reinstatement right.

2. When a pilot is displaced and is awarded another bid status, such pilot shall have a reinstatement right, unless the pilot is either awarded a bid status which was on the bid preference list or the pilot is entitled to receive moving expenses in accordance with D.7.b.(3) of this Section. As provided in D.2.d. of this Section, a pilot proffering displacement does not have a reinstatement right.

3. Duration of Reinstatement Rights

a. Any reinstatement right existing prior to January 1, 2013 shall not have an expiration date.

b. Any reinstatement right created on or after January 1, 2013 shall expire 36 months after the effective date of the event that created the reinstatement right. If, on the effective date of such event, the longest FAA-required training course for re-qualification to that reinstatement bid status is triggered in a period shorter than 36 months, then the reinstatement right will expire at the end of the shorter period (e.g., If the FAA requires the longest training course after a 30-month absence from the bid status, the reinstatement right will expire at the end of the 30th month following the effective date of the event that created the reinstatement right).

c. For purposes of this section, a furloughed pilot's reinstatement right, if any, is awarded and effective on the date of recall.

4. When two (2) or more pilots have a reinstatement right to the same bid status, their reinstatement rights will be honored in seniority order.

5. A pilot who has a reinstatement right to a bid status will automatically be reinstated if a vacancy becomes available in that bid status.

6. A pilot shall lose a reinstatement right to a bid status if reinstated to that bid status or if awarded any bid status which is on such pilot's bid preference list, except when awarded a lateral bid.

7. If a pilot has a reinstatement right, it will be included on the standing bid list and will be identified as a reinstatement right.

8. A pilot who has a reinstatement right may choose to forfeit such right at any time by deleting it from the standing bid list. If a pilot has more than one reinstatement right, such pilot may choose to forfeit one or more such rights in this manner without affecting any other reinstatement rights.

9. A pilot who has been displaced more than once may have a reinstatement right to more than one (1) bid status. The reinstatement of such a pilot shall terminate reinstatement right(s) to

any bid status which the pilot has ranked lower than the one to which reinstated but shall not affect reinstatement right(s) to any bid status which the pilot has ranked higher than the one to which reinstated. However, if such a pilot is awarded any bid status which is on such pilot's bid preference list, that pilot shall forfeit all reinstatement rights, except when awarded a lateral bid.

F. Advance Notice of Vacancies to be Filled

1. At least fifteen (15) days before implementing the bid award procedure, the Company shall provide notification of the following:
   a. The date on which the bid award procedure will be implemented.
   b. The number of known vacancies identified by bid status.
   c. The effective date of all known vacancies.
   d. A forecast of the total number of positions in the system for the first, third and sixth months, with the first month being the first month in which the vacancies are effective.
      (1) The forecasts for the first and third months will be by bid status at each base or satellite base.
      (2) The sixth month forecast will be for the system by category, equipment and division.
2. The forecasts required in 1. shall be the best estimates which the Company can provide, but they shall be made available solely as a guide and shall not, in any way, represent a commitment that the number and/or distribution of forecasted bid status positions will actually develop or be maintained.
3. Following the notification required in 1., pilots may continue to access and make changes to their standing bid lists at any time prior to the date on which the bid award procedure is implemented.

G. Bid Award Procedure

1. When there are known vacancies and/or displacements, the Company shall, once during each month, simultaneously award bids for vacancies, and process displacements, reinstatements, entitlements, and also process displacements and vacancies resulting from such awards. All awards shall be based on system seniority giving first priority to reinstatement rights, second priority to entitlements and then bids for vacancies. Only those bids or displacement preferences indicated on pilots' standing bid lists will be considered in the bid award procedure. [See Q&A #141]
2. With the exception of V. (Furloughs) and W. (Method of Recall) of this Section, none of the procedures in Section 17. (bidding for vacancies, displacements, etc.) shall apply to the Flight Test pilot positions.

H. Standing Bid List

1. Each pilot shall indicate preferences for any change in bid status on a standing bid list. A pilot's standing bid list shall be the only method of bidding for vacancies or expressing preferences for bid status positions should such pilot be displaced. Each pilot's standing bid list may include any or all of the following:
   a. Bid Preference List
      (1) A pilot's bid preference list shall include all of that pilot's bids for any other desired bid status positions, listed in order of preference by the pilot. [See Q&A #111]
      (2) The bid status positions listed need not be vacant at the time they are placed on a pilot's bid preference list.
      (3) If a pilot is displaced, such pilot shall be awarded the highest preference on his or her bid preference list to which such pilot is entitled by seniority, provided the position is vacant.
   b. Displacement Preference List

(1) A pilot's displacement preference list shall include all of that pilot's preferences for bid status positions to which such pilot would displace in the event of displacement from his or her present bid status position.

(2) Displacement preferences shall be listed in order of preference by the pilot.

(3) If a pilot is displaced and a vacant bid status position cannot be awarded from such pilot's bid preference list, such pilot will displace to the highest preference on his or her displacement preference list to which entitled by seniority.

(4) If pilots are displaced and have expressed no bid or displacement preferences, or they are not entitled by seniority to a position on either their bid preference lists or their displacement preference lists, such pilots shall be assigned to positions by the Company in accordance with Section 17.D.7.c. or d.

c. Reinstatement Rights

(1) If a pilot has a reinstatement right to a bid status from which displaced, it shall appear on such pilot's bid preference list but it shall be identified as a reinstatement right.

(2) A pilot who has been displaced more than once may have more than one reinstatement right, in which case all such rights shall appear on such pilot's bid preference list.

(3) A pilot may arrange bid preferences and reinstatement right(s) in any order on the bid preference list.

(4) A pilot may forfeit a reinstatement right by deleting it from the bid preference list.

d. Entitlements

(1) If a pilot has an entitlement which was awarded while serving a lock-in, the entitlement shall appear on such pilot's bid preference list but it shall be identified as an entitlement.

(2) A pilot may have only one entitlement.

(3) A pilot serving a lock-in who already has an entitlement may be awarded another entitlement, in which case the previous entitlement will automatically be deleted from such pilot's bid preference list.

(4) Pilots may arrange their entitlements and bid preferences in any order on their bid preference lists.

(5) A pilot may forfeit an entitlement by deleting it from the bid preference list.

2. A pilot may add, delete, or otherwise alter the preferences on the standing bid list at any time prior to the date on which the bid award procedure is implemented. All preferences on a pilot's standing bid list on the date the bid award procedure is implemented shall be considered, and any resulting change in bid status shall be binding on the pilot.

I. Notice of Bid Status Positions Awarded

1. Following the implementation of the bid award procedure, the Company shall expeditiously provide electronic notification of all bid status positions which were awarded.

2. Each pilot whose bid status changed as a result of the bid award procedure shall be individually notified of such change.

3. Following the award/assignment of training associated with the results of the bid award procedure, the Company shall provide electronic notification of the dates of all such training awarded/assigned.

J. Effective Date Of Bid Status

1. The effective date of a bid status position shall always be on the first day of a contractual month, and shall not be more than three (3) months after the date such position was

awarded, except as provided in R. and S. of this Section for the introduction of new equipment or the opening or reactivation of a crew base.

2. A pilot will be paid the applicable rates of pay for a bid status commencing with the effective date of such bid status. However, a pilot who is scheduled to fly or flies in more than one (1) bid status during a contractual month as the result of a fly through trip sequence shall be paid and credited on the basis of the bid status contained in the fly through trip sequence until the fly through sequence terminates.

K. Reporting To A Different Base

1. A pilot who receives a bid status award which involves transferring from one base to another, shall normally be given a period of not less than fifteen (15) days to report to such new base from the date on which notification of the bid award was made.

2. A pilot under 1. above who is required by the Company to report to another base in less than fifteen (15) days shall be afforded reasonable time off at a later date, not to exceed fifteen (15) days, at the time of such pilot's household move, to facilitate completing moving arrangements. The pilot's schedule will be so arranged at the new base as to minimize, insofar as is possible, loss of flying time during such reasonable time off in which moving arrangements are being completed. Such pilot shall be allowed actual reasonable expenses for himself or herself only at the new base station for the number of days equivalent to the difference between the standard fifteen (15) day reporting date and the date on which such pilot was actually required to report. Where Company Regulations or any provision of this Agreement provides additional moving expenses for specific moves, such expenses shall be in addition to, but not in duplication of, the expense provisions of this paragraph.

L. Lock-Ins

1. A pilot awarded a bid status from the bid preference list or who is assigned a bid status as provided in Section 17.N.1., 2., 3., 4., or 5., shall be subject to the following period of lock-in:
   a. If awarded/assigned a higher paid bid status -- twenty four (24) months,
   b. If awarded/assigned a lower paid bid status -- twenty four (24) months,
   c. If awarded/assigned a lateral bid status (same category and equipment -- different division and/or base) -- no new lock-in, but such pilot shall continue to serve the balance of any existing lock-in.
   d. A pilot awarded to a different bid status for aircraft operated with a common type rating will not incur a lock-in.
   e. A pilot who is serving a lock-in shall not be awarded a higher or lower bid status but may be awarded a lateral bid status (same category and equipment -- different division and/or base). However, a pilot who is serving a lock-in shall be released to initially upgrade to the next higher category after fulfilling six (6) months of such lock-in.
   f. A pilot who is displaced from a bid status while serving a lock-in shall, if later reinstated to that same bid status, resume the lock-in and serve the balance which remained at the time of displacement. However, upon reinstatement, such pilot shall be credited with any time served in the same category and equipment while displaced.
   g. A pilot who is displaced from a bid status shall not be required to serve a lock-in in the bid status assumed after displacement unless such bid status is awarded from the bid preference list.
   h. A pilot who proffers a displacement from a bid status shall be required to serve a lock-in in the bid status assumed after displacement.
   i. If a pilot, who is awarded/assigned a position in a lower bid status and is subject to the twenty four (24) month lock-in in b. above, is withheld from such bid status in accordance with M. of this Section, the lock-in shall be reduced by one (1) month for each month such pilot is withheld beyond the third (3rd) month after the effective date of the position from which withheld.

j. A pilot awarded/assigned a bid status on "new equipment" or at a newly opened or reactivated base shall be subject to the lock-in provisions of R. or S. of this Section, as applicable.

2. A newly hired pilot shall serve a six (6) month lock-in in the bid status of initial assignment.

   Such pilot may be awarded/assigned a lateral bid status (same category and equipment – different division and/or base), in which case the pilot shall not incur a new lock-in but shall continue to serve the balance of the existing lock-in.

3. Lock-ins shall become effective as follows:
   a. A lock-in shall not commence prior to the effective date of the award.
   b. A pilot who completes required training prior to the effective date of an award shall begin any applicable lock-in on the effective date of such award.
   c. A pilot who completes required training after the effective date of an award shall begin any applicable lock-in on the first day of the contractual month following the completion of training, but no later than the first day of the second (2nd) contractual month following the commencement of training.
   d. Any lock-in required for a pilot who has been withheld, shall begin when the pilot's period of withholding ceases, irrespective of when the pilot trains.

4. Lock-ins are a function of a change in bid status and are not mitigated or satisfied by previous or current qualifications or previous lock-ins.

5. A pilot who is serving a lock-in may bid for vacant bid status positions; however, if such pilot is the successful bidder such pilot may, at the Company's discretion, only be awarded an entitlement to the bid status. After such pilot has served the lock-in the entitlement may be exercised only when there is a vacancy in the bid status. Entitlements to a vacancy are awarded immediately after reinstatement rights. A pilot with an entitlement to a bid status will be awarded a vacancy before any pilot who does not have a reinstatement right or an entitlement. If more than one pilot has an entitlement to the same bid status, a single vacancy is awarded to the most senior.

6. Nothing herein shall prevent the Company from terminating a pilot's lock-in at its discretion.

M. Withholding From A Bid Status Position

1. A pilot who is eligible to be awarded a bid status position may, at the Company's discretion, be withheld from occupying such position under the following circumstances:
   a. Consideration of age,
   b. Anticipated eligibility for and commitment to occupy a higher bid status than that from which such pilot is being withheld, as indicated on that pilot's bid preference list at the time such pilot is withheld,
   c. Operational reasons, such as manning requirements or availability of training or equipment.

2. Withholding Time Limits - General
   a. If it is necessary to withhold a pilot from a bid status preference, the period of withhold will be no greater than six (6) contractual months from the effective date of the bid status award. The six (6) month limit shall not apply to the following exceptions:
      (1) A pilot being withheld from a bid status preference in consideration of the pilot’s age.
      (2) The withholding period for a first year pilot withheld from a lateral position shall be limited to a total of two months.
      (3) Extraordinary circumstances. If withholding in excess of six (6) months is necessary due to extraordinary circumstances, the Company and the Association will meet and agree on an appropriate duration for such withholding. Extraordinary circumstances, include but are not limited to:
         - An act of God,

- A strike by any other Company employee group,
- A national emergency,
- Involuntary revocation of the Company's operating certificate(s),
- Grounding of a fleet type or a substantial number of the Company's aircraft,
- A reduction in the Company's operation resulting from a decrease in available fuel supply caused by either governmental action or the suppliers being unable to meet the Company's demands,
- The unavailability of aircraft scheduled for delivery,
- Start up of a new division (e.g., South America)

b. Elimination of a fleet type:

(1) The Company has the ability to increase withholds from 6 to 12 months beginning one year prior to the month in which the last aircraft in a fleet is scheduled to be eliminated (e.g., the last S80 is scheduled to be retired in August 2020, withholds can increase from 6 to 12 months beginning in July of 2019).

(2) In no case can a pilot be withheld greater than 12 months (e.g., using the example in b.1 above, the Company subsequently elects to defer the scheduled retirement of the last S80 until December 2020. The pilots that have been withheld since July 2019 must be released from the withhold by the end of June 2020).

c. Withholding in excess of twelve (12) months shall only occur if fleet specific training facilities that are owned, leased, or operated by the Company or an affiliate are fully utilized for American Airlines pilot training and no contract training capacity exists at any outside training facility.

3. Withholding From A Displacement Preference

a. A pilot may be withheld from a displacement preference bid status if, the Company projects the pilot will subsequently be displaced from the displacement preference, that the pilot is entitled to by seniority, within three (3) contractual months of the effective date of the displacement. If the pilot is withheld from a displacement preference and is assigned a displacement preference at the same base as the withheld displacement preference, the Company may, if the original three (3) month estimate is in error, extend the withhold period for up to three (3) additional months if the Company projects that the pilot will be displaced in that time period. For each bid status from which a pilot is withheld, the three (3) month limitation and the three (3) month extension provided for in this paragraph will apply beginning on the effective date of the pilot's withhold from each such bid status.

b. A pilot who is withheld from a displacement preference, and is assigned a displacement preference at a different base from the withheld displacement preference, shall receive priority passes for travel between the pilot's base and the AA station nearest the pilot's residence to cover any flying obligation while that pilot is being withheld. The pilot does not qualify for priority passes after the pilot is either awarded a bid status preference, or is subsequently displaced from the withheld displacement preference.

c. If a pilot does not have sufficient displacement preferences listed to indicate a displacement preference to a bid status other than from what the pilot would be withheld, the Company shall contact that pilot and obtain additional displacement preferences.

d. A pilot withheld from a displacement preference shall be entitled to a reinstatement right to each displacement preference from which such pilot is being withheld. Multiple reinstatement rights are permitted. Such pilot shall be paid for the highest four part bid status from which that pilot is being withheld.

e. If a pilot can occupy the withheld bid status position at the end of the time period outlined in Paragraph a. above, the pilot shall assume the bid status effective with the next contractual month.

4. Effective Date Of Withholding Pay

a. A pilot will be considered withheld commencing with the effective date of the bid status position from which withheld, and shall as of that date, be paid the highest equipment rate

of pay for the bid status from which withheld or the rate of pay for the flying actually performed, whichever is greater.

b. Such pilot shall be advised at the time of withholding the reason for withholding and the estimated duration of withholding.

c. Pilots being withheld shall retain their current bid status.

5. Termination Of Withholding/Withholding Pay

a. Withholding pay protection shall cease:

(1) When a pilot withheld under 1.a. above:

(a) No longer has a more junior pilot flying in the withheld status, or

(b) Is awarded a different bid status from the bid preference list.

(2) When a pilot under 1.b. above:

(a) Is assigned to a position in the withheld bid status, or

(b) Is assigned to a position in the higher bid status which such pilot had committed to accept when withheld, or

(c) No longer has a more junior pilot flying in the withheld bid status, or

(d) Is awarded from the bid preference list a position in a bid status lateral to or higher than that from which withheld.

(3) When a pilot under 1.c. above:

(a) Is assigned to a position in the withheld bid status, or

(b) Is awarded from the bid preference list a position in a bid status lateral to or higher than that from which withheld, or

(c) Has a more senior pilot displaced from the bid status from which withheld.

b. (1) When a pilot's period of withholding ceases in accordance with (1)(a), (2)(c), or (3)(c) above, the pilot will be considered displaced from the withheld bid status.

(2) (a) Such pilot will then be awarded a bid status position in accordance with D. above (Displacements), or withheld from such bid status position in accordance with M. above (Withholding From A Bid Status Position).

(b) The provisions of D.2. above (Proffer of Displacements) do not apply when a pilot is displaced from a withheld bid status, i.e., the displacement is not proffered to other pilots.

(3) In accordance with E. above (Reinstatement Rights), such pilot will be eligible for a reinstatement right to the bid status for which withholding ceased.

6. When a pilot's period of withholding ceases, such pilot shall, as of that date begin serving any lock-in which may be required by the provisions of L. of this Section. If a pilot has been withheld from a lower bid status, the provisions of L.1.h. may apply.

N. Assignment to a Bid Status

The Company may assign a pilot to a bid status in the following circumstances:

1. If there are no bidders for a Captain vacancy, assign at the base where the vacancy exists:

a. The most senior pilot who has upgraded to First Officer but has not upgraded to Captain, provided such pilot is not deferring a next-in-turn to qualify for Captain under the provisions of O. of this Section. If there are no such pilots,

b. Assign the most junior pilot, on the same equipment, in the same division, who is deferring a next-in-turn to qualify for Captain under the provisions of O. of this Section.

2. If the senior bidder for a Captain vacancy is junior to the pilot described in 1.a. above, assign the pilot described in 1.a.

3. In accordance with the provisions of 17.D.7.c. and d., the Company may assign displaced pilots to a bid status.

4. Except for a newly hired pilot, a pilot assigned in accordance with 1.or 2. above shall serve a twenty-four (24) month lock-in in accordance with L.1.a. of this Section.

5. A newly upgraded Captain may be assigned First Officer flying to acquire experience. Such pilot will be given a temporary bid to that First Officer status and will bid for trip selections according to seniority within that First Officer status. Such pilot will be paid rates of pay according to that pilot's current status or the assigned status, whichever is greater.

6. Each month the Company shall provide the Association with information detailing the initial bid status assignments of all newly hired pilots and all pilots who were withheld from such bid status.

O. Requirement to Qualify in Turn and Deferral [See Q&A #110, #111]

1. All pilots are required to qualify in turn for the next higher pilot category at their base. In no case shall a probationary pilot be assigned to upgrade to a Captain vacancy, and in no case shall a flight officer who has not upgraded to First Officer be assigned to upgrade to a Captain vacancy. A pilot will only be required to upgrade to First Officer one (1) time. A pilot will only be required to upgrade to Captain one (1) time.

2. When a pilot is required to qualify in turn for the next higher category as provided in 1. above, such pilot at his or her option may defer the opportunity to upgrade from First Officer to Captain for a period of thirty (30) consecutive contractual months, starting with the effective date of the bid status so declined. Such pilot shall receive written notification of the start date of the deferral period. However, the last six (6) months of the deferral period, or part thereof, the pilot is unlikely to complete upgrade to Captain by age sixty-five (65).

3. If the Company extends additional opportunities to upgrade, during the period of automatic deferral as provided in 2. above, such pilot may accept an upgrade bid status, thereby terminating the deferral.

4. After the period of automatic deferral as provided in 2. above, a pilot may continue to defer upgrading for up to an additional twenty-four (24) consecutive contractual months provided such extension is approved by the Vice President of Flight. A pilot's request for such extension may be submitted at any time during the initial deferral period and should be submitted a minimum of ninety (90) days before the end of the deferral period. The pilot should receive a written response from the Vice President of Flight no later than thirty (30) days from the date of receipt of the pilot's request for such extension. The Vice President of Flight's approval of the extension will be based on consideration of the individual pilot's circumstances and reason for requesting the extension, and shall not be unreasonably withheld. If the Vice President of Flight determines that, as a result of any extension of a pilot's deferral, pursuant to this paragraph, the pilot submitting the request is unlikely to complete upgrade to Captain by age sixty (60), such request shall be denied in whole or in part.

5. A pilot who has received written notice of the start date of the deferral period and who transfers to another base may:

   a. continue to defer category upgrade at the new base subject to the deferral period established at the previous base(s), or

   b. accept a new bid status to which entitled by seniority.

6. The Company may assign such a pilot to upgrade in accordance with N. of this Section.

P. Failure to Qualify

1. When a successful bidder fails to qualify for an awarded bid status within thirty (30) days from the effective date of the award -- subject to weather, equipment availability, or extent of

qualification requirements -- such pilot shall forthwith return to his or her former bid status at such pilot's own expense. The unfilled vacancy shall then be considered a new vacancy.

2. The Company may, at its discretion, extend the thirty (30) day window to accommodate the continuation of training course already begun.

3. It is recognized that a pilot who has been awarded a bid status may be unable to commence or complete training to qualify for that new bid status due to circumstances beyond the pilot's control. In this case the following provisions apply:
   a. The pilot will be returned to his/her previous status and paid in accordance with that previous status.
   b. When the pilot is able to again commence training for the awarded bid status, or when such date can be reasonably determined, the pilot will notify the Company. Upon such notification, the pilot will be awarded a reinstatement right to the new bid status for a future vacancy award.

Q. Cancellation Of Vacancy

If the Company awards a pilot a bid status and then cancels that award prior to its effective date, the pilot shall be considered to have been displaced from the bid status awarded. If, as a result of such displacement, a pilot is awarded a vacancy from the bid preference list, the determination of any lock-in shall be based on the bid status the pilot held at the time the future award was canceled.

R. Introduction of New Equipment

1. When new equipment is introduced at a base, it will be considered "new equipment" for the first twelve contractual months following the effective date of the first vacancy, and the Company may award vacancies on such new equipment up to six (6) months in advance of their effective dates. However, if the Company makes no vacancies available on the new equipment for any three (3) consecutive months, it will no longer be considered new equipment.

2. Vacancies on new equipment will be filled using pilots' standing bid lists and the regular bid status award procedure.

3. Pilots awarded or assigned a bid status on new equipment will serve a lock-in of twenty-four (24) months. A lock-in of twelve (12) months applies to those pilots who may have held a lateral bid status (same category and equipment -- different division and/or base).

4. Pilots who are serving a lock-in at the time the Company announces the introduction of new equipment may bid for vacancies on the new equipment. If they are awarded a bid status on the new equipment, their existing lock-in will terminate and they will begin a lock-in on the new equipment.

5. Once the Company has announced the introduction of new equipment, pilots who begin training or begin a lock-in not associated with a bid status on the new equipment can not bid for the new equipment until they complete their lock-in, unless they are bidding for the new equipment from a lateral bid status (same category and equipment -- different division and/or base). If such pilots are awarded a lateral bid status on the new equipment, their existing lock-in will terminate and they will begin a lock-in on the new equipment.

6. With respect to bid status on new equipment, as with all other bid status, the Company may terminate pilots' lock-ins at its discretion, and the Company has the option to withhold pilots from a bid status.

S. Opening, Reactivating, or Closing a Base

1. Opening or Reactivating a Base
   a. When a base is reactivated or a new base is opened, these procedures will be in effect for the first twelve contractual months following the effective date of the first vacancy.

b. Vacancies at a new or reactivated base will be filled using pilots' standing bid lists and the regular bid status award procedure. However, pilots will be able to qualify their bids by indicating the lowest seniority position which will be acceptable to them in the status for which they are bidding, and the Company may award vacancies at such new or reactivated base up to six (6) months in advance of their effective dates.

c. Pilots awarded or assigned a bid status at a new or reactivated base will serve a lock-in of twenty-four (24) months. A lock-in of twelve (12) months applies to those pilots who may have held a lateral bid status (same category and equipment -- different division and/or base). While serving a lock-in at a new or reactivated base, pilots may not assume a lateral bid status at a different base.

d. Pilots who are serving a lock-in at the time the Company announces a new or reactivated base may bid for vacancies at the new or reactivated base. If they are awarded a bid preference at the new or reactivated base, their existing lock-in will terminate and they will begin a new lock-in.

e. Once the Company has announced a new or reactivated base, pilots who begin training or begin a lock-in not associated with the new or reactivated base may not bid for the new or reactivated base until they complete their lock- in, unless they are bidding for a lateral bid status (same category and equipment -- different division and/or base). If such pilots are awarded a lateral bid status at the new or reactivated base, their existing lock-in will terminate and they will begin a new lock-in.

f. With respect to bid status at a new or reactivated base, as with all other bid status, the Company may terminate pilots' lock-ins at its discretion, and the Company has the option to withhold pilots from a bid status.

2. Closing of a Base

a. The Company will announce the closing date of a base at least six (6) months prior to the closing; except that such notice is not required when a base is closed due to unforeseeable circumstances.

b. During the period between the announcement of closing and the closing of the base, the Company will maintain the level of earnings of all pilots assigned to such base.

c. During the period between the announcement of the closing and the closing of the base, a pilot may bid and be awarded a position in another bid status, but such pilot may be withheld from such bid status.

d. Once the base closing is announced, each pilot assigned to such base should indicate to the Company, using the standing bid list, preferences for bid status assignment at a different base.

e. When vacancies and displacements are processed for the month in which the base will close, each pilot assigned to such base will indicate to the Company, using the standing bid list, preferences for bid status assignment at a different base.

f. The moving expenses of pilots who transfer to other bases in accordance with this provision will be paid by the Company in accordance with Section 8 of this Agreement.

T. Voluntary Mutual Bid Status Exchanges [See Q&A #104, #131]

The purpose of the Mutual Bid Status Exchange program ("Program") is to provide pilots at a base to be awarded their three-part bid status (category, equipment, division) at a different base.

The Association administers the Program solely as an accommodation to the Company. The Association assumes no special or new responsibility or liability to the Company, any pilot, or any other person or entity, as a result of its administration of the Program. The Company retains its authority and responsibility as employer under the Agreement.

A pilot, acting on his or her own behalf or through the Association as currently provided in the Agreement, has access to the existing grievance and arbitration processes set forth in Sections 21,22 and 23 of this Agreement, provided, however, that in any such grievance proceeding an arbitrator is without jurisdiction to enter relief against the Association.

After the normal monthly bid award process has been completed the Association will administer the Program subject to the following provisions and constraints:

1. Pilots who have indicated a preference to occupy their three-part bid status (category, equipment, division) at a different base will be identified. Pilots with pending bid statuses will not be included.
2. These pilots will be grouped by three-part bid status (category, equipment, division) and be sorted by seniority.
3. Pilots will be eligible for a mutual bid status exchange provided that each pilot is senior to the most junior pilot in their new respective bid status prior to the exchange. i.e. The mutual bid status exchange cannot result in a new more junior pilot in either one of the two statuses involved in an exchange.
4. Within each group, beginning with the most senior pilot, the Association will attempt to accommodate a mutual exchange with the next most junior pilot (or pilots, in the case of "Multi-Base" Exchanges), on the list, proceeding down the list and removing accommodated pilots until no further matches exist.
5. At the Company's option, mutual exchanges may be allowed based on a pilot's two-part bid status (category, equipment).
6. Pilots who are successfully matched in (4) above are awarded the respective bid status without incurring a lock-in.

   E.g.

Seniority #	Base	Proffers:	Matched With:	Result
1	LAX	SLT	5	Awarded SLT
2	ORD	SLT	3	Awarded SLT
3	SLT	ORD	2	Awarded ORD
4	DFW	SLT	None	Remains DFW
5	SLT	LAX	1	Awarded LAX
6	LGA	SLT	9	Awarded SLT
7	LAX	SLT	8	Awarded SLT
8	SLT	LAX	7	Awarded LAX
9	SLT	LGA	6	Awarded LGA

7. APA will normally provide Crew Resources with the list of bid status exchanges by the 6th of the month preceding the effective date of the new bid statuses.

U. Change of Base Due to Hardship

The Vice President-Flight of the Company and the President of the Allied Pilots Association will consider each request for a change of base due to hardship on a case-by-case basis, giving due consideration to the particular circumstances involved.

V. Furloughs

1. When a curtailment of operations results in fewer pilots being employed by the Company, the most junior pilots in the system, irrespective of their bid status or any rights that have accrued to them, shall be furloughed on a system-wide basis in reverse order of system seniority.

2. In the event of a furlough, the Company will notify all pilots that it will consider all requests for Leaves of Absence in order to mitigate the number of furloughs.

3. Pilots to be furloughed will be given thirty (30) days' notice before the effective date of the furlough. Such notice will not be applicable in cases of emergency which include, but are not limited to acts of God or a strike by employees of the Company.

4. A pilot furloughed by the Company due to a reduction in force shall continue to accrue seniority during the period of such furlough. Length of service for pay purposes shall not accrue during such period of furlough.

5. Furlough Pay

   a. A pilot who has completed one (1) or more years of service with the Company as a flight deck crewmember and who is furloughed shall receive furlough pay based upon such pilot's earnings for the last full month prior to the announcement of furlough, but not less than reserve guarantee for the bid status such pilot held that month, for the period of time specified below, except that no furlough pay will be paid when furloughs are caused by an act of God, a national emergency, involuntary revocation of the Company's operating certificate(s), a strike by any Company employee group, or a reduction in the Company's operation resulting from a decrease in available fuel supply caused by either governmental action or by commercial suppliers being unable to meet the Company's demands.

If a pilot has completed:	
1 year of service	1/2 month's furlough pay
2 years of service	1 month's furlough pay
3 years of service	1 month's furlough pay
4 years of service	1-1/2 months' furlough pay
5 years of service	2 months' furlough pay
6 years of service	2-1/2 months' furlough pay
7 years of service	3 months' furlough pay
8 years of service	3-1/2 months' furlough pay
9 years of service	4 months' furlough pay
10 years of service and thereafter	4-1/2 months' furlough pay

   b. A pilot eligible for furlough pay shall receive such pay starting at the time of furlough and such payments for the amounts due shall be at regular pay periods and continue until all furlough pay credit is used, except that in no event shall any such pay be due after the effective date of recall or, if such pilot elects to defer recall in accordance with W.3. of this Section, the effective date of such deferral.

W. Method of Recall

1. All pilots furloughed from the Company shall file proper addresses with the Vice President-Flight of the Company at the time of furlough. Any changes in address must be supplied promptly to the Vice President-Flight of the Company. A pilot shall not be entitled to preference in re-employment if such pilot does not comply with the foregoing requirements.

2. Furloughed pilots who are recalled to the employ of the Company shall be allowed a period of twenty-one (21) days to return to the service of the Company after date of postmark of reply-requested telegram or cablegram, or certified return-receipt-requested letter, of such pilot's reassignment to duty with the Company, sent to the last address on file with the Vice President- Flight of the Company.

3. Furloughed pilots referred to above who are recalled to the employ of the Company must respond to such recall in accordance with paragraph 2. above, provided, however, such recalled pilot may defer return to the active flight payroll for a period not to exceed two (2)

years from the date of postmark on the notice of recall or the date the least senior furloughee is recalled, whichever date comes first, provided further that such deferring pilot may cancel such deferral, in writing, and become eligible for recall at the next recall date. When a pilot's deferral period has expired, such pilot will be eligible for recall and such pilot will be recalled when the needs of the Company require such recall. Pilots electing to defer their return to the Company in accordance with the above must notify the Company by telegram, cablegram, or certified letter, return-receipt-requested, of their decision and length of requested deferral, within twenty-one (21) days of postmark on their recall notice. Pilots electing to defer their return to active flight duty will continue to accrue occupational seniority, but length of service for pay purposes shall not accrue during such deferral period.

4. When a furloughed pilot is recalled and placed on active pilot status with the Company, such pilot shall have no prior right or claim to any vacancy or vacancies that have been filled during the period of such furlough. However, if the pilot had a reinstatement right at the time of furlough, the pilot may reclaim such reinstatement right. If more than one reinstatement right was held, the pilot may select one such reinstatement right.

X. Number of Bid Status Positions

1. The minimum number of monthly positions in each bid status shall be no less than:
   a. Total regularly scheduled flight time, plus
   b. Total scheduled flight time credit, plus
   c. Total charter and extra section flight time, plus
   d. Ten percent (10%) of the total of a., b., and c. above (reserve), plus
   e. Total anticipated hours of vacation, plus
   f. Total anticipated hours of training,
   g. Divided by the monthly average line value (MALV).

2. The above formula shall not prohibit the Company from increasing the number of pilot positions in a bid status above the minimums determined above.

3. By the fifteenth day of the month, the Company shall forward the Association a report of all flying planned and flown in the previous month.

Y. Pilot Status Listing

The Company shall publish a list each month on which shall appear the names and status of all of the pilots in the employ of the Company and the stations at which they are currently based. Such list shall include the bid status of pilots, their seniority numbers, the bid status for which reinstatement rights are held, entitlements, lock-ins, and deferrals. Three (3) current copies of such list shall be distributed monthly to the Flight Department offices at each base, one (1) additional current copy of such list shall be posted on the Bulletin Board at all bases and co-terminals, and one (1) current copy shall be furnished to the Chairman and Vice Chairman of each Domicile and the President of the Association. Such lists shall be made available at all times for examination by pilots, and no such list shall be removed from Company property.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement this the 1st day of January, 2013.

WITNESS:

FOR THE AIR LINE PILOTS
IN SERVICE OF
AMERICAN AIRLINES, INC.
AS REPRESENTED BY
THEALLIED PILOTS ASSOCIATION

*/signed/*_____
Keith Wilson
President

*/signed/*_____
Neil Roghair
Negotiating Committee Chairman

*/signed/*_____
David C. Brown
Negotiating Committee Member

*/signed/*_____
Per J. Lovfald
Negotiating Committee Member

*/signed/*_____
William R. Boyd
Negotiating Committee Member

FOR AMERICAN AIRLINES, INC.

/signed/ _____
Laura Einspanier
Vice-President, Employee Relations

/signed/ _____
Dennis Newgren
Managing Director, Employee Relations

*/signed/*_____
Jim Anderson
Senior Principal, Employee Relations

*/signed/*_____
Keith Austin
Principal, Employee Relations

*/signed/*_____
Ed Garza
Coordinator, Contract Administration

*/signed/*_____
Jim Thomas
Director of Pilot Engagement

*/signed/*_____
Michael Burtzlaff
Principal, Finance

EXHIBIT 5

Federal Aviation Administration
Moving America Safely

FAA.gov Home

Airline Certificate Information - Detail View

AMERICAN AIRLINES INC	
Airline internet site	http://www.aa.com/
FAA Designator Code	AALA
Certificate Number	AALA025A
Years In Business	62
Certificate Issue Date	01/01/1954
FAA Office	AMERICAN CERTIFICATE MANAGEMENT OFF
FAA Office Phone Number	(214) 277-7700
Airline Information	
Airline Address	AMERICAN AIRLINES, INC PO BOX 619616 MD 5621, HQ DFW AIRPORT , TX 75261-9616
Operation Kind	1. DOMESTIC AND FLAG (PAX / CARGO)

Make/Model	Count
AIRBUS A-319	125
AIRBUS A-320	58
AIRBUS A-321	172
AIRBUS A-330	24
BOEING B-737	263
BOEING B-757	103
BOEING B-767	57
BOEING B-777	66
BOEING B-787	14
DOUG DC-9	140
EMB ERJ-190	20

U.S. Department of Transportation
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591

EXHIBIT 6

Federal Aviation Administration
Moving America Safely

FAA.gov Home

Airline Certificate Information - Detail View

ENVOY AIR INC	
Airline internet site	Not available
FAA Designator Code	SIMA
Certificate Number	SIMA586A
Years In Business	38
Certificate Issue Date	07/07/1978
FAA Office	8700 FREEPORT PARKWAY, SUITE200A
FAA Office Phone Number	(214) 277-7700
Airline Information	
Airline Address	ENVOY AIR INC 4301 REGENT BLVD. IRVING , TX 75063
Operation Kind	1. DOMESTIC AND FLAG (PAX / CARGO)
Operator is doing business as	1. AMERICAN EAGLE

Make/Model	Count
CNDAIR CL-600	35
EMB EMB-135	59
EMB EMB-145	85
EMB ERJ-170	6
SAAB SAAB-340B	29

U.S. Department of Transportation
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591

EXHIBIT 7

AGREEMENT

between

AMERICAN AIRLINES, INC

and

THE AIRLINE PILOTS

in the service of

AMERICAN AIRLINES, INC.

as represented by the

ALLIED PILOTS ASSOCIATION

EFFECTIVE: MAY 1, 2003

Table of Contents
Sections

Note: Single vertical line in the table of Contents indicates the Section, Supplement or Letter was not contained in the printed Agreement dated May 5, 1997.

Single vertical line in the body of this Agreement indicates a change from the printed agreement dated May 5, 1997.

Table of Contents
Supplements

Table of Contents
Letters

Table of Contents
Letters

SECTION 2

DEFINITIONS

A. Air Freight Feed Operation

A freight operation conducted with non-turbojet aircraft whose primary purpose is to "feed" the Company's aircraft and which is flown with active or furloughed pilots of the Company or under contract.

B. Calendar Month

"Calendar month", as used herein, shall mean the period from the first day of, to and including the last day of each calendar month of the year, except that for pilot scheduling and pay purposes January, February and March will each be considered a thirty (30) day month through the addition of January 31 and March 1 to the month of February. Leap year will make February a thirty-one (31) day month.

The Company may, at its option and prior to the annual vacation bidding for a given year, declare that up to any other four (4) months containing thirty-one (31) calendar days be deemed thirty (30) day contractual months by taking the first or last day of each such month and adding it to each or all of the other thirty (30) calendar day months.

C. Captain

"Captain" means a pilot who is in command of the aircraft and is responsible for the manipulation of, or who manipulates the flight controls of an aircraft while under way, including takeoff and landing of such aircraft, and who is properly qualified to serve as, and holds a current airman's certificate authorizing service as a Captain and who holds a Captain bid status.

D. Changeover pairings / prior removal sequence

Pairings on the next month allocation for trip sequences originating in the current contractual month. They may be longer or shorter which show a commitment for that particular month. Pay protection for any changes are limited to the current month’s flying.

E. Classification date

A pilot’s Classification Date is assigned concurrent with such pilots’ occupational date and shall continue to accrue during such period of duty except as provided in Sections 11, 12, and 17 of this Agreement. Classification seniority is used to determine pay level and the timing of advancement to succeeding pay levels.

F. Company date

In most cases it is the same as your date of hire since it is based on continuous service with AMR. A current AMR employee hired as an AA pilot will retain his/her original Company date. It is adjusted due to furloughs and leaves of absence as provided for in Sections 11 and 17.

G. Co-terminals as used in this Agreement shall mean:

1. Kennedy/Newark/LaGuardia
2. Midway/O'Hare
3. Dallas/Fort Worth International Airport/Love Field
4. Washington/Dulles International
5. Tampa/St. Petersburg
6. Miami/Fort Lauderdale

The above shall become and remain in effect when crew bases are maintained in the respective cities.

H. Contractual Month

"Contractual month" as used herein, shall mean the period of time, for pilot scheduling and pay purposes, during which allocated flying and the associated trip selections shall be effective, when the thirty (30) day provision of Section 2.B. (Calendar Month) is utilized.

I. Credited Projection (PROJ)

A pilot's total time for the month, including fly through time credited at the beginning of the month, the greater of scheduled or actual for flying already performed, scheduled time for flying yet to be performed, credits as provided in Section 15 Hours of Service (E.- minimum pay and credit for an on duty period, F. - minimum pay and credit for time away from base, and G.- minimum and average pay and credit for an on duty period), and credit for scheduled flight time when relieved of flying duties as provided in Section 5, [trips missed due to paid sick leave, a training program of more than five (5) days, vacation, jury duty, and Association leave] and credited time for any credit/no pay removals (for example, unpaid sick). Credited Projection (PROJ) is used in conjunction with Scheduled Projection (SPROJ) to determine a regularly scheduled pilot's legality in accordance with SECTION 15 Hours of Service.

J. Crew Tracking Trip Sequence(s)

Any pairing or repairing of a trip or trip sequence by Crew Tracking, or any flying that is not planned in advance to permit inclusion in a pilot's monthly trip selection, shall be called a "Crew Tracking Sequence".

K. Date of hire

The first day as an AA pilot. This date does not change for furloughs or leaves of absence.

L. Day Flying

"Day flying" shall include all flying between the hours of 0600 and 2259 pilot’s Home Base Time (HBT).

M. Diversion

When a crew makes an unscheduled or scheduled landing at a destination other than planned, generally due to operational reasons such as (weather, mechanical, pick-up passengers, passenger emergency).

N. Domicile

A common location where a group of pilots are based.

O. Duty day

A calendar day (0000-2400) in which any duty is performed for the company including sign-in and debrief.

P. Duty period

The elapsed time between sign-in time and release time;

1. Sign-in time – shall not be less than one hour prior to scheduled or rescheduled departure time for a pilot flying the first flight of a duty period or thirty (30) minutes prior for a pilot deadheading.
2. Release time – shall apply to all scheduled flying and deadheading and shall be fifteen (15) minutes after the scheduled or actual block in time, whichever is later. (30 minutes for International trip sequence).
3. Deadheading to and from training does not require a thirty (30) minute sign-in or a fifteen (15) minute debrief.

Q. First Officer

"First Officer" means a pilot who is second in command of the aircraft and any part of whose duty is to assist or relieve the Captain in the manipulation of the flight controls of the aircraft while under way, including takeoff and landing of such aircraft, and who is properly qualified to serve as, and holds a current airman's certificate authorizing service as a First Officer and who holds a First Officer bid status. On any international flight requiring more than a two (2) pilot cockpit crew, the First Officer(s) shall also be required to possess an ATPC and a type rating on the equipment flown.

R. Flight Time

1. Actual – that period of time beginning when an aircraft first moves from the ramp blocks for the purpose of flight and ending when the aircraft comes to a stop at the ramp for the purpose of loading or unloading at either intermediate stops or final destination.

2. Scheduled - the time published publicly by the Company from flight departure to flight arrival of the flight.

S. Fly-through

Time resulting from a trip or trip sequence which spans two contractual months and refers to the flight time including P&C for which a pilot is credited in the succeeding contractual month.

T. Furlough

"Furlough" means the removal of a pilot from active duty as a pilot with the Company without prejudice, due to a reduction in force, or the period of time during which such pilot is not in the active employ of the Company as a pilot due to such reduction in force.

U. Greater Time to Date (GTD)

A running accumulation of a pilot's credited hours to date, including time credited for a crew schedule error affecting a reserve pilot (as provided in Section 18.D.2.), but not including credit for future flying, relief from future flying, or reserve proficiency displacement flying (as provided in18.G.2.). Greater Time to Date (GTD) includes all time credited to date. Greater Time to Date (GTD) is used to determine reserve variances and assignments (as provided in Section 18.

V. International Officer

"International Officer" means a pilot who is assigned to international flights and who holds, in addition to a First Officer qualification, an ATPC and a type rating on the equipment flown, and whose duties as specified by the Company and as directed by the pilot in command, include the assistance or relief of the Captain or First Officer.

W. Last trip of the month

The last active scheduled trip sequence in a pilot’s contractual month, other than make up, regardless of when it was added to the pilot’s schedule.

X. Management pilot

A pilot who occupies a management position in the Flight Department.

Y. Midnight cutoff

When a change in a contractual month occurs en route, pay and credit for the time flown before midnight shall be paid and credited to the month in which the pilot involved originated the flight. Midnight shall be determined on the basis of local time at the point of last takeoff.

Z. Misconnect

Misconnect means that a particular segment, including deadhead, of a pilot's sequence operates sufficiently late into a station so as to cause such pilot to miss the next segment of such pilot's sequence. [See Q&A #105, #106]

AA. Night Flying

"Night flying" shall include all flying between the hours of 2300 and 0559 pilot's HBT.

BB. Occupational date

Generally occupational seniority shall begin to accrue from the date a pilot is first scheduled to complete initial new hire training with the Company and shall continue to accrue during such period of duty except as provided in Sections 11 and 12 of this Agreement. Occupational seniority is used for determining placement on the Pilot System Seniority list and for bidding purposes. Any references to seniority in this Agreement are to Occupational Seniority, unless otherwise specified.

CC. Pay or Compensation

"Pay" or "compensation", for purposes of this Agreement, means longevity, hourly, gross weight, mileage and, if applicable, international override pay.

DD. Pay Projection (PPROJ)

A pilot's total paid time for the month based on fly through time applied to the Credited Projection (PROJ) at the beginning of the month, the greater of scheduled or actual for flying already performed, scheduled time for flying yet to be performed, credits as provided in SECTION 15 Hours of Service (E. - minimum pay and credit for an on duty period, F. - minimum pay and credit for time away from base, and G. - minimum and average pay and credit for an on duty period), for scheduled time when relieved of flying duties as provided in Section 5, [trips missed due to paid sick leave, a training program of more than five (5) days, vacation, jury duty, and Association leave], and for any pay/no credit applications [for example, trips missed due to a training program of five (5) days or less as provided in Section 6.D.1.a.]. Pay adjustments will be made at the end of the month for training pay (Section 6.D.), minimum guarantee (SECTION 4), apportionment pay (Section 6.C.2.), CPA fill up (Section 15.A.6.a.), CPA spill back (Section 15.A.6.b.) and CPA pay out.

EE. Pilot

"Pilot" shall include and mean Captain, First Officer, and International Officer.

FF. Proficiency Displacement

A qualified pilot about to lose a qualification may request to displace another pilot for proficiency flying. The displaced pilot, once removed from the trip, is no longer obligated for such trip. The displacing pilot assumes the obligation to cover the displaced pilot's trip. (See Q&A #28)

GG. Reassignment

A pilot who is legal in all respects for such pilot's next regularly scheduled flight/sequence, but is assigned by the Company to perform other flying instead of such regular flight/sequence. The pilot shall be paid for whichever of the two (2) flights/sequences produces the higher pay.

HH. Recurrent training

Training and any associated proficiency check(s) for a category in which the pilot is qualified and is for the purpose of retaining qualification before becoming non-current.

II. Reschedule

A pilot shall be deemed rescheduled if, (1) following a cancellation, the pilot flies or is deadheaded on the first available flight to base or flies or is deadheaded to pick up the next leg

of the pilot's original flight sequence; or (2) following a misconnect or illegality, the pilot flies or is deadheaded on the first available flight to base. The "first available flight to base" is the flight that arrives at the base the earliest. This flight may be direct or indirect.

JJ. Requalification training

Training (ground and/or flight) and any associated proficiency check(s) for a category for which the pilot was qualified but is no longer currently qualified.

KK. Satellite Base

A satellite base is a station where pilots domiciled at a certain crew base as specified herein, may be scheduled to originate and terminate trip sequences. All satellite trip selections must contain only sequences which are scheduled to originate and terminate at the same satellite for the entire contractual month, unless accepted below. The following satellites shall become and remain in effect when crew bases are maintained in the respective cities:

Crew Bases	Satellites
Los Angeles	Ontario (ONT) / Santa Ana (SNA) / Long Beach (LGB)
San Francisco	Oakland (OAK)/San Jose (SJC)
Washington	Baltimore (BWI)
Tampa/St. Petersburg	Sarasota (SRQ)
Miami/Fort Lauderdale	West Palm Beach (PBI)

Any Los Angeles based reserve pilot who originates and terminates a trip sequence at a Los Angeles satellite will have the off duty periods immediately preceding and immediately following such trip sequence extended by one hour (1:00) each.

In any contractual month up to thirty-five percent (35%) of the total trip selections for the satellites of Long Beach (LGB), Santa Ana (SNA), Ontario (ONT), Baltimore (BWI), and West Palm Beach (PBI), only, may, at the Company's option, be constructed subject to the following exceptions:

1. or Long Beach (LGB), one (1) trip sequence for each trip selection may originate and terminate at Santa Ana (SNA), or one (1) trip sequence for each trip selection may originate and terminate at Ontario (ONT), or one (1) trip sequence for each trip selection may originate and terminate at Los Angeles (LAX).

2. or Ontario (ONT), one (1) trip sequence for each trip selection may originate and terminate at Santa Ana (SNA), or one (1) trip sequence for each trip selection may originate and terminate at Long Beach (LGB), or one (1) trip sequence for each trip selection may originate and terminate at Los Angeles (LAX).

3. or Santa Ana (SNA), one (1) trip sequence for each trip selection may originate and terminate at Long Beach (LGB), or one (1) trip sequence for each trip selection may originate and terminate at Ontario (ONT), or one (1) trip sequence for each trip selection may originate and terminate at Los Angeles (LAX).

4. for Baltimore (BWI), one (1) trip sequence for each trip selection may originate and terminate at Washington (DCA).

5. for West Palm Beach, (PBI), one (1) trip sequence for each trip selection may originate and terminate at Fort Lauderdale (FLL), or one (1) trip sequence for each trip selection may originate and terminate at Miami (MIA).

LL. Schedule

"Schedule" means the operating schedule used by the Company in its operations.

MM. Scheduled Projection (SPROJ)

A pilot's total scheduled time for the month, based on the pilot's trip selection award after adjustment for fly through time. Scheduled Projection (SPROJ) includes credits as provided in

SECTION 15 Hours of Service (E. - minimum pay and credit for an on duty period, F. - minimum pay and credit for time away from base, and G. - minimum and average pay and credit for an on duty period), and credit for scheduled time when relieved of flying duties as provided in Section 5 [trips missed due to paid sick leave, a training program of more than five (5) days, vacation, jury duty, and Association leave]. Scheduled Projection (SPROJ) is adjusted only for underfly on a leg by leg (block to block) basis, an assignment or reassignment (domestic: at base or away from base; international: at base only), an award or assignment of open flying at base (through make-up, reserve, VJA or trip trading with open time), trip trading (with another pilot or with open time), an uncredited removal from all or part of a scheduled trip sequence which results in less time than was originally scheduled (for example, a cancellation). Scheduled Projection (SPROJ) is used in conjunction with Credited Projection (PROJ) to determine a regularly scheduled pilot's legality in accordance with SECTION 15 Hours of Service.

NN. Scheduled Trip or Trip Sequence

A "scheduled trip or trip sequence" is a published pairing of flying and/or deadheading, consisting of two or more flight segments, which originates and terminates at a crew base.

OO. Service

"Service" means the period of time assigned to active duty as a flight deck operating crewmember or supervisor with the Company.

PP. Sick if needed

A reserve pilot who is sick may call and so notify the Company. The pilot will not be charged sick leave until such pilot is assigned to fly. At the time the pilot is needed to fly (by assignment – not by proffer) such pilot will be so notified and will be placed on sick leave effective that date. At the beginning of each subsequent month of reserve, the pilot will convert back to a sick-if-needed status.

QQ. Stand in stead displacement

A senior pilot can proffer to stand instead of a junior pilot being displaced from their respective bid status. In doing so, the senior pilot will be awarded a job from his/her bid preference list using the seniority number of the pilot who is most junior in such bid status at that point in the process. Once in the new bid status, pilots will use their own seniority number. The pilot is subject to a lock-in per Section 17L.

RR. Supervisory displacement

When a crewmember is replaced on a whole or partial sequence by a Supervisory Pilot. Crewmember is paid schedule for displacement plus greater of schedule/actual time flown. If crewmember is scheduled to deadhead on displaced leg, the greater of scheduled or actual is paid.

SS. Supervisory Pilot

Any pilot listed on the American Airlines Pilot Seniority List who is serving in a managerial or instructional capacity and has not been awarded a monthly trip selection, except that a pilot may be utilized as a temporary supervisory pilot under the provisions of SUPPLEMENT O, or may be appointed to a supervisory position during the course of the month.

TT. Trip Selection

"Trip selection" means any monthly regular, relief, secondary or reserve flying assignment.

UU. Trip selection denial

When a Captain or First Officer cannot be awarded a trip selection of choice due to minimum experience requirements. Such pilot will be awarded another selection, in accordance with that

pilot's seniority and choice, and will be pay protected for the trip selection that such pilot could have held.

VV. 32 hour legality

FAR legality where an international crewmember of a two man unaugmented crew cannot be scheduled to fly over 32 hours in a seven day period.

FAR legality where a crewmember must be given a period of 24 hours free from all duty within a 7 calendar day period. This relief of duty may be given in the form of a calendar day off, a 24 hour period commencing at any time during the day and terminating 24 hours later (including a period free from all duty of 24 hours or more contained within a sequence), or by moving a reserve's movable duty free period in accordance with Section 15.D.2.c

SECTION 3

PAY

A. Captains

1. Day hourly flight pay component for Captains:

	Effective 05/01/03	Effective 05/01/04	Effective 05/01/05	Effective 05/01/06	Effective 05/01/07	Effective 05/01/08
B-777-300	142.91	159.85	162.80	165.80	168.84	171.93
B-777-200	139.63	156.23	159.12	162.06	165.05	168.07
B-747-SP	137.22	153.78	156.67	159.60	162.57	165.59
MD-11	139.09	155.58	158.45	161.37	164.34	167.35
DC-10-30	132.32	148.03	150.77	153.55	156.37	159.23
DC-10-10	132.52	147.86	150.53	153.25	156.01	158.80
A-300	125.91	140.43	142.96	145.53	148.14	150.79
B-767-300	125.27	139.80	142.34	144.91	147.52	150.17
B-767-200ER	125.27	139.65	142.16	144.70	147.28	149.91
B-767	125.18	139.44	141.93	144.46	147.02	149.62
B-757	125.20	139.28	141.74	144.23	146.76	149.33
B-737-800	121.25	134.67	137.01	139.39	141.80	144.25
B-727-200B	117.80	130.95	133.24	135.57	137.93	140.33
B-727-223/ 200A	117.79	130.90	133.19	135.51	137.86	140.25
B-727-100	117.82	130.88	133.16	135.47	137.82	140.20
MD-80	118.13	131.19	133.47	135.78	138.13	140.51
B-737-300	109.73	121.96	124.10	126.26	128.46	130.69
B-737-100/200	109.77	121.95	124.07	126.23	128.42	130.64
F-100	109.79	121.92	124.04	126.19	128.37	130.58

2. Mileage pay component for Captains:

   Three cents (3¢) per mile for each mile flown.

3. Gross weight pay component for Captains:

   Three cents (3¢) per thousand pounds of gross weight of the airplane flown for each hour flown.

4. All Captains shall receive pay in accordance with 1. through 3. above multiplied by the following percentages applicable to their total accredited service with the Company as a pilot:

2nd year	92.50%
3rd year	93.25%
4th year	94.00%
5th year	94.75%
6th year	95.50%
7th year	96.25%
8th year	97.00%
9th year	97.75%
10th year	98.50%
11th year	99.25%
12th year & thereafter	100.00%

5. The day hourly rates developed in 4. above shall be adjusted to produce hourly day rates and hourly night rates based on a differential of $5.00.

6. Supplement A contains day hourly Pay Guides. The Pay Guides do not include international override and are only guides. Actual pay rates are calculated in accordance with the provisions of the Agreement.

B. First Officers

1. First year First Officers shall be paid at the day hourly rate of $35.37.

2. Each First Officer who has completed one (1) year of service with the Company as a pilot shall be paid at a rate based on a percentage of Captain pay for the same year of service as follows:

Year In which serving	
2	50.0%
3	60.0%
4	61.0%
5	62.0%
6	63.0%
7	64.0%
8	65.0%
9	66.5%
10	67.5%
11	68.0%
12 and thereafter	68.0%

The percentages above shall be used to calculate hourly pay rates.

3. Supplement A contains day hourly Pay Guides. The Pay Guides do not include international override and are only guides. Actual pay rates are calculated in accordance with the provisions of the Agreement.

C. The Company will notify the Association whenever an aircraft gross weight or speed change occurs which would affect pilot pay rates. Whenever pilot pay rates change, the Company will provide the Association, via electronic media, with all of the actual minute rates used to calculate pilot pay.

D. Determination of Hours

1. a. In determining the hours flown by pilots for pay purposes, the actual time from block to block and time credited for pay purposes as specified elsewhere in this Agreement shall be used; provided that on each leg of a flight where scheduled times have been established, the pilot shall be paid for no less than such scheduled time. The respective hourly pay brackets shall be determined in accordance with the speeds of aircraft established in paragraph E. of this Section.

b. Subsequent to the start of a contractual month, the Company may add flight time to a scheduled segment by changing the scheduled arrival time for the sole purpose of correcting arrival performance. Such addition of flight time shall not be considered a reassignment under Section 18.E. of this agreement. In a contractual month, the total number of such adjusted segments shall not exceed two percent (2%) of the total number of system scheduled segments. The difference between the credited time of the adjusted segment after having been flown and the time of the segment as originally scheduled shall be paid at the rate of one and one-half (1-1/2) minutes for each one (1) minute of credited flight time.

2. In computing the pay for night flying, the actual night hours shall be used, as defined in Section 2.AA. of this Agreement and when changes in local time occur during the flight, the local time at the pilots home base shall be used in computing the day and night flying time for that leg of the flight; provided that on each leg of a flight where scheduled times have been established the pilot shall be paid for no less than such scheduled times.

3. When the scheduled block to block time is found in actual operation to be improper, conferences shall be held at the request of the pilot representatives for the purpose of establishing proper scheduled times to be used for pay purposes.

E. Determination Of Speeds And Mileage

1. The speeds of aircraft now in service or to be in service shall be established for hourly and mileage pay purposes as follows:

B-747	590 MPH
MD-11	585 MPH
DC-10	585 MPH
B-777	575 MPH
A-300	565 MPH
B-767	565 MPH
B-757	565 MPH
B-727	540 MPH
MD-80	540 MPH
B-737	540 MPH
F-100	540 MPH

2. The mileage to be used for mileage pay computation shall be determined by multiplying the speeds for the type aircraft flown, as specified herein, by the total number of hours flown and credited, as specified in paragraph E. of this Section.

3. When the Company introduces aircraft other than those specified in this Section, or modifies current aircraft or their operation in such a manner as to vary an established speed, five (5) or more miles per hour over the established speeds specified herein, a speed shall be determined for such new or modified aircraft in the following manner:

   a. An optimum air speed will be determined from the manufacturer's performance charts by assuming that the aircraft in question is loaded to maximum certificated gross weight for takeoff and takeoff made from sea level under standard conditions. Climb will be made to optimum altitude using the Company's established power control procedures. At optimum altitude, and at the gross weight of the aircraft at that time, a true air speed will be fixed at scheduled operation cruising power, standard conditions for the altitude.

   b. A ratio shall be established on the most comparable type of aircraft presently in operation, between the established speed of such aircraft, as specified in this Section, and the true airspeed of that aircraft at optimum altitude under the conditions set forth in subparagraph a. above.

   c. This ratio shall be applied to the true airspeed at optimum altitude of the new or modified aircraft and the figure resulting from the application of such ratio, rounded to the nearest five (5) miles per hour, shall then be the established speed for pay purposes of such new or modified aircraft.

d. These procedures shall not apply when the established speed of new or modified aircraft results in a figure greater than five hundred ninety-nine (599) miles per hour.

F. Determination of Gross Weight

1. The gross weight of an aircraft shall be the maximum certificated gross weight rounded to the nearest one thousand (1,000) pounds, except the gross weights for B-777-200, B-727-223/200A and MD-80 aircraft shall be those specified in 2. below until such time as the gross weight for any of those aircraft changes, at which time such gross weight shall also be rounded to the nearest one thousand (1,000) pounds.

2. The Pay Guides in were developed using the following gross weights:

	Weight lb. (000)	Additive Included in Captains Pay (rounded to 2 decimals)
B-747-SP	703	$21.09
B-777-300	662	19.86
B-777-200	650	19.50
MD-11	621	18.63
DC-10-30	568	17.04
DC-10-10	433	12.99
B-767-300	409	12.27
A-300	381	11.43
B-767-200ER	352	10.56
B-767	315	9.45
B-757	251	7.53
B-727-200B	191	5.73
B-727-223/200A	178.5	5.36
B-737-800	175	5.25
B-727-100	161	4.83
MD-80	150.5	4.52
B-737-300	135	4.05
B-737-100/200	115	3.45
F-100	99	2.97

G. General

When a change in a contractual month occurs en route, pay and credit for the time flown before midnight shall be paid and credited to the month in which the pilot involved originated the flight. Midnight shall be determined on the basis of local time at the point of last takeoff.

SECTION 17

FILLING VACANCIES, DISPLACEMENTS, REINSTATEMENTS, FURLOUGHS, AND RECALLS

A. Bid Status

1. All pilot positions are identified by their bid status which consists of four elements:
   a. Base
   b. Category
   c. Equipment
   d. Division
2. Each bid status is ranked according to its elements. Bases have no ranking. Within a base, all Captain positions are higher than all First Officer positions. Within a base and category, bid status is ranked by equipment on the basis of certificated gross weight -- the higher the certificated gross weight, the higher the ranking. If two or more models exist within an equipment type, the average certificated gross weight of the models is used to determine the ranking. Within a base, category and equipment, a bid status is ranked according to division with International being higher than Domestic.

B. Change in Bid Status

A pilot's bid status can only change as follows:

1. A pilot may bid for and be awarded a vacancy in a different bid status, which may be higher, lower or lateral (lateral meaning the same category and equipment -- different division and/or base) than such pilot's current bid status.
2. A pilot who is displaced from a bid status, because the pilot's position was eliminated or because such pilot was displaced by a more senior pilot, may displace a more junior pilot.
3. A pilot may proffer and be awarded a displacement which would have otherwise affected a junior pilot.
4. A pilot who is displaced from a bid status may later be reinstated to a vacancy in that bid status.
5. A pilot may be awarded a vacancy as a result of an entitlement which was awarded while serving a lock-in.
6. A pilot may be assigned to a bid status by the Company.

C. Qualifications Required for Bidding and Filling a Vacancy

1. All pilots may bid for and be awarded any vacancy with the following exceptions:
   a. A probationary pilot cannot bid for a Captain vacancy.
   b. In order to be eligible to be awarded a bid status that requires or results in an Airline Transport Pilot Certificate, a pilot must possess such certificate or have previously entered the date of the successful completion of the required written examination for said certificate into the Company's computer database.
   c. As provided in L. of this Section, a pilot serving a lock-in may, at the Company's discretion, only be awarded an entitlement to fill a future vacancy.
   d. A pilot who is being withheld from occupying a bid status position in accordance with M.1.b. or c. of this Section, may only bid for a bid status lateral to (same category and equipment -- different division and/or base) or higher than the bid status from which withheld.
   e. If a pilot is awarded a different bid status, either as a result of bidding for or being assigned to a vacancy or as a result of being displaced, such pilot's bid(s) for other

vacancies processed prior to the effective date of the pending bid status award will be given consideration as follows:

(1) For a pilot who will be required to fulfill a lock-in in the pending bid status award,

(a) If such pilot is the successful bidder for a vacancy which is lateral (same category and equipment -- different division and/or base) to the pending bid status award, the pilot's bid for the lateral vacancy will be awarded, or

(b) If such pilot is the successful bidder for a vacancy in a bid status which is higher or lower than the pending bid status award, such pilot may only be awarded an entitlement to such bid status, in accordance with Section 17.L.5.

(2) If a pilot will not be required to fulfill a lock-in in the pending bid status award, such pilot may bid for and be awarded a vacancy in any other bid status.

2. A pilot who is awarded a different bid status, either as a result of bidding for or being assigned to a vacancy or as a result of being displaced, shall be afforded the opportunity to acquire the necessary route qualifications, equipment qualifications or ratings within a reasonable period of time.

D. Displacements

1. A pilot shall be considered displaced if any one of the following occurs:
   a. The Company eliminates all positions in a bid status, in which case all pilots holding a position in such bid status shall be considered displaced.
   b. The Company reduces the number of positions in a bid status, in which case, to the extent necessary to accomplish the reduction, the pilots within the bid status being reduced who have the least system seniority shall be considered displaced.
   c. A pilot who has been displaced under any provision of this section may displace a more junior pilot in accordance with 7. below, in which case the more junior pilot may then also be considered displaced.

2. Proffer of Displacements
   a. When a junior pilot is to be displaced from a bid status, the displacement shall be proffered in seniority order to all pilots in that bid status.
   b. Displacement into another bid status is based upon the junior pilot's seniority. (For example, junior pilot A would otherwise be displaced; senior pilot B in the same bid status proffers the displacement; senior pilot B displaces into a bid status indicated on senior pilot B's bid preference list based on junior pilot A's seniority. Once senior pilot B is in the new bid status, bidding trip selections, vacations, etc. will be done with pilot B's own seniority.)
   c. A pilot is eligible to proffer displacement provided:
      (1) The pilot must fulfill a lock-in in accordance with Section 17.L.1., unless waived at the Company's discretion, except that the lock-in for a pilot who displaces to a lower bid status and only requires a short requalification training program shall be the same as a pilot bidding to a higher bid status.
      (2) The pilot can fulfill the lock-in in c.(1). above prior to normal retirement unless waived at the Company's discretion.
      (3) A pilot fulfilling a lock-in may only proffer displacement to a lateral bid status (same category and equipment -- different division and/or base) unless released from the lock-in at the Company's discretion.
      (4) A probationary pilot cannot proffer displacement to a Captain bid status.
      (5) In order to be eligible to be awarded a bid status that requires or results in an Air Transport Pilot certificate, a pilot must possess such certificate or have previously entered the date of the successful completion of the required written examination for said certificate into the Company's computer data base.

(6) The pilot has not begun, or is not within five (5) days of beginning training for another bid status as a result of a previous award.

d. A pilot proffering displacement does not have a reinstatement right.

3. Each pilot shall have access to and shall be responsible for maintaining a displacement preference list as a part of his or her standing bid list. On the displacement preference list a pilot may list in order of preference any bid status to which the pilot would prefer to displace in the event such pilot is displaced. A pilot may add to, delete from, or rearrange the order of displacement preferences at any time prior to the date on which the bid award procedure is implemented.

4. Displacements may be processed once during each month; simultaneously with reinstatements, entitlements and bid preferences for vacancies.

5. Displacements shall always be effective on the first day of a contractual month, and they shall never be effective earlier than the first day of the first contractual month following the date on which they are processed.

6. The Company shall provide at least fifteen (15) days advance notice of the date on which displacements will be processed. Between the date on which advance notice is given and the date on which displacements are processed, pilots may continue to access and make changes to their displacement preference lists.

7. A displaced pilot may fill a vacancy or displace a more junior pilot. The vacancy or the position to which such pilot is displacing may be in a higher, lateral, or lower bid status than the bid status of the position from which such pilot was displaced. The order of awarding a new bid status to a displaced pilot is as follows:

   a. A displaced pilot shall fill a vacancy from such pilot's bid preference list.

   b. From such pilot's displacement preference list, the pilot shall be awarded the highest preference to which entitled by seniority.

      (1) Such pilot shall have a reinstatement right to the bid status from which displaced, and

      (2) Shall not incur a lock-in in the bid status awarded.

      (3) Such pilot who is awarded, from the displacement preference list, a lateral bid status (same category and equipment -- different division and/or base) or the highest bid status in the system to which entitled by seniority shall, if the location of the bid status position is at a base other than the one from which displaced, be eligible for moving expenses as provided in Section 8, provided:

         (a) Such pilot relocates to the base to which displacing.

         (b) Such pilot incurs a lock-in in the bid status to which displacing equal to the down-bid lock-in specified in Section 17.L.1.b.

         (c) Such pilot forfeits any reinstatement right to the bid status from which displaced.

      (4) When such pilot is awarded a bid status from the displacement preference list, the junior pilot who held that bid status may then be considered displaced.

   c. If the seniority of a displaced pilot does not entitle such pilot to a bid status from either the bid preference list or the displacement preference list, such pilot shall be assigned to a different bid status at that pilot's base.

      (1) Such assignments shall be made in the following order:

         (a) The displaced pilot will be assigned a vacancy in the highest bid status above the displaced status to which entitled by seniority at that pilot's base.

         (b) The displaced pilot will displace a more junior pilot in the highest bid status above the displaced status to which entitled by seniority at that pilot's base.

         (c) The displaced pilot will be assigned a vacancy in the next lower bid status if available at that pilot's base. If no vacancy is available, the pilot will displace a more junior pilot in that same next lower bid status at that pilot's base.

(d) Step (c) will be repeated at each successively lower bid status until the displaced pilot is assigned a bid status at that pilot's base.

(2) A pilot so assigned shall have a reinstatement right to the bid status from which displaced, and

(3) Shall not incur a lock-in in the bid status to which assigned.

d. If a displaced pilot cannot be awarded a vacancy at that pilot's base and there is no more junior pilot at that base, such pilot may be proffered those vacancies in the system for which there are no bidders, and then, if necessary, be assigned to such a vacancy.

(1) Such pilot shall have a reinstatement right to the bid status from which displaced, and

(2) Shall not incur a lock-in in the bid status awarded or to which assigned.

8. A pilot can only be displaced once in any contractual month, but a pilot who has been displaced may be displaced again in a later month. A pilot who has been displaced more than once may hold multiple reinstatement rights in accordance with E. of this Section.

E. Reinstatement Rights

1. A reinstatement right provides a displaced pilot with the right to be reinstated to a vacancy in the bid status from which displaced before such vacancy is awarded to any other pilot who does not have a reinstatement right.

2. When a pilot is displaced and is awarded another bid status, such pilot shall have a reinstatement right, unless the pilot is either awarded a bid status which was on the bid preference list or the pilot is entitled to receive moving expenses in accordance with D.7.b.(3) of this Section. As provided in D.2.d. of this Section, a pilot proffering displacement does not have a reinstatement right.

3. When two (2) or more pilots have a reinstatement right to the same bid status, their reinstatement rights will be honored in seniority order.

4. A pilot who has a reinstatement right to a bid status will automatically be reinstated if a vacancy becomes available in that bid status.

5. A pilot shall lose a reinstatement right to a bid status if reinstated to that bid status or if awarded any bid status which is on such pilot's bid preference list, except when awarded a lateral bid.

6. If a pilot has a reinstatement right, it will be included on the standing bid list and will be identified as a reinstatement right.

7. A pilot who has a reinstatement right may choose to forfeit such right at any time by deleting it from the standing bid list. If a pilot has more than one reinstatement right, such pilot may choose to forfeit one or more such rights in this manner without affecting any other reinstatement rights.

8. A pilot who has been displaced more than once may have a reinstatement right to more than one (1) bid status. The reinstatement of such a pilot shall terminate reinstatement right(s) to any bid status which the pilot has ranked lower than the one to which reinstated but shall not affect reinstatement right(s) to any bid status which the pilot has ranked higher than the one to which reinstated. However, if such a pilot is awarded any bid status which is on such pilot's bid preference list, that pilot shall forfeit all reinstatement rights, except when awarded a lateral bid.

F. Advance Notice of Vacancies to be Filled

1. At least fifteen (15) days before implementing the bid award procedure, the Company shall provide notification of the following:

a. The date on which the bid award procedure will be implemented.

b. The number of known vacancies identified by bid status.

c. The effective date of all known vacancies.

d. A forecast of the total number of positions in the system for the first, third and sixth months, with the first month being the first month in which the vacancies are effective.

(1) The forecasts for the first and third months will be by bid status at each base or satellite base.

(2) The sixth month forecast will be for the system by category, equipment and division.

2. The forecasts required in 1. shall be the best estimates which the Company can provide, but they shall be made available solely as a guide and shall not, in any way, represent a commitment that the number and/or distribution of forecasted bid status positions will actually develop or be maintained.

3. Following the notification required in 1., pilots may continue to access and make changes to their standing bid lists at any time prior to the date on which the bid award procedure is implemented.

G. Bid Award Procedure

1. When there are known vacancies and/or displacements, the Company shall, once during each month, simultaneously award bids for vacancies, and process displacements, reinstatements, entitlements, and also process displacements and vacancies resulting from such awards. All awards shall be based on system seniority giving first priority to reinstatement rights, second priority to entitlements and then bids for vacancies. Only those bids or displacement preferences indicated on pilots' standing bid lists will be considered in the bid award procedure. [See Q&A #141]

2. With the exception of V. (Furloughs) and W. (Method of Recall) of this Section, none of the procedures in Section 17. (bidding for vacancies, displacements, etc.) shall apply to the M&E pilot positions at the Tulsa Base.

H. Standing Bid List

1. Each pilot shall indicate preferences for any change in bid status on a standing bid list. A pilot's standing bid list shall be the only method of bidding for vacancies or expressing preferences for bid status positions should such pilot be displaced. Each pilot's standing bid list may include any or all of the following:

a. Bid Preference List

(1) A pilot's bid preference list shall include all of that pilot's bids for any other desired bid status positions, listed in order of preference by the pilot. [See Q&A #111]

(2) The bid status positions listed need not be vacant at the time they are placed on a pilot's bid preference list.

(3) If a pilot is displaced, such pilot shall be awarded the highest preference on his or her bid preference list to which such pilot is entitled by seniority, provided the position is vacant.

b. Displacement Preference List

(1) A pilot's displacement preference list shall include all of that pilot's preferences for bid status positions to which such pilot would displace in the event of displacement from his or her present bid status position.

(2) Displacement preferences shall be listed in order of preference by the pilot.

(3) If a pilot is displaced and a vacant bid status position cannot be awarded from such pilot's bid preference list, such pilot will displace to the highest preference on his or her displacement preference list to which entitled by seniority.

(4) If pilots are displaced and have expressed no bid or displacement preferences, or they are not entitled by seniority to a position on either their bid preference lists or their displacement preference lists, such pilots shall be assigned to positions by the Company in accordance with Section 17.D.7.c. or d.

c. Reinstatement Rights

(1) If a pilot has a reinstatement right to a bid status from which displaced, it shall appear on such pilot's bid preference list but it shall be identified as a reinstatement right.

(2) A pilot who has been displaced more than once may have more than one reinstatement right, in which case all such rights shall appear on such pilot's bid preference list.

(3) A pilot may arrange bid preferences and reinstatement right(s) in any order on the bid preference list.

(4) A pilot may forfeit a reinstatement right by deleting it from the bid preference list.

d. Entitlements

(1) If a pilot has an entitlement which was awarded while serving a lock-in, the entitlement shall appear on such pilot's bid preference list but it shall be identified as an entitlement.

(2) A pilot may have only one entitlement.

(3) A pilot serving a lock-in who already has an entitlement may be awarded another entitlement, in which case the previous entitlement will automatically be deleted from such pilot's bid preference list.

(4) Pilots may arrange their entitlements and bid preferences in any order on their bid preference lists.

(5) A pilot may forfeit an entitlement by deleting it from the bid preference list.

2. A pilot may add, delete, or otherwise alter the preferences on the standing bid list at any time prior to the date on which the bid award procedure is implemented. All preferences on a pilot's standing bid list on the date the bid award procedure is implemented shall be considered, and any resulting change in bid status shall be binding on the pilot.

I. Notice of Bid Status Positions Awarded

1. Following the implementation of the bid award procedure, the Company shall expeditiously provide electronic notification of all bid status positions which were awarded.

2. Each pilot whose bid status changed as a result of the bid award procedure shall be individually notified of such change.

3. Following the award/assignment of training associated with the results of the bid award procedure, the Company shall provide electronic notification of the dates of all such training awarded/assigned.

J. Effective Date Of Bid Statusbid status:

1. The effective date of a bid status position shall always be on the first day of a contractual month, and shall not be more than three (3) months after the date such position was awarded, except as provided in R. and S. of this Section for the introduction of new equipment or the opening or reactivation of a crew base.

2. A pilot will be paid the applicable rates of pay for a bid status commencing with the effective date of such bid status. However, a pilot who is scheduled to fly or flies in more than one (1) bid status during a contractual month as the result of a fly through trip sequence shall be paid and credited on the basis of the bid status contained in the fly through trip sequence until the fly through sequence terminates.

K. Reporting To A Different Base

1. A pilot who receives a bid status award which involves transferring from one base to another, shall normally be given a period of not less than fifteen (15) days to report to such new base from the date on which notification of the bid award was made.

2. A pilot under 1. above who is required by the Company to report to another base in less than fifteen (15) days shall be afforded reasonable time off at a later date, not to exceed fifteen (15) days, at the time of such pilot's household move, to facilitate completing moving

arrangements. The pilot's schedule will be so arranged at the new base as to minimize, insofar as is possible, loss of flying time during such reasonable time off in which moving arrangements are being completed. Such pilot shall be allowed actual reasonable expenses for himself or herself only at the new base station for the number of days equivalent to the difference between the standard fifteen (15) day reporting date and the date on which such pilot was actually required to report. Where Company Regulations or any provision of this Agreement provides additional moving expenses for specific moves, such expenses shall be in addition to, but not in duplication of, the expense provisions of this paragraph.

L. Lock-Ins

1. A pilot awarded a bid status from the bid preference list or who is assigned a bid status as provided in Section 17.N.1., 2., 3., 4., or 5., shall be subject to the following period of lock-in:
   a. If awarded/assigned a higher bid status -- twenty four (24) months,
   b. If awarded/assigned a lower bid status -- twenty four (24) months,
   c. If awarded/assigned a lateral bid status (same category and equipment -- different division and/or base) -- no new lock-in, but such pilot shall continue to serve the balance of any existing lock-in.
   d. A pilot who is serving a lock-in shall not be awarded a higher or lower bid status but may be awarded a lateral bid status (same category and equipment -- different division and/or base). However, a pilot who is serving a lock-in shall be released to initially upgrade to the next higher category after fulfilling six (6) months of such lock-in.
   e. A pilot who is displaced from a bid status while serving a lock-in shall, if later reinstated to that same bid status, resume the lock-in and serve the balance which remained at the time of displacement. However, upon reinstatement, such pilot shall be credited with any time served in the same category and equipment while displaced.
   f. A pilot who is displaced from a bid status shall not be required to serve a lock-in in the bid status assumed after displacement unless such bid status is awarded from the bid preference list.
   g. A pilot who proffers a displacement from a bid status shall be required to serve a lock-in in the bid status assumed after displacement.
   h. If a pilot, who is awarded/assigned a position in a lower bid status and is subject to the twenty four (24) month lock-in in b. above, is withheld from such bid status in accordance with M. of this Section, the lock-in shall be reduced by one (1) month for each month such pilot is withheld beyond the third (3rd) month after the effective date of the position from which withheld.
   i. A pilot awarded/assigned a bid status on "new equipment" or at a newly opened or reactivated base shall be subject to the lock-in provisions of R. or S. of this Section, as applicable.
2. A newly hired pilot shall serve a six (6) month lock-in in the bid status of initial assignment. Such pilot may be awarded/assigned a lateral bid status (same category and equipment – different division and/or base), in which case the pilot shall not incur a new lock-in but shall continue to serve the balance of the existing lock-in.
3. Lock-ins shall become effective as follows:
   a. A lock-in shall not commence prior to the effective date of the award.
   b. A pilot who completes required training prior to the effective date of an award shall begin any applicable lock-in on the effective date of such award.
   c. A pilot who completes required training after the effective date of an award shall begin any applicable lock-in on the first day of the contractual month following the completion of training, but no later than the first day of the second (2nd) contractual month following the commencement of training.
   d. Any lock-in required for a pilot who has been withheld, shall begin when the pilot's period of withholding ceases, irrespective of when the pilot trains.

4. Lock-ins are a function of a change in bid status and are not mitigated or satisfied by previous or current qualifications or previous lock-ins.

5. A pilot who is serving a lock-in may bid for vacant bid status positions; however, if such pilot is the successful bidder such pilot may, at the Company's discretion, only be awarded an entitlement to the bid status. After such pilot has served the lock-in the entitlement may be exercised only when there is a vacancy in the bid status. Entitlements to a vacancy are awarded immediately after reinstatement rights. A pilot with an entitlement to a bid status will be awarded a vacancy before any pilot who does not have a reinstatement right or an entitlement. If more than one pilot has an entitlement to the same bid status, a single vacancy is awarded to the most senior.

6. Nothing herein shall prevent the Company from terminating a pilot's lock-in at its discretion.

M. Withholding From A Bid Status Position

1. A pilot who is eligible to be awarded a bid status position may, at the Company's discretion, be withheld from occupying such position under the following circumstances:
   a. Consideration of age,
   b. Anticipated eligibility for and commitment to occupy a higher bid status than that from which such pilot is being withheld, as indicated on that pilot's bid preference list at the time such pilot is withheld,
   c. Operational reasons, such as manning requirements or availability of training or equipment.

2. Withholding Time Limits - General
   a. If it is necessary to withhold a pilot from a bid status preference, the period of withhold will be no greater than six (6) contractual months from the effective date of the bid status award. The six (6) month limit shall not apply to the following exceptions:
      (1) A pilot being withheld from a bid status preference in consideration of the pilot’s age.
      (2) The withholding period for a first year pilot withheld from a lateral position shall be limited to a total of two months.
      (3) Extraordinary circumstances. If withholding in excess of six (6) months is necessary due to extraordinary circumstances, the Company and the Association will meet and agree on an appropriate duration for such withholding. Extraordinary circumstances, include but are not limited to:
         - An act of God,
         - A strike by any other Company employee group,
         - A national emergency,
         - Involuntary revocation of the Company’s operating certificate(s),
         - Grounding of a fleet type or a substantial number of the Company’s aircraft,
         - The elimination of a fleet type,
         - A reduction in the Company’s operation resulting from a decrease in available fuel supply caused by either governmental action or the suppliers being unable to meet the Company’s demands,
         - The unavailability of aircraft scheduled for delivery,
         - Start up of a new division (e.g., South America)
   b. Withholding in excess of twelve (12) months shall only occur if fleet specific training facilities that are owned, leased, or operated by the Company or an affiliate are fully utilized for American Airlines pilot training and no contract training capacity exists at any outside training facility.

3. Withholding From A Displacement Preference
   a. A pilot may be withheld from a displacement preference bid status if, the Company projects the pilot will subsequently be displaced from the displacement preference, that the pilot is entitled to by seniority, within three (3) contractual months of the effective date of the displacement. If the pilot is withheld from a displacement preference and is assigned a displacement preference at the same base as the withheld displacement preference, the Company may, if the original three (3) month estimate is in error, extend the withhold period for up to three (3) additional months if the Company projects that the pilot will be displaced in that time period. For each bid status from which a pilot is withheld, the three (3) month limitation and the three (3) month extension provided for in this paragraph will apply beginning on the effective date of the pilot's withhold from each such bid status.
   b. A pilot who is withheld from a displacement preference, and is assigned a displacement preference at a different base from the withheld displacement preference, shall receive priority passes for travel between the pilot's base and the AA station nearest the pilot's residence to cover any flying obligation while that pilot is being withheld. The pilot does not qualify for priority passes after the pilot is either awarded a bid status preference, or is subsequently displaced from the withheld displacement preference.
   c. If a pilot does not have sufficient displacement preferences listed to indicate a displacement preference to a bid status other than from what the pilot would be withheld, the Company shall contact that pilot and obtain additional displacement preferences.
   d. A pilot withheld from a displacement preference shall be entitled to a reinstatement right to each displacement preference from which such pilot is being withheld. Multiple reinstatement rights are permitted. Such pilot shall be paid for the highest four part bid status from which that pilot is being withheld.
   e. If a pilot can occupy the withheld bid status position at the end of the time period outlined in Paragraph a. above, the pilot shall assume the bid status effective with the next contractual month.
4. Effective Date Of Withholding Pay
   a. A pilot will be considered withheld commencing with the effective date of the bid status position from which withheld, and shall as of that date, be paid the highest equipment rate of pay for the bid status from which withheld or the rate of pay for the flying actually performed, whichever is greater.
   b. Such pilot shall be advised at the time of withholding the reason for withholding and the estimated duration of withholding.
   c. Pilots being withheld shall retain their current bid status.
5. Termination Of Withholding/Withholding Pay
   a. Withholding pay protection shall cease:
      (1) When a pilot withheld under 1.a. above:
         (a) No longer has a more junior pilot flying in the withheld status, or
         (b) Is awarded a different bid status from the bid preference list.
      (2) When a pilot under 1.b. above:
         (a) Is assigned to a position in the withheld bid status, or
         (b) Is assigned to a position in the higher bid status which such pilot had committed to accept when withheld, or
         (c) No longer has a more junior pilot flying in the withheld bid status, or
         (d) Is awarded from the bid preference list a position in a bid status lateral to or higher than that from which withheld.
      (3) When a pilot under 1.c. above:
         (a) Is assigned to a position in the withheld bid status, or

(b) Is awarded from the bid preference list a position in a bid status lateral to or higher than that from which withheld, or

(c) Has a more senior pilot displaced from the bid status from which withheld.

b. (1) When a pilot's period of withholding ceases in accordance with (1)(a), (2)(c), or (3)(c) above, the pilot will be considered displaced from the withheld bid status.

(2) (a) Such pilot will then be awarded a bid status position in accordance with D. above (Displacements), or withheld from such bid status position in accordance with M. above (Withholding From A Bid Status Position).

(b) The provisions of D.2. above (Proffer of Displacements) do not apply when a pilot is displaced from a withheld bid status, i.e., the displacement is not proffered to other pilots.

(3) In accordance with E. above (Reinstatement Rights), such pilot will be eligible for a reinstatement right to the bid status for which withholding ceased.

6. When a pilot's period of withholding ceases, such pilot shall, as of that date begin serving any lock-in which may be required by the provisions of L. of this Section. If a pilot has been withheld from a lower bid status, the provisions of L.1.h. may apply.

N. Assignment to a Bid Status

The Company may assign a pilot to a bid status in the following circumstances:

1. If there are no bidders for a Captain vacancy, assign at the base where the vacancy exists:
   a. The most senior pilot who has upgraded to First Officer but has not upgraded to Captain, provided such pilot is not deferring a next-in-turn to qualify for Captain under the provisions of O. of this Section. If there are no such pilots,
   b. Assign the most junior pilot, on the same equipment, in the same division, who is deferring a next-in-turn to qualify for Captain under the provisions of O. of this Section.
2. If the senior bidder for a Captain vacancy is junior to the pilot described in 1.a. above, assign the pilot described in 1.a.
3. In accordance with the provisions of 17.D.7.c. and d., the Company may assign displaced pilots to a bid status.
4. Except for a newly hired pilot, a pilot assigned in accordance with 1.or 2. above shall serve a twenty-four (24) month lock-in in accordance with L.1.a. of this Section.
5. A newly upgraded Captain may be assigned First Officer flying to acquire experience. Such pilot will be given a temporary bid to that First Officer status and will bid for trip selections according to seniority within that First Officer status. Such pilot will be paid rates of pay according to that pilot's current status or the assigned status, whichever is greater.
6. Each month the Company shall provide the Association with information detailing the initial bid status assignments of all newly hired pilots and all pilots who were withheld from such bid status.

O. Requirement to Qualify in Turn and Deferral [See Q&A #110, #111]

1. All pilots are required to qualify in turn for the next higher pilot category at their base. In no case shall a probationary pilot be assigned to upgrade to a Captain vacancy, and in no case shall a flight officer who has not upgraded to First Officer be assigned to upgrade to a Captain vacancy. A pilot will only be required to upgrade to First Officer one (1) time. A pilot will only be required to upgrade to Captain one (1) time.
2. When a pilot is required to qualify in turn for the next higher category as provided in 1. above, such pilot at his or her option may defer the opportunity to upgrade from First Officer to Captain for a period of thirty (30) consecutive contractual months, starting with the effective date of the bid status so declined. Such pilot shall receive written notification of the start date

of the deferral period. However, the last six (6) months of the deferral period, or part thereof, the pilot is unlikely to complete upgrade to Captain by age sixty (60).

3. If the Company extends additional opportunities to upgrade, during the period of automatic deferral as provided in 2. above, such pilot may accept an upgrade bid status, thereby terminating the deferral.

4. After the period of automatic deferral as provided in 2. above, a pilot may continue to defer upgrading for up to an additional twenty-four (24) consecutive contractual months provided such extension is approved by the Vice President of Flight. A pilot's request for such extension may be submitted at any time during the initial deferral period and should be submitted a minimum of ninety (90) days before the end of the deferral period. The pilot should receive a written response from the Vice President of Flight no later than thirty (30) days from the date of receipt of the pilot's request for such extension. The Vice President of Flight's approval of the extension will be based on consideration of the individual pilot's circumstances and reason for requesting the extension, and shall not be unreasonably withheld. If the Vice President of Flight determines that, as a result of any extension of a pilot's deferral, pursuant to this paragraph, the pilot submitting the request is unlikely to complete upgrade to Captain by age sixty (60), such request shall be denied in whole or in part.

5. A pilot who has received written notice of the start date of the deferral period and who transfers to another base may:
   a. continue to defer category upgrade at the new base subject to the deferral period established at the previous base(s), or
   b. accept a new bid status to which entitled by seniority.

6. The Company may assign such a pilot to upgrade in accordance with N. of this Section.

P. Failure to Qualify

When a successful bidder fails to qualify for an awarded bid status within thirty (30) days from the effective date of the award -- subject to weather, equipment availability, or extent of qualification requirements -- such pilot shall forthwith return to his or her former bid status at such pilot's own expense. The unfilled vacancy shall then be considered a new vacancy.

Q. Cancellation Of Vacancy

If the Company awards a pilot a bid status and then cancels that award prior to its effective date, the pilot shall be considered to have been displaced from the bid status awarded. If, as a result of such displacement, a pilot is awarded a vacancy from the bid preference list, the determination of any lock-in shall be based on the bid status the pilot held at the time the future award was canceled.

R. Introduction of New Equipment

1. When new equipment is introduced at a base, it will be considered "new equipment" for the first twelve contractual months following the effective date of the first vacancy, and the Company may award vacancies on such new equipment up to six (6) months in advance of their effective dates. However, if the Company makes no vacancies available on the new equipment for any three (3) consecutive months, it will no longer be considered new equipment.

2. Vacancies on new equipment will be filled using pilots' standing bid lists and the regular bid status award procedure.

3. Pilots awarded or assigned a bid status on new equipment will serve a lock-in of twenty-four (24) months. A lock-in of twelve (12) months applies to those pilots who may have held a lateral bid status (same category and equipment -- different division and/or base).

4. Pilots who are serving a lock-in at the time the Company announces the introduction of new equipment may bid for vacancies on the new equipment. If they are awarded a bid status on

the new equipment, their existing lock-in will terminate and they will begin a lock-in on the new equipment.

5. Once the Company has announced the introduction of new equipment, pilots who begin training or begin a lock-in not associated with a bid status on the new equipment can not bid for the new equipment until they complete their lock-in, unless they are bidding for the new equipment from a lateral bid status (same category and equipment -- different division and/or base). If such pilots are awarded a lateral bid status on the new equipment, their existing lock-in will terminate and they will begin a lock-in on the new equipment.

6. With respect to bid status on new equipment, as with all other bid status, the Company may terminate pilots' lock-ins at its discretion, and the Company has the option to withhold pilots from a bid status.

S. Opening, Reactivating, or Closing a Base

1. Opening or Reactivating a Base
   a. When a base is reactivated or a new base is opened, these procedures will be in effect for the first twelve contractual months following the effective date of the first vacancy.
   b. Vacancies at a new or reactivated base will be filled using pilots' standing bid lists and the regular bid status award procedure. However, pilots will be able to qualify their bids by indicating the lowest seniority position which will be acceptable to them in the status for which they are bidding, and the Company may award vacancies at such new or reactivated base up to six (6) months in advance of their effective dates.
   c. Pilots awarded or assigned a bid status at a new or reactivated base will serve a lock-in of twenty-four (24) months. A lock-in of twelve (12) months applies to those pilots who may have held a lateral bid status (same category and equipment -- different division and/or base). While serving a lock-in at a new or reactivated base, pilots may not assume a lateral bid status at a different base.
   d. Pilots who are serving a lock-in at the time the Company announces a new or reactivated base may bid for vacancies at the new or reactivated base. If they are awarded a bid preference at the new or reactivated base, their existing lock-in will terminate and they will begin a new lock-in.
   e. Once the Company has announced a new or reactivated base, pilots who begin training or begin a lock-in not associated with the new or reactivated base may not bid for the new or reactivated base until they complete their lock- in, unless they are bidding for a lateral bid status (same category and equipment -- different division and/or base). If such pilots are awarded a lateral bid status at the new or reactivated base, their existing lock-in will terminate and they will begin a new lock-in.
   f. With respect to bid status at a new or reactivated base, as with all other bid status, the Company may terminate pilots' lock-ins at its discretion, and the Company has the option to withhold pilots from a bid status.
2. Closing of a Base
   a. The Company will announce the closing date of a base at least six (6) months prior to the closing; except that such notice is not required when a base is closed due to unforeseeable circumstances.
   b. During the period between the announcement of closing and the closing of the base, the Company will maintain the level of earnings of all pilots assigned to such base.
   c. During the period between the announcement of the closing and the closing of the base, a pilot may bid and be awarded a position in another bid status, but such pilot may be withheld from such bid status.
   d. Once the base closing is announced, each pilot assigned to such base should indicate to the Company, using the standing bid list, preferences for bid status assignment at a different base.
   e. When vacancies and displacements are processed for the month in which the base will close, each pilot assigned to such base will indicate to the Company, using the standing bid list, preferences for bid status assignment at a different base.

f. The moving expenses of pilots who transfer to other bases in accordance with this provision will be paid by the Company in accordance with Section 9 of this Agreement.

T. Voluntary Mutual Bid Status Exchanges [See Q&A #104, #131]

To provide pilots at a base to be awarded their three-part bid status (category, equipment, division) at a different base, the following procedure will be utilized after the normal monthly bid award process has been completed. At the Company's option, mutual exchanges may be allowed based on a pilot's two-part bid status (category, equipment).

1. The Company will identify pilots who have indicated a preference to occupy their three-part bid status (category, equipment, division) at a different base.
2. The Company will group these pilots by three-part bid status (category, equipment, division) and sort them by seniority.
3. Within each group, beginning with the most senior pilot, the Company will attempt to accommodate a mutual exchange with the next most junior pilot on the list, proceeding down the list and removing accommodated pilots until no further matches exist.
4. Pilots who are successfully matched in (3) above are awarded the respective bid status without incurring a lock-in.

E.g.

Seniority #	Base	Proffers:	Matched With:	Result
1	LAX	SLT	5	Awarded SLT
2	ORD	SLT	3	Awarded SLT
3	SLT	ORD	2	Awarded ORD
4	DFW	SLT	None	Remains DFW
5	SLT	LAX	1	Awarded LAX
6	LGA	SLT	9	Awarded SLT
7	LAX	SLT	8	Awarded SLT
8	SLT	LAX	7	Awarded LAX
9	SLT	LGA	6	Awarded LGA

U. Change of Base Due to Hardship

The Vice President-Flight of the Company and the President of the Allied Pilots Association will consider each request for a change of base due to hardship on a case-by-case basis, giving due consideration to the particular circumstances involved.

V. Furloughs

1. When a curtailment of operations results in fewer pilots being employed by the Company, the most junior pilots in the system, irrespective of their bid status or any rights that have accrued to them, shall be furloughed on a system-wide basis in reverse order of system seniority.
2. In the event of a furlough, the Company will notify all pilots that it will consider all requests for Leaves of Absence in order to mitigate the number of furloughs.
3. Pilots to be furloughed will be given thirty (30) days' notice before the effective date of the furlough. Such notice will not be applicable in cases of emergency which include, but are not limited to acts of God or a strike by employees of the Company.
4. A pilot furloughed by the Company due to a reduction in force shall continue to accrue seniority during the period of such furlough. Length of service for pay purposes shall not accrue during such period of furlough.
5. Furlough Pay
   a. A pilot who has completed one (1) or more years of service with the Company as a flight deck crewmember and who is furloughed shall receive furlough pay based upon such pilot's earnings for the last full month prior to the announcement of furlough, but not less

than reserve guarantee for the bid status such pilot held that month, for the period of time specified below, except that no furlough pay will be paid when furloughs are caused by an act of God, a national emergency, involuntary revocation of the Company's operating certificate(s), a strike by any Company employee group, or a reduction in the Company's operation resulting from a decrease in available fuel supply caused by either governmental action or by commercial suppliers being unable to meet the Company's demands.

If a pilot has completed:	
1 year of service	1/2 month's furlough pay
2 years of service	1 month's furlough pay
3 years of service	1 month's furlough pay
4 years of service	1-1/2 months' furlough pay
5 years of service	2 months' furlough pay
6 years of service	2-1/2 months' furlough pay
7 years of service	3 months' furlough pay
8 years of service	3-1/2 months' furlough pay
9 years of service	4 months' furlough pay
10 years of service and thereafter	4-1/2 months' furlough pay

b. A pilot eligible for furlough pay shall receive such pay starting at the time of furlough and such payments for the amounts due shall be at regular pay periods and continue until all furlough pay credit is used, except that in no event shall any such pay be due after the effective date of recall or, if such pilot elects to defer recall in accordance with W.3. of this Section, the effective date of such deferral.

W. Method of Recall

1. All pilots furloughed from the Company shall file proper addresses with the Vice President-Flight of the Company at the time of furlough. Any changes in address must be supplied promptly to the Vice President-Flight of the Company. A pilot shall not be entitled to preference in re-employment if such pilot does not comply with the foregoing requirements.

2. Furloughed pilots who are recalled to the employ of the Company shall be allowed a period of twenty-one (21) days to return to the service of the Company after date of postmark of reply-requested telegram or cablegram, or certified return-receipt-requested letter, of such pilot's reassignment to duty with the Company, sent to the last address on file with the Vice President- Flight of the Company.

3. Furloughed pilots referred to above who are recalled to the employ of the Company must respond to such recall in accordance with paragraph 2. above, provided, however, such recalled pilot may defer return to the active flight payroll for a period not to exceed twenty-four (24) months from the date of postmark on the notice of recall or the date the least senior furloughee is recalled, whichever date comes first, provided further that such deferring pilot may cancel such deferral, in writing, and become eligible for recall at the next recall date. When a pilot's deferral period has expired, such pilot will be eligible for recall and such pilot will be recalled when the needs of the Company require such recall. Pilots electing to defer their return to the Company in accordance with the above must notify the Company by telegram, cablegram, or certified letter, return-receipt-requested, of their decision and length of requested deferral, within twenty-one (21) days of postmark on their recall notice. Pilots electing to defer their return to active flight duty will continue to accrue occupational seniority, but length of service for pay purposes shall not accrue during such deferral period.

4. When a furloughed pilot is recalled and placed on active pilot status with the Company, such pilot shall have no prior right or claim to any vacancy or vacancies that have been filled during the period of such furlough. However, if the pilot had a reinstatement right at the time of

furlough, the pilot may reclaim such reinstatement right. If more than one reinstatement right was held, the pilot may select one such reinstatement right.

X. Number of Bid Status Positions

1. The minimum number of monthly positions in each bid status shall be no less than:
   a. Total regularly scheduled flight time, plus
   b. Total scheduled flight time credit, plus
   c. Total charter and extra section flight time, plus
   d. Ten percent (10%) of the total of a., b., and c. above (reserve), plus
   e. Total anticipated hours of vacation, plus
   f. Total anticipated hours of training,
   g. Divided by seventy-eight hours (78:00).

2. The above formula shall not prohibit the Company from increasing the number of pilot positions in a bid status above the minimums determined above.

3. By the fifteenth day of the month, the Company shall forward the Association a report of all flying planned and flown in the previous month.

Y. Pilot Status Listing

The Company shall publish a list each month on which shall appear the names and status of all of the pilots in the employ of the Company and the stations at which they are currently based. Such list shall include the bid status of pilots, their seniority numbers, the bid status for which reinstatement rights are held, entitlements, lock-ins, and deferrals. Three (3) current copies of such list shall be distributed monthly to the Flight Department offices at each base, one (1) additional current copy of such list shall be posted on the Bulletin Board at all bases and co-terminals, and one (1) current copy shall be furnished to the Chairman and Vice Chairman of each Domicile and the President of the Association. Such lists shall be made available at all times for examination by pilots, and no such list shall be removed from Company property.

SECTION 26

AMENDMENTS TO AGREEMENT, EFFECT ON PRIOR AGREEMENTS, AND DURATION

A. Amendments to Agreement

Either party hereto may at any time propose, in writing, to the other party any amendment which it may desire to make to this Agreement, and if such amendment is agreed to by both parties hereto, such amendment shall be stated, in writing, signed by both parties and the amendment shall then be deemed to be incorporated in and shall become a part of this Agreement.

B. Effect on Prior Agreements

This Agreement, including the Supplemental Agreements and Letters attached hereto, shall supersede and take precedence over all Agreements, Supplemental Agreements, Amendments, Letters of Understanding and other documents concerning the same subjects executed between the Company and the collective bargaining representative of the pilots in the service of American Airlines, Inc. prior to the signing of this Agreement. All rights and obligations, monetary or otherwise, which may have accrued because of services rendered prior to the effective date of this Agreement shall be satisfied or discharged.

C. Duration

This Agreement shall become effective May 1, 2003, except as otherwise dated herein, and shall continue in full force and effect until May 1, 2008, and shall renew itself without change until each succeeding May 1 thereafter, unless written notice of intended change is served in accordance with Section 6, Title I, of the Railway Labor Act, as amended, by either party hereto at least sixty (60) days prior to May 1, 2008, or May 1 of any subsequent year.

D. Early Opener

At any time following May 1, 2006, but prior to May 1, 2008, with sixty (60) days prior written notice by either party, the parties will commence negotiations in accordance with Section 6, Title I, of the Railway Labor Act, as amended.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement this the __1__ day of __May___, 2003

WITNESS:

FOR THE AIR LINE PILOTS
IN SERVICE OF
AMERICAN AIRLINES, INC.
AS REPRESENTED BY
THEALLIED PILOTS ASSOCIATIONFOR AMERICAN AIRLINES, INC.

*/signed/*_____ */signed/* _____
John Darrah — Mark Budette
President — Director, Employee Relations, Flight

*/signed/*_____ */signed/* _____
Ed White — Jim Anderson

*/signed/*_____ */signed/*_____
Sam Bertling — Tammy Hardge

*/signed/*_____ */signed/*_____
Ralph Hunter — John LaMorte

*/signed/*_____ */signed/*_____
Mickey Mellerski — Eric Lewis

*/signed/*_____ */signed/*_____
Harry Sophos — Chris Ryan

*/signed/*_____
Bob Stow

EXHIBIT 8

LETER OO

AmericanAirlines®

May 1, 2003

Captain John Darrah, President
Allied Pilots Association
14600 Trinity Blvd., Suite 500
Fort Worth, TX 76155-2512

Re: Master Shuffle

Dear John:

This letter will confirm our discussions concerning the “Master Shuffle” to be effective for May, 2004. This will be a one time deviation from the procedures of the Agreement.

The intent of the Master Shuffle is to avoid the training costs that are normally associated with a system displacement cascade. It is not the intent of either party to deny any pilot a reinstatement right or pay that a pilot would have otherwise received were it not for the agreement to the one time deviation.

Accordingly, the procedures to be utilized are as follows:

1. The Company will determine staffing requirements, by bid status, for May 2004 by early May 2003. These staffing requirements will be published as soon as available and no later than seven days before the “Trial Run.” Additionally, pilots will be notified of their ability to designate one preference (not displacement) using the “New Base” procedures – specifying the lowest seniority position which will be acceptable in that bid status.

2. The Company will complete a Trial Run in early May before performing the Master Shuffle. Pilots will receive at least 15 days notice of the Trial Run date. Pilots will also be advised that the actual Master Shuffle results are likely to be very different from the Trial Run results, due to pilots shifting their preferences following the Trial Run. After the Trial Run, at a minimum, the junior pilot and seniority distribution in each bid status will be published.

3. Pilots will receive at least 15 days advance notice of the Master Shuffle date, and will have the opportunity to update their preferences and displacements. The Company will provide the pilots with the forecast of available positions.

4. The actual Master Shuffle will be run before the end of May.

5. Pilots will be released from all lock-ins for the purpose of the Master Shuffle. All deferral clocks will also be reset prior to the run.

6. Effective for the Master Shuffle only, Section 17 paragraph M.3.a. is amended to read: “A pilot may be withheld from a displacement preference bid status if, the Company projects the pilot will subsequently be displaced from the displacement preference, that the pilot is entitled to by seniority, within twelve (12) contractual months of the effective date of the displacement. If the pilot is withheld from a displacement preference and is assigned a displacement preference at the same base as the withheld displacement preference, the Company may, if the original twelve (12) month estimate is in error, extend the withhold period for up to three (3) additional months if the Company projects that the pilot will be displaced in that time period. For each bid status from

with a pilot is withheld, the twelve (12) month limitation and the three (3) month extension provided for in this paragraph will apply beginning on July 1, 2003."..Withholding pay protection shall cease in accordance with Section 17, paragraph M.5.a.(3). All other provisions of the Basic Agreement shall apply.

7. Following the bid awards, a Training Plan will be formulated as follows:

    a. Pilots who have a recurrent training requirement in the next two months and who are changing equipment will be scheduled for training first
    b. Junior pilots who are surplus in their current bid status
    c. In reverse seniority order to the extent permitted by a. and b. above

8. Planned retirements for the intervening period will be removed for the purposes of the Master Shuffle.

9. Pilots who are displaced and who accept a paid move will incur a lock-in and will forfeit reinstatement rights, in accordance with the existing Agreement.

10. Pilots with No Job Available will be those identified for furlough, with the earliest furlough date being July 2003. Such pilots will not be trained to another bid status at American Airlines. These pilots will also have access to Supplement W implementation as described in the "Small Jets Letter of Agreement".
    [The "Small Jets Letter of Agreement" has been superseded by Letter PP "Implementation of Supp W". See Letter QQ "Summary of Updates"]

Sincerely,

/signed/
Mark Burdette
Director, Employee Relations, Flight

Agreed and Accepted:

*/signed/*_____
John Darrah, President
Allied Pilots Association

EXHIBIT 9

RICHARD I. BLOCH
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WASHINGTON, D. C. 20016
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June 6, 2004

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10th Floor 1299 Pennsylvania Ave., N.W
Washington, D.C. 20004

Re: Grievance FLO-0203

Dear Advocates:

Enclosed please find the Opinion and Award in the above-entitled matter.

Sincerely,

RICHARD I. BLOCH

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In the Matter of the Arbitration Between:

AMERICAN AIRLINES, INC.
and
AMERICAN EAGLE AIRLINES, INC. Grievance FLO-0203
and
ALLIED PILOTS ASSOCIATION
and
AIR LINE PILOTS ASSOCIATION INTERNATIONAL

Hearings Held January 20 & 21, 2004
Before Richard I. Bloch, Esq.

Appearances

For American Airlines, Inc.
Harry A. Rissetto, Esq.
Brian Z. Liss, Esq.
Michelle A. Peak, Esq.

For American Eagle Airlines, Inc.
John J. Gallagher, Esq.
Brendan M. Branon, Esq.

For Allied Pilots Association
David P. Dean, Esq.
Richard M. Moyed, Esq.

For Air Line Pilots Association International
David Holtzman, Esq.
Wayne M. Klocke, Esq.

OPINION

Facts

The grievance in this case, filed by American Airlines, concerns whether certain pilots furloughed from that company in May – August of 2003 may properly assume positions made available by attrition at American Eagle Airlines.

The controlling document in this case, containing the language that gives rise to this dispute, is referred to variously as "Letter 3" in the Eagle collective bargaining

agreement and "Supplement W" in the American contract. For ease of reference, the shorthand in this case will be "Supp. W."[1] As a general matter, that four-party agreement among American Airlines (hereinafter "American" or "AA"), the Allied Pilots Association ("APA"), American Eagle Airlines, Inc. ("Eagle"), and the Air Line Pilots Association ("ALPA"), seeks to establish certain employment opportunities at Eagle for AA pilots ("flow-down") and at American for Eagle pilots ("flow-up").[2] Directly relevant to the matters at issue here are those provisions dealing with the "flow down" rights of furloughed American pilots, with specific reference to whether such individuals may move into "attrition" vacancies created not by the introducing new equipment, but by such eventualities as retirement, leaves, upgrades or recall to American. AA and APA contend that furloughed AA pilots may, in fact, "flow down" to those vacancies. ALPA denies that any such right exists and argues, as well, that the matter is not procedurally ripe for resolution.

Supp. W was made effective May 5, 1997, and stemmed from years of collective bargaining between AA and APA. A Tentative Agreement reached in the fall of 1996 was rejected by the APA membership in January of 1997. Following a 30-day statutory cooling off period and, pursuant to President Clinton's executive order creating a Presidential Emergency Board, AA and APA held hearings in early 1997 and subsequently met to mediate at Orcas Island, Washington in March. During those

---

[1] As the name implies, Supp. W supplements, and to a certain extent, modifies, the existing collective bargaining agreements between the parties. Section I(C) of Supp. W states:

> This Supplemental Agreement supplements and makes certain exceptions to the Basic Agreements between the parties. The provisions of the Basic Agreements will continue to apply, except as modified herein and, in the event of a conflict, the provisions herein shall apply.

[2] See Art. III of Supp. W, –"Employment Opportunities at AA for AMR Eagle, Inc. Pilots", and Art. IV – "Furlough Protection at AMR Eagle, Inc. for Pilots Furloughed from AA."

meetings, the parties discussed "flow-through" concepts -- pilot mobility between AA and Eagle -- as companion issues to, among other things, questions of who would fly the regional jets. Ultimately, another Tentative Agreement[3] resolved the outstanding compensation and regional jet issues and established a framework for flow-throughs. Having set forth a general understanding between themselves, American Eagle and ALPA were brought into the mix for the purpose of executing Supp. W. as a four-party agreement. The document was finally executed by all on March 23, 1997.

Several points concerning Supp W. are significant. First, with respect to the parties' overall intention to establish a vehicle that would accommodate pilot mobility between the employer airlines, there was, at the time of the negotiation, no expectation that the process would be put to the type of test that followed the cataclysmic events of September 11, 2001. While some 124 Eagle pilots "flowed-up" to AA between 1997 and the Fall of 2001,[4] massive furloughs occasioned by 9/11 occurred in short order. 386 pilots were furloughed by American on October 1, 2001 with another 209 pilots on November 8 of that year.[5] These furloughs (not at issue here) inspired a series of grievances under Supp. W, three of them filed by APA, one by ALPA. In the arbitration award resultant from the four Union grievances, to be discussed in greater detail below, Arbitrator Richard Kasher observed as follows:

> It is important to note that, in spite of the substantial detail reflected in Paragraphs III and IV of Supp. W/Letter 3 which Paragraphs address employment opportunities for Eagle pilots and American and the furlough protection at Eagle for pilots furloughed from American, these agreements were negotiated under extraordinary time constraints.

[3] The parties named it the "Final, Final, Final, Final, Proposed Tentative Agreement."
[4] See Joint Exhibit 9D, p. 20.
[5] *Id.*, p. 20.

> It is also important to note that issues such as recall rights and the extent to which pilots "flowing-down" would "pass-through" multiple CJ Captain positions and the extent to which pilots "flowing-up" would "pass-through" multiple CJ Captain positions (the "marbles in a tube" theory) received minimal consideration because the parties did not envision substantial furloughs of American pilots. The events of September 11, 2001 clearly were not in the contemplation of the parties in 1997.
>
> It is also significant to note that Supp. W/Letter 3, the "four party agreement", were reached with little direct communications or meetings at which all the parties participated. Accordingly, it is difficult to place any weight upon the history of the negotiations.[6]

Supp. W, then, was a document conceived in relative haste, under difficult circumstances, and pressed into service that was wholly unanticipated by any of the drafters. Considering its genesis, it is not surprising that differences as to its interpretation and application should arise. At issue in this case are two specific questions:

> 1.Whether the AA pilots furloughed between May 1, 2003 and August 30, 2003 should be considered eligible to invoke flow-down rights pursuant to Supp. W and,
>
> 2. Whether CJ captain vacancies at Eagle caused by "attrition"—retirement, termination, military leave, sick leave or causes other than the acquisition of new equipment constitute "positions" subject to the displacement/recall procedures of Supp. W?[7]

---

[6] Kasher Decision, p. 12.

[7] Originally, this grievance included a third question of whether a furloughed AA pilot with seniority to displace an Eagle CJ captain, but who loses the opportunity to train for the Eagle captain position in favor of a more senior American furloughee, should be deemed displaced and entitled to recall rights to Eagle. This grievance has been withdrawn by the Company.

The Air Line Pilots Association, for its part, moves to dismiss the grievance on grounds of "ripeness, standing, arbitral disfavor of advisory opinions and collateral estoppel".[8]

American Airlines Position

American maintains that the dispute resolution procedures of Supp. W accommodate the filing of an employer-based grievance. Moreover, it denies the current matter should be considered "advisory": This case, says the Company, involves an actual and current dispute over the interpretation and application of Supp. W. Additionally, contrary to ALPA's claim, AA pilots furloughed between May and August 2003 have displacement rights under Supp. W.

Attrition vacancies, the Company claims, are fully subject to the displacement and recall provisions of Supp. W. While Arbitrator Kasher concluded that vacancies arising from introduction of new equipment would be unavailable to furloughed AA pilots, neither ALPA's grievance in that case nor the Arbitrator's decision extended beyond the specific questions involving new equipment vacancies. It requests that ALPA's Motion To Dismiss be denied and that the employer's grievance be granted.

ALPA Position

ALPA contends, among other things, that the Company's grievance must be dismissed on the grounds of ripeness, standing, arbitral disfavor of advisory opinions, and collateral estoppel. ALPA also says AA pilots furloughed between May 1 and August 30 either never had displacement rights or failed to exercise such rights in a timely manner.

On the merits, ALPA maintains that Supp. W, by its terms, prohibits furloughed

[8] ALPA prehearing motion to dismiss, submitted as Joint Exhibit 1.

AA pilots from flowing down to vacancies created by "attrition" and, additionally, precludes their being recalled into such vacancies. Negotiation history, as well as past practice, favors the denial of such rights, it is claimed.

APA Position

The Allied Pilots Association joins the Company in opposing ALPA's Motion to Dismiss. Additionally, it contends the May-August furloughees have Supp. W rights. Nothing in Supp. W, says APA, precludes any AA pilots from asserting eligibility for flow-down or recall rights. Moreover, ALPA's position, it is claimed, ignores the difference between new positions that have never been occupied and older, established positions that are occupied but subsequently vacated.[9] Accordingly, any arbitral precedent afforded the Kasher decision cannot apply to this set of circumstances. It requests that the grievance be granted.

Eagle Position

Eagle joins ALPA and AA in opposing ALPA's Motion to Dismiss. As the sole party imposed with responsibility for actually implementing the flow-down arrangement of Supp. W, it reiterates the importance of seeking a binding resolution of the issues in dispute.

Relevant Contract Provisions

> IV. Furlough protection at AMR Eagle, Inc. for pilots furloughed from AA.
>
> A. A pilot furloughed from AA may displace a CJ captain at AMR Eagle, Inc. Carrier provided that the number of CJ Captain positions available to furloughed AA pilots will be limited to the total number of CJ Captains

[9] See APA brief p. 22.

positions at AMR Eagle, Inc. less the number of Eagle Rights CJ Captains.

B. A furloughed AA pilot may displace

1. A CJ Captain, other than an Eagle Rights CJ Captain, who has not been awarded a seniority number at AA, in reverse order of AMR Eagle, Inc. seniority;

2. A CJ Captain who has accepted a position on the AA pilot's seniority list pursuant to Paragraph III.B. above, or a CJ Captain who was previously furloughed from AA, in reverse order of AA's seniority.

C. If no CJ Captain position at AMR Eagle, Inc. is available for a furloughed AA pilot, such pilot shall not have any further displacement rights at AMR Eagle, Inc. and shall be furloughed as an AA pilot, with the exception that a furloughed AA pilot who is displaced from a CJ Captain status may elect either of the following options:

1. Such pilot may uses seniority accrued at AMR Eagle, Inc. to bid for a vacancy or displace at such carrier in accordance with the applicable collective bargaining agreement provided that no AMR Eagle, Inc. pilot on the current Eagle seniority list will be furloughed as a result of this provision consistent with Paragraph IV. K. below; or
2. Such pilot may relinquish his position at the AMR Eagle, Inc. carrier and will receive furlough pay due under the Basic Agreement between AA and the Allied Pilots Association ("AAA"). The rights and obligations of a furloughed AA pilot who relinquishes a position at AMR Eagle, Inc. will be the same as any other furloughed AA pilot, except that such pilot shall have a right of recall for 10 years to any vacant CJ Captain position in the reverse order of displacement specified in Paragraph IV. B. above.

D. Eagle Rights CJ Captains are not subject to displacement by furloughed AA pilots, or any pilot who has been awarded an AA seniority number pursuant to Paragraph III. B. above.

Analysis

Turning first to the Motion to Dismiss and related procedural questions, the finding is, for the reasons that follow, that the Motion should be denied. Article VI of Supp. W states, in subsection B:

> B. The parties agree to arbitrate any grievance alleging a violation of this Supplemental Agreement on an expedited basis...The jurisdiction of the neutral shall be limited to disputes involving the interpretation or application of this Supplemental Agreement.

Subsection C states in relevant part: "Any grievance concerning the interpretation or application of this Supplemental Agreement shall be stated in writing...." ALPA observes, among other things, that the grievance submitted by the Company fails to allege a violation of Supp. W by any of its signatories. Moreover, there is no current implementation of the "flow-down" with respect to the 672 May-August furloughees. Any action concerning those pilots has been suspended pending resolution of the instant questions.[10]

To the extent these observations raise the question of whether a "violation" exists, it is more appropriate, one concludes, to deal with that question as an "advisory opinion" or "ripeness" issue, both of which are discussed below. It suffices, for the moment, to observe that Article VI of Supp. W does not preclude a Management grievance.[11] And, there is no reason to conclude that Supp. W\letter 3 has somehow modified the clear terms of the existing collective bargaining agreements, which, in both the AA/APA and

[10] Of the 672 pilots furloughed from May-August of 2003, 384 opted to "flow-down" and displace Eagle CJ Captains. However, American chose to keep these pilots on furlough while seeking resolution of this grievance.

[11] One notes, for example, that subsection C of Article VI refers to "*any grievance*" concerning the interpretation or application of the Agreement.

Eagle/ALPA contracts, specifically authorize Management's filing a grievance. Section 21.E of the Eagle-ALPA Agreement, for example, mandates the System Board of Adjustment to "consider any grievance properly submitted to it by the Association or the Company...."[12]

Nor may this matter be dismissed as either unripe or "advisory" in nature. While it is true that the "limbo status"[13] of the furloughees is a situation wholly attributable to American's decision to withhold action, this does not mean the case is not a current controversy. According to the record,[14] of the 672 pilots eligible for flow-down, 384 have actually opted to do so by their Summer, 2003 bids. ALPA's suggestion that the Company's actions should somehow be considered a waiver of those pilots' flow-down rights ignores the reality that, to have actually installed the pilots into new positions could have exposed Eagle to substantial training costs as well as vulnerability to back pay claims resulting from improper displacement of Eagle pilots. And, as American observes, the answer to the question of whether AA furloughees are entitled to attrition vacancies will potentially increase the current rate at which AA pilots are able to displace Eagle CJ captains. A related impact will involve the fate of junior American pilots in Eagle slots who will likely be displaced if American furloughees can flow-down at a greater rate. At the time of displacement from Eagle, a furloughed American pilot must decide, under Art. IV(C) of Supp. W, as to whether he or she wishes to relinquish the Eagle position and receive furlough pay or utilize acquired Eagle seniority to either bid

[12] The American-APA contract also accommodates such filing. Article 21.2.b states that American "shall have the right to file a grievance concerning any action by the Association *or any matter arising pursuant to the Agreement.*" (Emphasis added).
[13] See ALPA Memorandum In Support Of Its Pre-Hearing Motion, p. 13.
[14] See Tr., 124-126 (Anderson testimony).

another vacancy or displace, in accordance with the Eagle contract. All these factors strongly suggest the matter is ripe for resolution. In the interest of certainty for all parties, the question should now be answered.

ALPA also maintains that the current signed agreements between AA and APA furnish no furlough protection via displacement rights to former TWA pilots (who constitute the bulk of the May-August furloughees.)[15] But the question of former TWA pilots' access to flow-down rights is determined, for purposes of this case, not by the existence or non-existence of any AA-APA understandings but, rather, by the terms of the four-party Supp. W,[16] which, as noted most succinctly by the APA, "does not distinguish between the AA furloughees based on how they came to American."[17] Article IV(B) of Supp. W provides, simply, that "this Supplemental Agreement also covers employment opportunities at AMR Eagle, Inc. for furloughed AA pilots." The May-August pilots here at issue, primarily former TWA pilots, fully qualify as "furloughed AA pilots" currently and are therefore eligible for coverage under Supp. W.

Remaining for discussion is the extent to which such coverage applies in "attrition" situations. What are the rights of furloughed pilots with respect to "flow-down" and recall? It is to those issues this Opinion now turns.

The parties differ in substantial measure concerning the content and impact of discussions leading to consummation of Supp. W. As noted by Arbitrator Kasher,[18]

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[15] ALPA directs the arbitrator's attention to Supplement CC, the original AA/TWA seniority integration agreement, which provided considerably limited furlough protection to former TWA pilots. A subsequent AA/APA Restructuring Agreement (See AA Exhibit 2) extended greater furlough protection to those pilots. However, it has never been formally executed, due, apparently, to its current status in litigation.
[16] ALPA is a party to neither Supp. CC nor to the as-yet unsigned understanding between AA and APA that expands, to some extent, the former TWA pilot rights.
[17] APA post-hearing brief, p.12.
[18] See p.4, *supra.*

however, given the circumstances surrounding the negotiations, it is difficult to afford the history any controlling weight.[19] Rather, the terms of Supp. W, taken together with Arbitrator Kasher's decision involving those provisions, compel the conclusions that (1) furloughed AA pilots may not flow-down to attrition vacancies but that (2) their right to be recalled to such vacancies, under certain circumstances, is clearly established by Art. IV(C)(2) of Supp.W.

Article IV of Supp. W, detailing the rights of AA pilots to flow-down, speaks, repeatedly, of "displacement".[20] The term "displace" is connotatively meaningful, with Subsections IV(A) and (B) reflecting the joint intention of the contracting parties to implement a "bumping" process wherein a furloughed AA pilot takes the place of another pilot occupying the CJ captain position.[21] Subsections B (1) and (2) proceed to identify the specific CJ captains who are vulnerable to being bumped.[22] Under Subsection (1), a non-Eagle Rights CJ Captain who has not been awarded a seniority number at AA may be displaced in reverse order of Eagle seniority. Thereafter, under B(2), an AA furloughee may displace a CJ Captain who has accepted a position on the AA seniority list under the "flow-up" provisions of Article III of Supp. W or he may displace another AA furloughee who was occupying a CJ Captain position. Article IV(C) reinforces the conclusion that the displacement options for furloughed AA pilots are limited to Subsections B(1) and (2):

> ... C. If no CJ Captain position at AMR Eagle, Inc. is available for a furloughed AA pilot, such pilot shall not have any further

[19] The four-party germinal document that seeks to control pilot movement and relocation was a product of a remarkable set of negotiations that never, according to the record, found all four parties together at any given time.
[20] See IV(A) and (B), *supra,* p.7.
[21] Article IV(A) provides "A pilot furloughed from AA may displace [an Eagle] CJ Captain".
[22] See Art. IV(B)(1) and (2), *supra*, at p.4

> displacement rights at AMR Eagle, Inc. and shall be furloughed as an AA pilot,...

Moreover, that same section makes it clear that the furlough protection process does not include the right to flow-down directly to an attrition vacancy. Thus, one suffering layoff from AA, who is unable to displace under Sections B(1) or (2) will have exhausted any displacement options, as indicated above. Significantly, that dilemma does not exist for a furloughed AA pilot "who is *displaced* from CJ Captain status".[23] As to such individual, a variety of options is available. Under subsection C(1),the parties, for the first time, inserted language that meaningfully broadened that pilot's rights. "[S]uch [displaced] pilot", the parties agreed, "may use seniority accrued at AMR Eagle, Inc. *to bid for a vacancy* or displace" at Eagle.[24] These words suffer no ambiguities: Seniority permitting, that pilot may not only displace, seniority permitting, but may also bid for an empty attrition slot.[25] The clear impact of these provisions, read in their entirety, is that attrition vacancies are not available under the flow-down options of B(1) and (2) but are, instead, limited to those situations wherein the pilot has previously occupied the Eagle seat and is subsequently displaced under Subsection (C). As such, the May-August furloughees have no rights to flow-down to attrition vacancies.

A furloughed pilot's recall rights, as distinguished from flow-down opportunities, are established, in unambiguous language, by Article IV(C)(2). Again, however, they are contingent on the pilot having occupied an Eagle captain position. Thus, a furloughed

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[23] Art. IV(C).
[24] *Id.*, Subsection C(1) (emphasis added).
[25] The Kasher decision made it clear that such vacancies would not include those accompanying the introduction of new equipment.

AA pilot displaced from a CJ Captain status[26], may relinquish his position at Eagle and be treated solely as a furloughed AA pilot by receiving furlough pay under the AA/APA Labor Agreement. Significant to this case, that individual, having occupied an Eagle position, having been displaced and having subsequently relinquished the Eagle position, retains a recall right under IV (C)(2) "*to any vacant CJ Captain position* in the reverse order of displacement established in Paragraph IV. B...."(emphasis added.) Here again, the parties spoke with relative precision -- recall rights extend broadly "to *any* vacant CJ Caption position" in reverse order of displacement.

In sum, contrary to American's contentions,[27] Supp.W does, in fact, distinguish between flow-down into positions temporarily vacated and those at Eagle that are filled by active pilots. Subsections IV(A) and (B) deal with displacements of active pilots. Only in Subsection IV(C) (and there, only in cases of certain pilots) did the parties agree to give access to attrition vacancies.[28]

The decision in the "New Equipment Grievance"[29], while responding to a different fact scenario, lends meaningful support to the outcome here. Arbitrator Kasher considered the question of whether the flow-down provisions of Article IV would apply to new Captain positions generated by the arrival of new EMB aircraft at LAX. Rather than making the CJ positions available for system-wide bids, the Company had offered them to American furloughees, seeking to justify its actions under Article IV(C)(2) of the

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[26] See Art.IV (C).
[27] AA post-hearing brief, pp. 27-28.
[28] The Company also contends (American post-hearing brief, p. 28) it "makes practical sense to allow American furloughees to flow-down to positions created by attrition vacancies at Eagle, because it avoids the problem of having American furloughs flow-down and displace existing Eagle pilots." Yet, however practical, that result is inconsistent with the mandates of Supp. W.
[29] FLO-0501.

Supplement.[30] Arbitrator Kasher granted ALPA's grievance. In so deciding, the arbitrator observed that the question of new equipment at Eagle had not been a subject for specific discussion during the negotiations of Supp. W:

> This Arbitrator is not persuaded that there is sufficiently explicit language in the Supp. W/letter 3 regarding the filling of CJ Captain positions on new equipment which trumps the Eagle-ALPA collective bargaining agreement's requirements concerning bidding on CJ Captain positions.[31]

The parties present elegant and varied arguments as to what can and cannot be inferred from the Arbitrator's words and holding. In the final analysis, however, there are certain indisputable observations about the decision that underscore its necessary impact. In concluding that new equipment vacancies at Eagle are unavailable to AA furloughees (until first occupied by Eagle pilots), Arbitrator Kasher found a lack of "sufficiently explicit language" in Supp. W. to override the Eagle/ALPA seniority mandates and, in so doing, read the operative document as meaningfully restricted in certain respects. Among other things, the furlough protection sought by AA pilots was by no means comprehensive; the mere existence of available seats does not guarantee their access by a furloughed American pilot. At the heart of the Arbitrator's interpretation and application of Supp. W is recognition of the primacy of pilot seniority rights at Eagle and bidding entitlements that are unequivocally established via the Eagle-ALPA collective bargaining agreement.[32] As such, one seeking to set aside the

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[30] The pilots in question were AA furloughees from October of 2001 who had been employed by American Eagle but were subsequently displaced by the November AA furloughees.

[31] Kasher decision, p. 16.

[32] Section 13(E) of the Eagle/ALPA contract states:

E. BASIC SENIORITY RULE

Except as otherwise provided in this Agreement, seniority will govern all pilots in case of promotion and demotion, displacement, and downgrading, retention in case of reduction-in-force, furlough and recall to duty, filling of vacancies, and assignment due to expansion or reduction in schedules.

otherwise-controlling assumption concerning an Eagle pilot's right to a seat must provide a mutually-agreed contractual foundation. In rendering his decision, the Arbitrator focused, clearly, on the fact that the parties had never discussed the eventuality of new equipment. Therefore, that particular scenario could not be read in as the mutually-bargained intent of Supp. W.

Similarly, in this case there is no evidence the parties specifically contemplated attrition vacancies; indeed, there is no real question they did not. But, the language of Supp. W, taken together with the guidance of the prior arbitration decision emphasizing the import of the Eagle/ALPA seniority provisions, suffices to answer the questions posed here. For the reasons stated above, the finding is that the AA pilots in question may not flow-down to attrition vacancies. However, their right to be recalled to "any vacancy"[33] is clearly established under circumstances set forth in Supp.W.

[33] Article IV(C)(2), but see n. 25, *supra*.

AWARD

The Motion to Dismiss is denied. The grievance is granted in part and denied in part. American Airlines pilots cannot flow-down into attrition vacancies, but Supp. W permits their recall into such positions, under the circumstances detailed in Article IV(C).

RICHARD I. BLOCH, ESQ.

June 6, 2004

EXHIBIT 10

In the Matter of the Arbitration Between:	)	
AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,	)	Grievance Under Letter Three/Supplement W
and	)	
AMERICAN EAGLE AIRLINES, INC.,	)	Case No. FLO-0903 (Former TWA Pilots)
and	)	
ALLIED PILOTS ASSOCIATION,	)	**OPINION AND AWARD**
and	)	
AMERICAN AIRLINES, INC.	)	

Hearing Date: June 28, 2006
Hearing Location: Sacramento, CA
Date of Award: May 11, 2007

JOHN B. LaROCCO
Arbitrator
2001 H Street
Sacramento, CA 95814-3109

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TABLE OF CONTENTS
ALPA, AE, APA, AA

Grievance Under Letter 3/Supplement W

Case No. FLO 0903
(Former TWA Pilots)

OPINION

I. INTRODUCTION

On November 26, 2003, the Air Line Pilots Association, International (ALPA) filed a grievance invoking the dispute resolution procedures in Section VI of Letter 3/Supplement W, an agreement between four parties: ALPA, American Eagle Airlines, Inc. (AE), Allied Pilots Association (APA) and American Airlines, Inc. (AA). On January 15, 2004, ALPA properly progressed the grievance to the undersigned Arbitrator for a decision on its merits. [ALPA Exhibit 2]

At the June 28, 2006 hearing, the four parties stipulated that the first issue is whether former Trans World Airlines (TWA) pilots placed on the AA seniority list filled or may fill "new hire positions" in "new hire classes" within the meaning of Section III.A of Letter 3/Supplement W. The second issue is what is the appropriate seniority number remedy for AE CJ (Commuter Jet) Captains covered by Letter 3/Supplement W, Section III? If the answer to the first issue is affirmative, the parties stipulated that the Arbitrator shall remand the second issue back to the parties for a possible resolution with the Arbitrator retaining jurisdiction over the case. [TR 9]

At the hearing, the parties also stipulated that all evidence, including testimonial evidence, of prior arbitrations adjudicated under Letter 3/Supplement W is admitted into the record herein. The parties specifically alluded to two prior arbitration awards. *American Airlines, American Eagle Airlines, Allied Pilots Association and Air Line Pilots Association, FLO-0203 (Bloch, 2004)* and *Air Line Pilots Association, Allied Pilots*

Association, American Airlines and American Eagle Airlines, Nos. FLO-0201, FLO-0301, FLO-0401, and FLO-0501 (Kasher, 2003).[1]

At the conclusion of the hearing, the parties reserved the rights to: 1) submit additional documentation to clarify or augment evidence submitted during the hearing, and; 2) move to reopen the evidentiary record. ALPA submitted additional documents to complete certain exhibits that it had proffered during the hearing. The Arbitrator granted APA's motion to reopen the record to admit the declaration of Ralph Hunter but denied a motion to supplement the record with an AE brief from a prior arbitration. The three other parties, ALPA, AE and AA, waived the opportunity to cross-examine Hunter.

Subsequent to the hearing, the parties filed opening and reply post-hearing briefs. The Arbitrator received the reply post-hearing briefs on or about March 12, 2007 and the matter was deemed submitted.

II. PERTINENT AGREEMENT PROVISIONS AND FAA ORDERS

Letter 3/Supplement W became effective in 1997.[2] Sections III and IV of Letter 3/Supplement W established pilot mobility between AE and AA. AE pilots may flow through or up to AA while AA pilots may flow back or down to AE. AA pilot hiring triggers the flow through process while an AA pilot furlough triggers the flow down process. The dispute in this case centers on the first trigger, that is, what precisely constitutes AA pilot hiring.

Section III of Letter 3/Supplement W sets forth AA employment opportunities for AE pilots. The gravamen of this case rests on the proper interpretation of the phrases

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[1] The Arbitrator will respectively cite these two Awards as the *Bloch Decision* and the *Kasher Decision*.
[2] The four party agreement is labeled "Letter 3" to the Basic Agreement between ALPA and AE and it is labeled "Supplement W" to the Basic Agreement between APA and AA. [Joint Exhibits 1 and 2]

"new hire positions" and "new hire class" that appear in Letter 3/Supplement W, Section III.A, which is quoted below.

III. Employment Opportunities at AA for AMR Eagle, Inc. Pilots

A. At least one (1) out of every two (2) new hire positions per new hire class at AA will be offered to CJ Captains who are line pilots and who have completed their IOE at AMR Eagle, Inc. Such positions will be offered to the CJ Captains who are line pilots in order of their AMR Eagle, Inc. seniority. [Joint Exhibits 1 and 2]

Other subsections of Section III are relevant to this case. The remainder of Section III reads:

B. If a CJ Captain is unable to fill a new hire position at AA in accordance with Paragraph III.A above, due to a training freeze or other operation constraint, (see Paragraph III.J. below), such CJ Captain will be placed on the AA pilots Seniority List and will count toward the number of new hire positions. The pilot's AA occupational seniority date and number will be established as if he were able to fill such new hire position at AA and had attended the new hire training class referenced in Paragraph III.A above. Such pilot's length of service for pay purposes, date of hire for pension purposes, and length of service for vacation accrual will be established in accordance with III.C. below. The number of such CJ Captains will not exceed the difference between the number of CJ Captains who are able to fill new hire positions at AA and the number of new hire positions which must be offered to CJ Captains in accordance with Paragraph III.A above.

C. A CJ Captain's (1) placement on the AA Pilots Seniority List (except as provided in Paragraph III.B. above which is only applicable for placement on the AA Pilots Seniority List in order to establish an AA occupational seniority date and number), (2) length of service for pay purposes, and (3) "date of hire" for pension purposes will be based on the date such pilot is entered on the AA payroll. Such pilot's length of service for vacation accrual will be based on the cumulative total of the pilot's service at AMR Eagle, Inc. and AA

D. If a CJ Captain is placed on the AA Pilots Seniority List per III.B. above, such CJ Captain will receive priority based on his AA seniority in filling a new hire position in the next new hire class, following release from a training freeze or other AMR Eagle, Inc. imposed operational constraint. Such CJ Captains will not count toward the number of new

hire positions offered to CJ Captains at AMR Eagle, Inc., under Paragraph III.A above.

E. Each of the first 125 AMR Eagle, Inc. pilots who successfully complete transition training as a CJ Captain must fulfill a training freeze for a period of eighteen (18) months from the date said pilot completes IOE. All other pilots who successfully complete transition training as CJ Captains must fulfill a training freeze for a period of two (2) years from the date each pilot completes IOE, unless released from such training freeze by AMR Eagle, Inc.

F. An AMR Eagle, Inc. pilot may, not later than the completion of IOE for a CJ Captain position or at such time as the pilot is able to demonstrate hardship, elect to forfeit the opportunity to secure a position on the AA Pilots Seniority List as provided by this Supplemental Agreement. Such pilot will hereinafter be referred to as an "Eagle Rights CJ Captain," and will not be eligible for a future new hire position at AA which may otherwise become available under Paragraph III of this Supplemental Agreement. The existence of a hardship for this purpose shall be approved by the ALPA AMR Eagle MEC Chairman and the appropriate management official(s).

G. A CJ Captain who is awarded a new hire position at AA will be issued the lowest seniority number at AA in the applicable new hire class, subject to AA's policy concerning the assignment of seniority numbers to new hire pilots who have previous service in other employee classifications. AMR Eagle, Inc. pilots will receive their AA seniority number in order of their seniority at AMR Eagle, Inc.

H. A CJ Captain who accepts a new hire position at AA may bid and will be awarded a bid status vacancy based upon such pilot's AA seniority at the time of this transfer to AA. Such pilot must fulfill a one year lock-in, in the bid status which is awarded or assigned. Such pilot will not be required to serve a probationary period at AA.

I. A CJ Captain who accepts a new hire position at AA must qualify for the initial bid status position which such pilot is awarded or assigned at AA. A pilot who meets the physical requirements at his AMR Eagle, Inc. carrier will be deemed to have met the physical requirements at AA, provided that a pilot who accepts a new hire position at AA must have an FAA First Class Medical Certificate, and must not be on the disability list or the long term sick list. In addition, at the time such pilot accepts a position at AA, he must meet AA's then current criteria for future promotion to Captain at AA.

> J. A CJ Captain who accepts a new hire position at AA may be withheld from such position for operational reasons, provided the pilot is paid the greater of the rate of pay for the CJ Captain flying being performed at the applicable AMR Eagle, Inc. pay rates, or the highest equipment rate of pay for the AA bid status from which withheld up to the applicable AA monthly maximum. Such withholding will be limited to a maximum of six (6) months. [Joint Exhibits 1 and 2]

Section IV of Letter 3/Supplement W governs the rights of pilots furloughed from AA to displace to AE CJ Captain positions. Sections IV.A, IV.B and IV.D provide:

> IV. Furlough Protection at AMR Eagle, Inc. for Pilots Furloughed from AA
>
> A. A pilot furloughed from AA may displace a CJ Captain at an AMR Eagle, Inc. carrier provided that the number of CJ Captain positions available to furloughed AA pilots will be limited to the total number of CJ Captain positions at AMR Eagle, Inc. less the number of Eagle Rights CJ Captains.
>
> B. A furloughed AA pilot may displace
>
> 1. A CJ Captain, other than an Eagle Rights CJ Captain, who has not been awarded a seniority number at AA, in reverse order of AMR Eagle, Inc. seniority; and then
>
> 2. A CJ Captain who has accepted a position on the AA Pilots Seniority List pursuant to Paragraph III.B. above, or a CJ Captain who was previously furloughed from AA, in reverse order of AA seniority.
>
> * * * *
>
> D. Eagle Rights CJ Captains are not subject to displacement by furloughed AA pilots, or any pilot who has been awarded an AA seniority number pursuant to Paragraph III.B. above. [Joint Exhibits 1 and 2]

The terms and conditions of the parties' Basic Collective Bargaining Agreements continue to apply except that provisions of Letter 3/Supplement W supersede provisions of the Basic Agreements if the former conflicts with the latter. Section I.C of Letter 3/Supplement W states:

> C. This Supplemental Agreement supplements and makes certain exceptions to the Basic Agreements between the parties. The provisions of the Basic Agreements will continue to apply, except as modified herein and, in the event of a conflict, the provisions herein shall apply. [Joint Exhibits 1 and 2]

Besides Letter 3/Supplement W, the parties also rely on certain provisions from their Basic Agreements. ALPA cited Section 13.A of the APA/AA Basic Agreement which reads:

> A. Service with Company
>
> Seniority as a pilot shall be based upon the length of service as a flight deck operating crew member with the Company except as otherwise provided in Sections 11 and 12 of this Agreement. [Joint Exhibit 3]

APA cited and contrasted Section 13.B.2 with Sections 1.C.1 and 1.C.2 of the ALPA/AE Basic Agreement. Sections 1.C.1 and 1.C.2 of the ALPA/AE Basic Agreement state:

> C. MERGER PROTECTION
>
> 1. Merger with an ALPA represented carrier
>
> In the event the Company acquires a carrier (or part thereof) whose pilots are represented by the Association, the pilots of the Company and the pilots of the acquired carrier will each operate pursuant to their own collective bargaining agreement, with their respective seniority lists, without transfer of aircraft between the Company and the acquired carrier, until:
>
> a. Conclusion of negotiation of only such provisions, if any, as may be necessary to cover such acquired carrier's flying under this Agreement, and
>
> b. Integration of seniority lists of the respective pilot groups. Such seniority integration will be governed by the Association's Merger Policies. There will be no "system flush" as the result of seniority integration.
>
> 2. Merger with a non-ALPA represented carrier

a. In the event the Company acquires a carrier (or part thereof) whose pilots are not represented by the Association, the pilots of the acquired carrier will operate pursuant to the terms and conditions of employment (whether collectively bargained or otherwise established) applicable at the acquired carrier until:

1.) conclusion of negotiation of only such provisions, if any, as may be necessary to cover such acquired carrier's flying under this Agreement, and

2.) integration of seniority lists of the respective pilot groups. Such seniority integration will be accomplished in a fair and equitable manner, including negotiations between the carriers and the representatives of the pilot group affected. There will be no "system flush" as a result of seniority integration.

b. In the event of failure to reach a negotiated resolution, the seniority integration dispute will be resolved in accordance with Sections 3 and 13 of the Allegheny-Mohawk Labor Protective Provisions. Pending such resolution, there will be no transfer of aircraft between the Company and the acquired carrier. [Joint Exhibit 1]

Section 13.B.2 of the ALPA/AE Basic Agreement provides:

B. SENIORITY DATE AND LIST

2. Newly hired pilots will be placed on the Seniority List in order of date of hire. When two (2) or more pilots are employed on the same date, they will be placed on the Seniority List according to their age; i.e. the older pilot will be given the lower number. [Joint Exhibit 1]

On November 8, 2001, which was after AA entered into a contract to purchase the assets of TWA, a debtor in bankruptcy, the APA and AA entered into an agreement, memorialized as Supplement CC, to govern the seniority consolidation of former TWA

pilots with existing AA pilots once the National Mediation Board (MMB) designated AA as a single carrier. Section II of Supplement CC, which is entitled "Construction of Modified System Seniority Lists", provides:

> The modified System Seniority List will be constructed by integrating the April 10, 2001 AA Pilot Seniority List (i.e., adjusted for hiring and attrition through April 10, 2001) and the TWA Pilot Seniority List as of April 10, 2001 (i.e., adjusted for hiring and attrition through April 10, 2001(in the following manner.
>
> A. TWA Pilots J.G. Upp, DOH 12/2/63 through Raymond Camus, DOH 3/20/89 will be inserted in the AA Pilot Seniority List on a ratio of approximately one TWA Pilot to 8.1762556 AA Pilots, commencing immediately following AA Pilot W.H. Elder, DOH 10/8/85 and ending immediately following AA Pilot B.D. White, DOH 4/9/01.[3]
>
> B. The remaining TWA Pilots commencing with TWA Pilot Theron Clark, DOH 3/23/89, will be placed in seniority order immediately following TWA Pilot Raymond Camus, DOH 3/20/89.
>
> C. All pilots hired by American after April 10, 2001 who had been assigned to air line flying duty as of October 1, 2001 will be placed on the modified System Seniority List following pilots referred to in Section II.B above in accordance with their length of service as flight deck crew members at American, in accordance with Section 13 of the Green Book.
>
> D. After furloughed pilots (if any) have been recalled and new pilot positions become available, American will offer employment, in seniority order, to all pilots who were hired by American after April 10, 2001 but who had not been assigned to air line flying duty as of October 1, 2001. Each such pilot will be placed on the modified System Seniority List on the date he is first assigned to air line flying duty with American in accordance with Section 13 of the Green Book, following all pilots then on the modified System Seniority List. [Joint Exhibit 3]

[3] **The ratio of 1 to 8.1762556 specified in Section II.A of Supplement CC will henceforth be referred to as the 1:8 ratio.**

The first sentence of Supplement CC, Section III.B provided that the modified seniority list would apply beginning on the "implementation date". Supplement CC Section I.G defined "implementation date" as follows:

> G. For purposes of this Supplement CC, the term "Implementation Date" means the date on which the National Mediation Board issues a decision finding that American and TWA LLC are or have become a single carrier. [Joint Exhibit 3]

Section IV of Supplement CC built a fence enclosing the former TWA pilots by vesting them with paramount (or prior) rights to cockpit positions at St. Louis. [Joint Exhibit 3]

Section V.A of Supplement CC barred former TWA pilots from access to Section IV of Letter 3/Supplement W subject to a condition precedent. Supplement CC, Section V.A reads:

> A. Furloughs
>
> Furloughs will be administered in inverse system seniority order, and recalls from furlough will be administered in system seniority order, in accordance with the Green Book as modified by the Transition Agreement and Supplement CC. The parties agree that the TWA Pilots will be covered by Section IV. of Supplement W of the Green Book when pilot J.K. Viele, DOH 8/20/01, is given notice of recall from furlough. [Joint Exhibit 3]

In the May 1, 2003 APA/AA Basic Agreement (sometimes called the "Restructuring Agreement"), APA and AA modified Section V.A of Supplement CC. Paragraph 10 of Letter OO, attached to the 2003 APA/AA Basic Agreement, states:

> 10. Pilots with No Job Available will be those identified for furlough, with the earliest furlough date being July 2003. Such pilots will not be trained to another bid status at American Airlines. These pilots will also have access to Supplement W implementation as described in the "Small Jets Letter of Agreement". [Joint Exhibit 3]

The above paragraph gave former TWA pilots, who were furloughed from AA subsequent to May 2003, access to Section IV of Letter 3/Supplement W. Thus, Paragraph 10 lifted the ban contained in Supplement CC, Section V.A.

ALPA and AE cited and relied on *Federal Aviation Administration Order 8400.10* which covers pilot training and qualifications.

FAR 8400.10, Chapter 2, Section 1, Paragraph 283 delineates categories of training as follows:

> *Categories of Training:* The classification of instructional programs by the regulatory requirement the training fulfills. Categories of training consist of one or more curriculums. The categories of training are initial new-hire, initial equipment, transition, upgrade, recurrent, and requalification.

The category classified as Initial New Hire is covered in great detail in *Paragraph 289* of the same section. *FAR 8400.10, Chapter 2, Section 1, Paragraph 289(A)* reads:

> *Initial New-Hire Training:* This training category is for personnel who have not had previous experience with the operator (newly-hired personnel). It also applies however, to personnel employed by the operator who have not previously held a crewmember or dispatcher duty position with that operator. Initial new-hire training includes basic indoctrination training and training for a specific duty position and aircraft type. Except for a basic indoctrination curriculum segment, the regulatory requirements for "initial new-hire" and "initial equipment" training are the same. Since initial new-hire training is usually the employee's first exposure to specific company methods, systems, and procedures, it must be the most comprehensive of the six categories of training. For this reason, initial new-hire training is a distinct separate category of training and should not be confused with initial equipment training. As defined by this handbook, initial equipment training is a separate category of training. [Emphasis added]

Later, *Subsection G (1) of Paragraph 289* states:

> G. *Summary of Categories of Training.* The categories of training are summarized in general terms as follows:

(1) All personal not previously employed by the operator must complete *initial new-hire training.*

Paragraphs 361, 363 and 365 of FAR 8400.10, Chapter 2, Section III, read:[4]

361. GENERAL. This section specifies the objectives and content of basic indoctrination curriculum segments. This training is required for all flight crewmembers who are enrolled in an initial new-hire category of training. Basic indoctrination is normally the first curriculum segment of instruction conducted for newly-hired flight crewmembers. It serves as the initial introduction for the new-hire employee to the operator and, in many cases, to the operational requirements of Part 121 and/or Part 135.

363. OBJECTIVE OF BASIC INDOCTRINATION. The objective of basic indoctrination training is to introduce the new-hire flight crewmember to the operator and its manner of conducting operations in air transportation. It specifically acquaints the student with the operator's policies, procedures, forms, organizational and administrative practices, and ensures the student has acquired basic airman knowledge. The flight crewmember basic indoctrination curriculum segment consists of training modules which contain information applicable to the student's specific duty position. Two general subject areas are required during basic indoctrination training. These subject areas are "operator-specific" and "airman-specific" training. These two areas serve to acquaint the student with the operator's means of regulatory compliance and to ensure that basic knowledge has been acquired by the student before entering aircraft ground and flight training. These two areas are not always mutually exclusive and in many cases may be covered in the same training module.

365. OPERATOR-SPECIFIC INDOCTRINATION TRAINING.

A. The first subject area, "operator-specific," must include training modules in at least the following:

- Duties and responsibilities of flight crewmembers.
- Appropriate provisions of the Federal Aviation Regulations.
- Contents of the certificate holder's operating certificate and operations specifications.

[4] These three paragraphs appear consecutively in Section III.

B. Operator-specific training modules should also include information about the company which the student needs in order to properly perform his duties as an employee of the operator. This information may include such items as the operator's history, organization, policies, scope of operation, administrative procedures, employee rules of conduct, compensation, benefits, and contracts.

FAR 8400.10, Chapter 2, Section III, Paragraph 371(A) reads:

371. TRAINING HOURS

A. FAR 121.415 specifies a minimum of 40 programmed hours of instruction for basic indoctrination training. Normally, 40 hours should be the minimum number of training hours for basic indoctrination for Part 121 operators who employ personnel with little or no previous Part 121 experience. Reductions to the programmed hours in certain situations, however, may be appropriate for several reasons. One example would be a merger or acquisition situation where flight crewmembers new to the surviving certificate holder may only require "operator-specific" training modules. Another example would be the operator's enrollment prerequisites requiring a high level of Part 121 experience.

III. BACKGROUND AND SUMMARY OF FACTS

A. AA Purchases TWA's Assets

On January 9, 2001, AA entered into an agreement with TWA to purchase its assets. [ALPA Exhibit 15] Inasmuch as the asset purchase arrangement contemplated that AA would acquire TWA's assets while TWA was a debtor in bankruptcy, TWA filed for bankruptcy on January 10, 2001. [AA Exhibit 1; ALPA Exhibit 15] On February 15, 2001, TWA LLC was established to operate the debtor airline under a separate air carrier operating certificate. [TR 163; AA Exhibit 1]

AA purchased the assets of the debtor on April 10, 2001. [TR 161-162] Jim Anderson, an AA Employee Relations Principal, related that subsequent to April 10, 2001, some TWA LLC aircraft moved to AA while others were retired.[5] [TR 163]

Article 10 of the Asset Purchase Agreement is entitled "Employee Matters". Sections 10.1, 10.2 and 10.5 of Article 10 provided:

> 10.1 Hiring Obligations. Upon the occurrence of the Closing, Purchaser shall (i) offer all of Sellers' U.S.-based union employees (other than personnel who (A) have previously been terminated by Purchaser or an entity controlled by Purchaser or (B) would not be qualified for employment under Purchaser's general hiring policies as in effect at Closing) employment by Purchaser or one or more entities controlled by Purchaser at compensation levels substantially equivalent to those currently enjoyed by similarly situated employees of Purchaser or such controlled entity, (ii) offer employment to certain members of TWA's executive management and non-union employees on a case-by-case basis at Purchaser's sole discretion and (iii) provide employment benefits and post-retirement benefits to all employees actually hired by Purchaser pursuant to (i) and (ii) above at levels substantially no less favorable than those benefits provided to Purchaser's similarly situated employees. Any Seller employees to be hired by Purchaser or an entity controlled by Purchaser in accordance with this Section 10.1 will be hired in accordance with terms and conditions established by Purchaser or such entity (and, where applicable, in accordance with and pursuant to collective bargaining agreements relating to employees of Purchaser or such controlled entity).
>
> 10.2 Union Matters. All offers of employment made by Purchaser in accordance with Section 10.1(i) above and all benefits to be provided pursuant to Section 10.1 (iii) above will be conditioned on acceptance by all such employees of Purchaser's work rules then in effect and in effect after the Closing Date from time to time that are generally applicable to similarly situated employees of Purchaser. Purchaser and Sellers agree to encourage their respective unions to negotiate in good faith to resolve fair and equitable seniority integration. Prior to Closing, TWA shall amend all existing Collective Bargaining Agreements relating to any present or former employee of TWA to provide that (i) scope, successorship, and benefits provisions of the Collective Bargaining Agreements are not applicable to or being assumed by Purchaser as part of or as the result of the transactions contemplated by this Agreement, and (ii) consummation of the transactions contemplated by this Article X will

[5] **Anderson stated that the TWA LLC operating certificate was formally retired in August, 2004. [TR 163]**

not violate or breach in any manner any provision of any Collective Bargaining Agreement (collectively, the "CBA Amendments").

* * * *

10.5 Tax Reporting. If requested by Purchasers, Purchaser, TWA and each other Seller agree that, pursuant to the "Alternative Procedure" provided in Section 5 of the Revenue Procedure 96-60, 1996-2 C.B. 399, (i) Purchaser, TWA and each other Seller will report on a predecessor-successor basis as set forth therein, (ii) TWA and each other Seller will be relieved from filing a Form W-2 with respect to any employee of TWA and each other Seller who accepts employment with Purchaser, and (iii) Purchaser will file (or cause to be filed) a Form W-2 for each such employee for the year that includes the Closing Date (including the portion of such year that such employee was employed by TWA or any other Seller). TWA agrees to provide Purchaser with all payroll and employment-related information reasonably requested by Purchaser with respect of each employee of TWA and each other Seller who commences employment with Purchaser. [ALPA Exhibit 15]

Pursuant to Article 10.1 of the Asset Purchase Agreement, AA rejected a handful of TWA pilots for AA employment. For example, AA refused to employ former TWA pilot Susan Smith because she had previously been terminated from AA.[6] Smith did not prevail in a suit she brought against AA challenging AA's decision to refrain from employing her subsequent to AA's purchase of TWA's assets. *Smith v. American Airlines, Nos. 04-1405 and 04-1757 (8th Cir. 2005)* [ALPA Exhibit 5]

B. The Addition of Former TWA Pilots to the AA Seniority Roster

On November 8, 2001, AA and APA entered into Supplement CC in anticipation of integrating the former TWA pilots into the AA seniority list. Anderson declared that in late 2002 and early 2003, TWA LLC pilots were either furloughed or transferred to AA. [TR 163-164] Anderson elaborated that both groups of former TWA pilots were

[6] Apparently, AA deemed Smith and six other former TWA pilots ineligible for AA employment pursuant to the first sentence of Article 10.1. [ALPA Exhibit 3]

integrated into the AA seniority list per Supplement CC which also established a protected cell at St. Louis for the former TWA pilots. [TR 165]

On March 5, 2002, the NMB adjudged that AA and TWA LLC operated as a single carrier for purposes of Union representation. *45 U.S.C. §152, Ninth, Section 2.* On April 3, 2002, the NMB certified APA as the exclusive bargaining representative for the class and craft of cockpit crew members on AA. [AA Exhibit 1] Consequently, April 3, 2002 became the implementation date specified in Section I.G of Supplement CC. [Joint Exhibit 3; AA Exhibit 1]

APA and AA constructed a modified (post acquisition) AA pilot seniority list. As described in Supplement CC, Section II.A, the former TWA pilots were integrated into the AA seniority list according to the 1:8 ratio between the specified hire dates. Camus was the last former TWA pilot incorporated into the seniority roster as a product of the 1:8 ratio. Pursuant to Supplement CC, Section II.B, the remaining former TWA pilots, commencing with Clark, were consecutively appended to the bottom of the AA seniority roster in the order of their TWA seniority. These pilots became known as the "Staplees". [TR 130; ALPA Exhibit 11] David Ryter, ALPA MEC Vice Chair at AE, counted 167 former TWA pilots integrated into the AA seniority list pursuant to the 1:8 ratio and 1,225 former TWA pilots stapled to the bottom of the AA seniority list. [7] [TR 126] Ryter also pointed out that five flow through AE CJ Captains appear on the seniority list immediately below former TWA Pilot Stremler and another group of fifteen AE flow through pilots with AA seniority numbers appear in the midst of the staplees. [ALPA Exhibit 11; TR 127] The staplees plus several junior former TWA pilots integrated into

[7] **Ryter deduced, and the AA seniority roster demonstrates, that the date in the column "date of hire" lists the particular pilot's date of hire with TWA. [ALPA Exhibit 11; TR 145]. According to Ryter, 13,992 pilots are listed on the AA seniority roster. [TR 130; ALPA Exhibit 11]**

the AA seniority list according to the 1:8 ratio were furloughed directly from TWA LLC and thus, they did not perform any training or active service at AA. [ALPA Exhibit 11] Ryter explained that former TWA Pilot Stremler, who was one of the pilots integrated into the AA roster by the 1:8 ratio, was the most junior former TWA pilot that AA trained. [TR 116] Ryter further explained that every former TWA pilot junior to Stremler was furloughed directly from TWA LLC and never worked at AA. [TR 118-119]

Brian Sweep, ALPA MEC Grievance Chair at AE, declared that the integration of former TWA pilots into the AA roster did not generate AA seniority numbers for any AE CJ Captains. [ALPA Exhibit 11; TR 156].

C. The Furlough of AA Pilots After September 11, 2001

At the time that AA and APA constructed the post-acquisition AA seniority list, Supplement CC, Section V.A prevented former TWA pilots, furloughed at AA, from flowing down to AE. [Joint Exhibit 3]

Ryter testified that, after the former TWA pilots were added to the AA seniority list but prior to Letter OO, some previously furloughed AA pilots were recalled to service causing the furlough of several former TWA pilots. [TR 148] Ryter stressed that these former TWA pilots did not have access to Section IV of Letter 3/Supplement W because former TWA Pilot Viele, who is expressly mentioned in Supplement CC, Section V.A, had not been given notice of a recall from furlough. [TR 150] Ryter declared that AA furloughed about 1,000 pilots between late 2001 and May, 2003 which raises the reasonable inference that the possibility of Viele receiving a recall notice was miniscule, if not nil. [TR 151]

Prior to the cataclysmic and tragic September 11, 2001 attacks which precipitated gigantic upheavals in the airline industry, a substantial number of AE CJ Captains received AA seniority numbers pursuant to Section III of Letter 3/Supplement W. [AE Exhibit 1] A large group of AE CJ Captains, who apparently received AA seniority numbers almost coincident with September 11, 2001, have yet to "physically" go to AA. [TR 128] William Couette, an AE CJ Captain, was aware that AE CJ Captains flowed through to AA after TWA LLC was established but before the September 11, 2001 attacks, inasmuch as AA was hiring pilots off the street. [TR 109]

On May 1, 2003, APA and AA entered into the Restructuring Agreement with attached Letter OO. Ryter related that, for those former TWA pilots furloughed from AA after May 2003, Paragraph 10 of Letter OO abolished the prohibition contained in Section V.A of Supplement CC. [TR 148, 151] Sweep testified that, commencing in late 2003, some former TWA pilots flowed down to AE from AA. [TR 154-155] Sweep emphasized that allowing the former TWA pilots access to Section IV of Letter 3/Supplement W had "everything" to do with ALPA filing the instant grievance because the former TWA pilots henceforth displaced AE pilots. [TR 155] AA furloughed 672 pilots between May and August, 2003 and the bulk of these were former TWA pilots. According to AE, 174 of the 368 pilots who flowed down to AE were former TWA pilots.[8] Most of the AA furloughees were former TWA pilots and more than 400 attempted to flow down to AE. [9]

The *Bloch Decision* held that Section IV of Letter 3/Supplement W does not distinguish among the furloughees based on how they came to AA. Arbitrator Bloch

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[8] **American Eagle Airlines Post Hearing Brief at P. 8.**
[9] **ALPA Post Hearing Brief at P. 21. Presumably, more former TWA pilots would have actually flowed down to AE but for the cap in Section IV.A of Letter 3/Supplement W.**

concluded that the former TWA pilots were "fully" qualified, furloughed AA pilots and so, they were eligible to utilize the flow down provisions in Section IV.B of Letter 3/Supplement W. [ALPA Exhibit 9]

D. Training Former TWA Pilots

Christopher Broom, Managing Director of AA Flight Training Operations, extensively described the training that AA provided to some (but far from all) of the former TWA pilots.[10] At the onset, Broom related that AA developed the training program pursuant to *FAA Order 8400.10* and the FAA approved the training. [TR 40, 48, 63]

The "Prerequisites", for entering TWA training, enumerated at pages 5 and 6 of the AA Advanced Qualification Program, state:

> Candidate is a cockpit crewmember or instructor who is currently or was previously qualified in their respective duty position at TWA LLC and is transferring to American Airlines into the same or different duty position.
>
> NOTE: Completion of the TWA Indoctrination course by TWA LLC crewmembers and instructors will satisfy all requirements for new hire indoctrination into American Airlines (Basic Indoctrination), First Officer Initial Upgrade, Initial Security, and Initial Hazardous Materials training. [ALPA Exhibit 16]

Chapter 1, Section 1 of AA's Approved Training Manual describes pilots who must complete initial new hire training as well as transition training. Section 1.I.B.1 provides:

> INITIAL NEW-HIRE Training: This training category is for personnel who have not had previous experience with American Airlines (AAL) (newly-hired personnel). It also applies to personnel employed by AAL who have not previously held a crewmember or dispatcher duty position with AAL. It also applies to flight attendants and dispatchers employed by AAL who have not previously held a flight crewmember duty position with AAL. Initial new-hire training includes basic indoctrination training

[10] **As noted earlier, Pilot Stremler was the most junior TWA pilot who completed AA training.**

> and training for a specific duty position and aircraft type. The training for a specific duty position and aircraft type is equivalent to "Initial Equipment Training". Since initial new-hire training is usually the employee's first exposure to specific company methods, systems, and procedures, it is the most comprehensive of the six categories of training. For this reason, initial new-hire training is a distinct separate category of training and should not be confused with "initial equipment training". When AAL hires crewmembers with previous Part 121 operator experience, abbreviated curriculum segment outlines for initial new-hire training may be used, if approved. [ALPA Exhibit 17]
>
> Section 1.I.B.3 states:
>
> TRANSITION Training: This category of training is for an employee who has been previously trained and qualified for a specific duty position by AAL and who is being assigned to the same duty position on a different aircraft type. If the transitioning crewmember has been previously qualified on that aircraft in another crewmember position, the ground and emergency training segments are abbreviated based on the length of time elapsed since the crewmember was quailed and current on the aircraft. [ALPA Exhibit 17]

Broom compared the training that AA provides to a pilot hired off the street with the training it gave to the former TWA pilots. Broom testified that AA treated the former TWA pilots different than pilots AA hired off the street because the FAA allowed AA to specifically tailor the training to address the needs of the former TWA pilots.[11] [TR 47-49] Broom testified that the flight training for former TWA pilots consisted of sixteen days of flight academy plus a minimum of ten hours operating experience while the training program for a pilot hired off the street consisted of thirty-seven days in the flight academy and a minimum of twenty-five hours operating experience. [AA Exhibits 2 and 3; TR 41-42, 49-50] Broom declared that the training program for the former TWA pilots included five days of indoctrination. Broom denied that TWA indoctrination was equivalent to basic indoctrination. [AA Exhibit 2; TR 52] Broom testified that, if a

[11] **While the record is not entirely clear, AA apparently incorporated the TWA training into the AA Advanced Qualification Program.**

former TWA pilot switched aircraft, the pilot received the same type of transition training as if an AA pilot changed aircraft. [TR 59]

Broom emphasized that AA could not shorten the training for AE pilots, who flow up to AA, even if, hypothetically, the pilot were to fly the same aircraft at AA as the pilot flew at AE. The AE pilots undergo the same training as pilots AA hires off the street. [TR 61-62]

Broom declared that, if a pilot furloughed from TWA LLC was called up to active service from the AA seniority list, the kind of training afforded the pilot would depend on the length of time the pilot has spent on furloughed status. [TR 60] Broom explained that these pilots would qualify for TWA indoctrination but the amount of ground and flight training would be contingent on whether the pilot was currently qualified as a Captain or First Officer.[12] Broom elaborated that, if not currently qualified, the pilot would receive the same ground and flight training that AA provides to a pilot hired off the street. [TR 60]

E. Negotiating History

In 1997, APA and AA bargained over the contentious issue of who would fly commuter (regional) jets. [*Kasher Decision* TR at 83] The two parties negotiated the rough parameters of a flow-through, flow-back arrangement which was labeled the "Final, Final Final, Final Proposed Tentative Agreement" dated March 17, 1997. This tentative agreement provided that every third "new hire vacancy at AA" will be offered to an AE CJ Captain (subject to a minimum amount of experience). [APA Exhibit 11 in the *Kasher*

[12] **Anderson understood that if AA called a former TWA pilot from furlough, AA would not put the former TWA pilot through the same training as a pilot AA hires off the street because "the training is different in terms of indoctrination". Anderson's testimony was largely based on his understanding of Broom's testimony. [TR 175-176]**

Decision] APA and ALPA then quickly negotiated, outside the presence of AA and AE, the ultimate provisions of a flow-through, flow-back agreement.[13] Couette, an ALPA negotiator, and then APA Vice President Ralph Hunter participated in the March 1997 bargaining. [TR 83-84]

During the March 1997 negotiations, APA and ALPA adopted an ALPA proposal that AE pilots were entitled to flow up to AA on the basis of one out of every two "new hire positions" at AA. [APA Exhibit 17 in *Kasher Decision*] Couette testified that the ALPA negotiators successfully sought to change the term "vacancy" to "position" to be "more specific" because "position" would mean a "job". [TR 92] Couette distinguished a "position" from a "vacancy" in that the latter would "... be something put out for bid." [ALPA Exhibit 13; TR 91-92] Couette explained that the negotiators discussed AA growth with the recognition that the industry goes through cycles of "high points and low points of hiring." [TR 106] Couette also related that the ALPA negotiators examined the AA seniority list to forecast the number of upcoming retirements which would determine how many AE pilots "... were going to be able to go over to that seniority list at AA". [TR 106]

Couette and Hunter concurred that the negotiators did not discuss an AA merger or acquisition. Couette acknowledged that the ALPA negotiators never announced to the APA negotiators that Section III.A would cover pilots added to the AA seniority list in any way, including a merger. [TR 105]

[13] **APA and ALPA negotiated in Washington, DC during forty-eight hours in March 1997. [TR 83]**

Couette declared that Letter 3/Supplement W is instilled with a risk verses reward principle. Couette explained that the opportunity for an AE pilot to go to AA is the reward while an AE pilot's exposure to possible displacement by an AA pilot in the event of an AA furlough is the risk. [TR 85]

In his October 23, 2006 declaration, Hunter acknowledged that the APA negotiators understood that ALPA perceived that Letter 3/Supplement W contained a balance of risk and reward. Hunter claimed that, but for the September 11, 2001 attacks, AE pilots might have had enjoyed more opportunities to flow up to AA (i.e. greater rewards) due to the increased retirements resulting from the addition of the older, former TWA pilots to the AA seniority list. Hunter asserted that it was never APA's intent to provide AE pilots "... with any proportion of the jobs at an airline brought into AA through merger or acquisition." Hunter declared that the ALPA negotiators never informed the APA negotiators that ALPA was seeking such a right. Hunter also declared that the former TWA pilots were not treated like new hire pilots. He elaborated that, in accord with Supplement CC, the former TWA pilots received integrated seniority, special bidding rights and other privileges that are never afforded to pilots hired off the street.

Couette stated that Section 1.C of the ALPA/AE Basic Agreement governs how AE and ALPA integrate pilots into the AE seniority list should AE acquire another air carrier. Couette similarly related that Section 13 of the Basic Agreement provides how new pilots are added to the AE seniority list. [TR 96-97] Couette declared that, based on the two agreement provisions, a pilot added to the AE seniority list via acquisition is a different "animal" from a pilot hired off the street. [TR 100]

F. AA's Acquisition of Reno Air

Broom testified that AA acquired Reno Air in early 1999. By August 1999, the former Reno Air pilots had completed AA training.[14] [TR 55] Broom declared that the former Reno Air pilots received Reno Air indoctrination as opposed to the basic indoctrination provided to pilots AA hired off the street. [TR 64] The former Reno Air pilots spent eight days in the flight academy consisting of five days of Reno Air indoctrination, two days of MD 80 (aircraft) ground training and one day of MD 80 flight training. No operating experience was required. [AA Exhibit 4] Broom explained that, upon their transfer to AA, the Reno Air pilots stayed in the "exact airplanes" that they had been flying. [TR 64] Broom also stated that, like the TWA training, the FAA approved the special training program for Reno Air pilots. [AE Exhibit 4; TR 63]

Ryter acknowledged that the merger of Reno Air pilots into AA did not generate any seniority numbers for AE flow through pilots. [TR 152] Ryter related that, in 1999, all eligible AE flow through pilots received AA seniority numbers because AA was hiring pilots off the street "at such a rate" that no AE pilots were delayed in receiving an AA seniority number. [TR 140, 152] Ryter concluded that the addition of the Reno Air pilots to the AA seniority roster did not harm any AE pilot. [TR 152]

G. Terminology

Anderson, who has worked for various air carriers since 1975, commented that the term "new hire" means a pilot hired off the street. [TR 171-172] Anderson claimed that based on his experience in the industry, pilots coming to an airline by merger are not considered to be pilots hired off the street. [TR 172]

[14] **Broom was the flight training leader on the Reno Air pilot training program. [TR 54]**

Broom stated that his understanding of the term "new hire pilot" is "hiring people to come work for your airline". [TR 73] Broom testified that he has frequently heard the term "new hire pilot" and he invariably understood that the term to referred to hiring "somebody off the street." [TR 73-74]

Couette understood that the words "new hire" refers to someone "... taking a new position at American" or "people that were hired and added onto the AA seniority list". [TR 94, 104]

IV. POSITIONS OF THE PARTIES

A. The Position of the Air Line Pilots Association

Letter 3/Supplement W does not define the term "new hire" or the phrase "new hire position." Absent a contractual definition, the definition of a "new hire pilot" in *FAA Order 8500.10,* which is widely accepted throughout the airline industry, demonstrates the meaning of "new hire" in Section III.A. Technical terms must be given their technical meaning when used within the technical field. *Restatement (2d) of Contracts (1979), §202(3)(b).* Couette confirmed the industry usage of "new hire" refers to someone taking a new position at AA. Among the categories listed in *Chapter 2* of *FAA Order 8500.10* is "initial new hire" training. *Chapter 2* explicitly states that initial new hire training is for a pilot who has not had "previous experience" with the carrier. Subsection G (1) goes on to provide that the initial new hire training is for all personnel not previously employed by the airline. Indeed, AA's own Training Manual adopts the FAA definition of a new hire pilot by applying "initial new-hire training" to pilots who have not had prior flying experience at AA. The former TWA pilots did not have any

"previous experience" with AA and so, they were new hire pilots. The definition of "new hire pilot" in *FAA Order 8500.10* is the most reliable source for defining the term "new hire" in Section III of Letter 3/Supplement W.

Also, since the negotiators of Letter 3/Supplement W were well acquainted with the airline industry's specialized vocabulary, they understood and adopted the "new hire" definition set forth in *FAA Order 8500.10*.

Besides defining a new hire pilot, *FAA Order 8500.10* requires a pilot coming to an airline to undergo basic indoctrination. It is recognized throughout the industry that all new pilots must successfully complete basic indoctrination. *Air Line Pilots Association vs. FedEx, Inc.; Grievance 05-01 (LaRocco, 2006)* While Broom claimed that the former TWA pilots did not undergo new hire basic indoctrination, his testimony is contrary to both *FAA Order 8400.10* and AA's own Advanced Qualification Program. Both mandated that the former TWA pilots complete basic indoctrination. The length of the indoctrination was shortened for the former TWA pilots, with approval of the FAA, since a merger or acquisition requires only operator specific training modules. Abbreviating the length of basic indoctrination does not alter the fact that the former TWA pilots were compelled to successfully complete basic indoctrination at AA, just as a pilot AA hires off the street must complete basic indoctrination.

Next, AA treated the former TWA pilots just as it would treat any other group of pilots arriving at AA. AA screened the TWA pilots and it elected not to hire all the TWA pilots. Those that AA hired began their service for the carrier like any new pilot per Section 13.A of the APA/AA Basic Agreement. The pilots AA employed were clearly

"new hire pilots". Letter 3/Supplement W does not contain any exception for pilots that AA hires during a merger or acquisition. The *Delta* case, on which APA relies, actually supports ALPA's position. The court in *Delta* referred to the custom in the industry of placing "newly hired pilots" at the bottom of an airline seniority list regardless of the length of service that the pilot may have had with other airlines. Therefore, prior experience at TWA does not alter the fact that the former TWA pilots were "newly hired" when they came to AA.

Most of the former TWA pilots were stapled to the bottom of the AA seniority roster and simultaneously placed on furloughed status. They never attended an AA training class. If these pilots accept a future recall and are trained, they will be AA new hires and so, they must generate seniority numbers for AE CJ flow through Captains.

ALPA's interpretation of Letter 3/Supplement W is logical and equitable. Conversely, APA's and AA's interpretation of Letter 3/Supplement W is illogical and inequitable. The core principle of Letter 3/Supplement W was to reward AE CJ flow through pilots as the AA seniority list grew in exchange for exposing themselves to the risk of being displaced by AA furloughees. The former TWA pilots qualified for furlough protection pursuant to the *Bloch Decision*. It is eminently equitable that, since the former TWA pilots can access the flow back provisions of Section IV of Letter 3/Supplement W, the addition of the former TWA pilots to the AA seniority list entitled AE CJ flow through Captains to receive AA seniority numbers under Section III of Letter 3/Supplement W. One entitlement cannot be fairly sustained without the other. Stated differently, if the former TWA pilots are included in Section IV they cannot be excluded from Section III. Indeed, AA and APA created this controversy by lifting the restriction,

originally contained in Supplement CC, which prevented former TWA pilots from procuring employment at AE. Under the APA's and AA's inequitable interpretation of Section III, the former TWA pilots receive furlough protection at the expense of AE pilots while the AE pilots receive nothing in return even though the former TWA pilots substantially expanded the AA seniority list. Consequently, the AE pilots unreasonably absorbed two hits. The addition of the TWA pilots resulted in an increase in the number of AA furloughees displacing AE pilots and significantly reduced future employment opportunities for AE pilots at AA. Surely, the parties did not intend for the application of Letter 3/Supplement W to result in the forfeiture of the reward embedded in the core principle. Applying Section III of Letter 3/Supplement W in conformity with ALPA's interpretation will avoid a harsh result and the forfeiture of AA seniority. *Ruben, A.M. et al., Editors, Elkouri & Elkouri, How Arbitration Works, 6th Ed.(BNA 2003) at 482-484.* Both are ameliorated by providing AE CJ flow through Captains, on a 1 to 2 basis as specified in Section III.A, with AA seniority numbers. ALPA's interpretation preserves the core principle resulting in a balanced, rational application of Letter 3/Supplement W.

During negotiations over Letter 3/Supplement W, the APA negotiators not only understood, but also they agreed to, the risk equals reward principle. ALPA successfully changed "vacancies" to "positions" to prevent any misinterpretation that Section III.A applied only to jobs that must be advertised for bid. The term "position" equates to any cockpit assignment regardless of how the job is established at AA. The modification from "vacancies" to "positions" renders Hunter's declarations speculative and argumentative. Hunter persistently uses the term "vacancies" despite the presence of the word "positions" in Section III. Hunter also wants to add the phrase "off the street" to

describe new hires in Section III. Hunter acknowledges that the definition of new hires was not discussed and thus, the language in Letter 3/Supplement W does not substantiate his speculation that the parties intended for a new hire pilot to be limited to a pilot AA hires off the street. Hunter nonetheless concedes that AE pilots are entitled to AA positions established as a result of AA fleet expansion which is exactly what happened when AA acquired aircraft from TWA LLC.

If the parties intended for Letter 3/Supplement W to exclude the former TWA pilots from Section III, APA bears the burden of proving that the four parties intended to exclude them. APA did not meet its burden of proof. Moreover, the parties could not foresee every future event, including an acquisition, and thus, Letter 3/Supplement W establishes the framework to deal with a broad range of not necessarily anticipated future events. *Ruben, A.M. et al., Elkouri & Elkouri, How Arbitration Works, 6th Ed. (BNA 2003) at 441-442.*

AA's acquisition of Reno Air did not constitute a proven or relevant past practice. In 1999, all eligible AE CJ flow through Captains timely received AA seniority numbers. The AE pilots did not suffer any harm. Thus, the Reno Air situation was wholly different from AA's purchase of TWA's assets where a large number of AE CJ Captains incurred a seniority forfeiture.

ALPA petitions the Arbitrator to answer yes to the first issue.

B. The Position of American Eagle Airlines

Letter 3/Supplement W provides AE CJ flow through Captains with one out of every two positions at AA which reflects that the AE Captains staked a position on AA's threshold to guarantee that they would be the first pilots through AA's front door. In exchange for being rewarded with preferential AA employment, these AE pilots assumed the risk of being displaced in the event of an AA furlough. AA and APA improperly seek to abandon this central principle of Letter 3/Supplement W by permitting former TWA pilots to flow down to AE while simultaneously barring eligible AE pilots from obtaining AA seniority numbers based on AA's hiring of the former TWA pilots. The TWA pilots gained extraordinary protection from the adversities of a furlough, and now, APA wants to eliminate the rights of AE pilots to flow up to AA. APA and AA unreasonably seek to strip the AE flow through pilots of job security which would turn the risk verses reward principle on its head. The AE pilots rightly reap AA employment opportunities because they sacrificed a degree of job security. By failing to provide AE pilots with AA seniority numbers when AA hired twenty-five hundred TWA pilots, the benefits for AE pilots evaporated while the risk was heightened. The APA argues that if the former TWA pilots had not flowed down to AE, pre-acquisition AA pilots would have been furloughed and displaced to AE positions. However, APA ignores the magnitude of the furloughs due to AA seniority list growth generated by the former TWA pilots. Thus, AE pilots suffered greater risk while losing any possible chance at the reward. AE urges the Arbitrator to reinstate the risk and reward balance that is the foundation of Letter 3/Supplement W.

The FAA required the former TWA pilots to complete initial new hire training at AA which demonstrates that they were new hire pilots filling new hire positions. *FAA Order 8400.10, Chapter 2, Section 1, Paragraph 289* mandates that initial new hire training include basic indoctrination which introduces new crew members to AA's operations. While *Paragraph 371* of *FAA Order 8400.10* allows for a reduction in the length of basic indoctrination for the initial hiring of merger/acquisition pilots, the indoctrination is still basic, i.e. it is still given to all pilots who have never before worked for AA. The former TWA pilots underwent basic indoctrination because they were initial new hire pilots.

Broom and Anderson merely gave their personal understanding of the term "new hire" as opposed to an industry attribution of the term. Absent evidence of a special trade meaning, the FAA definition becomes the technical and appropriate meaning for the term "new hire". It is a pilot who has never been employed at AA which obviously encompassed the former TWA pilots.

The plain meaning of the word "new hire" in Section III of Letter 3/Supplement W embraced the former TWA pilots. Inasmuch as Letter 3/Supplement W does not define "new hire" pilots, the term must be given its ordinary and popularly accepted meaning. Merriam-Webster's Online Dictionary defines "new" as having recently come into existence; having been seen, used, or known for a short time; different from one of the same category that has existed previously; and, beginning as the resumption or repetition of a previous act or thing. [www.M-W.com/dictionary/new] This definition precisely describes the former TWA pilots.

Next, nothing in Letter 3/Supplement W restricts the meaning of "new hire" to a pilot employed off the street. The term appropriately fits any pilot who accepts employment with AA. None of the former TWA pilots were previously employed by AA. AA exercised discretion by screening the TWA pilot group to determine who AA would hire just as it screens any applicant pool.

The context of the term "new hire" in Letter 3/Supplement W supports ALPA's interpretation of the term. Phrases such as "new hire positions" and ""new hire class" appear eighteen times in Section III of Letter 3/Supplement W. Under the recognized application of Section III, AE pilots transfer to AA just like the former TWA pilots transferred to AA. The term "new hire" obviously has a multi-faceted meaning and so the term must be broadly applied. *Kitty Hawk Air Cargo, 122. Lab. Arb. Rep. (BNA) 979, 985 (Vernon, 2006).*

The former Reno Air pilots were also new hire pilots when AA acquired Reno Air, but ALPA did not waive its argument in this case by not grieving in 1999. At the time that AA hired the Reno Air pilots, it was also hiring pilots off the street in sufficient numbers to permit all eligible AE CJ Captains to flow up to AA and be assigned AA seniority numbers. Any grievance would have been rendered moot.

The negotiating history supports ALPA's interpretation of Section III.A of Letter 3/Supplement W. During the March 1997 negotiations, ALPA negotiators purposely replaced "vacancy" with "position". In airline parlance, "vacancy" refers to a job that is routinely put out for bid. Conversely, "position" means all existing jobs. Therefore, the

former TWA pilots occupied positions which placed them within the coverage of Section III.A

APA and AA apparently concede the prospective issue, that is, they admit that the staplees have not yet been hired by AA since they were furloughed directly from TWA LLC. Thus, the staplees will generate seniority numbers for AE flow through CJ Captains when the staplees fill future AA positions.

In conclusion, the AE submits that ALPA satisfied its burden of proof.

C. The Position of the Allied Pilots Association

The contention by ALPA and AE that the four parties intended that one-half of the jobs of another air carrier brought into AA would go to AE pilots is patently implausible. The record does not contain any evidence that the negotiators of Letter 3/Supplement W ever considered such a proposition. Most significantly, granting AE pilots one-half of the jobs added to AA as a result of the TWA acquisition would unfairly give AE pilots priority over the former TWA pilots to the jobs they previously held at TWA. Inasmuch as the TWA pilots came to AA along with their positions, they were not "new hire" pilots and those positions were not "new hire positions". The transitioning of the pilots of an acquired carrier into AA would encounter an enormous, insurmountable obstacle if AE pilots had a right to one-half of the positions brought to AA. The obstacle would be a poison pill to future mergers and acquisitions. Nothing in Letter 3/Supplement W suggests that AE pilots have any role in the complexities of integrating an acquired or merged air carrier into AA. ALPA's position is void of any equity and grossly understates the cost to AA since ALPA seeks to place about two hundred thirty-

eight AE pilots in line for AA jobs ahead of furloughed former TWA pilots who have not received any benefit from Letter 3/Supplement W.

The term "new hire positions" has a specialized meaning in the airline industry. Airline labor relations veterans understand that "new hire positions" are filled by pilots being employed "off the street". Broom and Anderson confirmed this understanding. The understood meaning is implicitly found in the ALPA/AE Basic Agreement which distinguishes between a pilot hired off the street and a pilot coming to AE via merger. Section 1.C of the ALPA/AE Agreement provides separate handling for pilots coming to AE via merger. Section 13, which governs how a new hire pilot is assigned AE seniority, does not contain any language addressing a merger or acquisition because the industry definition of a "new hire pilot" excludes pilots coming to AE (or any other air carrier) via merger or acquisition. Thus, ALPA's claim that the trade meaning of a new hire pilot is covered in *FAA Order 8400.10* is inconsistent with the ALPA/AE Basic Agreement. Moreover, there is not any presumption that the parties adopted *FAA Order 8400.10* to define "new hire". Indeed, such a presumption cannot reasonably arise in light of the language in Sections 1.C and 13 of the ALPA/AE Basic Agreement which plainly contradicts *FAA Order 8400.10*.

At the hearing, an ALPA negotiator conceded that a pilot coming to AA via a merger and a pilot hired off the street were two different animals. Simply put, a pilot joining a seniority list by merger is not the same as a new hire pilot. *Abdu-Brisson v Delta Airlines, Inc.; 239 F. 3d 456, 462-463, 469 (2d Cir. 2001).*

There is a wealth of evidence that the parties excluded merger/acquisition pilots from Section III of Letter 3/Supplement W. When the provisions of Letter 3/Supplement W are read as a whole, it becomes clear that the arrangement was not intended to apply to mergers or acquisitions. In particular, Section III.B provides seniority numbers for AE pilots unable to go directly to AA due to a training freeze or AE operational constraints. Section III.B does not mention the special, transition type training given to the former TWA pilots because such training would not apply to AE pilots. Broom emphasized that the training for TWA pilots was substantially shorter than training AA provides to pilots hired off the street and to AE pilots. In addition, Section III.G provides that AE pilots obtain a particular seniority number based on the lowest number in a training class. This seniority establishment becomes nonsensical if applied to a merger or acquisition. The former TWA pilots acquired AA seniority according to the terms of Supplement CC as opposed to their participation in any training class.

Assuming, *arguendo*, that some ambiguity appears in Letter 3/Supplement W, the extrinsic evidence clearly shows that Letter 3/Supplement W does not apply to pilots acquired by merger or acquisition. More significantly, because any ambiguity is traceable to an ALPA negotiating proposal, the ambiguity must be construed against ALPA's position. During Letter 3/Supplement W negotiations between APA and ALPA, the latter changed the term "vacancy" to "position" in Section III but the ALPA negotiators never announced that the change was intended to cover a merger or acquisition. To the contrary, ALPA acknowledged that the negotiators never discussed a merger or acquisition. Everyone understood that the term "vacancies" would necessarily exclude merger and acquisition pilots. Therefore, the ALPA negotiators were under a

duty to disclose that the change from "vacancies" to "positions" was intended to encompass pilots coming to AA in a merger and acquisition to avoid any future misunderstanding or ambiguity. Rather, the obvious purpose of the change from "vacancies" to "positions" was to ensure that an AE pilot would not have to bid for a vacancy as a condition of coming to AA.

Other evidence of the negotiating history demonstrates that Section III of Letter 3/Supplement W was not intended to cover pilots employed by AA as a result of a merger or acquisition. Couette acknowledged that, during negotiations, ALPA calculated the likely reward to AE pilots by forecasting upcoming AA retirements. If the term "new hire positions" included merged pilots, the ALPA negotiators would have forecasted a much greater reward for AE pilots. Yet, now ALPA improperly seeks to force AA to render one-half of the pilots acquired by the TWA asset purchase superfluous by offering the incoming positions to AE pilots. Even if one is persuaded by ALPA's risk verses reward argument, there is not any justification for expanding the preferential hiring rights for AE pilots to positions brought into AA by the TWA acquisition. Moreover, ALPA's argument that AE pilots must enjoy the rewards of Section III ignores that the risk (Section IV) side of the so-called risk verses reward balance was not increased. The cap on the number of AA pilots flowing down to AE is unrelated to the size of the AA cockpit workforce. Rather, the cap is determined by the mix of Eagle rights pilots within the class of AE CJ Captains. Furthermore, AE pilots might accrue greater rewards in the future as a result of the TWA acquisition because the expansion in the number of AA positions will, upon retirements and resignations, make more positions available for AE flow up pilots. In sum, the negotiating history does not support ALPA's position.

Rather, the bargaining history demonstrates that Section III does not apply to pilots arriving at AA in conjunction with a merger or acquisition.

APA petitions the Arbitrator to answer the first issue in the negative.

D. The Position of American Airlines

ALPA strives to give "new hire" an unprecedented, unfounded and novel meaning. In essence, ALPA wants to foment a flood of AE pilots flowing up to AA. Neither the language of Letter 3/Supplement W nor the negotiating history indicates that the parties understood that the term "new hire" would apply to AA's acquisition of TWA. Thus, the transition of TWA pilots to AA did not create seniority list opportunities for AE flow through CJ Captains.

Although Letter 3/Supplement W does not contain a definition of "new hire positions", the former TWA pilots were not "new hire" pilots since AA did not employ them to fill vacancies. Moreover, if any entity hired the former TWA pilots, it was TWA LLC which was not a party to Letter 3/Supplement W. The Asset Purchase Agreement, on which ALPA relies, was executed well before the establishment of TWA LLC and prior to Supplement CC. Moreover, the former TWA pilots that eventually transitioned to AA did so with their TWA LLC jobs and TWA aircraft. Nevertheless, the AA seniority list demonstrates that pilots transitioning from TWA to AA continue to have a date of hire reflecting their start of employment at TWA as opposed to when they came to AA. In contrast, a new hire pilot has a date of hire when first employed at AA.

The context and use of "new hire" in Letter 3/Supplement W shows that the term applies to a pilot who is hired to fill vacancies. Letter 3/Supplement W, Section III.J provides that the AE pilots flowing up to AA are "new hire" pilots because they may encounter operational hurdles at AE. Thus, the term "new hire" appropriately applies to AE CJ Captains but not pilots coming to AA via an acquisition who would never confront such operational obstacles.

A close reading of Supplement CC reveals that APA and AA never envisioned that integrating the seniority of former TWA pilots into the AA seniority roster would create flow up rights for AE pilots since the former TWA pilots did not fill vacancies subject to the system wide bidding process. Nevertheless, for the most part, the TWA pilots were relegated to St. Louis positions that were specifically fenced in for their benefit.

ALPA failed to present any evidence that the four parties intended for "new hire" to include AA's purchase of TWA assets. Although the word "vacancies" evolved into "positions" during bargaining, Couette admitted that the negotiators did not discuss a merger situation. Indeed, the Reno Air acquisition manifests a contrary intent, that is, merged pilots are excluded from the term "new hire". The real reason to change "vacancies" to "positions" during negotiations was to harmonize Section III with the rest of the sections in Letter 3/Supplement W because those sections uniformly used the word "positions".

AA did not treat the former TWA pilots as "new hire" pilots. Broom and Anderson explained not only that they received training different from pilots hired off the

street but also, they understood the term "new hire" to refer solely to pilots hired off the street. Because the pilots were already flying under AA rules at TWA LLC, the FAA permitted AA to create a flexible training program solely for the former TWA pilots. They underwent abbreviated TWA training rather than AA training for new hire pilots. The length of the training was substantially reduced for both basic indoctrination and flight training. AA may have used some portions of new hire training for the TWA pilot training but AA simply did not treat the former TWA pilots like new hires. Moreover, the definition of an initial new hire pilot in *FAA Order 8400.10* does not reflect that the parties' intended definition of a "new hire" pilot in Section III of Letter 3/Supplement W because the record does not contain any evidence that the negotiators ever considered the training documents during bargaining.

Next, AA's training and integration of the former TWA pilots was similar to the training and transitioning afforded to the former Reno Air pilots in 1999. Like the former TWA pilots, the former Reno Air pilots did not receive initial new hire training. Most importantly, no AE pilot received a seniority number as a result of the seniority integration of Reno Air pilots into the AA seniority list. Although AE CJ Captains did not flow up to AA as a consequence of the Reno Air acquisition, ALPA did not initiate any grievance challenging the practice.

The Arbitrator must reject ALPA's equity arguments. The arguments are not only factually erroneous but also distort the risk verses reward concept. ALPA exaggerates the risk side of the equation. Letter 3/Supplement W, Section IV places a limit on the risk exposure to AE pilots so that an increase in the number of pilots eligible for potential flow down from AA does not increase the risk of displacement for AE pilots. The cap

does not fluctuate according to the number of furloughed AA pilots, inasmuch as, once the maximum is reached, AA furloughees may only displace less senior AA furloughees as opposed to AE CJ Captains. Put succinctly, the number of AA furloughees is irrelevant to determining the degree of risk to AE pilots. In addition, ALPA's argument that the former TWA pilots, who flowed down to AE, increased the risk of displacement to AE pilots is wholly speculative. If not for the TWA acquisition, pre-acquisition AA pilots would have been furloughed and would have flowed down to AE resulting in the same number of AE pilot displacements.

In summary, Letter 3/Supplement W is wholly inapplicable to the transition of the former TWA pilots into the AA seniority list. The grievance must be denied.

V. DISCUSSION

Letter 3/Supplement W neither defines "new hire positions" and "new hire class" nor expressly addresses the addition of pilots to the AA seniority list when AA acquires another air carrier.

The absence of a definition implies that the parties believed that they readily and mutually understood the meaning of "new hire positions" eliminating any need for an express definition and they did not anticipate a major controversy concerning the application of the term. The silence about mergers and acquisitions in Letter 3/Supplement W is not particularly suggestive. The silence cannot be reasonably construed to either include or exclude acquisitions. One might expect such inclusion or exclusion to be expressly stated since, unlike the September 11, 2001 attacks, airline merger and acquisitions are foreseeable events.

Because of a dearth of contract language pinpointing the meaning of "new hire positions", other rules of contract construction control how Section III of Letter 3/Supplement W shall be applied. As will be discussed, these contract interpretation rules, in conjunction with circumstantial evidence, cumulatively demonstrate that Section III.A of Letter 3/Supplement W does not apply to positions coming into AA via a merger or acquisition and the inapplicability of Section III is limited to positions as opposed to the addition of persons to the AA seniority list.

To begin, the words in Section III.A of Letter 3/Supplement W must be given their usual and ordinary meaning. It is significant that the plural noun "positions" appears after the modifiers "new hire" in the opening clause of Section III.A "Positions" is repeated in the second sentence. Section III.A only uses "pilots" to refer to AE CJ Captains. The term "pilots" is not used to designate who AA is hiring. Thus, the characterization of a particular pilot as "new" or a "new hire" is important, but not the starting point, for interpreting Section III.A Rather, the focus is on the type of "position".[15] The phrase "new hire positions" strongly suggests that the position was not previously in existence for a "new hire". In other words, a "position" available for a "new hire" must materialize. Positions can have many origins. AA might establish a cockpit position because: it expands its system to new markets; introduces new aircraft; increases the frequency of its flight schedule; or, other similar operational change. Under these circumstances the position is truly new and may be available to a new hire. If an existing position becomes vacant and cannot be filled by AA forces, the position is likely

[15] **"New hire positions" must be somewhat distinct from "new hire pilots" otherwise the drafters of Section III.A would have written "pilots" to allude to who AA was hiring just as they used "pilots" to refer to persons coming from AE.**

available to a new hire. If, however, a position is transferred from a defunct air carrier to AA, the position was previously in existence and is not automatically available to a "new hire". Rights to these positions, which existed on another carrier, are predicated on negotiations surrounding the merger and acquisition. Clearly, the position is not akin to a position that opens up due to normal pilot attrition (including but not limited to resignations, retirements, disablements, etc.) or, as stated above, due to market expansion or fleet expansion. Also, the modifier "new hire" before "positions" in Section III.A, indicates that some positions may be excluded from the scope of Section III.A If the four parties wanted every position included within the ambit of Section III.A, the authors could simply and easily have written "any positions" instead of "new hire positions". Therefore, the literal language of Section III.A raises an inference that some "positions" may not trigger the flow up provisions of Letter 3/Supplement W. The language also suggests that positions coming to AA via a merger or acquisition may be properly categorized as a type of position beyond the scope of "new hire positions".

Next, Section I.C of Letter 3/Supplement W provides for the continuing application of the provisions in the parties Basic Collective Bargaining Agreements unless a provision in Letter 3/Supplement W conflicts with a provision in a Basic Collective Bargaining Agreement. If so, the former supersedes the latter. Absent any conflict, the terms of the Basic Agreements are controlling. The ALPA/AE Basic Agreement addresses mergers while Letter 3/Supplement W is silent on the subject. Section 1.C.1 and 1.C.2 of the ALPA/AE Basic Agreement separates the seniority establishment method for pilots coming to AE via merger or acquisition from pilots who come to AE to occupy positions created by AE operational changes or to fill attrition

caused vacancies. The ALPA/AE Basic Agreement provides that pilots coming to AE via merger may receive seniority and employment enhancements that are foreclosed to other pilots hired by AE. The fact that the ALPA/AE Basic Agreement affords preferential seniority treatment for merger related pilots as opposed to non-merger related pilots is a recognition by ALPA and AE that, the similar situation, that is, pilots arriving at AA via acquisition and merger, might be treated differently than other pilots for purposes of establishing AA seniority. Indeed, the former TWA pilots established seniority outside the parameters of Section III of Letter 3/Supplement W. They did not attain seniority according to the methodology similar to the seniority establishment provisions described in Section III.G of Letter 3/Supplement W or Section 13.B.2 of the ALPA/AE Basic Agreement. This circumstantial evidence raises the inference that the parties intended for the Basic Agreements to cover merger/acquisition positions and the seniority of those pilots filling the positions. The inference logically leads to a conclusion that "new hire positions" in Section III.A of Letter 3/Supplement W does not apply to positions coming into AA via merger or acquisition.

Next, when the phrase "new hire positions" in Section III.A is read in harmony and in context with the remainder of Section III, applying Section III.A to positions established at AA due to a merger or acquisition becomes problematic and borders on the nonsensical. As stated above, Section III.G specifically provides for the assignment of seniority numbers according to a pilot's position in a training class. The former TWA pilots, who occupied the positions at AA subsequent to the TWA acquisition, received their seniority by the methodology specified in Supplement CC. Thus, Section III.G did not cover these former TWA pilots. To give Section III internal consistency it logically

follows that Section III.A did not cover them. Section III.J alludes to the possibility of temporarily holding a flow through AE CJ Captain back at AE, without any diminution in compensation, for operational reasons. Section III.J refers to an AE CJ Captain in the singular, rather than the plural, which shows that Section III.J was not constructed to address a massive influx of AE CJ Captains from AE to AA. A merger could result in the addition of 1000 or more positions to AA. If these positions fell within the ambit of Section III.A, more than 500 AE flow through CJ Captains would flow up to AA which could strain the rational operation of Section III.J.

Therefore, when Section III.A is placed in context with the rest of Section III, the rule of always construing a contract reasonably leads to the conclusion that Section III.A does not apply to merger related positions.

Last, the AA training program developed for the former TWA pilots was hardly identical to training provided to AE flow through pilots or pilots commencing AA employment by other than a merger or acquisition. AA developed a training program to address the unique needs of the former TWA pilots. To begin flying at AA, the former TWA pilots did not undergo a lengthy basic indoctrination or a prolonged flight academy. Rather, they were specifically trained to continue to occupy the same kind of positions that they occupied at their former employer. The abbreviated training for the former TWA pilots who immediately occupied AA positions, demonstrates that the positions created as a consequence of the TWA acquisition cannot be properly characterized as "new hire positions".

ALPA argues that training for the former TWA pilots was legally classified as initial "new hire" training under *FAA Order 8400.10, Chapter 2, Section 1.* As already discussed, the training program was custom tailored to for the former TWA pilots. They did not attend the same kind of training classes that are afforded to AE flow through CJ Captains. Thus, the FAA Training Order is substantially broader than the language in Section III.A. Most importantly, ALPA did not cite any language which expressly or implicitly incorporated the FAA descriptions of new hire training into Letter 3/Supplement W. Nothing on the face of Letter 3/Supplement W even hints that the parties mutually understood that they would look to the *FAA Order* to describe a new hire position.[16] Therefore, the record is void of any evidence that the four parties intended to adopt the definition of "initial news hire" training in *FAA Order 8400.10* as the definition of "new hire positions" in Section III.A.

In sum, the Arbitrator utilized the following elementary rules of contract construction: the plain meaning of the words used in Section III.A; the application of Section 1.C.; the rule of reason; interpreting Section III.A within the context of Section III; and, the absence of any reference to *FAA Order 8400.10.* In addition, the circumstantial evidence of how the former TWA pilots were trained is also pertinent.

One of these elementary rules of contract construction, by itself, may not be sufficient to provide a definitive interpretation of Section III.A of Letter 3/Supplement W. But, when the rules are taken together, the cumulative effect clearly evinces that Section III.A is inapplicable to positions established at AA which were directly related to

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[16] **Indeed, *FAA Order 8500.10* refers to training pilots and does not precisely state what are "new hire positions".**

AA's acquisition of TWA. These positions were not "new hire positions" and so, the former TWA pilots who assumed active employment at AA and occupied positions coincident with the acquisition were not new hire pilots.

After the acquisition was consummated, the positions established at AA as a consequence of the acquisition, evolved into solely AA positions. Thus, the positions do not hold any special merger related status beyond their establishment at AA at the time AA purchased the assets of TWA. This distinction is critical. ALPA presented overwhelming evidence that many former TWA pilots, including several pilots subject to the 1:8 ratio in Supplement CC, neither performed any active service at AA nor were trained at AA. If and when positions are available at AA, the presence of a huge group of former TWA pilots (the staplees) on the AA seniority roster cannot interfere with the rational operation of Section III.A of Letter 3/Supplement W. Pilots who did not commence active employment at AA in conjunction with merger are equivalent to new hires because positions are no longer being established or filled due to the acquisition.[17] While Section III.A of Letter 3/Supplement W does not apply to positions established at AA exclusively due to a merger or acquisition, Section III.A applies to positions that are established or become vacant based on the causes previously enunciated in this Opinion, such as expansion of market, expansion of fleet and pilot attrition. In addition, if two of the four parties to Letter 3/Supplement W could simply append thousands of individuals to the bottom of the AA seniority list to place them ahead of AE flow through CJ Captains, two parties could effectively nullify the flow through provisions of Letter

[17] **The stapelees are identical to a large pool of successful applicants (for employment) since they will not obtain AA positions stemming from the TWA acquisition.**

3/Supplement W.[18] The parties do not enter into their intricate agreements with the expectation that entire sections will be rendered meaningless. Because Section III.A uses the term "positions", the former TWA pilots, who were never trained and who never occupied a position at AA, do not bar the operation of Section III.A as AA positions become available in the future.

To summarize, with regard to Issue No. 1, the term ""new hire positions" does not apply to positions that were established at AA as a direct result of AA's acquisition of TWA and does not apply to former TWA pilots who obtained positions at AA coincident with the acquisition. However, the exclusion from Section III of Letter 3/Supplement W does not extend to former TWA pilots added to the AA seniority list who did not obtain an AA position.

The Arbitrator is unable to draw a precise line on the AA seniority list where the division occurs. The Arbitrator delegates this task to the four parties. Suffice it to state, the parties are, of course, free to draw the line at any mutually agreeable location on the seniority list.

Inasmuch as the Arbitrator interpreted Section III of Letter 3/Supplement W according to elementary rules of contract construction, the Arbitrator did not consider evidence of negotiating history or any past practice. ALPA, AE, APA and AA also raise strong equitable arguments. ALPA and AE persuasively argued that the TWA acquisition distorted the delicate balance of the risk verses reward principle. APA and AA persuasively argued that applying Section III.A to pilots arriving at AA via merger or

[18] Such a machination would be completely contrary to the rule of reason in construing contracts.

acquisition would create an insurmountable obstacle to future mergers which could detrimentally harm not only AA and AE but also the pilots working for those two entities. The Arbitrator elects, within the parameters of this particular case, to refrain addressing these compelling equitable considerations especially since the Arbitrator did not resort to extrinsic evidence to interpret Section III.A. The Arbitrator notes that equities are best reserved for the parties to discuss at the bargaining table.

At the hearing, the parties prudently agreed that the remedy in this matter should be remanded to the property. Thus, the parties will have an opportunity to formulate remedial strategies that are beyond the Arbitrator's jurisdiction and authority. Also, the parties will have an opportunity to deliberate about potential remedies, and their consequences, given that the obvious uncertainties about what might occur in the future. In addition, since the answer to the first issue in dispute is partially in the affirmative and partially in the negative, the remedy may be conditional. As stipulated by the parties, the Arbitrator reserves jurisdiction over the case should the parties be unable to formulate a satisfactory remedy. However, the Arbitrator places a time limit on the reserved jurisdiction which can be extended.

AWARD AND ORDER

The Arbitrator issues the following Order:

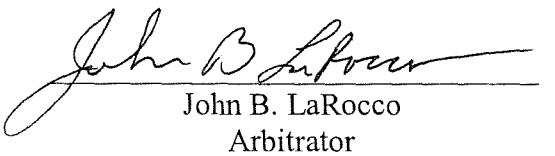
1. The first issue states: whether former Trans World Airlines (TWA) pilots placed on the AA seniority list filled or may fill "new hire positions" in "new hire classes" within the meaning of Section III.A of Letter 3/Supplement W. The answer to this issue is partially no and partially yes as more fully described in this Opinion.

2. The second issue states: what is the appropriate seniority number remedy for AE CJ (Commuter Jet) Captains covered by Letter 3/Supplement W, Section III? The Arbitrator remands this case to ALPA, AE, APA and AA to formulate an appropriate remedy in accord with the second issue herein.

3. The Arbitrator retains jurisdiction over this case for a period of two years from the date stated below. The four parties may mutually agree to extend the retention of jurisdiction beyond two years. Any party may bring a motion seeking to extend the period of reserved jurisdiction.

4. Any party may request the Arbitrator to exercise jurisdiction over the second issue herein within the two year period, or as it may be extended, provided such request shall not be made within sixty days of the date stated below.

DATED: May 11, 2007



John B. LaRocco
Arbitrator

EXHIBIT 11

In the Matter of the Arbitration Between:	)	
AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,	)	Grievance Under Letter Three/Supplement W
and	)	
AMERICAN EAGLE AIRLINES, INC.,	)	Case No. FLO-0903 (Former TWA Pilots)
and	)	
ALLIED PILOTS ASSOCIATION,	)	**SUPPLEMENTAL OPINION AND AWARD ON REMEDY**
and	)	
AMERICAN AIRLINES, INC.	)	

Hearing Date: April 24, 2008
Hearing Location: Sacramento, CA
Date of Supplemental Award: October 20, 2008

JOHN B. LaROCCO
Arbitrator
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FLO-0903

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL / AMERICAN EAGLE AIRLINES, INC. / ALLIED PILOTS ASSOCIATION / AMERICAN AIRLINES, INC.

SUPPLEMENTAL OPINION AND AWARD ON REMEDY

TABLE OF CONTENTS

OPINION

I. INTRODUCTION

This Opinion and Award supplements the May 11, 2008 Opinion and Award concerning a dispute involving the four parties to Letter Three/Supplement W: The Air Line Pilots Association, International (ALPA), the Allied Pilots Association (APA), American Airlines, Inc. (AA), and American Eagle Airlines, Inc. (AE).

The May 11, 2007 Opinion and Award resolved the contract liability phase of this case. The Arbitrator remanded the case back to the properties for the parties to attempt to fashion a remedy while retaining jurisdiction over the dispute. Despite good faith efforts, the parties were unable to reach an agreement. Therefore, the Arbitrator granted the parties' request to exercise his retention of jurisdiction to adjudicate the appropriate remedy.

The four parties presented additional evidence at a hearing held on April 24, 2008. They filed opening and reply post-hearing briefs. The Arbitrator received the reply briefs on August 18, 2008 and the matter was deemed submitted.

At the April 24, 2008 hearing, the Arbitrator framed the issue as follows: Based on the Opinion and Award issued on May 11, 2007, what is the appropriate remedy within the context of that issue? [TR 187] The issue is stated broadly because the parties have a substantial disagreement regarding the scope of this Arbitrator's jurisdiction to fashion certain remedies. They also disagree on whether ALPA and AE waived their right to seek particular remedies. Later in this Opinion, the Arbitrator will state the subset of issues in great detail.

II. BACKGROUND AND SUMMARY OF THE FACTS

Most of the pertinent facts and contract provisions are fully set forth in the May 11, 2007 Opinion and Award. For easy reference, Sections III.A through III.G of Letter Three/Supplement W are set forth below:

A. At least one (1) out of every two (2) new hire positions per new hire class at AA will be offered to CJ Captains who are line pilots and who have completed their IOE at AMR Eagle, Inc. Such positions will be offered to the CJ Captains who are line pilots in order of their AMR Eagle, Inc. seniority.

B. If a CJ Captain is unable to fill a new hire position at AA in accordance with Paragraph III.A. above, due to a training freeze or other operational constraint, (see Paragraph III.J. below), such CJ Captain will be placed on the AA Pilots Seniority List and will count toward the number of new hire positions. The pilot's AA occupational seniority date and number will be established as if he were able to fill such new hire position at AA and had attended the new hire training class referenced in Paragraph III.A. above. Such pilot's length of service for pay purposes, date of hire for pension purposes, and length of service for vacation accrual will be established in accordance with III.C. below. The number of such CJ Captains will not exceed the difference between the number of CJ Captains who are able to fill new hire positions at AA and the number of new hire positions which must be offered to CJ Captains in accordance with Paragraph III.A. above.

C. A CJ Captain's (1) placement on the AA Pilots Seniority List (except as provided in Paragraph III.B. above which is only applicable for placement on the AA Pilots Seniority List in order to establish an AA occupational seniority date and number), (2) length of service for pay purposes, and (3) "date of hire" for pension purposes will be based on the date such pilot is entered on the AA payroll. Such pilot's length of service for vacation accrual will be based on the cumulative total of the pilot's service at AMR Eagle, Inc. and AA.

D. If a CJ Captain is placed on the AA Pilots Seniority List per III.B. above, such CJ Captain will receive priority based on his AA seniority in filling a new hire position in the next new hire class, following release from a training freeze or other AMR Eagle, Inc. imposed operational constraint. Such CJ Captains will not count toward the number of new hire positions offered to CJ Captains at AMR Eagle, Inc., under Paragraph III.A. above.

E. Each of the first 125 AMR Eagle, Inc. pilots who successfully complete transition training as a CJ Captain must fulfill a training freeze for a period of eighteen (18) months from the date said pilot completes IOE. All other pilots who successfully complete transition training as CJ Captains must fulfill a training freeze for a period of two (2) years from the date each pilot completes IOE, unless released from such training freeze by AMR Eagle, Inc.

F. An AMR Eagle, Inc. pilot may, not later than the completion of IOE for a CJ Captain position or at such time as the pilot is able to demonstrate hardship, elect to forfeit the opportunity to secure a position on the AA Pilots Seniority List as provided by this Supplemental Agreement. Such pilot will hereinafter be referred to as an "Eagle Rights CJ Captain," and will not be eligible for a future new hire position at AA which may otherwise become available under Paragraph III of this Supplemental Agreement. The existence of a hardship for this purpose shall be approved by the ALPA AMR Eagle MEC Chairman and the appropriate management official(s).

G. A CJ Captain who is awarded a new hire position at AA will be issued the lowest seniority number at AA in the applicable new hire class, subject to AA's policy concerning the assignment of seniority numbers to new hire pilots who have previous service in other employee classifications. AMR Eagle, Inc. pilots will receive their AA seniority number in order of their seniority at AMR Eagle, Inc. [Joint Exhibit 1]

Other facts that were presented at the April 24, 2008 hearing herein and/or arose subsequent to May 11, 2007 may be relevant to the outcome of this case and are covered in the ensuing paragraphs.

On March 13, 2008, this Arbitrator issued an Opinion and Award in Case FLO-0106 which adjudged that AE flow-through pilots, who had acquired AA seniority numbers but had not yet transferred to AA, did not possess recall rights under Letter Three/Supplement W. Consequently, AA is not obligated to call them to AA service in seniority order. Rather, the recall right is governed by the APA-AA Working Agreement. In essence, the decision means that AE flow-through pilots come to AA, for the first time, exclusively by the operation of Letter Three/Supplement W. *Air Line Pilots Association,*

American Eagle Airlines, Inc,. Allied Pilots Association, and American Airlines, Inc., FLO-0106 (2008) (LaRocco, Arb.).[1]

Shortly thereafter, on June 30, 2008, Arbitrator Richard Bloch adjudged that the ten year duration clause in Section VII.A of Letter Three/Supplement W did not extinguish flow-up rights for those AE pilots who, prior to May 1, 2008, had completed CJ Captain IOE and received AA seniority numbers. *Allied Pilots Association, Air Line Pilots Association, American Airlines, Inc., and American Eagle Airlines, Inc.* (2008) (Bloch, Arb.) (*Bloch* decision). Correspondingly, the *Bloch* decision held that AE pilots who had not acquired AA seniority numbers by May 1, 2008 do not gain a right to flow-up to AA due to the expiration of Letter Three/Supplement W.

The May 11, 2007 Award herein adjudged that some, but not all, of the former TWA pilots were equivalent to "new hire pilots" within the meaning of Section III.A of Letter Three/Supplement W.[2] The May 11, 2007 holding drew a distinction between former TWA pilots who had never trained or flown at AA and former TWA pilots who were integrated into active employment at AA, as a direct consequence of the acquisition, even if those pilots may have been subsequently furloughed from AA. However, the holding did not precisely identify each and every TWA new hire pilot. The parties now concur that there are 154 TWA new hire pilots. [Joint Exhibit 4, TR 187] AA began recalling these 154 TWA new hire pilots in 2007 and evidently the first group came to AA in the June 6, 2007 training class. [APA Exhibit 2, TR 312]

As of April 30, 2008, the AA seniority list evinced the following attributes. Pilots holding seniority from numbers one through 8870 remained actively employed at AA,

[1] This Opinion will refer to the FLO-0106 decision as the "recall decision."

[2] The Arbitrator will refer to these pilots as "TWA new hire pilots."

i.e., they were never furloughed.[3] [TR 248] Beginning on January 3, 2007, AA commenced offering recall opportunities to pilots starting with the pilot who currently holds seniority number 8871. [TR 311] Between January 2007 and April 2008, AA moved down the seniority list to offer recall to pilots through the pilot at number 10492, except AA skipped over AE flow-through pilots holding AA seniority numbers since they do not possess recall rights. As of April 2008, 388 AE flow-through pilots held AA seniority numbers between 8416 and 11876. These AE flow-through pilots are interspersed throughout this range with some below the large block of former TWA pilots integrated into the AA seniority list near the bottom of the list. [ALPA Exhibit 11]

As was related in the May 11, 2007 Opinion, pursuant to Supplement CC to the APA-AA Working Agreement, former TWA pilots were integrated into the AA seniority list on a 1:8 ratio and then a block of 1,156 pilots were added near the bottom of the list.[4] Eighty-one former TWA pilots were integrated into the AA seniority roster below seniority number 9218 on a 1:8 basis. [APA Exhibit 2; TR 248-249] Of these 81 pilots, 56 accepted a proffered AA recall opportunity. Another 98 pilots from the block of 1,156 former TWA pilots also accepted recall. The 56 pilots plus the 98 pilots equals the 154 pilots that are deemed TWA new hire pilots for purposes of applying the May 11, 2007 Award. [APA Exhibit 2; TR 254]

Following the block of former TWA pilots on the AA seniority roster, there are 385 pilots who, according to Michael Mellerski, were hired or added to the list after April

[3] The most junior pilot on the roster possessed seniority number 11927.

[4] APA represented that only 455 of the 1,156 pilots were eligible to flow down to AE. [APA Exhibit 2]

10, 2001.[5] [TR 249] The 385 pilots include 92 pilots that were afforded reemployment rights pursuant to Supplement CC. [APA Exhibit 2; Joint Exhibit 3] Mellerski explained that these pilots were in AA training when the September 11, 2001 terrorist attacks precipitated their furlough before they had completed IOE. [TR 250] The 92 pilots were granted occupational seniority, even though they lacked recall rights inasmuch as they had not finished IOE. However, Mellerski conceded that there is not any meaningful difference between reemployment rights and recall rights. [TR 251] Mellerski recounted that AA and APA agreed to place these pilots on the AA seniority list because they had generated seniority numbers for AE flow-through pilots. [TR 251]

As of April 2008, more than 400 AE CJ pilots had elected flow-through status, but had not received AA seniority numbers. Thus, the aggregate population of AE flow-through pilots consists of 388 pilots who currently hold AA seniority numbers but have not yet shifted to AA, and the 400 plus AE pilots who opted for flow-through status but do not hold AA seniority numbers. For example, Captain Linder, an AE flow-through pilot who acquired an AA seniority number, has waited years to commence active employment at AA. Linder forewent other job opportunities based on his expectation that his AA seniority would permit him to soon transfer to AA. [TR 103-106 in FLO-0107]

The parties stipulated that between October 1999 and September 2001, 124 AE flow-through pilots completed their training freeze at AE and flowed-through to AA. These pilots attended AA training and began flying at AA. The parties further stipulated that, in accord with Section III.B of Letter Three/Supplement W, the 124 AE pilots

[5] Mellerski is presently an AA First Officer on the 767 aircraft. He previously served on the APA Negotiating Committee in 1997 and the Mergers & Acquisitions Committee in 2001. [TR 227-228, 240]

received AA seniority numbers as if they had attended training and filled new hire positions. They were granted the senior numbers in the class unless a trainee had prior service in another AA classification. New hire pilots not originating with AE or AA received the junior numbers in the class. After the 124 AE pilots served their lock-in at AE, AA assigned the pilots to the next scheduled training class. The parties stipulated that AA did not award an AA seniority number to another AE flow-through pilot when an AE flow-through pilot came to an AA training class after the expiration of the pilot's training freeze. [Joint Exhibit 5]

A portion of the controversy herein centers on the extent of the Arbitrator's authority to formulate a remedy as well as whether or not ALPA and AE may have waived some potential remedies. Both ALPA and AE seek a remedy which would require AA to provide seats in upcoming training classes to AE flow-through pilots who either: (1) already possess AA seniority numbers, or (2) acquire AA seniority numbers as a consequence of implementing a remedy herein. ALPA and AE contend that mandating AE pilots to attend training classes ahead of most or all former TWA pilots is an appropriate, make-whole remedy. APA and AA cited portions of the record and post-hearing briefs from the contract liability phase to support their arguments concerning lack of jurisdiction and waiver.

ALPA initiated the grievance herein on November 26, 2003. Items 4, 5, and 6 of the grievance read:

> 4. Former TWA pilots hired by AA fill "new hire positions" at AA within the meaning of Letter Three/Supplement W, III.B.
>
> 5. American Eagle CJ Captains who were otherwise qualified and eligible have not been awarded positions on the AA Pilots'

Seniority list at the rate of one (1) out of two (2) new hire positions per new hire class at AA.

6. As a result of the facts stated herein, CJ Captains employed at American Eagle Airlines have been wrongfully denied positions on the AA Pilots' Seniority List. [ALPA Exhibit 2]

At the commencement of the hearing on the liability phase of this proceeding, the parties stipulated that the issue was whether former TWA pilots placed on the AA seniority list filled new hire positions and new hire classes within the meaning of Letter Three/Supplement W and if so, "…what is the appropriate AA seniority number remedy for AE CJ Captains covered by Letter 3, Roman III?" [TR 9]

In its opening statement during the liability phase, ALPA remarked that "…a new hire training class at AA generates employment opportunities for American Eagle CJ Captains in the form of … AA seniority numbers." [TR 14] ALPA went on to state that it sought "a precedential ruling that when those pilots [TWA new hire pilots] are trained they meet the definition of attending new hire training classes and as a result they'll generate the numbers for the Eagle pilots." [TR 18] [Brackets added for clarification] ALPA claimed that the core of the Letter Three/Supplement W bargain was that, as AA added positions, AE pilots would share in AA's growth by receiving "…some of those seniority numbers so that they could eventually go to AA." [TR 19]

During its opening statement, AE posited that the term "new hire positions" in Section III.A must be read "to provide Eagle pilots with AA seniority numbers…." [TR 21-22] AE further stated that "…to deny Eagle pilots to flow -- to seniority numbers when American was hiring … is unfair and was not intended by the drafters of the Letter 3." [TR 23]

AA submitted during its opening statement that "there is, in fact, no basis for an interpretation for Supp W/Letter 3 that creates positions for Eagle pilots in the context of an integration of an air carrier or two air carriers...." [TR 23] AA also stated that the parties "never envisioned that such an acquisition would create flow-up rates [rights] for Eagle pilots." [TR 28] [Brackets added for clarification.]

APA offered the following observation in its opening statement. "And I guess I'd want to emphasize that although ALPA is today speaking largely in terms of a right to seniority numbers...that's a kind of secondary right under Supplement W. What Supplement W provides in Section III.A. is the right of CJ Captains to one out of every two new hire positions per new hire class at AA. That's not just the seniority number, that's a right to come to class and, you know, be hired at American and proceed." [TR 32] APA also forecasted that one implication of sustaining ALPA's position could be:

> "...when American acquired TWA, half of the TWA pilots coming over in these transition classes, instead those slots belonged to Eagle pilots and the TWA pilots would be shot out the door if they were on the bottom of the list. So rather than a situation of a growing American where Eagle was coming into slots, you're literally talking about a situation where if Eagle pilots had been entitled to half the positions in the transition classes, then – and we only had a certain – we only had the aircraft that was brought over that we're talking about here – then you're talking about having to furlough what are now American pilots out the door to make room for Eagle pilots to come up. [TR 36-37]

The following excerpts appeared in ALPA's Post-Hearing Brief during the liability phase of this dispute. ALPA argued that if former TWA pilots "accept recall and are trained, they will continue to be part of AA's growth and, as such, they must generate AA seniority numbers for the Eagle CJ Captains who are waiting to receive them." [ALPA Post-Hearing Brief at p.3] ALPA submitted that AE flow-through pilots "...should have received AA numbers as a result of AA hiring and would subsequently

continue to accrue AA seniority…" because the "intended" benefit for AE flow-through pilots was "the addition to the AA seniority list….". ALPA asserted that: "The result proposed by ALPA herein is a balanced approach that does not impose any unreasonable burden upon either AA or the APA. AE pilots would receive the AA seniority numbers they rightly deserve, but no AA pilots would be furloughed or displaced as a result of the issuance of these numbers." [ALPA Post-Hearing Brief at p.35]

In its Post-Hearing Brief during the liability phase, AE implored that, if AE prevails, the Arbitrator should remand the matter "…to the parties for discussion of the appropriate AA seniority number remedy." [AE Post-Hearing Brief at p.23]

APA wrote in a footnote in its post-hearing brief that: "If former TWA pilots are deemed to fill 'new hire' positions in 'new hire' classes as they transition into AA from TWA LLC, then Section III.A of Supp. W/Letter 3 clearly mandates that at least one out of every two of those positions be offered to CJ Captains at Eagle." APA then argued that such a result is "…so implausible that only the strongest evidence of the parties' intent would suffice to establish it." [APA Post-Hearing Brief at p.1]

III. THE POSITIONS OF THE PARTIES

A. The Position of the Air Line Pilots Association

ALPA seeks a remedy that would grant AA seniority numbers to virtually all, if not all, AE flow-through pilots and bring the AE flow-through pilots, who possess and/or acquire AA seniority numbers, into AA training classes.

While ALPA's computations are not entirely clear, it counts the number of TWA new hire pilots in each class from July 3, 2007 through June 4, 2008 as a basis for its

formula on generating seniority numbers.[6] For example, the two TWA new hire pilots in the July 3, 2007 class generate 184 AA seniority numbers for AE flow-through pilots because there are 182 AE flow-through pilots senior to the two junior TWA new hires and, by extrapolation, a total of 366 (182 + 184) AE pilots would be in a hypothetical training class to achieve the proper ratio required by Sections III.A and III.D of Letter Three/Supplement W. Examining the August 1, 2007 class as another example, 31 seniority numbers are generated by the nine TWA new hire pilots who attended that class because there are 22 remaining AE flow-through pilots senior to the TWA new hires. Using the same calculation, the total number of AE pilots needed in a hypothetical class to obtain the proper ratio is 53 (22 + 31).[7]

ALPA also seeks a readjustment of the AA seniority list to prevent AE pilots who acquire seniority numbers under this remedy from attaining greater seniority than many AE pilots who already possess an AA seniority number. Consequently, the 93 AE pilots who hold seniority numbers junior to the TWA new hire pilots must move up the AA seniority list so that their numbers are approximately at or more senior to the TWA new hire pilots. The logical solution is to award 93 seniority numbers generated by the first 93 TWA new hire pilots to the 93 AE pilots who previously received AA numbers because the previously awarded numbers are improper.

Section III.A of Letter Three/Supplement W provides that 50% of all new hire positions in any new hire class must be offered to AE CJ Captains who completed IOE and elected flow-through status. Once an AE pilot acquires an AA seniority number, the

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[6] The number of TWA new hire pilots in these classes ranged from a low of two in the first class to a high of 26 in the April 16, 2008 class.

[7] ALPA submitted a table on page 25 of its Opening Post-Hearing Brief illustrating its proposed remedies.

AE pilot will either transfer to AA and begin training in a new hire class or be held back at AE to serve a training lock-in. If the latter occurs, the AE pilot is given top priority to transfer to AA after the pilot is released from the AE lock-in per Section III.D of Letter Three/Supplement W. When this AE pilot later transfers to AA, the AE pilot occupies a position in an AA training class which would have otherwise been filled by a conventional new hire pilot. Nevertheless, the 50% ratio in Section III.A continues to apply so that half of the positions in any class attended by the AE pilot coming to AA under Section III.D must be offered to AE flow-through pilots. Pursuant to the express language of Section III.D, the AE pilot coming to AA after the lock-in does not count as a new hire pilot so that pilot must generate another AA seniority number.[8] For example, suppose AA needs to hire 50 pilots. Initially, the hiring process will be half and half; that is, 25 of the pilots will be conventional new hire pilots and 25 will be AE flow-through pilots. If the 25 AE pilots are withheld by AE, due to a training freeze, AA needs to bring in 25 more conventional new hire pilots to fill the training class. Of the 50 new hire pilots in training at AA, none are AE flow-through pilots. However, the AA seniority list is increased by 75 pilots since the 25 AE pilots receive AA seniority numbers along with the 50 conventional new hire pilots. If, several months later, AA needs to hire 50 more pilots, AA will establish a training class for 50 new hire pilots. Assuming the prior 25 AE pilots are released from the AE training freeze, those 25 pilots are afforded priority in filling the new hire class. They occupy 25 of the 50 seats in the class. However, AA must still abide by the 50% ratio in Section III.A. To satisfy the compulsory ratio, AA must offer the remaining 25 training class seats to the next 25 AE

[8] Conversely, under Section III.B, the AE pilot coming to AA counts as a new hire pilot and does not generate another AA seniority number.

pilots who have opted for flow-through status.[9] Now, AA has hired 100 pilots: 50 are conventional new hires and 50 are AE flow-through pilots which complies with the minimum ratio specified in Section III.A of Letter Three/Supplement W. Unless the training classes are filled as described above, AE pilots would never receive the guaranteed allotment of one out of every two new hire positions at AA. APA's interpretation of Section III.A would result in a one out of three ratio because it disregards the operation of Section III.D.

Each AE flow-through pilot is entitled to the most senior number in each class after any new hire pilots who have prior service in another AA classification. In other words, the conventional new hire pilots obtain the seniority numbers immediately below the seniority numbers assigned to the AE flow-through pilots. The parties stipulated that, in the past, 124 AE flow-through pilots received seniority numbers higher than other trainees, except for AA employees with prior AA service. In this case, the former TWA new hires are equivalent to conventional new hire pilots. So, each AE pilot acquiring an AA seniority number must be more senior than the pilot's TWA new hire pilot counterpart.

Prior to 2001, an insufficient number of AE pilots had completed CJ IOE to take advantage of the full potential of the number generation percentage in Sections III.A and III.D. If more AE pilots had entered AA new hire classes after serving the training freeze, they would have generated additional AA seniority numbers for other AE flow-through pilots who had completed IOE and elected flow-through status.

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[9] Regardless of whether these next 25 flow-through pilots are withheld at AE, they acquire AA seniority numbers.

To provide AE pilots with seniority numbers above the TWA new hire pilots, the AA seniority list must be reordered to place the AE pilots and the TWA new hire pilots in their rightful positions. This Arbitrator is authorized to adjust the AA seniority list to achieve the appropriate remedy. *Brotherhood of Locomotive Engineers and Trainmen v. CSX, Inc.*, 455 F.3d 1313 (11th Cir. 2006) The Arbitrator is empowered to modify a seniority list to harmonize the list with the provisions of Section III of Letter Three/Supplement W. *LaRocque v. R.W.F., Inc.*, 8 F.3d 95 (1st Cir. 1993). The AE flow-through pilots who have AA numbers and who will receive AA numbers must be properly inserted to their rightful place on the AA seniority roster because APA and AA failed to place the TWA new hire pilots at the bottom of the seniority list. Consequently, the AE flow-through pilots must obtain AA seniority numbers immediately senior to each of the TWA new hires in each respective training class. However, to maintain relative AE seniority, 93 AE flow-through pilots previously afforded AA seniority must move up the roster so that junior AE flow-through pilots do not leapfrog over them. Contrary to AA and APA's position, the 93 pilots are not being provided with underserved seniority. Rather, they are simply being reallocated to their rightful position on the AA seniority roster.

Reordering and adjusting the AA seniority list is the only reasonable remedy because APA and AA inflicted substantial harm on AE pilots when they integrated the TWA new hire pilots into the AA seniority roster without negotiating with ALPA. ALPA had a real interest in the terms and conditions of Supplement CC because ALPA represented a large group of pilots possessing AA seniority numbers. Many pilots, like Captain Linder, have patiently waited for their chance to pursue their career at AA, an

opportunity that now must be offered to them. Furthermore, Item 3 in Letter PP to the AA-APA working agreement provides:

> Recognizing that this is the first large scale implementation of the flow back provisions of Supplement W, and recognizing that the four parties may have differing interpretations of the correct implementation, this agreement may be modified from time to time based on the outcome of the dispute resolution procedures of Supplement W. In any case, the implementation of Supplement W reflected in this letter, as modified, if necessary, to accommodate such future rulings, fulfills any and all obligations concerning Supplement W arising from the parties' May 1, 2003, New Collective Bargaining Agreement.

Thus, APA and AA fully anticipated that they may have to adjust the AA seniority roster to comply with the judgments issued by arbitrators interpreting and applying the provisions of Letter Three/Supplement W.

This Arbitrator has jurisdiction to award training class seats to AE flow-through pilots holding AA seniority numbers. Section 2, Second, as well as Section 2, Eleventh and Section 3, First, of the Railway Labor Act provides that an Adjustment Board has liberal authority to adjust disputes between "a carrier or carriers, and its or their employees…." 45 U.S.C. § 151, 152. When TWA new hire pilots attend new hire classes, AE pilots have indisputable priority, pursuant to the express language in Section III.D, to go to AA. ALPA never waived its right to seek seats for AE pilots in training classes. Indeed, ALPA could not intentionally relinquish a right until the right matures which did not occur until the Arbitrator issued the ruling in the liability phase of this case. At the time this case was originally litigated, none of the parties knew when (or if) a new hire class may be convened and no party knew that AA would deny AE pilots seats in those classes. ALPA cannot waive an unknown right.

In conclusion, ALPA urges the Arbitrator to adopt its proposed remedy.

B. The Position of American Eagle Airlines, Inc.

AE flow-through pilots have seniority numbers both senior and junior to the 154 TWA new hire pilots that AA has recalled in 2007 and 2008. These 154 pilots must generate AA seniority numbers for AE flow-through pilots on a one-to-one basis in accord with Section III.A. In addition, Section III.D grants AE pilots priority to attend new hire training classes after serving their training freeze. Consequently, before any TWA new hire pilot attends an AA training class, the 388 AE flow-through pilots with AA seniority numbers, who have completed their AE training freezes, are entitled to go to AA training classes.

Section III.A expressly provides that each of the 154 TWA new hire pilots must generate a seniority number for an AE flow-through pilot who has not yet received a seniority number. Mellerski admitted that if AE pilots could attend a class without having to serve a training freeze, half of the class would be populated with flow-through pilots and the other half of the class with new hire pilots. Therefore, Section III.A contains a one to one ratio (154 to 154) for seniority number generation.

While AE does not take a position on what specific numbers shall be afforded to each of the 154 AE flow-through pilots, AE observes that Section III.G entitles the AE pilots to receive the most senior numbers in a new hire class. This seniority assignment provision is consistent with how AE flow-through pilots received AA seniority numbers after they completed CJ IOE between October 1999 and September 2001. The AE pilots only received seniority numbers lower than a trainee who had service in another AA classification. The remaining new hire pilots were given the junior numbers in the training class.

The priority given to AE flow-through pilots in Section III.D cannot be disputed. APA wants to ignore the Arbitrator's ruling that TWA pilots are filling new hire positions. The holding on the liability phase of the case necessarily implicates Section III.D. Therefore, AE flow-through pilots must now be given priority in filling the new hire positions in all upcoming AA new hire classes.

There is not any past practice showing the relationship between Section III.A and Section III.D inasmuch as the 1999-2001 practice was limited to AE pilots who could not immediately attend a new hire class. Beginning in 2007, AA improperly filled new hire positions with TWA new hire pilots, even though AE flow-through pilots were available to come to AA because they had completed their training freezes. As a result, Section III.B is inapplicable since that provision only applies if the AE flow-through pilot is not relegated to a training freeze.

The holding in the recall decision need not be considered in fashioning the remedy herein. In that case, this Arbitrator decided that AE pilots lacked a right of recall under the express provisions of Letter Three/Supplement W, but did not justify the decision on the notion that recalling AE pilots might disrupt AA training or change the AA seniority list. Therefore, nothing in the recall decision supports AA's and APA's position that AE flow-through pilots must wait to attend new hire classes held after all the TWA new hire pilots attend classes.

Also, Section III.D does not contain any limit on the number of AE pilots that can occupy a particular AA training class. Therefore, the 154 AE pilots, who will receive AA numbers, were entitled to be trained at the same time as the 154 recalled TWA new hire pilots.

Neither AE nor ALPA waived their right to seek a remedy giving AE flow-through pilots seats in AA training classes. APA unreasonably claims that AE and ALPA were asking for a remedy without a right, *i.e.*, an abstract seniority number. Obtaining an AA seniority number without concrete benefits would completely undermine the flow-through provisions of Letter Three/Supplement W. It is true that AE did not seek retroactive relief, but that does not bar AE from seeking prospective relief in the form of providing AE pilots with the benefits attached to their AA seniority number. Moreover, APA's waiver claim is paradoxical inasmuch as APA argued, during the liability phase of this case, that sustaining the grievance would give AE pilots one-half of all positions in a merger. If AE had waived its right to claim a training class remedy, APA would not have used the potential remedy to try to defeat the merits of the grievance.

A Board of Adjustment under the Railway Labor Act has mandatory and exclusive jurisdiction over minor disputes. 45 U.S.C. § 151, et seq. The Act does not leave any room for a private resolution scheme, as advanced by APA. Moreover, Section 1.C of Letter Three/ Supplement W expressly provides that Sections III.A and III.D modify pre-existing collective bargaining agreements. This arbitral proceeding, under the auspices of the Railway Labor Act, must resolve the entire dispute because it is the exclusive forum for resolving all aspects of this grievance. *Cf. Gunther v. San Diego and Air Line Eastern Railway*, 352 U.S. 257 (1965); *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246 (1994).

Finally, if the Arbitrator does not decide the issue of whether AE flow-through pilots are entitled to immediately go to AA training classes, the parties will be forced, unnecessarily, to expend substantial resources. If the dispute is left unresolved, the

controversy could end up before another arbitrator who does not understand the complexities and consequences of the original May 11, 2007 Opinion and Award.

In sum, AE seeks a remedy encompassing the generation of 154 seniority numbers for AE flow-through pilots and seats in upcoming AA training classes for AE flow-through pilots who currently hold and will acquire AA seniority numbers.

C. The Position of the Allied Pilots Association

AE flow-through pilots must receive one AA seniority number for every two of the 154 TWA new hire pilots who were recalled to AA prior to May 1, 2008. The 154 pilots generate 77 AA seniority numbers for AE flow-through pilots. The 77 seniority numbers, with the flow-through pilots, are added to the bottom of the AA seniority list.

Since the inception of Letter Three/Supplement W, AE flow-through pilots have been awarded seniority numbers at the bottom of the AA seniority list at the rate of one number for every two new hire pilots. As Mellerski declared, a new hire class consisting of 10 pilots triggers an allotment of five slots to AE flow-through pilots. Therefore, a class of 10 new hire pilots generates five seniority numbers for the AE pilots, that is, a two to one ratio. An AE pilot who is called to an AA training class after serving a training freeze does not generate additional seniority numbers. An AE flow-through pilot can only accept one new hire position. Therefore, once the AE pilot accepts the position pursuant to Section III.B, the same pilot cannot accept a separate new hire position under Section III.D. In other words, the AE pilot who comes to AA under Section III.D moves to AA more akin to a recalled pilot than a new hire pilot. Moreover, the parties stipulated that AA did not provide additional seniority numbers for AE flow-through pilots when an

AE pilot came to an AA training class after finishing the AE training freeze during the period from 1999 to 2001.

Section III.G expressly provides that the AE pilots are given the lowest seniority number at AA. There is not any precedent for awarding AE pilots a seniority number anywhere on the seniority list except at the bottom. ALPA unreasonably wants to slingshot 93 AE pilots up the AA seniority list simply because their seniority numbers are presently junior to furloughed TWA LLC pilots. ALPA conveniently ignored these 93 pilots during the liability phase herein. Similarly, ALPA ignored the 700 AA pilots at or near the bottom of the AA list. The parties wanted a transparent operation of seniority in Letter Three/Supplement W to avoid duplicating the experience at another air carrier where pilots sometimes jumped ahead of other pilots when moving from one carrier to another. (*Bloch* decision) ALPA's proposed remedy would allow many AE pilots to catapult past existing AA pilots who, for many years, have understood where they rank on the seniority roster. In other words, all pilots on the AA roster became vested with their relative position on the AA seniority roster. ALPA's proposed remedy undermines the transparency concept and could result in unwanted and unfortunate consequences. Put simply, ALPA has not cited any reliable precedent for moving pilots into seniority slots already occupied by other AA pilots. Nothing in the language, the bargaining history, or the past practice under Letter Three/Supplement W supports ALPA's absurd request to engage in a wholesale rearrangement of the AA seniority list. Item 3 of Letter PP only refers to a possible future modification of Letter PP. It does not reference the APA-AA Working Agreement or Supplement CC. To reiterate, placing AE flow-through pilots in the middle of the AA seniority list would likely create a great deal of conflict

and angst among pilots. Finally, Section 13.C of the APA-AA Working Agreement provides that a pilot's relative position on the AA seniority list cannot be changed for any reason.

ALPA voluntarily relinquished any right to seek a remedy beyond granting AE flow-through pilots 77 additional seniority numbers.

When it filed the grievance and argued its case, ALPA deliberately omitted any claim concerning when AE pilots should come to AA for training. ALPA made a tactical decision. ALPA fully realized that if it had aggressively claimed seats in training classes for AE flow-through pilots, the resulting disruptions would weigh heavily against granting its grievance. Now, after receiving a favorable decision in the liability phase, ALPA belatedly wants to inject a new claim into the remedy phase which would impermissibly delay the recall of furloughed TWA pilots. Thus, the Arbitrator lacks jurisdiction to determine when AE flow-through pilots should attend AA training classes. *Continental Airlines, Inc. v. International Brotherhood of Teamsters,* 391 F.3d 613 (5th Cir. 2004), *187 Concourse Assocs. v. Fishman*, 399 F.3d 524 (2d Cir. 2005). Moreover, in the recall decision, this Arbitrator unequivocally ruled that being awarded a seniority number, and filling a training slot, are distinct occurrences under Letter Three/Supplement W.

Section III.B of Letter Three/Supplement W controls the issuance of seniority numbers, but does not give AE pilots any immediate right to attend an AA training class. Sections III.A and III.B only guarantee a right for AE pilots to eventually come to AA. The plain language of Sections III.A and III.B segregates the offer of a new hire position from occupying the position. Permitting AE pilots to attend AA training classes prior to

completion of the recall, down the entire AA seniority list, would be directly contrary to the recall decision. Stated differently, allowing AE pilots to attend AA classes in the midst of the recall would nullify the recall decision that found that AE pilots, who held AA seniority numbers, have no right of recall under Letter Three/Supplement W.

ALPA proposes a convoluted, confusing, and contradictory remedy which is predicated on erroneous facts and fallacious assumptions. ALPA wrongly asserts that TWA LLC pilots were integrated into the AA seniority roster with the motive of denigrating the flow-through rights of AE pilots. Rather, at the time of the acquisition, all parties anticipated that AA would provide full employment for all TWA pilots. AA and APA did not act arbitrarily by excluding ALPA from negotiations over Supplement CC, since ALPA only represented pilots on the AA list who were placeholders in terms of possessing AA seniority. The pilots were still at AE. Moreover, none of the TWA pilots were stapled to the bottom of the list. None were immediately furloughed when AA acquired TWA. While the economic downturn forced AA to shrink before the TWA transition was completed, there were and are AA pilots junior to all the former TWA pilots.

Since the equities favor the TWA pilots, the Arbitrator should reject ALPA's proposed remedy which compels the TWA pilots to suffer substantially more inequities. During the long economic downturn, many TWA pilots were furloughed to the street, while the AE pilots reaped great rewards (continued employment) by flying commuter jets. Moreover, many of these TWA pilots could not avail themselves of the furlough protection provided by Letter Three/Supplement W because they were ineligible to flow down to AE.

In conclusion, the APA proposes that the remedy be the generation of 77 AA seniority numbers for AE flow-through pilots and those 77 pilots be added to the bottom of the AA seniority roster.

D. The Position of American Airlines, Inc.

AA's primary objectives are to avoid both operational disruptions and turmoil on the AA seniority list.

The *Bloch* decision held that 388 AE pilots, who have received seniority numbers, remain eligible to flow-up to AA, while 438 AE flow-through pilots, without AE seniority numbers, are no longer eligible to flow-up to AA. The *Bloch* decision did not address the fate of two other groups affected by the expiration of Letter Three/Supplement W: pilots who already flowed through from AE and furloughed AA pilots who flowed down to AE. The remedy herein must be commensurate with the *Bloch* decision.

AA does not take a firm position on how many AA seniority numbers should be generated for AE flow-through pilots, albeit the number must comply with the ratio specified in Letter Three/Supplement W.

Regardless of the number of seniority numbers generated, the AE flow-through pilots must be assigned AA seniority numbers that are below the most junior pilot on the AA seniority list. There is not any precedent for assigning a new seniority number to a pilot except at the bottom of the AA seniority list. Dovetailing seniority only occurs in a merger. It would be nonsensical to provide seniority numbers to AE flow-through pilots that would shoot them up the AA seniority list ahead of hundreds of AA pilots and even many AE pilots who have already received AA seniority numbers.

ALPA proposes a confusing and complicated remedy that ignores the fact that the TWA, LLC pilots were integrated into the AA seniority roster as a result of a merger. They were not placed at the bottom of the seniority roster like new hires. The AE pilots are new hires and so, they must take seniority numbers junior to any existing AA seniority number.

AE flow-through pilots cannot be placed in the next AA training class without overruling the recall decision. Allowing AE pilots to come to a current AA training class would be tantamount to providing them with the right of recall. In accord with the recall decision, AA must exhaust the recall list before placing AE flow-through pilots in an AA training class. Pursuant to Section III.D of Letter Three/Supplement W, AA is not filling a new hire position until the recall is finished. The ruling in the May 11, 2007 Award only held that TWA LLC new hire pilots are equivalent to new hires solely for the purpose of generating AA seniority numbers. AE pilots may only come to an AA training class after AA recalls all pilots furloughed from both AA and TWA LLC.

Thus, the Arbitrator should reject ALPA's proposed remedy.

IV. DISCUSSION

A. Subset of Issues.

The broad remedial issue can be segmented into several specific issues that must be consecutively addressed to determine the appropriate remedy flowing from the adjudication of the issue on the merits. The specific issues are:

(1) What is the exact quantum of AA seniority numbers that come into existence as a result of AA recalling and training the 154 TWA new hire pilots?

(2) What seniority numbers are provided to AE flow-through pilots who acquire AA seniority numbers pursuant to Issue (1)?

(3) What shall be the effective date of the seniority numbers acquired and assigned to AE flow-through pilots pursuant to Issues (1) and (2)?

(4) Does the Arbitrator have jurisdiction to adjust or rearrange the AA seniority roster as consequence of or to implement the answer to Issue (2) above?

(5) Does the Arbitrator have the jurisdiction to decide whether AE flow-through pilots were entitled to attend AA training classes ahead of TWA new hire pilots and/or whether AE flow-through pilots have a priority to attend upcoming AA training classes?

(6) If the answer to Issue (4) is "yes", does the generation of additional seniority numbers for AE flow-through pilots necessitate an adjustment in AA relative seniority for any AE flow-through pilot who acquired an AA seniority number prior to the application of the remedy herein?

(7) If the answer to Issue (5) is 'yes', did ALPA and AE waive the right to request a remedy that includes awarding AE flow-through pilots seats in AA training classes?

(8) If the answer to Issue (5) is 'yes', and the answer to Issue (7) is 'no', when are AE flow-through pilots, who possess an AA seniority number, entitled to attend AA training classes?

(9) If the answer to Issue (5) is 'yes' and Issue (7) is 'no', does the attendance of AE flow-through pilots in AA training classes generate additional AA seniority numbers for other AE pilots who have completed CJ IOE and opted for flow-through status?

B. Issue No. 1.

The first issue is how many AA seniority numbers are generated for AE flow-through pilots, who currently do not possess a seniority number, predicated on the four parties' concurrence that there are 154 TWA new hire pilots as described by the May 11, 2007 Award.

Seniority number generation is controlled by Section III.A of Letter Three/Supplement W.[10] When AA needs to hire pilots, it establishes a new hire training class. Section III.A clearly provides that a minimum of one out of every two positions in the class "will be offered" to CJ Captains who have elected flow-through status. Put simply, if AA establishes two new hire positions, a minimum of one of those positions must be offered to an AE flow-through pilot.

Next, the Section III.A ratio must be hypothetically applied to the 154 TWA new hire pilots. The best way to emulate what should have occurred is to suppose that AA needed 154 pilots and thus, convenes a training class with 154 positions. Because of the Section III.A ratio, the 154 positions cannot be offered, at least not initially, to the 154 TWA new hire pilots. Instead, one-half, or 77, of the new hire positions must be offered to AE flow-through pilots. Absent a training freeze, the 77 AE flow-through pilots acquire AA occupational seniority numbers, per Sections III.C and III.G, and attend the training class with 77 TWA new hire pilots. After this class completes training, there remains 77 TWA new hire pilots who are untrained. To bring them into active employment, AA would have to convene a training class with double the number of new hire positions (another class of 154 trainees) to satisfy the 1 out of 2 ratio mandate of Section III.A. If AA convenes a second training class of 154 new hire positions, 77 will be offered to AE flow-through pilots who will acquire AA seniority numbers. Now, the supply of former TWA new hire pilots has been exhausted. It is easy to calculate that the 154 TWA new hire pilots generated 154 AA seniority numbers for AE flow-through pilots. Since it takes 308 new hire AA positions to guarantee the "hiring" of the 154

[10] Section III.G is the technical provision that actually grants the AE flow-through pilot an AA occupational seniority date and number.

TWA new hire pilots, the same number of AE flow-through pilots will acquire AA seniority numbers.

The AE training freeze is inapplicable to this simulation because all of the AE pilots who may be awarded AA seniority numbers have long ago completed any AE training lock-in. They are immediately available, in a hypothetical sense, to occupy an AA new hire position in a new hire class. As a result, Section III.D is irrelevant to generating seniority numbers for AE pilots until or unless AE pilots, who already hold AA seniority numbers, come to an AA training class, pursuant to the priority expressed in Section III.D. The possible generation of additional AA seniority numbers by the operation of Section III.D is Issue No. 9.

Therefore, the 154 TWA new hire pilots generate 154 AA seniority numbers for AE flow-through pilots. These AA seniority numbers shall go to the 154 most senior AE flow-through pilots who do not currently possess an AA seniority number in accord with the second sentence of Section III.G of Letter Three/Supplement W.

C. Issue No. 2.

The second issue is what are the actual seniority numbers that are granted to the 154 AE flow-through pilots obtaining AA seniority numbers? ALPA argues that the seniority numbers must be senior to the 154 TWA new hire pilots because AE pilots are given the higher numbers in each training class, *i.e.*, greater seniority than conventional new hire pilots.

The placement of AE pilots on the AA seniority roster is governed by Section III.G. The applicable language specifies that AE flow-through pilots receive the "lowest" seniority numbers at AA. Without a doubt, the lowest seniority number is at the bottom

of the AA seniority list. Thus, Section III.G expressly requires that the 154 AE pilots, who are acquiring AA seniority, obtain numbers below the number 11927, which was, as of April 2008, the last number on the roster.

Nevertheless, an ambiguity arises with respect to the literal application of Section III.G because the TWA new hire pilots were already afforded AA seniority numbers as a result of the seniority integration set forth in Supplement CC. In a perfect application of Section III.G, the TWA new hire pilots would have the seniority number in each training class lower than the new seniority numbers granted to the AE flow-through pilots. If ALPA's requested remedy is appropriate, then either the 154 TWA new hire pilots must move below the 154 AE pilots acquiring seniority numbers or the 154 AE pilots must be inserted onto the seniority list one number in front of each TWA new hire pilot counterpart. Both these outcomes are inappropriate because they are contrary to a past practice and could denigrate the seniority ranking of many AE pilots who already acquired AA seniority numbers. Consequently, when a TWA new hire pilot is recalled, the pilot is treated as a new hire for purposes of a Section III.A offer of a position to generate a seniority number, but the recall, itself, does not affect the relative standing of the former TWA pilot's seniority. The past practice prior to 2001 amply demonstrates that all AE flow-through pilots were placed at the bottom of the AA seniority list. ALPA has not cited any precedent which provides a compelling justification for deviating from this past practice. Next, granting the AE flow-through pilot seniority numbers above the 154 TWA new hire pilots would vest them with seniority greater than some current AE flow-through pilots who have AA numbers. Such a result would not only directly contravene the last sentence of Section III.G, but also inequitably dilute the value of AA

seniority held by AE pilots, who already hold AA seniority numbers. They would be out of seniority order in violation of the second sentence of Section III.G. ALPA proposes adjusting the seniority of these other AE pilots, which is Issue No. 6, but there is nothing in Section III.G that even hints that pilots, upon receiving an AA seniority number, are placed on the AA roster above AE pilots who earlier acquired AA seniority numbers.

Therefore, the 154 seniority numbers shall be the next 154 numbers after the most junior pilot on the AA seniority list unless the answer to Issue No. 6 mandates an adjustment in the AA seniority list.

D. Issue No. 3.

Because the contract violation occurred while Letter Three/Supplement W was still in effect, the 154 AE pilots shall acquire their AA seniority numbers retroactive to April 30, 2008 so that they are eligible to flow-up to AA as determined by the *Bloch* decision.

E. Issue Nos. 4 and 5.

In the May 11, 2007 Opinion and Award, the Arbitrator encouraged the parties "to formulate remedial strategies that are beyond this Arbitrator's jurisdiction and authority." The parties are free, of course, to consider matters disparate from this controversy to reach a resolution on the remedy. The Arbitrator's encouragement constituted notice to the parties that, within the context of this case, the Arbitrator's jurisdiction over potential remedies was narrow. The Opinion also predicted that any remedy may be "conditional" which anticipated the possible cessation of Letter Three/Supplement W. The *Bloch* decision, while not ruling on all aspects of the termination of Letter Three/Supplement W, dispensed with the need for any conditional

remedy on identifying which pilots fall within the ambit of the May 11, 2007 Award since the *Bloch* decision permitted the parties to concur on the number (154) of TWA new hire pilots.

The question becomes whether any appropriate remedy can include a readjustment of the AA seniority roster and/or an order placing AE flow-through pilots, with AA seniority numbers, into AA training classes ahead of or instead of any former TWA pilot.

At the start of the June 28, 2006 hearing on the liability phase, the parties stipulated to this issue. "…whether former TWA pilots placed on the AA Seniority List filled or may fill 'new hire positions' in 'new hire classes' within the meaning of Letter 3, Roman numeral III.A. If so, what is the appropriate AA seniority number remedy for AE CJ Captains covered by Letter 3, Roman III." [TR 9] The issue tracked the grievance wherein ALPA sought, on behalf of CJ Captains, "… wrongfully denied positions" on the AA seniority list. Nothing in the stipulated issue or the grievance even remotely suggests that the remedy encompasses reordering the AA seniority list or moving the CJ Captain to immediate AA employment. One of the primary purposes of stipulating to the issue is to establish the boundary lines of the Arbitrator's authority. The agreed-upon question at issue submitted by the parties limits the Arbitrator's authority. *See, 187 Concourse Associates v. Fishman, Id.*

In addition, in the Award and Order, the second stipulated issue was expressly remanded to the parties. Item 2 of the Award and Order states: "…what is the appropriate seniority number remedy for AE CJ (Commuter Jet) Captains covered by Letter 3/Supplement W, Section III? The Arbitrator remands this case to ALPA, AE,

APA and AA to formulate an appropriate remedy in accord with the second issue herein." This remand unequivocally restricted the remedy to "the appropriate seniority number."

To now consider remedies beyond the generation of seniority numbers would upset stable labor management relations at AA and AE. The evidence and arguments raised during the contract liability phase were all submitted on the understanding that the remedy was solely relegated to seniority number generation. It would set a dangerous precedent for this Arbitrator to now disregard the stipulated issue. The parties could never be sure, when they stipulated to the issue in future cases, whether the Arbitrator would obey the parties limitations on his authority.

In addition, going beyond the stipulated parameters of a remedy undermines due process. The parties presented evidence and argument knowing the issues under consideration. This Arbitrator made evidentiary rulings and issued a judgment predicated solely on the stipulated issues. The parties have hardly had any meaningful opportunity to present evidence on seniority list readjustment or the proper application of Section III.D with respect to placing AE pilots in new hire classes. Due Process dictates that the remedy herein be restricted to the generation of seniority numbers.

The Arbitrator is mindful that leaving issues such as whether any flow-through pilots are entitled to seats in AA training classes, either prior to May 1, 2008 or subsequent to May 1, 2008, undecided could allow a dispute to fester, causing harm to airline operations and pilots. Nevertheless, the Arbitrator is bound to comply with the limitations on his authority.

The Arbitrator's remarks herein should not be construed to express any opinion on whether ALPA and/or AE waived any right to seek the additional relief it requested

herein in any subsequent case. More specifically, the issue of whether ALPA and/or AE waived any additional remedy is not before this Arbitrator. Therefore, the Arbitrator cannot decide if the contents of ALPA's and AE's opening statements and briefs constitute waivers.

In sum, the Arbitrator lacks jurisdiction to decide Issue Nos. 6, 7, 8, and 9.

AWARD AND ORDER

The Arbitrator renders the following Findings and Orders.

1. The 154 TWA new hire pilots generate 154 AA seniority numbers for 154 AE flow-through pilots.

2. AA and APA shall grant the 154 AA seniority numbers to 154 AE flow-through pilots, in seniority order.

3. The 154 AA seniority numbers generated herein shall be at the bottom of the AA seniority list.

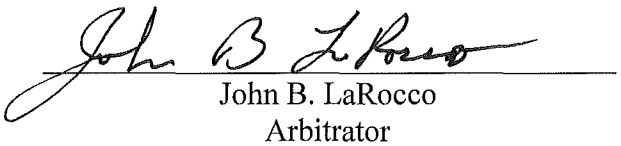
4. The 154 AA seniority numbers granted to the 154 AE flow-through pilots shall be effective April 30, 2008.

5. For the reasons explained herein, the Arbitrator lacks jurisdiction to decide Issue Nos. (6), (7), (8), and (9) which are set forth at the beginning of the Discussion section herein.

6. APA and AA shall comply with Items (2), (3), and (4) of this Award and Order within thirty (30) days of the date stated below.

7. The Arbitrator retains jurisdiction over this case to resolve any dispute concerning the application of the specified remedy; provided however, this retention of jurisdiction shall expire in one (1) year unless the four parties agree to extend the retention of jurisdiction.

Dated: October 20, 2008



John B. LaRocco
Arbitrator

EXHIBIT 12

In the Matter of the Arbitration	:	
	:	
Between	:	
Allied Pilots Association	:	
- and -	:	
Air Line Pilots Association	:	
and	:	
American Airlines, Inc.	:	
and	:	**OPINION**
American Eagle Airlines, Inc.	:	**AND**
	:	**AWARD**
(SuppW/Letter 3; Grv. FLO-0108 Remedy)	:	

APPEARANCES

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James Lobsenz, Esq.

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For American Airlines, Inc.:
Morgan, Lewis & Bockius, LLP.
By: Harry A. Rissetto, Esq.
Michelle A. Peak, Esq.

On March 29, 2008, ALPA filed a grievance in which it claimed that American Eagle CJ Captains with AA seniority numbers as a result of the flow-through provisions of the now expired Supplement W/Letter 3 were entitled to attend AA training classes beginning June 6, 2007 instead of those TWA-LLC pilots designated by Arbitrator LaRocco in FLO-0903 as "equivalent to new hires."

That same question was raised before Arbitrator LaRocco in the remedy phase of FLO-0903, but his ruling was that he lacked jurisdiction to provide an answer because the Parties' previously stipulated remedy question did not encompass that issue. He also said:

> The Arbitrator's remarks herein should not be construed to express any opinion on whether ALPA and/or AE waived any right to seek the additional relief it requested herein in any subsequent case.
> (FLO-0903, 10/28/08, PP.31-32)

As a result of that determination, this grievance was moved forward and was placed before me on June 1, 2009. At that hearing, the Parties agreed on what I have characterized as a narrow question, i.e.:

> Were American Eagle pilots who hold American Airline seniority numbers entitled to attend AA training classes beginning in June 2007?

They also agreed, if this question was answered in the affirmative, that the question of remedy was to be returned to them for determination, with the arbitrator retaining jurisdiction in the event a resolution was not reached.

By the time the June 1, 2009 hearing had taken place, there had been 20 training classes at AA in the period between June 6, 2007 and March 18, 2009. No Eagle Captains with AA seniority numbers were in those classes. However, there were 244 TWA "new hire" pilots, all of whom had been "recalled" from furlough along with AA pilots who had

previously been furloughed from active AA positions.[1]

In my October 18, 2009 decision, I stated that there were, as in previous cases, equities on both sides of the dispute. I also said that I understood and fully appreciated those arguments, but that the first question was whether what the Parties had agreed to in SuppW/Letter 3 answered the question at hand. If it did, consideration of the competing equities, as Arbitrator LaRocco had previously noted, were best left to the Parties, particularly when they had the foresight of leaving any remedy, if the question was answered in the affirmative, in their hands.

For reasons fully set forth in the Opinion, I did answer the submitted question in the affirmative, stating in the Award:

> As stated in the foregoing Opinion, American Eagle pilots who hold American Airline seniority numbers were entitled to attend AA training classes beginning in June 2007.
>
> In accordance with the instructions of the Parties, the matter is remanded to ALPA, AE, AA and APA to formulate an appropriate remedy.
>
> Jurisdiction will be retained for a period of one year, a period that may be extended by agreement of the Parties. In the event that agreement on an appropriate remedy is not reached during the period of retained jurisdiction, any Party may, by motion, request that jurisdiction be exercised over the question of remedy. However, such request shall not be made within ninety days of the date of this Award.

[1] Only one TWA-LLC pilot entered training in the June 6, 2007 class. At the time this occurred, there were 155 Eagle Captains with AA seniority senior to that pilot. As the classes continued the number of TWA-LLC pilots attending them increased, with their numbers filling the bulk of the class seats during the nine classes held during first six months of 2008.

As it was, the Parties could not agree on a remedy and that question was returned to me, with hearings held on February 25 and 26 and March 30, 2010. Prior to those hearings, position statements were filed setting forth the views of the Parties on the remedy question. All agreed on one thing, that the question was complex and the answer difficult.

Upon studying those positions and arguments in detail and reviewing the earlier proceeding as well as my October 18, 2009, Award and the prior awards, I opened the remedy hearings by advising that I did not intend to require an Eagle pilot to go to American who does not wish to do so and did not intend, whatever award I might render, that any pilot flying for American end up on the street as a direct result of the required transfer of Eagle Captains. I reinforced that view as the hearings continued so that the Parties would be well aware of my considered views.

During the hearing, in addition to lengthy opening statements and continued presentations of the respective views of the two airlines and the two unions, I heard testimony from James Anderson, Senior Principal, Employee Relations, Flight at American, Kye Johanning, Lead Economic Analyst at ALPA, Eagle Captain Robert Higgins, Michael Burtzlaff, a Principal in American's Finance Group, Cathy McCann, Vice President, People at Eagle, Captain Bill Couette, an Eagle Captain and Vice President, Administration at ALPA, American Captain Ralph Hunter

and First Officer Steven Salter, American Captains Douglas Gabel, Jeff Hefley and Glen Morris, former TWA employees, and Kenneth Cooper, former Assistant Director in ALPA's Representation Department.

The testimony of APA witness Hunter and ALPA witness Cooper dealt primarily with the question of whether or not it was obligatory under the now expired Supplement W/Letter 3 for a non-Eagle Rights Captain to flow up to American at the time an offered opportunity was available (Tr. 189-214, 315-324,Hunter; 325-339, Cooper).

The testimony of ALPA witness Johanning and American witness Burtzlaff dealt with damages issues, affecting those who were unable to flow up to American because they were not given the opportunity to attend the aforesaid training classes, and the so-called ripple or downstream damages for those who were unable to move into higher Eagle positions because of the inability of those ahead of them to move to American. ALPA took the position that both groups were damaged and that such damages should be awarded (Tr. 78-110,177-181, Johanning; ALPA Ex.1 & 1A). American's analysis was that those whose movement to American was delayed did not suffer a monetary loss in overall compensation (Tr. 118-148, Burtzlaff; AA Ex. 1). Both American and Eagle also argued that downstream damages were not just highly speculative, as confirmed through Vice President McCann's testimony as to how and why pilots bid (Tr. 149-164), but were also wholly inappropriate.

The testimony of Captains Gabel, Hefley and Morris, former TWA pilots called by APA, dealt with the purchase of the airline by American, the technicalities, process and progress of the transition, and the status and role of TWA-LLC, the subsidiary created at the time of purchase. The purpose of this testimony, aided by a timeline (APA Ex.4) and other exhibits (APA Ex.1-3,5-9), was to demonstrate that TWA-LLC was a needed vehicle in a large and complicated merger; that all employed at TWA-LLC fully expected to become American pilots as American officials told them they would; that a number of them did so, and that it is not appropriate, when the facts of the transition are objectively viewed, to characterize them as "new hires." APA also argued, on different equitable grounds, that 292 of the 382 pilots such as First Officer Salter hired by American in 2001 prior to the events of 9/11 are entitled to return before any of the 244 Eagle pilots can attend class. These are pilots furloughed post-9/11, who were placed below all former TWA pilots when the AA/TWA seniority lists were merged.

There was also testimony by Eagle Captain Higgins, who is presently on short-term disability and, as a consequence, is unable to use his first-class medical. The question regarding the status and right of a pilot such as Captain Higgins, who might be unable to move to American because of such an impediment, has been resolved by a Stipulation, one of the few issues on which the Parties have agreed, that will be part of my Award.

The Positions of the Parties

Both ALPA and Eagle contend that, in order to remedy the previously found breach, 244 Eagle CJ Captains with AA numbers are entitled to flow-up to AA ahead of any new hires and any AA pilots junior to the TWA "new hires" and that said movement, which is in seniority order, is obligatory for each Eagle CJ Captain. Where they differ is on the pace of that movement. ALPA maintains that the pilots, who have waited long enough, should move without delay. Eagle maintains that a pace as swift as ALPA seeks would cripple the operations of the airline and that, as a consequence, the move should be limited to no more than 20 pilots a month, beginning 60 days after the Award. Twenty a month because that is the maximum Eagle can spare at any one time and 60 days hence because that is the time Eagle needs to train those replacing pilots who are leaving. ALPA says it understands the constraints Eagle advances, but argues that such metering should be ordered only to resolve a remedial issue that cannot be solved by other means, and that, in any event, all affected pilots must continue to be properly compensated during any further period of delay.

APA, as previously stated, is of the opinion that the above mentioned American pilots hired in 2001, the bulk of the so-called "AA Legacy" pilots, come first and that the Eagle pilots must wait. American, because it says it would have recalled those pilots if it had known that recalling TWA "new hires" was improper, takes the same position. In

addition, APA, for reasons of equity, believes an additional 154 furloughed pilots should be recalled before Eagle pilots begin transferring to AA.

The Parties also disagree over the damage issue. Here, the dispute is between the companies and ALPA. The Association contends that each pilot who was unable to flow-up is entitled to every element of compensation and every benefit he would have received if he had moved to American at the time he was entitled to do so, such time to be measured by the presence of the TWA-LLC pilots in the June 6, 2007-March 18, 2009 training classes. ALPA also contends that the compensation and benefits must go beyond seniority credit for pay and pension purposes as Eagle suggests, but must also include AA sick leave, vacation and health insurance differentials; retroactive participation and credit in both American retirement plans, American Airlines, Inc. Retirement Benefit Program–Fixed Income Plan (the "A Plan") and the American Airlines, Inc. Pilot Retirement Benefit Program–Variable Income Plan (the "B Plan"). Other than length of service credit for pay purposes, American, contending that there was no overall compensation loss, insists, as a result, that no other compensation or increased benefit is warranted. Both American and Eagle also forcefully argue that, if damages are awarded, the Companies are entitled to an offset or credit for amounts Eagle flow-through pilots earned at Eagle in

excess of the amounts they would have earned at AA if they had transferred between June 6, 2007 and March 18, 2009.

ALPA also contends that those pilots prevented from moving higher in Eagle's ranks because of the delay occasioned by the breach are also entitled to damages. By ALPA's calculation, these downstream damages, absent requested interest, total $21.9 million; $19.7 million in lost wages and $1.2 million in Company 401(k) contributions. This amount, ALPA says, should not be paid by Eagle, which did not cause the breach, but by American, which had decided to bring the TWA "new hire" pilots into the training classes rather than following the precepts of SuppW/Letter 3. Though not being held responsible for these damages, Eagle asserts they are speculative and unjustified. American vigorously opposes any such downstream damages. Like Eagle, it contends they are speculative and, given the bidding patterns of pilots, that any determination of the appropriate recipients would be fraught with uncertainty. It also argues that any consideration of downstream damages is just not encompassed within the narrow, disputed question with which this proceeding began. That question was whether Eagle pilots with AA seniority numbers were entitled to attend AA training

classes. Once that question was answered, the only remaining issue was what remedy should be fashioned for those pilots, not others.[2]

Discussion and Analysis

As every one understands, the remedy issues presented in this case are complex and inter-related. All four Parties (APA, ALPA, AA and Eagle) have vigorously and effectively presented their evidence and arguments, including strong equitable arguments on behalf of all affected pilots. In light of the complex and inter-related nature of the issues, I elected to announce certain aspects of my decision to the Parties on the record and then to ask the Parties to discuss with me, collectively, the remedy issues that would remain open in light of my preliminary rulings. During those discussions I provided the Parties further guidance about the resolution of the remedial issues. While this consultation process was helpful to me in further defining the issues and understanding the competing views and considerations, the Award that follows is my Award; it does not represent the "agreement" of any of the four parties. Indeed, as set forth above, the positions of the parties on the key issues addressed herein remain far apart. Nonetheless, in the face of an impending Award, each of the Parties has been helpful and cooperative in my efforts to finalize an Award with sufficient clarity and detail to facilitate implementation.

[2] Eagle raised some other remedy issues. However, they were predicated on the assumption that moving to AA was mandatory and the consequent need for a hardship provision. In view of my ruling, set forth below, these questions need not be addressed.

It should also be said that I have taken into consideration some facts that were not known until after the proceeding was underway. First, I was advised that 102 AA pilots, of whom 83 were former TWA-LLC "new hire" pilots who had been serving at American since their 2007-2009 recalls, were furloughed on February 28, 2010. However, anticipated furloughs that were to take place in April were canceled. Additionally, I was advised that American, except as a possible result of this Award, anticipates no additional training in 2010. All of this, as well as the competing equities, which will be discussed, has been taken into consideration in reaching my conclusions.

I had stated at the outset that I did not intend to require any Eagle CJ Captain to transfer to American if he chose not to do so. I reached that conclusion, which I repeat here, for two reasons. The first is that, in my judgment, the now expired Supp W/Letter 3 did not require it. Though it could be argued that those who did not elect to "forfeit the opportunity to secure a position on the AA Pilots Seniority List" pursuant to Article III.F. at the completion of CJ Captain IOE were obligated to accept the actual position when offered, the language of Supp W/Letter 3 does not support that conclusion. Other subsections of Article III, such as III. H., I. and J., speak of a CJ Captain who "accepts a new hire position." If a pilot were required to move to that new hire position when actually available, that is, if such movement were

obligatory, the word "accept," which clearly entails a choice, would not have been used.

The second reason is that SuppW/Letter 3 was crafted in 1997. Much has changed since then. As I and other arbitrators have pointed out, no one anticipated 9/11, no one anticipated the magnitude of the resultant furloughs, and mergers were not even discussed. Moreover, those pilots who did not chose Eagle Rights status did so at a very different time in a very different landscape. That unanticipated upward delay, encompassing ten years for some, strongly supports the judgment that reading Supp W/Letter 3 as containing an irrevocable obligation is inappropriate and inconsistent with equity.

It is therefore my conclusion that a choice should be made. Obviously, the choice should be extended to the 244 CJ Captains who would have had the opportunity to attend the aforesaid training classes. I am also of the opinion that the choice should be given to an additional 42 CJ Captains, for a total of 286. That includes all active Eagle CJ Captains who have greater seniority than the least senior currently active TWA-LLC pilot.

The choice these pilots make is to be made in light of the remedial components spelled out herein. Once these pilots are made aware of the compensation and benefits available to them if they choose to flow-up to American pursuant to the timetable set forth herein, a timetable consistent with the needs of the companies and the equities inherent in

the history and prior anticipations of all other pilots, their choice will be irrevocable. The opportunity to flow-up, clearly at times uncertain except for the first 35, will be offered to the 286 senior Eagle CJ Captains with AA numbers. The compensation and benefits attached to a flow-up choice will be granted to the most senior 244 of the 286 who choose this advancement. If less than 244 of the 286 choose to flow-up, the compensation and benefits will only be offered to that lesser number, whatever it may be, with such compensation and benefits offered to no other Eagle pilot. Though the opportunity to transfer to American may not occur for some time, dependent as it is on the health of the airline and the compelling equities in this case, I have decided to make the choice irrevocable rather than allowing an affected pilot to choose one option and later choose another. Supp W/Letter 3 has expired and finality, in my judgment, is to the interest of all.

As stated, the 244 Eagle CJ Captains who choose to transfer to American should have been at the Company earlier; the first on June 6, 2007, and the remainder on the July 3, 2007-March 18, 2009, class dates at the pace measured by the class attendance of the remaining 243 TWA-LLC pilots. The retroactivity of the compensation and benefits to be offered has been determined with those dates in mind. I have also

decided that, for these 244 Eagle CJ Captains, undeniable considerations of equity require that retroactivity also be applied to any "time to Captain" requirement. Therefore, the Award provides that, for such purposes, the "time of transfer" should be measured from the time that Captain would have transferred to AA had the breach not occurred.

If any one of the 244 Eagle CJ Captains chooses to flow-up to American and is subsequently enrolled in a training class, his transfer to American, save for the exception noted above, shall be no different, than transfers that had previously occurred pursuant to the now expired Supp W/Letter 3, including placement and restrictions.[3]

Once that Eagle CJ Captain transfers to American, he shall receive length of service for pay purposes retroactive to the date he would have transferred during the June 6, 2007-March 18, 2009 period. Prospectively, that Eagle CJ Captain who transfers will also receive the greater vacation and sick bank credit he would have earned if had been at American on the date he should have transferred. Those Eagle CJ Captains within the group of 244 who transfer will also become participants in America's A Plan on the day they become American employees. However, as was done when TWA pilots became American employees, the one year waiting period shall be waived and the period

[3]In all other respects, these CJ Captains who choose to flow-up to AA must meet American's criteria for employment at the time of transfer. However, it should be noted that the Parties have stipulated, as reflected in the Award, that an Eagle CJ Captain who is unable to flow to AA because he does not have an FAA First Class Medical Certificate or is on the long-term sick list or disability list does not forfeit the opportunity to flow-up at a later date.

between the time they should have transferred and the time they actually transferred shall be credited, but solely for vesting purposes. At the time that Eagle CJ Captain transfers to American, the Company, by means legally permissible as set forth in the Award, will also make contributions to the B Plan for the period that Captain should have transferred at a rate equal to the Super MD-80 First Officer rate of 73 hours, which is the reserve guarantee.

I turn now to the movement of Eagle CJ Captains to American. Here, competing equities come sharply into play. The Eagle CJ Captains have waited a long time to exercise the opportunity to transfer. On the other hand, the individual TWA pilots are not at fault for that delay. They were employees of a failing, bankrupt company whose assets were purchased by American and had little control over their fate. They, along with the Eagle CJ Captains and those pilots hired by American in 2001, were all caught up and severely impacted by the events of 9/11; events which no one anticipated and which has affected all to this day. In constructing what follows I have taken all of those equities into consideration.

The Award provides that 35 Eagle CJ Captains who choose to flow-up to American shall be placed in training beginning no later than June 2010, with said training to be in two tranches if needed. The Award also

provides that there shall be no furloughs as a direct result of these transfers. If, for other reasons, a furlough is deemed necessary during the remainder of 2010, 35 pilots furloughed shall receive two months additional furlough pay in the amount set forth in the AA/APA Agreement, as specified in the Award.

Following the aforesaid transfer, before any additional CJ Captains are transferred, recalls to AA shall be administered in accordance with the AA/APA Agreement based on the AA seniority list as of the date of this Award until the most junior pilot furloughed on February 28, 2010 has been offered recall.

Following that offer and recall, the remaining Eagle CJ Captains with AA numbers who elect to transfer when and as future positions become available and those AA pilots presently on furlough shall be entitled to enter and re-enter active service at American in AA seniority order. Of those Eagle CJ Captains who transfer, those who were in the previously referenced 244 shall be entitled to receive the previously referenced compensation and benefits as of the day they would have transferred if they were in one of the June 6, 2007–March 18, 2009 training classes.

What remains is the downstream damage question. I am not persuaded that the requested payment of monetary damages, with their

calculation and distribution so unclear and imprecise, is a suitable means of dealing with the effect on those pilots below the Eagle CJ Captains with AA numbers. A more appropriate means is to concentrate on the job opportunities which were unavailable as a result of the above described events that will become available following contractually required recalls. There are presently 1351 Captains at Eagle, 527 have AA seniority numbers, 824 do not. Through a system of preferential hiring, 824 future pilot job opportunities at AA should be made available to Eagle pilots who do not have AA seniority numbers. When job opportunities become available at a result of future hiring at AA, said Captains are to be offered one of every two new hire positions in a new hire class in Eagle seniority order subject to the following limitation. Eagle will make every attempt to release a sufficient number of pilots to meet the aforesaid ratio. It will not, however, be required to release more than 20 pilots per month should release of a greater number result, in its judgment, in severe operational difficulties. If any one of the present day Captains declines the above opportunity when available, an Eagle pilot who has become a Captain after the date of this Award shall have the option of electing that opportunity until such time as 824 pilot positions have been filled by Eagle Captains pursuant to this paragraph. This system of preferential hiring should be a matter of agreement between the directly affected Parties. The Award that follows so provides.

The Undersigned, acting as the Arbitrator pursuant to the Agreement of the Parties and having duly heard their proofs and allegations, therefore renders the following

AWARD

> As stated in the foregoing Opinion, American Airlines shall offer to the 286 most senior Eagle CJ Captains holding AA seniority numbers the opportunity to elect to flow-up to American. Said election, which is to be made after said Captains are advised of the remedial components set forth herein, shall be irrevocable, and shall be made no later than May 24, 2010. Once elections are made, the opportunity to transfer to American with the remedial components set forth herein shall be offered to the 244 most senior CJ Captains of the 286 who elect this advancement. If less than 244 Eagle CJ Captains so elect, the remedial components set forth will only be offered to that lesser number.
>
> Said CJ Captains who elect the opportunity must meet the criteria for employment at American at the time of transfer, with the "time of transfer" for the purposes of "time to Captain" measured from the time each CJ Captain would have transferred to American had the breach not occurred. By agreement of the Parties, any Eagle CJ Captain who is unable to transfer to American because he does not have a FAA First Class Certificate or is on Eagles' long-term sick list or disability list does not forfeit the opportunity to transfer at a later date provided American's eligibility criteria, as set forth herein, are met.

Except as noted above, those Eagle CJ Captains transferred to American shall be transferred in the same fashion as those CJ Captains who previously transferred pursuant to the now expired Supplement W/Letter 3, including placement and restrictions.

Once an above referenced Eagle CJ Captain electing to transfer becomes an employee of American, he shall receive length of service for pay purposes retroactive to the date he would have transferred but for the placement of TWA-LLC pilots in the June 6, 2007-March 18, 2009 training classes.

Prospectively, an above referenced Eagle CJ Captain who transfers to American will receive the greater vacation and sick bank credit he would have earned if he had been at American but for the placement of TWA-LLC pilots in the aforesaid training classes. Those Eagle CJ Captains within the group of 244 CJ Captains who transfer will become participants in American's A Plan on the day they become American employees, with the one year waiting period waived and the period between the time they should have transferred and the time they actually transferred credited solely for vesting purposes. Additionally, at the time said CJ Captain transfers to American, the Company will make contributions to the B Fund for the period that Captain should have transferred to American, which contributions shall be at the MD-Super 80 First Officer reserve guarantee rate of 73 hours. In the event such contributions are not legally permissible during the first year of said Captain's employment at American, the remainder of such contributions will be made, to the extent legally permissible, in the second year. Any remaining contributions shall be paid as taxable compensation.

The first 35 Eagle CJ Captains who elect to transfer to American shall be placed in training beginning no later than June 2010, with said training to be in two tranches if needed.

There shall be no furloughs as a result of these transfers. If, for other reasons, a furlough is deemed necessary during 2010, 35 pilots furloughed shall receive two additional months furlough pay in the amounts set forth in the AA/APA Agreement. Such additional pay shall be awarded beginning with the most senior pilot in each month of furloughs and then to each less senior pilot in that month until a total of 35 pilots have been awarded the additional pay.

Following the aforesaid transfer, before any additional Eagle CJ Captains are transferred, recalls to AA shall be administered in accordance with the AA/APA Agreement based on the AA seniority list as of the date of this Award until the most junior pilot furloughed on February 28, 2010 has been offered recall.

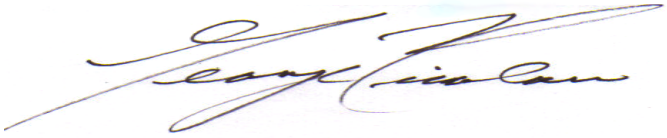
Following that offer and recall, the remaining Eagle CJ Captains with AA seniority numbers who choose to transfer when and as future positions become available and those American pilots presently on furlough shall be entitled to enter and re-enter active service at American in American seniority order. Said Eagle CJ Captains transferring to American shall be transferred in the same fashion as those CJ Captains who previously transferred pursuant to the now expired Supplement W/Letter 3, including placement and restrictions. Upon their transfer, those CJ Captains within the previously referenced 244 CJ Captains shall be entitled to receive the above referenced compensation and benefits as of the day they would have transferred but for the placement of TWA-LLC pilots in the June 6, 2007-March 18, 2009 training classes.

The affected Parties are directed to enter into a preferential hiring agreement pursuant to which American, at the time hiring resumes, will offer to 824 Eagle Captains, including Eagle Rights Captains, one of every two new hire positions in a new hire class in order of Eagle seniority, subject

to the following limitation. Eagle is to make every attempt to release a sufficient number of pilots to meet the aforesaid ratio. It will not, however, be required to release more than 20 pilots per month if doing so would, in its judgment, create severe operational difficulties.

Should any of the present day Eagle Captains decline the above offered pilot position opportunity, an Eagle pilot who becomes a Captain after the date of this Award, shall have the right to elect said opportunity in seniority order until such time as 824 pilot positions have been filled by Eagle Captains pursuant to this paragraph.

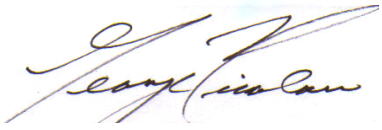
Jurisdiction will be retained in the event there is any dispute regarding the interpretation or application of this Award.



George Nicolau, Arbitrator

ACKNOWLEDGMENT

On this 9th day of April, 2010 I, George Nicolau, affirm, pursuant to Section 7507 of the Civil Practice Law and Rules of the State of New York, that I have executed and issued the foregoing as my Opinion and Award in the above matter.



George Nicolau

EXHIBIT 13

Arbitrator Nicolau's Opinion and Award in FLO-0108 dated April 9, 2010, as clarified by his letter dated August 17, 2011, directed the "affected" parties, American Airlines ("AA"), American Eagle Airlines ("Eagle"), and the Air Line Pilots Association ("ALPA") "to enter into a preferential hiring agreement pursuant to which American, at the time hiring resumes, will offer to 824 Eagle Captains, including Eagle Rights Captains, one of every two new hire positions in a new hire class in order of Eagle seniority . . . . " Opinion and Award at 20. The affected parties having reached agreement with each other, and with the Allied Pilots Association ("APA"), the four parties hereby agree as follows:

1. Following the offer of recall to the most junior furloughed pilot on the American Airlines' pilot seniority list, and beginning with the first class of additional pilots (not currently on the American Airlines Pilot Seniority List) subsequent to the offer of recall to the most junior pilot on furlough from American Airlines, AA will offer to Eagle pilots 50% of the pilot positions (net of any AA pilots returning from deferred furlough status) in that class, and each subsequent class, until 824 Eagle pilots have been hired at AA.

    a. It is the intent of the parties that this agreement shall not in any respect diminish or otherwise impact the pre-existing rights and privileges of pilots already employed by AA pursuant to the applicable collective bargaining agreement, including recall rights for furloughed pilots on the AA System Seniority List.

    b. The intent of this agreement is to provide 50% of the AA new hire training slots to 824 AE pilots in such a way that the AE operation is not disrupted.

    c. As such, AE management will release no fewer than 20 AE pilots per month in a month in which AA is entering new hire pilots into training, in an effort to meet the 50%. If AE management determines that they can release more than 20 pilots in any given month, they will do so.

    d. Because AA's hiring requirements may exceed 40 per month in any given month then drop below 40 in subsequent months, it is possible and even likely that AE will not achieve 50% of the new hire training slots. Therefore AA will make its best efforts to offer and Eagle will make its best efforts to release additional Captains, up to 100% of each class until the 50% ratio is achieved, in aggregate, based on the total number of new hire positions in aggregate over time.

2. For each new hire class at AA, new hire positions will be offered to Eagle pilots in Eagle seniority order starting with the most senior Eagle pilot. Should an Eagle pilot decline the offer, he shall remain eligible to accept future offers, but will not be assigned an AA seniority number or begin accruing seniority at AA until he accepts any future offer, is hired at AA, and is assigned a seniority number by AA. Declining an offer will result in more junior Eagle pilots who accept the offer having greater AA seniority than the senior Eagle pilot who declined the offer, but accepted a later offer. It shall be the responsibility of AE to administer this process and provide AA

with the list of names for each class. Any dispute with respect to the class list shall be resolved between AE and ALPA.

3. An American Eagle pilot who accepts a new hire position at AA under the provisions of this letter will forfeit his American Eagle Seniority number and any rights to pilot employment at American Eagle at the time of his employment by AA.

4. In order to identify the pilots who will be hired at AA in any particular class, Eagle will identify the most senior pilots on property, excluding any Eagle pilot who previously held an AA pilot seniority number under the provisions of Letter 3/Supplement W. Eagle pilots who are offered pilot employment at AA under the provisions of this Letter must hold or have held a Captain status at American Eagle prior to being hired at American Airlines and must have satisfied a one-year training freeze in accordance with Section 15.I.2 of the Eagle-ALPA-Collective Bargaining Agreement. Eagle management may waive the training freeze requirement at its discretion.

   Should Eagle management use web-based or other electronic means by which Eagle pilots are required to accept positions at AA, such means will be considered to satisfy the requirements under this paragraph.

5. The 824 Eagle pilots who elect to accept a position at AA under this preferential hiring agreement will be treated as new-hires with the following clarification:

   a. Probation - Eagle pilots who are hired at AA under the provisions of this Letter will be required to complete a Probationary Period at AA in accordance with the AA-APA Collective Bargaining Agreement.

   b. Seniority - Eagle pilots will be assigned AA pilot seniority in accordance with the AA-APA Collective Bargaining Agreement. Company seniority for Eagle pilots will be the combined time of service at American Airlines and any wholly owned AMR subsidiaries, including any time worked at Eagle, even if it is not owned by AMR.

   c. Sick Bank Accrual - Upon being hired at AA, American Eagle pilots will have the balance of hours remaining in their **regular** sick bank, up to a maximum of 300 hours, transferred to their AA sick bank.

   d. Vacation Bank Accrual - An Eagle pilot's vacation accrued, but not used at Eagle, will be paid out to that pilot as part of his final paycheck from American Eagle. Upon being hired at AA, Eagle pilots will accrue AA pilot vacation based on their Company Seniority in accordance with paragraph 5.b above.

   e. Travel Privileges - Upon being hired at AA, Eagle pilots will accrue AA travel privileges in accordance with AA Travel Policy based on their Company Seniority in accordance with paragraph 5.b above.

f. Interview - Eagle pilots who are offered pilot employment at AA under the provisions of this Letter will not be required to undergo any portion of an employment interview at AA.

g. Medical - Eagle pilots who are offered pilot employment at AA under the provisions of this Letter will be required to hold a First Class Medical prior to the first day of training at American Airlines. No other medical or cognitive examination will be required for employment. While on disability or long-term sick, an Eagle pilot will not be eligible for a new hire position under this agreement.

6. If American Airlines were to acquire or employ pilots employed at another carrier who are not currently employed by AA or on furlough from AA for any reason, including merger or acquisition, AA will meet with the Eagle representatives from the Air Line Pilots Association within thirty (30) days of the announcement of the transaction to discuss the projected effect of the merger or acquisition on the timing of the 824 new hire positions.

7. If AMR sells, divests, spins, or in any way changes American Eagle's ownership structure, this agreement will be binding on any successor until 824 American Eagle pilots have been hired at American Airlines under the provisions of this agreement.

8. If American Eagle Airlines were to merge with, be sold to, or in any other way have pilots not currently on its pilot seniority list added to or merged with the current American Eagle pilot system seniority list, those pilots added will have no rights under this letter and will not be included in the 824 who have employment rights at American Airlines under the provisions of this letter.

9. Once 824 American Eagle pilots have been hired at AA under the provisions of this letter, no further AA pilot positions will be offered to Eagle pilots under the provisions of this letter.

10. Any American Eagle pilot who voluntarily resigns or who is discharged from American Eagle will have no rights under this letter unless reinstated by an arbitrator.

11. In the event of a dispute concerning the interpretation or application of this Agreement, the parties to this Agreement (AA, APA, ALPA and AE) agree to the following Dispute Resolution Procedures:

a. The parties agree to arbitrate any grievance alleging a violation of this Agreement on an expedited basis directly before a board of adjustment with a single neutral arbitrator jointly selected by all the parties. Each party may designate one person to serve on the adjustment board as a nonvoting member of the board. Although the party-designated members shall sit with the neutral in any evidentiary proceeding and shall be consulted with respect to the neutral’s decision, the

neutral shall be the sole decision maker in resolving the dispute. The jurisdiction of the neutral shall be limited to disputes involving the interpretation or application of this Agreement.

b. All grievances shall be stated in writing and set forth a full and complete statement of the facts and shall be served upon all of the other parties. During the course of the next fourteen (14) days after receipt of service by all parties, the parties shall meet and confer for the purpose of seeking to resolve the dispute. If all of the parties are unable to resolve the dispute to all parties' satisfaction, any party may submit the dispute in writing to the neutral by service of such submission upon the other parties within thirty (30) days thereafter. All of the parties shall convene for a hearing on the first hearing dates offered by the neutral selected by the parties. The hearing shall be completed within sixty (60) days and the briefs, if any, shall be submitted to the neutral within seven (7) days of the close of the record and receipt of the transcript. The neutral shall render a written opinion and award no later than thirty (30) days after the conclusion of the hearing. The time limits may be extended by mutual agreement of the parties.

c. The parties agree to establish a list of five (5) neutrals as a permanent panel of arbitrators to resolve disputes over the interpretation and application of this Agreement. AA, AE, ALPA and APA may each sequentially strike a name from this list, and the remaining neutral shall hear and decide the dispute. The order of striking will be determined by lot. The neutral's decision on any matter within his jurisdiction may be enforced in federal court against any and all parties pursuant to the Railway Labor Act, as amended.

Dated this 14 day of September, 2011.

For the Air Line Pilots Association, Int'l

Captain Anthony Gutierrez
Chairman, Eagle MEC

For American Eagle Airlines, Inc.

Cathy McCann
Vice President, People

For the Allied Pilots Association

Captain David Bates
President

For American Airlines, Inc.

Mark Burdette
Vice President, Employee Relations

EXHIBIT 14

In the Matter of the Arbitration Between

Allied Pilots Association
and
Air Line Pilots Association
and
American Airlines, Inc.
and
American Eagle Airlines, Inc.

Supplement W/3
Case No. FLO-0107

Hearings held February 20 and 21, 2008
Before Richard I. Bloch, Esq.

Appearances:

For the APA:
David P. Dean, Esq.
Emilie S. Craft, Esq.

For ALPA:
Wayne M. Klocke, Esq.

For American Airlines, Inc.
Harry A. Rissetto, Esq.
Michelle A. Peak, Esq.

For American Eagle Airlines:
John J. Gallagher, Esq.
Intra L. Germanis, Esq.

OPINION

Facts

This grievance, filed by American Eagle (hereinafter "Eagle") concerns Supp. W/Letter 3 (hereinafter "Supp.W), a four party agreement among American Airlines ("AA"), Eagle, the Air Line Pilots Assocation ("ALPA") and Allied Pilots Association ("APA"). The Agreement, which controls movement of

pilots (flow-throughs) between AA and Eagle, expired May 1, 2008.[1] At issue are the post-expiration flow-through rights, if any, of affected pilots. The four signatories to the agreement have met from time to time to attempt to resolve differences concerning Supp. W and to review the possibilities of its extension. But these attempts were unsuccessful and, on July 16, 2007, American Eagle (hereinafter "Eagle") filed a grievance directed to the impending expiration. The letter noted:

> Pursuant to Section VII.C. of Letter 3 the Supplemental Agreement between and among itself, that airline pilots in the service of American Airlines, Inc. ("American") as represented by the Allied Pilots Association and AMR Eagle, Inc., Executive Airlines Inc., Flagship Airlines, Inc., Simmons Airlines Inc., Wings West Airlinos, Inc. (AMR Eagle") and the airlines pilots in service of AMR Eagle Inc., Executive Airlines Inc., Flagship Airlines Inc., Simmons Airlines Inc., Wings West Airlines Inc., as represented by the Airline Pilots Association, International, dated May 5, 1997 (hereinafter "Letter 3"), the undersigned on behalf of AMR Eagle hereby files the following submission for resolution.
>
> In the past, the four parties have discussed the issues related to what effect the termination of Letter 3 (May 2008) will have regarding the American Eagle pilots' employment at American Airlines. At the time of the discussion, the parties' position on the issue did not occur.
>
> American Eagle needs this issue to be resolved expeditiously so that it an accurately determine and/or plan on how it will meet its pilots staffing needs.

[1] The spate of opinions generated by Supp. W over the years has adequately explored the purpose and performance of this 4-party agreement, and those elements will be revisited only to the extent necessary to respond to the issue raised in this case.

Eagle posed the following issue for resolution:

> What effect does the expiration of Letter 3/Supp 3[sic] in May 2008 have with respect to the American Eagle Pilots' employment opportunities at American Airlines under that agreement?[2]

On February 4, 2008, APA moved to dismiss the grievance which, it claimed, "does not, and cannot at this time, state a real and substantial controversy between parties having adverse legal interests of sufficient immediacy and reality to warrant an arbitral judgment."[3] Hearings were held February 20 and 21, 2008 in Washington, DC. All parties to the agreement were present and represented by counsel. Witnesses were presented for examination and cross-examination and, following the hearing, the parties submitted post-hearing briefs. The hearing was directed to both the APA's Motion to Dismiss and (in the event the Motion was denied) the merits of the question.

Relevant Contract Language

> III. Employment Opportunities at AA for AMR Eagle, Inc. Pilots
>
> A. At least (1) out of every two (2) new hire positions per new hire class at AA will be offered to CJ Captains who are line pilots and who have completed their IOE at AMR Eagle, Inc. Such positions will be offered to the CJ Captains who are line pilots in order of their AMR Eagle, Inc. seniority.
>
> B. If a CJ Captain is unable to fill a new hire position at AA in accordance with Paragraph III.A. above, due to a training freeze or other operational constraint, (see Paragraph III.J. below) such CJ Captain will be placed on the AA Pilots Seniority List and will count

[2] July 16 letter from Cathy McCann to Representatives of ALPA, AA and APA, p.2.
[3] February 4, 2008 Motion.

toward the number of new hire positions. The pilot's AA occupational seniority date and number will be established as if he were able to fill such new hire position at AA and had attended the new hire training class referenced in paragraph III.A. above. Such pilot's length of service for pay purposes, date of hire for pension purposes, and length of service for vacation accrual will be established in accordance with III.C. below. The number of such CJ Captains will not exceed the difference between the number of CJ Captains who are able to fill new hire positions at AA and the number of new hire positions which must be offered to CJ Captains in accordance with Paragraph III.A. above. (emphasis added)

C. A CJ Captain's (1) placement on the AA Pilots Seniority List (except as provided in Paragraph III.B. above which is only applicable for placement on the AA Pilots Seniority List in order the establish an AA occupational seniority date and number); (2) length of service for pay purposes, and (3) "date of hire" for pension purposes will be based on the date such pilot is entered on the AA payroll. Such pilot's length of service for vacation accrual will be based on the cumulative total of the pilot's service at AMR, Eagle, Inc. and AA.

***

E. Each of the first 125 AMR Eagle, Inc. pilots who successfully complete transition training as a CJ Captain must fulfill a training freeze for a period of eighteen (18) months from the date said pilot completes IOE. All other pilots who successfully complete training as CJ Captains must fulfill a training freeze for a period of two (2) years from the date each pilot completes IOE, unless released from such training freeze by AMR Eagle, Inc.

***

VII. Duration

A. This Supplemental Agreement shall be effective on signing and shall continue in full force and effect through the later of:

1. The amendable date of the next ensuing Basic Agreement between AA and APA.

2. Ten (10) years from the date of signing of this Supplemental Agreement, at which time this Supplement Agreement shall become null, void and of no further force and effect.

B. Prior to the later of Paragraph VII.A.1. or VII.A.2. above, the parties will meet and confer regarding their desire, if any, to perpetuate this Supplemental Agreement for a further period of time; provided, however, that the fact that such discussions are ongoing will not extend the duration of this Supplemental Agreement. In the event that this Supplemental Agreement terminates, then all other provisions of the collective bargaining agreement between AA and APA, and AMR Eagle, Inc. and ALPA remain in full force and effect.

Analysis

The question of Eagle pilots' rights to flow-up, following Supp. W's expiration, is a real, not a hypothetical, question. To be sure, pilots do not now flow up from Eagle to AA and have not done so for some seven years. And, no one can predict with certainty when enabling events – additional hiring by AA, for example – will occur. But that problem is itself an issue that potentially impacts Eagle pilots and, because Eagle has responsibility to schedule properly, and to assume responsibility when it does not, it affects Eagle management, as well. Supp. W's deadline has passed and, because the contractual landscape has changed, the parties have meaningful and current questions relevant to their respective obligations under their labor agreements: For purposes of scheduling considerations, from the Company's standpoint, and career decision making for the pilot force, the parties need greater certainty in the face of the dramatic change occasioned by expiration of this document.

APA and ALPA have dramatically differing views as to the existing rights of Eagle pilots and, indeed, the companies, while joining ALPA in its belief that

certain flow-up rights continue, differ as to which pilots may exercise them.[4] Paragraph VI(B) of Supp. W – Dispute Resolution Procedures – provides that "The jurisdiction of the neutral shall be limited to disputes involving the interpretation or application of this Supplemental Agreement." Disputes do currently exist, and it is appropriate that this Opinion and Award respond to set them to rest.

On June 20, 2008, APA filed an additional Motion to Supplement the Record. It bases its claim on recent developments it contends bear directly on the ripeness issue, involving capacity reductions at AA and AE and the treatment of AA furloughee pilots at Eagle. The arbitrator has reviewed the respective positions of the parties on the motion and finds, first, that the presence or lack of imminent flow-up opportunities for Eagle pilots does not control the question of whether the respective parties' rights should be clarified sooner rather than later. The case is strong for issuance of an award now to satisfy all parties' bona fide needs for guidance on this current contract issue.

Nor does the recent treatment by Eagle of AA flow-backs provide controlling, or even meaningful, evidence to the arbitrator as to the proper interpretation and application of Supp. W. In the overall, the existence of the continuing controversies suggests that postponing a response on these issues will

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[4] Eagle maintains it is sufficient for the pilot to have completed CJ Initial Operating Experience before May 1, 2008. American takes the position that Eagle pilots must have or be entitled to AA seniority numbers by that date. (AA post-hearing brief, pp.7-8.) From this, one infers AA would require the existence, as of May 1, of a new hire class (and there was none.). See Section III(G) of Supp. W, which states, in relevant part: "A CJ Captain who is awarded a new hire position at AA, will be issued the lowest seniority number at AA in the applicable new hire class,..."

only exacerbate the situation. For these reasons, APA's Motion to Supplement the Record is denied.

Whether Supp. W deals at all with post termination rights is the subject of substantial controversy. APA says the parties made it abundantly clear, by virtue of a termination clause[5] in Supp. W, that all rights cease immediately upon expiration of the agreement in May of 2008:

> VII. Duration
>
> A. This Supplemental Agreement shall be effective on signing and shall continue in full force and effect through the later of:
>
> 1. The amendable date of the next ensuing Basic Agreement between AA and APA.
>
> 2. Ten (10) years from the date of signing of this Supplemental Agreement, at which time this Supplement Agreement shall become null, void and of no further force and effect.

The admonition that the agreement shall become "null, void and of no further force and effect," says APA, does more than simply cutting off any effects based on a "vested right" that a pilot might assert post-termination. Indeed, it claims, the "null and void" language prevents a vested right from ever accruing in the first place.[6]

That contention by the AA Pilots union is at the heart of this matter. ALPA, joined by AA and Eagle, claims Eagle pilots who have elected to forego Eagle Rights[7], and who have thereby exposed themselves to potential

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[5] Section VII(A)(2).
[6] APA brief, p. 11.
[7] Section IV(D) says: "Eagle Rights CJ captains are not subject to displacement by furloughed AA pilots, or any pilot who has been awarded an AA seniority number pursuant to Paragraph III.B. above."

displacement by flow-down American pilots, have fulfilled their part of the risk/reward system that underlay the entire agreement. As such, an initial question for resolution is whether Eagle pilots accrued any rights that should somehow be considered " vested" and, if so, when?

Contrary to APA's argument, the "null, void and no further force and effect" language is not dispositive of the question. It is abundantly clear the provision was intended to foreclose pilots from initiating the process beyond May 1, 2008. It is by no means as clear the parties wished to remove a pilot's post-expiration right to flow up where, as here, the pilot had taken all necessary steps (more about these, below) for eligibility and was awaiting only the opening in an AA new hire class. The termination date marks the point beyond which no further flow-through rights may be gained. But neither that language nor any other words in Supp. W suggests that all previously earned, albeit currently unexercised, rights are to be forfeited. On the question of such forfeiture, the agreement is silent.[8]

Resolution of this interpretive dispute centers on a careful review of the parties' expectations and intentions at the time of bargaining. The four parties saw, and subtitled, the Supplemental Agreement as the genesis of "American Airlines Employment Opportunities and Furlough Protections".[9] The

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[8] APA does not challenge, and this Opinion does not question, the status of pilots who have successfully flowed through. Nothing in this Opinion should be read, therefore, as divesting former Eagle pilots who flowed up of the 18 months seniority accrued by virtue of Supp. W prior to flying at AA or the status of AA furloughees who flowed down to Eagle of their rights to maintain their Captain positions pending recall by AA.

[9] Supp. W,p.1

possibilities of those opportunities and protections[10] for the two pilot groups were implemented by constructing various flow-through opportunities wherein an AA pilot could move to Eagle in case of furloughs and an Eagle pilot could travel to AA, assuming he completed CJ Captain Initial Operating Experience (IOE) and chose to forego Eagle Rights, which would insulate him against displacement by an AA furloughee from an Eagle CJ Captain position. But no party to the process foresaw, in 1999, the industrial and economic hell to be raised by the events of 9/11. Indeed, the bargainers contemplated, generally, that movements between carriers would be completed in a matter of a few years.[11] It was the consensus, among the bargaining parties at the time, that ten years (estimated to be the length of a full economic cycle)[12], would be an appropriate duration for Supp. W because, during that time, current Eagle pilots could flow through and AA pilots who might be furloughed could flow down. After that, the parties intended to re-evaluate the entire process, thus the termination date of May 1, 2008.

Supp.W is characterized by two salient factors: The first is "visibility": The parties agreed, in 1998, there should be no "phantom" numbers and that in the interests of predictability, the addition of a new Eagle entrant to the seniority list should be made immediately apparent to all concerned (particularly AA

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[10] During the tenure of Supp.W, 124 Eagle pilots flowed up to AA, 524 AA pilots flowed down.
[11] See APA brief, p. 15.
[12] Tr.,p. 360 (testimony of Carl Battis.)

pilots)[13], even if his or her ascension to the AA work rolls were to be delayed by a training freeze or, as in this case, the lack of new hire slots. The second factor is that the operation of the agreement is manifestly time-limited. Both these elements are relevant in attempting to reconstruct the parties' intentions as to the proper operation of this agreement in the context of its termination.

There are, in this case, serious competing interests residing between and among the pilot and company groups. The companies' interests can be accommodated, in large part, by an answer to the filed grievance, thus providing some degree of certainty in terms of its administrative responsibilities.[14] APA and ALPA have a somewhat more direct interest. As indicated above, APA says all aspects of Supp. W expire, including any right to flow up at a future time. The ALPA-represented Eagle pilots claim they have a vested right to flow up at the appropriate time, even post-termination. Those individuals, it is claimed, earned that benefit by having renounced Eagle Rights, an act that resulted in their becoming vulnerable to displacement by a furloughed American pilot.[15] But,

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[13] The parties addressed their common visibility concerns by ensuring that Eagle pilots who opted to be eligible to flow up to American would receive actual AA seniority numbers on the AA seniority list. In this manner, incumbent AA pilots would be clearly advised of the existence of other pilots who might, at a later date, inhabit the AA seniority list. According to the evidence, APA raised the spectre of Continental pilots who, some years earlier, had been awarded "phantom" seniority numbers under a flow-through agreement between Continental and Continental Express. Express pilots, under the terms of that agreement, later jumped ahead on the Continental list without warning. It was agreed by the parties that placement of Eagle pilots on the AA seniority list at the time they secured AA numbers responded to those concerns.

[14] Beyond that, Eagle does vigorously support the cause of its pilots, arguing, generally, that they have paid their dues, and have exposed themselves to the vulnerability of displacement by American pilots. As such, they should reasonably be entitled to the benefit of the bargain, even if the payoff occurs post-termination of Supp. W.

[15] See Section IV(D), cited supra, n.7 .

having fulfilled their part of the bargain, says ALPA, these pilots should not be stripped of rights earned prior to May, 2008.

There is considerable force to the Eagle pilots' equitable arguments. There are additional considerations, however, with respect to the AA pilot work force, which will be discussed below. These competing considerations have been considered in constructing this Opinion and Award.

While Supp. W says nothing about rights "vesting", the concept is useful in evaluating the *quid pro quos* that make up the core and character of this agreement. The bargain agreed to by the four parties is aptly described as having centered around risk and reward. [16] There is no reason why, from an equitable or legal standpoint, Eagle pilots should not be seen as having vested rights under Supp. W to flow up in response to their having fulfilled their half of the bargain. APA's claims (1) there is no vesting process at all and (2) even assuming vesting, those rights are extinguished at the point Supp. W becomes null and void. But, when a pilot has completed training and received a seniority number, the clear mandate of the agreement is that he be allowed to move up at the point a new hire class is available for assignment at AA.[17] There is no delay, including a training freeze or the timing of such classes that will devitalize this earned right

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[16] AA Capt. Ralph Hunter testified in FLO-403/503 that:

> There was an important decision that had to be made by the American Eagle pilot ... the central principle of this agreement was, in order for the American Eagle pilot to have an opportunity to come to American Airlines, they were putting themselves at risk for the other side of this balances agreement. (At. Tr. II, 121-122, cited in Eagle Post-hearing brief, p.7.)

Eagle's lead negotiator Michael Costello testified similarly in FLO-210/301/401/501, remembering ALPA's characterization of "risk equals reward." (Tr. IV, p. 917.)

[17] See Section III.A., *supra*., p. 3.

prior to Supp. W's expiration.[18] Nor is there language compelling the conclusion those previously earned rights should vanish with termination of the agreement. Had the parties intended that result, it would have been easy enough to so provide.[19] Moreover, APA's claim that some seniority rights *do* vanish, is inapt. APA cites for the arbitrator's consideration the fact that, under a prior labor agreement, an AA pilot on furlough for ten years or on extended medical leave would lose seniority rights.[20] But those examples prove the point: The loss of seniority in cases of that nature result from specific agreement of the parties via the collective bargaining agreement, a result detailed in precise language that is wholly absent from Supp. W.

This focus on the nature and endurance of seniority rights suggests the necessary answer to the question of *when* flow-up rights vest. In considering the timing question one must recognize the existence of two groups of Eagle pilots at issue. 388 pilots received AA seniority numbers between August 1999 and August 2001 but have not flowed up to AA; no pilot has flowed up since 9/11. There are also 438 Eagle pilots who, subsequent to 2001, elected to participate in the flow-through process, but who have not yet been given AA seniority numbers as a result of the hiring freeze at AA.[21] Thus, the Eagle pilots who inhabit the current limbo are divided into two groups -- those who received AA seniority numbers and those who have not.

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[18] See Section III.B., *supra*, p. 3.
[19] Note, for example, Eagle's observation that nothing in the agreement forecloses one who received a seniority number within two years of the termination date from exercising the right, one that will necessarily be exercised after the termination date, due to the 2-year training freeze.
[20] APA post-hearing brief, p. 16.
[21] See Eagle Ex. 1.

Eagle and ALPA argue vigorously that flow-up rights vest at the time the pilot has done everything he or she may do to earn the right. They identify, for that purpose, the moment the pilot, having renounced Eagle Rights, completes IOE.[22] At that point, a pilot may or may not receive a seniority number, depending on availability of AA new hire classes. ALPA and Eagle deem the receipt of a number at that point irrelevant.[23] This position, however, fails to accord appropriate weight to the profoundly important role of the actual seniority number not only in the context of the airline industry in general but also, specifically, in ensuring a primary goal of Supp. W -- visibility. At the point the seniority number has been awarded, AA pilots stand better informed of their relative positions on the AA seniority list and, therefore, in a better position to make necessary career decisions and projections during their tenure with AA. Given that the central premise of Supp. W is about moving pilots between companies and ahead of other pilots, the import of receiving the seniority number cannot be underestimated. It is wholly appropriate to identify that as the moment the flow-up right has vested. The result of this conclusion, therefore, is that the right to flow up is to be restricted to those pilots possessing an AA seniority number as of May 1, 2008.

The argument favoring a broader view as to when the right should attach is by no means frivolous. The 438 pilots who opted against receipt of Eagle Rights

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[22] This is a commitment that, according to the mandates of Supp. W, must be made "not later than the completion of IOE for a CJ Captain position." Supp. W, Section III (F).

[23] Implicit in that position is the assumption that the possible lack of an awarded seniority number at that point should not be considered relevant, since that is an essentially a ministerial function that flows naturally at the point hiring resumes and new hire classes are scheduled.

and who therefore remained vulnerable to displacement by furloughed AA pilots have, undeniably, done everything required of them under Supp. W to be considered eligible to receive a seniority number. But to allow that group, at some unspecified date in the future, to attain a seniority number and the corresponding right to flow up, would be to, effectively, assign a "phantom" seniority number at some unspecified time in the future, and leaving room for a "surprise" that closely parallels the Continental/Continental Express scenario the parties discussed during bargaining and expressly wished to avoid. As such, that arrangement is potentially antithetical not only to that specific problem but also to the negotiated and clearly expressed desire of the parties for a date certain that would mark the end of this ten-year experiment.

In sum, the finding here, for the reasons set forth above, is that expiration of Supp. W did not extinguish flow-up rights of Eagle CJ Captains who, prior to May 1, 2008, completed IOE and received AA seniority numbers. Pilots who had not received AA seniority numbers by that date do not retain rights to flow up under Supp. W.

AWARD

The effect of the expiration of Supp.W in May 2008 on Eagle pilots' employment opportunities at American Airlines is as follows: The right to flow-up is to be retained by Eagle CJ Captains who, prior to May 1, 2008, completed IOE and received AA seniority numbers.

_____
RICHARD I. BLOCH, ESQ.

June 30, 2008

EXHIBIT 15

September 6, 2013

F/O Greg Cordes
2516 Nutmeg Ave.
Morro Bay, CA 93442
grcordes@mac.com
(805) 748 0007

Re: Improper A Fund Pension Credit Date used for Former American Eagle Pilots - Grievance

CERTIFIED MAIL
EMAIL

Captain Rusty McDaniels
Allied Pilots Association
O'Connell Building
14600 Trinity Boulevard
Suite 500
Fort Worth, TX 76155-2512 USA

Dear Rusty,

I appreciate your time last Friday in discussing the company's failure to utilize the date the former American Eagle pilots should have been allowed to transfer to American Airlines, had they not been wrongfully withheld, for their A fund vesting and credit purposes.

Many of these pilots are just now realizing the fact that they have been severely and unfairly financially harmed, and are seeking advice on how to get this corrected. Former American Eagle pilots are also very concerned if our own union, the APA, after having fought for years to delay and/or preclude us from transferring to AA at all, is now ready to step up and start representing us when it comes to such an egregiously unfair situation, which the APA helped create.

You stated in our conversation, that your belief is that the language and intent of Mr. Nicolau was, because AA management said that it was not legal for AA to retroactively apply the former AE pilots' A fund start date to the date that they should have transferred to AA, that the "make whole" for that damage was simply excluded from the remedy award. The Former American Eagle pilots reject that argument. First of all, this flies in the face of the make-whole doctrine of the grievance process. No labor union, properly representing their membership would simply let that go. Secondly, the question is, was AA's argument that it would be illegal to correct the vesting / funding start date to when these pilots should have transferred to AA even fact, or was it just another thinly veiled lie to side-step their pension obligations, that went unchallenged by the unions?

Below is an excerpt from Mr. Horton's 2006 reemployment agreement in which he is given make-up pension credit to restore his pension to reflect continuous service at AA, when in fact he had resigned from AMR Corporation and had gone to ATT for 4 years:

> The Executive shall be provided with one and one/third additional years of age and service credit for each year worked during the Employment Period (for up to a maximum 3.9 years of additional age and service credit) for all purposes of American's Supplemental Executive Retirement Program (the "SERP") all with the effect that Executive shall be deemed to have served continuously with American since August 1985.

So the argument is, it is legal for management, but not legal for the pilots?

You also said that this award was the result of settlement discussions for which transcripts exist that would shed clarity on the intent of the parties and Mr. Nicolau. The question that begs an answer is; if Mr. Nicolau's "award" was actually the result of settlement discussions, then for what, and to whom, were the monetary damages for these former AE pilots pension funds bargained away? A diligent labor union does not simply walk away from 3 years of members' pension vesting without something, such as liquidated damages, in return.

Additionally, the former American Eagle pilots do not share the APA's interpretation of the Nicolau award with respect to the use of word vesting. Black's Law Dictionary, 7th Edition defines "vested" as:

> Having become a completed, consummated right for present or future enjoyment; not contingent; unconditional; absolute.

As such, we believe the intent of the language requires that the harmed pilots have a consummated, unconditional and absolute right to their pension funds from the date that they should have transferred to AA had they not been wrongfully withheld.

Moreover, notwithstanding the Nicolau Award, the American Eagle pilots should have been made whole for the damages they suffered by being illegally withheld. It is impossible to make a reasonable argument that it is fair and correct for the pilots that were improperly placed into the AA new hire classes in place of the former American Eagle pilots, to have in effect swapped pension credited YOS start dates with the former AE pilots, now enjoying what should have been the former AE pilots start date, while the former AE pilots are now relegated to what should have been the more junior pilot's start date. It's simply wrong, does not make sense, and needs to be corrected. Most any judge will likely agree.

It is incumbent on the APA to do the right thing here, and to begin to vigorously and effectively represent this group of AA pilots (former American Eagle Pilots), as they do with other pilots on the APA seniority list. There has been substantial financial harm done to these former American Eagle pilots, with this issue being just a portion of the total harm.

Per our conversation you advised me to submit a brief on this issue. To allow me to accomplish this, I hereby request copies of all of the settlement transcripts and / or agreements pertaining to the 0108 Remedy Award.

I am not requesting this information solely for myself, but on behalf of the more than 30 other former American pilots who currently wish to join Mr. Sandhu's grievance.

I earnestly request that the APA immediately file a grievance on this matter. Should APA decline to do so, I request a written explanation of APA's position

Sincerely,

F/O Greg Cordes

cc: Captain Steve Roach
First Officer Thomas Copeland

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September 27, 2013

Via E-mail and First Class Mail

First Officer Greg Cordes
2516 Nutmeg Avenue
Morro Bay, CA 93442
grcordes@mac.com

Re: Pension Credit for Former American Eagle Pilots

Dear First Officer Cordes:

We write to respond to your recent letter to Captain Rusty McDaniels regarding former American Eagle pilots' credited service in the Defined Benefit Pension Plan (known as the "A Plan"), which was frozen on November 1, 2012 as a result of American Airlines' bankruptcy. In your letter, you argued that former Eagle pilots who flowed up to American pursuant Supplement W to the collective bargaining agreement between APA and American and Arbitrator George Nicolau's April 9, 2010 award should have more credited service for A Plan purposes than they do. Specifically, you argued that these former Eagle pilots should receive credited service (*i.e.*, credit for benefit calculation purposes) in the A Plan dating from the time that they should have flowed up to American, as determined by Arbitrator Nicolau, rather than the time that they actually began work at American. You also asked that APA file a grievance to that effect on your behalf.

However, Arbitrator Nicolau addressed this issue explicitly in his award. His April 9, 2010 award stated on page 19:

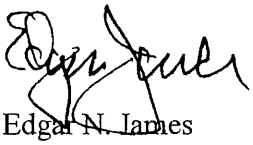
> Those Eagle [Commuter Jet] Captains within the group of 244 CJ Captains who transfer will become participants in American's A Plan on the day they become American employees, with the one year waiting period waived *and the period between the time they should have transferred and the time they actually transferred credited solely for vesting purposes.*

(Emphasis added.) Arbitrator Nicolau's award is quite clear about the fact that Eagle pilots flowing up to American by virtue of his award would begin accumulating credit for benefit calculation purposes in the A Plan immediately on their arrival at American, without any waiting period, and that the time between when they should have transferred and when they actually transferred would be credited "solely for vesting purposes." As you may know, the A Plan has a five-year vesting period, which means that participants are fully vested in the plan and able to receive full benefits according to the plan's terms after five years of vesting service. Vesting service is not the same as credited service, nor are they measured in the same manner. Vesting service pertains to a participant's right to receive an accrued benefit; credited service is used in calculating the benefit itself (and for early retirement eligibility). We are attaching a copy of Arbitrator Nicolau's award for your reference.

To the extent you are seeking to challenge the validity of Arbitrator Nicolau's award, a grievance is not the proper vehicle for such a challenge. Moreover, the time for filing such a challenge has passed; the statute of limitations has run. To the extent you are arguing that APA and American have misapplied the award, we must disagree. Arbitrator Nicolau's award is perfectly clear on this subject, and APA and American have applied it consistently since it was issued more than three years ago. If, on the other hand, you are arguing that APA did not adequately represent you in the proceedings before Arbitrator Nicolau, you will recall that APA did not represent you and other then-Eagle pilots in those proceedings at all.

Thank you for your letter, and we hope this response is helpful in clarifying these issues and explaining APA's position. If you disagree, you retain the right to file a grievance without APA's involvement.

Sincerely,



Edgar N. James
Jeff Vockrodt

Attorneys for the
Allied Pilots Association

Enclosure

In the Matter of the Arbitration	:	
	:	
Between	:	
Allied Pilots Association	:	
- and -	:	
Air Line Pilots Association	:	
and	:	
American Airlines, Inc.	:	
and	:	**OPINION**
American Eagle Airlines, Inc.	:	**AND**
	:	**AWARD**
(SuppW/Letter 3; Grv. FLO-0108 Remedy)	:	

APPEARANCES

For the Air Line Pilots Association:
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James Lobsenz, Esq.

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For the Allied Pilots Association:
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For American Airlines, Inc.:
Morgan, Lewis & Bockius, LLP.
By: Harry A. Rissetto, Esq.
Michelle A. Peak, Esq.

On March 29, 2008, ALPA filed a grievance in which it claimed that American Eagle CJ Captains with AA seniority numbers as a result of the flow-through provisions of the now expired Supplement W/Letter 3 were entitled to attend AA training classes beginning June 6, 2007 instead of those TWA-LLC pilots designated by Arbitrator LaRocco in FLO-0903 as "equivalent to new hires."

That same question was raised before Arbitrator LaRocco in the remedy phase of FLO-0903, but his ruling was that he lacked jurisdiction to provide an answer because the Parties' previously stipulated remedy question did not encompass that issue. He also said:

> The Arbitrator's remarks herein should not be construed to express any opinion on whether ALPA and/or AE waived any right to seek the additional relief it requested herein in any subsequent case.
> (FLO-0903, 10/28/08, PP.31-32)

As a result of that determination, this grievance was moved forward and was placed before me on June 1, 2009. At that hearing, the Parties agreed on what I have characterized as a narrow question, i.e.:

> Were American Eagle pilots who hold American Airline seniority numbers entitled to attend AA training classes beginning in June 2007?

They also agreed, if this question was answered in the affirmative, that the question of remedy was to be returned to them for determination, with the arbitrator retaining jurisdiction in the event a resolution was not reached.

By the time the June 1, 2009 hearing had taken place, there had been 20 training classes at AA in the period between June 6, 2007 and March 18, 2009. No Eagle Captains with AA seniority numbers were in those classes. However, there were 244 TWA "new hire" pilots, all of whom had been "recalled" from furlough along with AA pilots who had

previously been furloughed from active AA positions.[1]

In my October 18, 2009 decision, I stated that there were, as in previous cases, equities on both sides of the dispute. I also said that I understood and fully appreciated those arguments, but that the first question was whether what the Parties had agreed to in SuppW/Letter 3 answered the question at hand. If it did, consideration of the competing equities, as Arbitrator LaRocco had previously noted, were best left to the Parties, particularly when they had the foresight of leaving any remedy, if the question was answered in the affirmative, in their hands.

For reasons fully set forth in the Opinion, I did answer the submitted question in the affirmative, stating in the Award:

> As stated in the foregoing Opinion, American Eagle pilots who hold American Airline seniority numbers were entitled to attend AA training classes beginning in June 2007.
>
> In accordance with the instructions of the Parties, the matter is remanded to ALPA, AE, AA and APA to formulate an appropriate remedy.
>
> Jurisdiction will be retained for a period of one year, a period that may be extended by agreement of the Parties. In the event that agreement on an appropriate remedy is not reached during the period of retained jurisdiction, any Party may, by motion, request that jurisdiction be exercised over the question of remedy. However, such request shall not be made within ninety days of the date of this Award.

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[1] Only one TWA-LLC pilot entered training in the June 6, 2007 class. At the time this occurred, there were 155 Eagle Captains with AA seniority senior to that pilot. As the classes continued the number of TWA-LLC pilots attending them increased, with their numbers filling the bulk of the class seats during the nine classes held during first six months of 2008.

As it was, the Parties could not agree on a remedy and that question was returned to me, with hearings held on February 25 and 26 and March 30, 2010. Prior to those hearings, position statements were filed setting forth the views of the Parties on the remedy question. All agreed on one thing, that the question was complex and the answer difficult.

Upon studying those positions and arguments in detail and reviewing the earlier proceeding as well as my October 18, 2009, Award and the prior awards, I opened the remedy hearings by advising that I did not intend to require an Eagle pilot to go to American who does not wish to do so and did not intend, whatever award I might render, that any pilot flying for American end up on the street as a direct result of the required transfer of Eagle Captains. I reinforced that view as the hearings continued so that the Parties would be well aware of my considered views.

During the hearing, in addition to lengthy opening statements and continued presentations of the respective views of the two airlines and the two unions, I heard testimony from James Anderson, Senior Principal, Employee Relations, Flight at American, Kye Johanning, Lead Economic Analyst at ALPA, Eagle Captain Robert Higgins, Michael Burtzlaff, a Principal in American's Finance Group, Cathy McCann, Vice President, People at Eagle, Captain Bill Couette, an Eagle Captain and Vice President, Administration at ALPA, American Captain Ralph Hunter

and First Officer Steven Salter, American Captains Douglas Gabel, Jeff Hefley and Glen Morris, former TWA employees, and Kenneth Cooper, former Assistant Director in ALPA's Representation Department.

The testimony of APA witness Hunter and ALPA witness Cooper dealt primarily with the question of whether or not it was obligatory under the now expired Supplement W/Letter 3 for a non-Eagle Rights Captain to flow up to American at the time an offered opportunity was available (Tr. 189-214, 315-324,Hunter; 325-339, Cooper).

The testimony of ALPA witness Johanning and American witness Burtzlaff dealt with damages issues, affecting those who were unable to flow up to American because they were not given the opportunity to attend the aforesaid training classes, and the so-called ripple or downstream damages for those who were unable to move into higher Eagle positions because of the inability of those ahead of them to move to American. ALPA took the position that both groups were damaged and that such damages should be awarded (Tr. 78-110,177-181, Johanning; ALPA Ex.1 & 1A). American's analysis was that those whose movement to American was delayed did not suffer a monetary loss in overall compensation (Tr. 118-148, Burtzlaff; AA Ex. 1). Both American and Eagle also argued that downstream damages were not just highly speculative, as confirmed through Vice President McCann's testimony as to how and why pilots bid (Tr. 149-164), but were also wholly inappropriate.

The testimony of Captains Gabel, Hefley and Morris, former TWA pilots called by APA, dealt with the purchase of the airline by American, the technicalities, process and progress of the transition, and the status and role of TWA-LLC, the subsidiary created at the time of purchase. The purpose of this testimony, aided by a timeline (APA Ex.4) and other exhibits (APA Ex.1-3,5-9), was to demonstrate that TWA-LLC was a needed vehicle in a large and complicated merger; that all employed at TWA-LLC fully expected to become American pilots as American officials told them they would; that a number of them did so, and that it is not appropriate, when the facts of the transition are objectively viewed, to characterize them as "new hires." APA also argued, on different equitable grounds, that 292 of the 382 pilots such as First Officer Salter hired by American in 2001 prior to the events of 9/11 are entitled to return before any of the 244 Eagle pilots can attend class. These are pilots furloughed post-9/11, who were placed below all former TWA pilots when the AA/TWA seniority lists were merged.

There was also testimony by Eagle Captain Higgins, who is presently on short-term disability and, as a consequence, is unable to use his first-class medical. The question regarding the status and right of a pilot such as Captain Higgins, who might be unable to move to American because of such an impediment, has been resolved by a Stipulation, one of the few issues on which the Parties have agreed, that will be part of my Award.

The Positions of the Parties

Both ALPA and Eagle contend that, in order to remedy the previously found breach, 244 Eagle CJ Captains with AA numbers are entitled to flow-up to AA ahead of any new hires and any AA pilots junior to the TWA "new hires" and that said movement, which is in seniority order, is obligatory for each Eagle CJ Captain. Where they differ is on the pace of that movement. ALPA maintains that the pilots, who have waited long enough, should move without delay. Eagle maintains that a pace as swift as ALPA seeks would cripple the operations of the airline and that, as a consequence, the move should be limited to no more than 20 pilots a month, beginning 60 days after the Award. Twenty a month because that is the maximum Eagle can spare at any one time and 60 days hence because that is the time Eagle needs to train those replacing pilots who are leaving. ALPA says it understands the constraints Eagle advances, but argues that such metering should be ordered only to resolve a remedial issue that cannot be solved by other means, and that, in any event, all affected pilots must continue to be properly compensated during any further period of delay.

APA, as previously stated, is of the opinion that the above mentioned American pilots hired in 2001, the bulk of the so-called "AA Legacy" pilots, come first and that the Eagle pilots must wait. American, because it says it would have recalled those pilots if it had known that recalling TWA "new hires" was improper, takes the same position. In

addition, APA, for reasons of equity, believes an additional 154 furloughed pilots should be recalled before Eagle pilots begin transferring to AA.

The Parties also disagree over the damage issue. Here, the dispute is between the companies and ALPA. The Association contends that each pilot who was unable to flow-up is entitled to every element of compensation and every benefit he would have received if he had moved to American at the time he was entitled to do so, such time to be measured by the presence of the TWA-LLC pilots in the June 6, 2007-March 18, 2009 training classes. ALPA also contends that the compensation and benefits must go beyond seniority credit for pay and pension purposes as Eagle suggests, but must also include AA sick leave, vacation and health insurance differentials; retroactive participation and credit in both American retirement plans, American Airlines, Inc. Retirement Benefit Program–Fixed Income Plan (the "A Plan") and the American Airlines, Inc. Pilot Retirement Benefit Program–Variable Income Plan (the "B Plan"). Other than length of service credit for pay purposes, American, contending that there was no overall compensation loss, insists, as a result, that no other compensation or increased benefit is warranted. Both American and Eagle also forcefully argue that, if damages are awarded, the Companies are entitled to an offset or credit for amounts Eagle flow-through pilots earned at Eagle in

excess of the amounts they would have earned at AA if they had transferred between June 6, 2007 and March 18, 2009.

ALPA also contends that those pilots prevented from moving higher in Eagle's ranks because of the delay occasioned by the breach are also entitled to damages. By ALPA's calculation, these downstream damages, absent requested interest, total $21.9 million; $19.7 million in lost wages and $1.2 million in Company 401(k) contributions. This amount, ALPA says, should not be paid by Eagle, which did not cause the breach, but by American, which had decided to bring the TWA "new hire" pilots into the training classes rather than following the precepts of SuppW/Letter 3. Though not being held responsible for these damages, Eagle asserts they are speculative and unjustified. American vigorously opposes any such downstream damages. Like Eagle, it contends they are speculative and, given the bidding patterns of pilots, that any determination of the appropriate recipients would be fraught with uncertainty. It also argues that any consideration of downstream damages is just not encompassed within the narrow, disputed question with which this proceeding began. That question was whether Eagle pilots with AA seniority numbers were entitled to attend AA training

classes. Once that question was answered, the only remaining issue was what remedy should be fashioned for those pilots, not others.[2]

Discussion and Analysis

As every one understands, the remedy issues presented in this case are complex and inter-related. All four Parties (APA, ALPA, AA and Eagle) have vigorously and effectively presented their evidence and arguments, including strong equitable arguments on behalf of all affected pilots. In light of the complex and inter-related nature of the issues, I elected to announce certain aspects of my decision to the Parties on the record and then to ask the Parties to discuss with me, collectively, the remedy issues that would remain open in light of my preliminary rulings. During those discussions I provided the Parties further guidance about the resolution of the remedial issues. While this consultation process was helpful to me in further defining the issues and understanding the competing views and considerations, the Award that follows is my Award; it does not represent the "agreement" of any of the four parties. Indeed, as set forth above, the positions of the parties on the key issues addressed herein remain far apart. Nonetheless, in the face of an impending Award, each of the Parties has been helpful and cooperative in my efforts to finalize an Award with sufficient clarity and detail to facilitate implementation.

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[2] Eagle raised some other remedy issues. However, they were predicated on the assumption that moving to AA was mandatory and the consequent need for a hardship provision. In view of my ruling, set forth below, these questions need not be addressed.

It should also be said that I have taken into consideration some facts that were not known until after the proceeding was underway. First, I was advised that 102 AA pilots, of whom 83 were former TWA-LLC "new hire" pilots who had been serving at American since their 2007-2009 recalls, were furloughed on February 28, 2010. However, anticipated furloughs that were to take place in April were canceled. Additionally, I was advised that American, except as a possible result of this Award, anticipates no additional training in 2010. All of this, as well as the competing equities, which will be discussed, has been taken into consideration in reaching my conclusions.

I had stated at the outset that I did not intend to require any Eagle CJ Captain to transfer to American if he chose not to do so. I reached that conclusion, which I repeat here, for two reasons. The first is that, in my judgment, the now expired Supp W/Letter 3 did not require it. Though it could be argued that those who did not elect to "forfeit the opportunity to secure a position on the AA Pilots Seniority List" pursuant to Article III.F. at the completion of CJ Captain IOE were obligated to accept the actual position when offered, the language of Supp W/Letter 3 does not support that conclusion. Other subsections of Article III, such as III. H., I. and J., speak of a CJ Captain who "accepts a new hire position." If a pilot were required to move to that new hire position when actually available, that is, if such movement were

obligatory, the word "accept," which clearly entails a choice, would not have been used.

The second reason is that SuppW/Letter 3 was crafted in 1997. Much has changed since then. As I and other arbitrators have pointed out, no one anticipated 9/11, no one anticipated the magnitude of the resultant furloughs, and mergers were not even discussed. Moreover, those pilots who did not chose Eagle Rights status did so at a very different time in a very different landscape. That unanticipated upward delay, encompassing ten years for some, strongly supports the judgment that reading Supp W/Letter 3 as containing an irrevocable obligation is inappropriate and inconsistent with equity.

It is therefore my conclusion that a choice should be made. Obviously, the choice should be extended to the 244 CJ Captains who would have had the opportunity to attend the aforesaid training classes. I am also of the opinion that the choice should be given to an additional 42 CJ Captains, for a total of 286. That includes all active Eagle CJ Captains who have greater seniority than the least senior currently active TWA-LLC pilot.

The choice these pilots make is to be made in light of the remedial components spelled out herein. Once these pilots are made aware of the compensation and benefits available to them if they choose to flow-up to American pursuant to the timetable set forth herein, a timetable consistent with the needs of the companies and the equities inherent in

the history and prior anticipations of all other pilots, their choice will be irrevocable. The opportunity to flow-up, clearly at times uncertain except for the first 35, will be offered to the 286 senior Eagle CJ Captains with AA numbers. The compensation and benefits attached to a flow-up choice will be granted to the most senior 244 of the 286 who choose this advancement. If less than 244 of the 286 choose to flow-up, the compensation and benefits will only be offered to that lesser number, whatever it may be, with such compensation and benefits offered to no other Eagle pilot. Though the opportunity to transfer to American may not occur for some time, dependent as it is on the health of the airline and the compelling equities in this case, I have decided to make the choice irrevocable rather than allowing an affected pilot to choose one option and later choose another. Supp W/Letter 3 has expired and finality, in my judgment, is to the interest of all.

As stated, the 244 Eagle CJ Captains who choose to transfer to American should have been at the Company earlier; the first on June 6, 2007, and the remainder on the July 3, 2007-March 18, 2009, class dates at the pace measured by the class attendance of the remaining 243 TWA-LLC pilots. The retroactivity of the compensation and benefits to be offered has been determined with those dates in mind. I have also

decided that, for these 244 Eagle CJ Captains, undeniable considerations of equity require that retroactivity also be applied to any "time to Captain" requirement. Therefore, the Award provides that, for such purposes, the "time of transfer" should be measured from the time that Captain would have transferred to AA had the breach not occurred.

If any one of the 244 Eagle CJ Captains chooses to flow-up to American and is subsequently enrolled in a training class, his transfer to American, save for the exception noted above, shall be no different, than transfers that had previously occurred pursuant to the now expired Supp W/Letter 3, including placement and restrictions.[3]

Once that Eagle CJ Captain transfers to American, he shall receive length of service for pay purposes retroactive to the date he would have transferred during the June 6, 2007-March 18, 2009 period. Prospectively, that Eagle CJ Captain who transfers will also receive the greater vacation and sick bank credit he would have earned if had been at American on the date he should have transferred. Those Eagle CJ Captains within the group of 244 who transfer will also become participants in America's A Plan on the day they become American employees. However, as was done when TWA pilots became American employees, the one year waiting period shall be waived and the period

[3]In all other respects, these CJ Captains who choose to flow-up to AA must meet American's criteria for employment at the time of transfer. However, it should be noted that the Parties have stipulated, as reflected in the Award, that an Eagle CJ Captain who is unable to flow to AA because he does not have an FAA First Class Medical Certificate or is on the long-term sick list or disability list does not forfeit the opportunity to flow-up at a later date.

between the time they should have transferred and the time they actually transferred shall be credited, but solely for vesting purposes. At the time that Eagle CJ Captain transfers to American, the Company, by means legally permissible as set forth in the Award, will also make contributions to the B Plan for the period that Captain should have transferred at a rate equal to the Super MD-80 First Officer rate of 73 hours, which is the reserve guarantee.

I turn now to the movement of Eagle CJ Captains to American. Here, competing equities come sharply into play. The Eagle CJ Captains have waited a long time to exercise the opportunity to transfer. On the other hand, the individual TWA pilots are not at fault for that delay. They were employees of a failing, bankrupt company whose assets were purchased by American and had little control over their fate. They, along with the Eagle CJ Captains and those pilots hired by American in 2001, were all caught up and severely impacted by the events of 9/11; events which no one anticipated and which has affected all to this day. In constructing what follows I have taken all of those equities into consideration.

The Award provides that 35 Eagle CJ Captains who choose to flow-up to American shall be placed in training beginning no later than June 2010, with said training to be in two tranches if needed. The Award also

provides that there shall be no furloughs as a direct result of these transfers. If, for other reasons, a furlough is deemed necessary during the remainder of 2010, 35 pilots furloughed shall receive two months additional furlough pay in the amount set forth in the AA/APA Agreement, as specified in the Award.

Following the aforesaid transfer, before any additional CJ Captains are transferred, recalls to AA shall be administered in accordance with the AA/APA Agreement based on the AA seniority list as of the date of this Award until the most junior pilot furloughed on February 28, 2010 has been offered recall.

Following that offer and recall, the remaining Eagle CJ Captains with AA numbers who elect to transfer when and as future positions become available and those AA pilots presently on furlough shall be entitled to enter and re-enter active service at American in AA seniority order. Of those Eagle CJ Captains who transfer, those who were in the previously referenced 244 shall be entitled to receive the previously referenced compensation and benefits as of the day they would have transferred if they were in one of the June 6, 2007–March 18, 2009 training classes.

What remains is the downstream damage question. I am not persuaded that the requested payment of monetary damages, with their

calculation and distribution so unclear and imprecise, is a suitable means of dealing with the effect on those pilots below the Eagle CJ Captains with AA numbers. A more appropriate means is to concentrate on the job opportunities which were unavailable as a result of the above described events that will become available following contractually required recalls. There are presently 1351 Captains at Eagle, 527 have AA seniority numbers, 824 do not. Through a system of preferential hiring, 824 future pilot job opportunities at AA should be made available to Eagle pilots who do not have AA seniority numbers. When job opportunities become available at a result of future hiring at AA, said Captains are to be offered one of every two new hire positions in a new hire class in Eagle seniority order subject to the following limitation. Eagle will make every attempt to release a sufficient number of pilots to meet the aforesaid ratio. It will not, however, be required to release more than 20 pilots per month should release of a greater number result, in its judgment, in severe operational difficulties. If any one of the present day Captains declines the above opportunity when available, an Eagle pilot who has become a Captain after the date of this Award shall have the option of electing that opportunity until such time as 824 pilot positions have been filled by Eagle Captains pursuant to this paragraph. This system of preferential hiring should be a matter of agreement between the directly affected Parties. The Award that follows so provides.

The Undersigned, acting as the Arbitrator pursuant to the Agreement of the Parties and having duly heard their proofs and allegations, therefore renders the following

AWARD

As stated in the foregoing Opinion, American Airlines shall offer to the 286 most senior Eagle CJ Captains holding AA seniority numbers the opportunity to elect to flow-up to American. Said election, which is to be made after said Captains are advised of the remedial components set forth herein, shall be irrevocable, and shall be made no later than May 24, 2010. Once elections are made, the opportunity to transfer to American with the remedial components set forth herein shall be offered to the 244 most senior CJ Captains of the 286 who elect this advancement. If less than 244 Eagle CJ Captains so elect, the remedial components set forth will only be offered to that lesser number.

Said CJ Captains who elect the opportunity must meet the criteria for employment at American at the time of transfer, with the "time of transfer" for the purposes of "time to Captain" measured from the time each CJ Captain would have transferred to American had the breach not occurred. By agreement of the Parties, any Eagle CJ Captain who is unable to transfer to American because he does not have a FAA First Class Certificate or is on Eagles' long-term sick list or disability list does not forfeit the opportunity to transfer at a later date provided American's eligibility criteria, as set forth herein, are met.

Except as noted above, those Eagle CJ Captains transferred to American shall be transferred in the same fashion as those CJ Captains who previously transferred pursuant to the now expired Supplement W/Letter 3, including placement and restrictions.

Once an above referenced Eagle CJ Captain electing to transfer becomes an employee of American, he shall receive length of service for pay purposes retroactive to the date he would have transferred but for the placement of TWA-LLC pilots in the June 6, 2007-March 18, 2009 training classes.

Prospectively, an above referenced Eagle CJ Captain who transfers to American will receive the greater vacation and sick bank credit he would have earned if he had been at American but for the placement of TWA-LLC pilots in the aforesaid training classes. Those Eagle CJ Captains within the group of 244 CJ Captains who transfer will become participants in American's A Plan on the day they become American employees, with the one year waiting period waived and the period between the time they should have transferred and the time they actually transferred credited solely for vesting purposes. Additionally, at the time said CJ Captain transfers to American, the Company will make contributions to the B Fund for the period that Captain should have transferred to American, which contributions shall be at the MD-Super 80 First Officer reserve guarantee rate of 73 hours. In the event such contributions are not legally permissible during the first year of said Captain's employment at American, the remainder of such contributions will be made, to the extent legally permissible, in the second year. Any remaining contributions shall be paid as taxable compensation.

The first 35 Eagle CJ Captains who elect to transfer to American shall be placed in training beginning no later than June 2010, with said training to be in two tranches if needed.

There shall be no furloughs as a result of these transfers. If, for other reasons, a furlough is deemed necessary during 2010, 35 pilots furloughed shall receive two additional months furlough pay in the amounts set forth in the AA/APA Agreement. Such additional pay shall be awarded beginning with the most senior pilot in each month of furloughs and then to each less senior pilot in that month until a total of 35 pilots have been awarded the additional pay.

Following the aforesaid transfer, before any additional Eagle CJ Captains are transferred, recalls to AA shall be administered in accordance with the AA/APA Agreement based on the AA seniority list as of the date of this Award until the most junior pilot furloughed on February 28, 2010 has been offered recall.

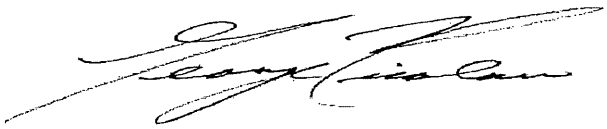
Following that offer and recall, the remaining Eagle CJ Captains with AA seniority numbers who choose to transfer when and as future positions become available and those American pilots presently on furlough shall be entitled to enter and re-enter active service at American in American seniority order. Said Eagle CJ Captains transferring to American shall be transferred in the same fashion as those CJ Captains who previously transferred pursuant to the now expired Supplement W/Letter 3, including placement and restrictions. Upon their transfer, those CJ Captains within the previously referenced 244 CJ Captains shall be entitled to receive the above referenced compensation and benefits as of the day they would have transferred but for the placement of TWA-LLC pilots in the June 6, 2007-March 18, 2009 training classes.

The affected Parties are directed to enter into a preferential hiring agreement pursuant to which American, at the time hiring resumes, will offer to 824 Eagle Captains, including Eagle Rights Captains, one of every two new hire positions in a new hire class in order of Eagle seniority, subject

to the following limitation. Eagle is to make every attempt to release a sufficient number of pilots to meet the aforesaid ratio. It will not, however, be required to release more than 20 pilots per month if doing so would, in its judgment, create severe operational difficulties.

Should any of the present day Eagle Captains decline the above offered pilot position opportunity, an Eagle pilot who becomes a Captain after the date of this Award, shall have the right to elect said opportunity in seniority order until such time as 824 pilot positions have been filled by Eagle Captains pursuant to this paragraph.

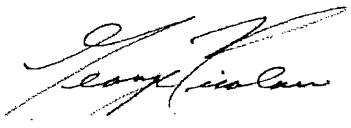
Jurisdiction will be retained in the event there is any dispute regarding the interpretation or application of this Award.



George Nicolau, Arbitrator

ACKNOWLEDGMENT

On this 9th day of April, 2010 I, George Nicolau, affirm, pursuant to Section 7507 of the Civil Practice Law and Rules of the State of New York, that I have executed and issued the foregoing as my Opinion and Award in the above matter.



George Nicolau

October 29, 2013

F/O Gregory R. Cordes
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P.O. Box 466
Morro Bay, CA 93442
(805) 748 0007

Mr. Edgar James
James & Hoffman
1130 Connecticut Ave. NW, Suite 950
Washington DC 20036-3975

CERTIFIED MAIL
EMAIL

Re: Request for FLO-0108 Remedy Award Transcripts

Dear Mr. James,

In response to your letter of September 27, 2013, I appreciate you confirming that the APA did not previously represent, and will not now represent the interests of the AE Flow-through Pilots in our efforts to have our A Plan pension credited YOS multiplier adjusted to reflect the time that we should have been at AA, had we not been improperly withheld from transfer with the concurrence of the APA.

It is important to remember that while the Flow-through pilots were being withheld, these pilots were on the AA Pilot System Seniority List and held an AA seniority number, just as were the group of pilots furloughed directly from TWA LLC. What is ironic is that it was clearly APA's policy to represent the former TWA LLC pilots during the same time that the APA now states that it was not representing the Flow-through pilots. Both pilot groups, the TWA LLC pilots, and the Flow-through pilots, held the same status, which was that both groups held AA pilot seniority numbers but neither group had transferred to AA. In fact, in FLO-0108 as well as several other arbitrations, FLO-0903 for example, APA was overtly working to benefit the former TWA pilots at the expense of the Flow-through pilots by attempting to eliminate, and/or delay the transfer of the Flow-through pilots to AA. When TWA LLC pilots "flowed-back" to American Eagle, the APA chose to represent the TWA pilots, even going as far as attending checking events at the American Eagle Flight Training Academy, even though the TWA LLC pilots were at American Eagle Airlines and represented by ALPA. So when you say, "you will recall that APA did not represent you and other then-Eagle pilots in those proceedings at all", it strikes a raw nerve in about 500 AA Flow-through pilots who categorically assert that the APA had a duty to represent all pilots on the AA Pilot System Seniority List, or at the very least had an obligation to not cause harm to the Flow-through pilots.

If the APA's contention is that ALPA, and not the APA, represented the Flow-through pilots at the time, is it also the APA's contention that ALPA should negotiate directly with AA management on issues that affect Flow-through pilots, particularly the remaining AE pilots with AA seniority numbers, or the 824 pilots who may come to AA under some other agreement?

With respect to the timeliness issue that you raised, we reject your argument entirely. The recent equity distribution calculations have only now brought to light the interpretation and harmful application of the Nicolau Award. Furthermore, the actual financial harm resulting from the A Plan credited YOS date difference is just now beginning to be realized by the affected Flow-through pilots. This issue has now just become "ripe".

The bottom line is, the Flow-through pilots have been discriminatorily financially harmed in this process, and APA acknowledges it will not represent the Flow-through pilots. Therefore, as you suggest, the Flow-through pilots will be forced to pursue this dispute without APA representation.

In light of the APA's refusal to assist the Flow-through pilots, it is requested that the APA make available all pertinent documentation relating to previous Supplement W arbitrations.

Mr. McDaniels and others have stated that the meetings, which culminated in the Nicolau Award should be characterized as formal discussions or negotiations. As such, official or unofficial transcripts, records and/or notes exist. These documents would shed light on Mr. Nicolau's intent, also what information he was given to render his award, and what the Flow-through pilot's pension rights were bargained away for. Mr. McDaniels also stated that AA had told Mr. Nicolau that it was not legal, or simply impossible for AA to utilize the date these pilots should have transferred to AA for pension credit purposes. Any information or records that show AA's statements to that effect would be helpful.

The Flow-through pilots are therefore formally requesting copies of any documents, official or unofficial, transcripts, records and/or notes pertaining to the remedy award meetings, and any information supplied to Arbitrator Nicolau, by the AA, AMR, ALPA and APA that he might have used in arriving at his Award.

In light of the APA's confirmation that it did not previously represent, and will continue to not represent the Flow-through pilots in these matters, we trust that the APA will at least not oppose these AA pilots, who are also APA members, in their actions to correct this blatant and obvious injustice.

Sincerely,

Gregory R. Cordes
AA Flow-Thru Pilots Coalition

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Judith A. Scott
Kathy L. Krieger
David P. Dean
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November 15, 2013

Via E-mail and First Class Mail

First Officer Greg Cordes
2516 Nutmeg Avenue
Morro Bay, CA 93442
grcordes@mac.com

Re: Pension Credit for Former American Eagle Pilots

Dear First Officer Cordes:

We received your letter dated October 29, 2013. You seem to have misunderstood our September 27 letter. During the time that you worked for American Eagle, as a matter of black letter law, you were represented by the Air Line Pilots Association ("ALPA"). APA did not, and could not legally, represent you. On the other hand, as a result of the NMB's March 5, 2002 decision that TWA LLC and American constituted a single transportation system, APA did represent the former TWA pilots. *American Airlines, Inc./Trans World Airlines, LLC,* 29 NMB 201 (2002). Accordingly, APA negotiated and obtained flowback rights for the former TWA pilots in the 2003 restructuring negotiations that it was not able to obtain when it negotiated the original integration agreement known as Supplement CC.

It is a simple and indisputable legal fact that the APA did not represent you and the other flow-through pilots still working at American Eagle during the FLO-0108 proceedings before Arbitrator George Nicolau. Although you had a contingent right to work for American at that time under Supplement W, you did not work for American, and you were not an employee of American for purposes of the Railway Labor Act. The former TWA pilots, on the other hand, as a result of an NMB ruling, were – and continue to be – represented by APA. Once you became an employee of American, APA became, and remains, your bargaining representative.

We also stated in our September 27 letter that your argument for a change in your pension credit has no basis in Supplement W or Arbitrator Nicolau's decision in FLO-0108. On the other hand, you are completely free to advocate for a change in the current legal agreements based on the equities. You should be aware that the A Plan credited years of service have for

decades been a function a pilot's Date of Hire with American, *see* Section 2 and Supplement F(1) of the 2003 and 2013 collective bargaining agreements. It is the same for the former TWA pilots, notwithstanding that approximately half of them have Occupational Seniority Dates well prior to the date of the NMB decision.

To the extent you seek a change in the collective bargaining agreement, you should address this issue to the APA National Officers, Board of Directors and Negotiating Committee. If you have legal counsel who wishes to discuss this matter further, please have him or her call us at the above listed number.

Pursuant to your request, we are enclosing a DVD containing the available documents from the Remedy Phase of FLO-0108; however, we have deleted Eagle Exhibit 1 (the seniority list).

Sincerely,

Edgar James
Jeff Vockrodt

Attorneys for the
Allied Pilots Association

cc: APA National Officers and Board of Directors
Mark Myers, Esq.

Enclosures

May 28, 2014

Edgar N. James

JAMES & HOFFMAN, P.C.

1130 Connecticut Avenue, N.W., Ste. 950

Washington, D.C. 20036

Dear Sir,

My name is Paul Linder and I'm an ORD based APA pilot with American Airlines and formerly a "flow-through" pilot from American Eagle via the Supplement W agreement. Upon the the finalization of Americans merger with US Airways, I communicated my concern to APA regarding how the present relative AA seniority AA/APA pilots such as myself is viewed by APA and thus how it would be represented by APA in the forthcoming seniority list integration. Using several methods of communication including fax, certified letter and email, I contacted President Keith Wilson, Chairman Mark Stephens of the Seniority Integration Committee and Per Lofvald, (former) Chairman of the Negotiating Committee, all without response, which only exacerbated my concerns.

As your firm is the legal representative of APA who now has a duty to fairly represent us and you have direct knowledge and experience with most, if not all of the nine seperate arbitrations regarding various aspects of disagreement regarding Supplement W (AKA Letter 3), I'm writing to you now in the hope that APA will address the concerns of a growing number of affected pilots who given the statements and positions of APA in those arbitrations and the apparent lack therof now, when questioned, that APA may believe that our AA seniority isn't "vested" in its present relative value in relation to other AA pilots and is subject to dilution to more junior positions on a future combined AA/US Airways list as a result of the delay that was both accepted and agreed upon between the parties to that agreement in commencing actual training, a dilution otherwise referred to as the concept of "longevity" or sometimes "length of service".

Should APA not support our present relative seniority as something that was vested when acquired as per section III.A/B. of that agreement (unlike those pilots at Continental Express who transferred to mainline Continental under different provisions and were initally awarded "ghost" positions on the CAL seniority list), it would put pilots like us at severe disadvantage in having our seniority properly represented so as to achieve "fair and equitable" consideration either in negotiations directly with other parties or in representation to arbitrators for their

accurate evaluation and consideration of all relevant facts regarding us as a sub-segment of pilots in what appears may be a very complicated seniority integration. It would also gravely jeopardize our pre-merger career expectations. In reviewing all nine arbitration opinion and awards, especially Bloch FLO-0107 (which I testified in), LaRocco FLO-0903 and Nicolau FLO-0108 as well as other documents, it is readily apparent to me that former AE Supplement W pilots such as myself have current AA seniority that is vested in its present value relative to all other AA pilots and that any dilution related to the delay in commencing or completing actual training would be inapplicable and thus if embraced, would be unfair and arbitrary treatment of these pilots, especially if done without their knowledge or awareness.

Considering that USAPA or in their absence, other as yet undefined merger committees from US Airways may seek to argue a longevity or other reduction for us as a sub-segment of AA/APA pilots due to our training delay given the strong potential for their unfamiliarity with the complexities of that agreement and the process of us acquiring and activating our AA seniority as per the agreements as well as the APA's beliefs and positions discussed in the various arbitrations and ALSO considering APA's past efforts to completely nullify our AA seniority in its entirity, let alone pertiality which strongly suggests a conflict of interest on this issue, it's of serious concern to many of us exactly how we will be treated and represented in this SLI and that be it either through negotiation or arbitration, the vested value of our present relative AA seniority may be in jeopardy and as of now unknown jeopardy. Thus, in the effort to resolve any such concerns now prior to them becoming a dispute and seeking our right to know in advance of any potential jeopardy to our seniority strictly related to Supplement W, I'd like to request that APA address this issue with the affected pilots who do have a right to know how their seniority interests are both viewed and represented by their union and in requesting a response, any efforts you could make to assist APA in clarifing and if necessary, resolving this potential situation would be greatly appreciated. My email address is nicad@sbcglobal.net.

Thank you for your time,

Paul Linder

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Judith A. Scott
Kathy L. Krieger
David P. Dean
Jeff Vockrodt
Darin M. Dalmat
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June 10, 2014

Via Email

Paul Linder
nicad@sbcglobal.net

Dear Mr. Linder:

We received your letter dated May 28, 2014. We want to make sure that we understand your concern correctly. Please confirm that your concern relates to APA's representation of your and your fellow APA pilots' interests in upcoming seniority integration negotiations or proceedings, and you are not asking APA to change any actions or redress any alleged wrongs in the past.

With regard to upcoming seniority integration processes, you may be assured that APA takes its duty of fair representation seriously, and it will comply with that duty.

Sincerely,

Edgar N. James
Jeff Vockrodt

September 5, 2014

Edgar N. James

JAMES & HOFFMAN, P.C.

1130 Connecticut Ave., N.W. Ste. 950

Washington, D.C. 20036

Dear Sir,

In reviewing the Seniority Integration Protocol Agreement (PA) agreed to yesterday, Sept. 4 by APA and USAPA, it defines the process of compilation, verification, certification and exchange of information regarding employement data to include those that "flowed through" to AA from American Eagle under Supplement W of the CBA between AAG and APA. The information is to include, but not limited to (1) "any other date relevant to the pilot's placement on the pre-merger seniority list; information reflecting each pilot's availability to engage in revenue flying (i.e., leave status, instructor status, management pilot status, medical/disability status); (3) "The identification, with an appropriate designator on the senioirty list, of any pilot whose placement on the pre-merger list was determined by a prior seniority integration agreement or award"; (5) "The identification, with an appropriate designator on the seniority list, of any pilots with grandfather, preferential hiring or similar special rights by agreement or prior seniority integration award that are limited as to catagory, domicile or status within the flight deck crew, and an explanation for each such special right".

In consideration of the above and also in consideration that there are AA/APA pilots who are concerned how APA interprets the vested rights of the present value of their pre-merger occupational seniority (OCC) as per Supplement W that will become the subject of negotiation between APA and USAPA in an "attempt to resolve any and all disputes and inconsistancies with regard to the employement data exchanged persuant to paragraph 3 above....", I would request that should agreement or disagreement between the parties threaten to result in any dilution of these pilots present OCC senioirty at AA as a direct application and result of the provisions of Supplement W, that said pilots have the opportunity to present to an arbitration panel their position regarding the vested value of their present AA OCC seniority as applied to this integration so that the arbitration panel has all relevant arguments and positions reagrding such pilots. The provisions of the McCaskill-Bond amendment requires a fair and equitable process for determination of how to integrate the pilot senioirty lists of the respective carriers and part

of the duty of fair representation by APA of these pilots is to ensure that they have the opportunity to dispute any arguments or positions of others that question the vested value of their present AA OCC seniority. The present vested value of these pilots AA OCC seniority is the foundation for their pre-merger career expectations and that concept has been identified by APA as the underlying goal to a fair and equitable integration.

Thank You for your time,

Paul Linder

June 5, 2015

Edgar N. James

JAMES & HOFFMAN, P.C.

1130 Connecticut Ave., N.W. Ste. 950

Washington, D.C. 20036

Dear Sirs,

As we approach the seniority integration arbitration that will bring three presently seperate pilot groups into one, the APA as the collective bargaining agent for those AA/APA pilots that arrived via Letter 3/Supplement W have yet to be informed as to how APA views their rightfully earned vested AA seniority in relation to either those also presently legacy AA/APA pilots who did not, nor in regard to the other two presently seperate US Airways pilot groups. This can only leave us extremely uneasy considering APA's past efforts to dilute and/or nullify our rightfully earned AA seniority. This uneasiness is understandable. Many recent events within the governing APA BOD have only exacerbated this long-standing concern of many of us, since it is this body in addition to APA legal that provides critical information, guidance and position to our seniority integration committee. That integration committee only knows what is provided and explained to them on this issue by APA legal and the BOD and from my interaction with at least one BOD member, it appears that at least some on the BOD have little understanding of the history and details regarding Letter3/Supplement W.

Recently, many highly questionable actions by BOD members including, but not limited to a grotesquely excessive $3600 dinner for approximately 10 members (to apparently celebrate defeating the other half of the BOD in a critical vote) that included multiple $300 bottles of wine followed by evasion, deflection and blame upon each other in the aftermath of its revelation to the membership leaves me with even more concern that the history of dysfunction within this BOD and union will inevitably spill over into the seniority integration process and coupled with APA's past clear bias against former American Eagle Letter 3/Supplement W pilots, that we are at significantly increased risk of having our rightful AA seniority not being fairly represented. It has come to my attention that the concepts of "longevity" will be in play and that the West pilot committee in particular will be seeking to dilute junior legacy AA pilots seniority by relying heavily on the United/Continental seniority integration model that was a product of revised ALPA merger policy, ironically due to the failures in the US Airways/America West merger and pilot integration that has yet to be fully

consummated. Additionally, one of our own integration committee members alluded to this integration models importance and relevance to our integration in an informal discussion with him.

The arbitrators in the United/Continental integration reaffirmed that "each case turns on its own facts" and there are facts in this integration that were not in play in the United/Continental merger/integration, among them the intracacies of Letter 3/Supplement W. To use that integration model in anything but a "loose" consideration as a litmus as to how the vested AA seniority of AA/APA pilots who were subject to Letter3/Supplement W should be considered has the risk to deny us fair representation as per McCaskill-Bond because it denies us input that is critical should the concept of longevity be weighed without considering the specifics of Letter 3/Supplement W, the arbitrations involved in what it meant combined with past and present APA actions and thus places us in unfair jeopardy. The two largest areas of risk to junior AA pilots in a longevity dilution are those furloughed and those of us subject to Letter 3/Supplement W. Recently, one of the West integration committee members (Mitch Vasin) on C & R commented on his belief that the United/Continental integration model would be the standard by which this integration will occur. Considering his other statements there on the desire of maximum use of weight on longevity and other West pilots strong belief that pre-merger career expectations should have minimal application, it is just another example of developing situations that concern AA/APA pilots who were subjected to Letter 3/Supplement W like myself.

The APA has recently claimed to be embracing a new "transparent" philosophy in how they do business and represent their pilots, yet clearly this has yet to reach those of us who have communicated valid concerns about this seniority integration as demonstrated by virtually complete silence on this issue over the last 18 months despite multiple requests for information from several sources with the exception of some verbal assurances during some union meetings. The schedule and details of the integration process have been announced and as part of that, the revelation that critical segments of the discussions with arbitrators and/or the other committees will be in private. Considering that, concerned pilots such as myself have no idea what will be represented in regards to the APA's position on the value of our seniority to either the other parties or the arbitration panel and as such, no assurances that vested seniority is being properly represented or defended, if disputed by the other parties. Since APA has not only denied pilots subject to Letter 3/Supplement W any ability to communicate to the arbitration panel and/or dispute any positions by any party that they disagree with, but denied them any information at all to asses the need for that, we are left at the whim of you, the APA leadership, legal department and the LAA integration committee to fairly represent us. That duty of fair representation is intended to ensure that you the collective bargaining agent are "sensitive to individual rights and interests of those not in the majority" (*Levinson, 2007*) and so far, many of us who were subject to Letter 3/Supplement W believe APA has not met that burden adequately as evidenced by your response to multiple inquiries with essentially silence

and disregard.

As we stand now, mere weeks from the start of the formal arbitration process, it appears the AA/APA pilots subject to this issue will have to wait for the outcome to see just how well and more importantly how fairly the APA as a bargaining representative instructed and educated our integration committee on this issue to ensure our vested AA senioirty rights were represented in good faith and that the arbitration panel had balanced information to consider this issue if it is to be in consideration as members of other pilots groups integration committees claim it will be. APA can be assured that if the results of the arbitration indicate this has not occured and a fair and balanced consideration of this issue was not presented to or made available for the arbitration panel for fair consideration and we "fell through the cracks", so to speak, accidentally or otherwise, that many of us will have no recourse but to retain the right to pursue a remedy.

Sincerely,

Paul M. Linder

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Steven K. Hoffman
Judith A. Scott
Kathy L. Krieger
David P. Dean
Darin M. Dalmat
Daniel M. Rosenthal
Ryan E. Griffin
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June 10, 2015

VIA EMAIL AND FIRST CLASS MAIL

Mr. Paul Linder
1611 Millbrook Drive
Algonquin, IL 60102
nicad@sbcglobal.net

Re: *Your Letter of June 5, 2015*

Dear Mr. Linder:

I received your certified letter dated June 5, 2015, and I know this is a follow up to your earlier letter of May 28, 2014. For the record, APA cannot and will not take any position with respect to how the three seniority lists should be integrated. Rather, pursuant to the requirement of McCaskill-Bond and in settlement of litigation with USAPA, APA established merger committees for the pre-merger US Airways and the pre-merger American Airlines pilots and established an arbitration process to determine whether the former America West pilots should be afforded representation separate from the USAPA committee. The former America West pilots are in a unique situation because they have never been merged onto a seniority list with the US Air East pilots. After considering the issue, three arbitrators recommended the establishment of a separate committee for the America West pilots. Accordingly, there are now three committees representing the pilots on the three unmerged seniority lists.

APA will itself only learn of the respective committee positions on June 19, 2015, when each of the three committees will make a variety of disclosures to the other committees and the arbitrators. I have attached the Seniority Integration Protocol Agreement and the Procedural Ground Rules to provide more information about the process. APA has established a website that will post the documents, exhibits and transcripts of the proceedings as they become available.

We previously received a letter from counsel for a group known as the "American Airlines Flow-Thru Pilots Coalition" and, on October 17, 2014, we responded by encouraging him to submit any brief or written material regarding the former Eagle pilots who came to

American pursuant to Supplement W to the committee representing the pre-merger American pilots.

The committee representing the pre-merger American pilots is, nevertheless, well aware of the interpretive history of what used to be known as Supplement W to the American/APA collective bargaining agreement, and I trust they will represent all of the pilots on the pre-merger American Airlines System Seniority List fairly.

Sincerely,

Edgar N. James
Daniel M. Rosenthal

Attorneys for the Allied Pilots Association

Cc: Keith Wilson
Neil Roghair
Mark Myers

June 10, 2015

Edgar M. James

JAMES & HOFFMAN, P.C.

1130 Connecticut Ave., N.W. Ste.950

Washington, D.C. 20036

Dear Messrs. James and Rosenthal,

I have received your response to my letter dated June 5. First of all, for the record, that letter was a follow-up letter of my correspondence to you dated September 5, 2014 and not the previous correspondence to that dated May 28, 2014. At any rate, although I appreciate your inclusion of a copy of the seniority integration protocol agreement and ground rules for arbitration, I am presently and previously have been aware of these. I am fully aware that APA now as the representative body for all three separate pilot groups must remain autonomous in the arbitration process, yet at the same time ensure to the best of their ability, a fair PROCESS for integration for all pilots (not just recognized "parties" to the arbitration portion). As such, it is understood that each of the other pilot groups integration committees is free to formulate and present any argument they see fit on what they believe to be a fair and equitable methodology of integration of the three pilot groups. That is not in question.

What IS in question, is what vested value APA believes applies to AA/APA pilots seniority who arrived at AA under the agreed upon process of Letter 3/Supplement W. The answer to THIS question has yet to be addressed to the affected pilots despite multiple requests since the announcement of the merger with US Airways and it is a question SEPARATE from what position the LAA committee might take with respect to how LAA pilots might be integrated with the other two pilot groups. It is a question that should have been answered even with NO integration with other pilots imminent. Previously, it was APA itself and not the present LAA seniority integration commitee assigned to the task of arguing integration methods with US Airways pilots that developed, defined, defended and in some instances refuted (even in contradiction to their own previous representations in different arbitrations) the value of that vested seniority, yet to this day, the affected pilots have no idea what vested value what is now their own union puts on their present AA occupational seniority.

It could be anything under the sun.

If it is true as you state that APA has no knowledge of what the LAA committee will represent as

the vested value of these pilots seniority (which again is different as to how that senioirty will be argued for integration) and will be informed of that on June 19, 2015 along with everyone else, that is evidence that the committee itself will apparently determine that question. In your response, you state that, ""The committee representing the pre-merger American pilots is, nevertheless well aware of the interpretive history of what used to be known as Supplement W to the American/APA collective bargaining agreement, and I trust they will represent all of the pilots on the pre-merger American Airlines Sysytem Seniority list fairly". If the APA has given the committee their position on that question, then they would know it and so there would be no need for "trust" on this issue and yet if this is what has occurred, it is unsettleing to say the least that APA still refuses to answer that question to affected pilots when queried. If this is the case, then this type of evasiveness only further aggrivates many or our concerns of transparency in just how the APA views or seniority, meaning you and they (the LAA integration committee) know, but won't tell US. If APA did not state their position to the LAA committee as part of whatever "interpretive history" it conveyed to ensure they acted appropriately (in your belief), then again, the committee will seem to have to determine that and yet that situation leaves affected pilots helpless in presenting a contridictory position for fair consideration by the arbitrators as since the LAA committee wasn't a part of any past Letter 3/Supplement W conflicts, it itself may not be able to make a fair evaluation of that for consideration by the arbitrators. In the first situation, APA's (and thus LAA integration committee) position is known to both these parties, but not divulged to the affected pilots thus putting us in a disadvantaged position due to questionable representation demonstrated by silence and evasiveness and in the latter, the same end result occurs as the LAA committee must formulate their own postion that APA supposedly hasn't conveyed in briefing them on the agreements interpretive history, but a position which may be detrimental to our careers because of no opportunity for fair rebuttal.

Finally, your statement that you've had interaction and various communication with a group of pilots known as the "American Airlines Flow-Thru Pilots Coalition" is essentially meaningless to most pilots subject to this concern unless they are members of that group. As someone NOT affiliated with that group, I can only assume based on unsubstantiated hearsay that it comprises only a handful of affected pilots. As a result, the overwhelming majority of affected pilots who are not affiliated with them and remain in the dark not only as to where the very people who were intimately responsible for the agreement they were required to conform to who now might believe they may be free to apply past interpretations to that agreement (that might result in harm to them) or reinterpret it to the same result, but unlike this particular minority group, also are unaware of the offers made to this group, but not to all affected pilots or for that m,atter, any awareness of their options at all. Aparently only a small group of affected pilots are getting these offers, while the majority are totally unaware of this, myself included until now. It is another example of the result of failure of APA to adequately address this issue over an extended period of time jeopardizing most of these pilots further by being unaware that there may be a proper need to defend their vested AA seniority relative to other present

AA pilots and what value it has itself as either the APA has determined that value internally and may or may not have communicated that to the negotiating committee or they have not, punting to them to determine that despite having zero past history with it. Since I am not a member of that group, it's not of surprise I have never heard of APA offering any pilot or group the ability to submit briefs or material to the negotiating committee and I'm sure that goes for the majority of the pilots affected. Even with that offer unknown to most, any such offer does not resolve the standing question as to APA's position on our present AA seniority anyway, nor the opportunity for comment to the party that matters and that is the arbitration panel.

While you may say YOU "trust" that the LAA committee will fairly represent us at the integration arbitration, the affected pilots still don't know how the APA presently views the value of their seniority because we don't know what YOU (the union that was a party to negotiating our seniority) have represented to THEM (the LAA integration committee), nor inform US of that directly. Again, this results in us being left in the dark not just on this issue itself that APA refuses to answer, but by ensuring we are hamsrung in any ability to defend that seniority for fair consideration to the arbitrators SHOULD that seniority prove to be redefined by whomever is defining it now, which sounds as if it is not the APA itself. I suppose we will just have to wait until June 19 to find out just where we as a subgroup of AA/APA pilots stand in regard to how whomever will be defining or vested seniority to the other parties and arbitrators to revaeal that.

Sincerely,

Paul M. Linder

Edgar N. James
Steven K. Hoffman
Judith A. Scott
Kathy L. Krieger
David P. Dean
Darin M. Dalmat
Daniel M. Rosenthal
Ryan E. Griffin
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June 25, 2015

VIA EMAIL AND FIRST CLASS MAIL

Mr. Paul Linder
1611 Millbrook Drive
Algonquin, IL 60102
nicad@sbcglobal.net

Re: *Your Letter dated June 10, 2015*

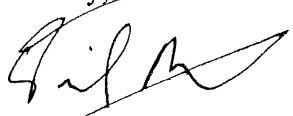
Dear Mr. Linder:

Last week, I received your letter dated June 10, 2015. You asked for further clarification on "what vested value APA believes applies to AA/APA pilots seniority who arrived at AA under [Supp W]." I apologize if I am misunderstanding your question, but it appears to me that you are still asking for APA to take a position as to how Eagle flowthrough pilots should be treated in the upcoming seniority integration. As I have explained, APA does not have a position on that question, nor on how any pilot or group of pilots should be integrated.

You also ask whether APA has "given the [pre-merger American] committee their position on that question." As far as I know, APA has never expressed any opinion to any merger committee as to how Eagle flowthrough pilots should be integrated. I certainly have not done so.

Finally, any pilot may submit materials to the committee representing him, whether or not the pilot is affiliated with a group such as the American Airlines Flow-Thru Pilots Coalition. I did not single out that group for any special "offer"; I simply responded to a message I received from them.

Sincerely,



Edgar N. James
Daniel M. Rosenthal

Attorneys for the Allied Pilots Association

Cc: Captain Keith Wilson
First Officer Neil Roghair
Mark Myers, Esq.

EXHIBIT 16

SUPPLEMENT CC

AGREEMENT
Between
AMERICAN AIRLINES, INC.
and
THE AIR LINE PILOTS
in the service of
AMERICAN AIRLINES, INC.
as represented by
ALLIED PILOTS ASSOCIATION

THIS AGREEMENT is made and entered into in accordance with the provisions of the Railway Labor Act, as amended, by and between AMERICAN AIRLINES, INC. ("American" or the "Company") and the AIR LINE PILOTS in the service of AMERICAN AIRLINES, INC., as represented by the ALLIED PILOTS ASSOCIATION ("APA" or the "Association").

WHEREAS, the Company has acquired certain assets of Trans World Airlines, Inc. ("TWA"), which have been placed in an entity known as TWA Airlines LLC ("TWA LLC"), and TWA LLC has employed the pilot employees of TWA, with the intention that the TWA Pilots will be consolidated with American's pilots as employees of a single carrier; and

WHEREAS, Section 13.A. of the collective bargaining agreement between the Company and the Association (the "Green Book") provides that "Seniority as a pilot shall be based upon the length of service as a flight deck operating crew member with the Company except as otherwise provided in Sections 11 and 12 of this Agreement;" Section 13.B. of the Green Book provides that "Seniority shall begin to accrue from the date a pilot is first assigned to air line flying duty and shall continue to accrue during such period of duty except as provided in Sections 11 and 12 of this Agreement;" and Section 17 and related provisions of the Green Book govern the filling of vacancies, displacements, reinstatements, furloughs and recalls based on system seniority; and

WHEREAS, Section 6 of the July 10, 2001 Transition Agreement between the Company and the Association (the "Transition Agreement") provides that, "The American Airlines and TWA LLC pilot seniority lists shall be combined to form a single System Seniority List pursuant to Section 13 of the AA/APA Agreement. In the event that APA and American Airlines decide to modify the application of Section 13, APA shall provide the modified list to American Airlines. American Airlines shall review the list and, if acceptable, provide a copy to all pilots on the combined list. Protests of the System Seniority List shall be handled in accordance with Section 13.G.2. of the current AA/APA Agreement;" and

WHEREAS, TWA LLC entered into a Transition Agreement with the Air Line Pilots Association, International ("ALPA"), the duly-recognized bargaining representative of the pilot employees of TWA LLC, in connection with which American agreed to use its reasonable best efforts to secure a fair and equitable process for the integration of seniority, by engaging a facilitator to organize meetings with APA and ALPA; and APA agreed to participate in such a process under certain conditions to which all parties agreed, although APA was under no obligation to do so; and

WHEREAS, APA's Mergers and Acquisitions Committee and ALPA's TWA MEC Merger Committee (as ALPA's designee) held 10 days of negotiations regarding the integration of the seniority lists, followed by an additional 15 days of negotiations with the assistance of a facilitator pursuant to an Agreement for Engagement of Facilitator, concluding on September 17, 2001; and

WHEREAS, following September 17, 2001, in furtherance of its reasonable best efforts to assure a fair and equitable process for the integration of seniority, American convened additional meetings with the APA Mergers & Acquisitions Committee and ALPA's TWA MEC Merger Committee on October 20-22, 2001; and

WHEREAS, American has agreed to accept a modification of Section 13 of the Green Book, provided, inter alia, that the modified System Seniority List be constructed based on the AA and TWA seniority lists as of a date no earlier than April 10, 2001, and that the treatment of TWA Pilots under Section IV. of Supplement W of the Green Book be resolved in a manner acceptable to the Company; and

WHEREAS, based on the methodologies and information developed during the course of the negotiations between the APA Mergers & Acquisitions Committee and the TWA MEC Merger Committee and the conditions required by American, American

and APA have decided, pursuant to Section 6 of the Transition Agreement, to modify the application of Section 13 and related provisions of the Green Book and certain provisions of the Transition Agreement according to the terms set forth below;

NOW, THEREFORE, the parties hereby agree to the following terms, provided that the provisions of the Green Book and Transition Agreement shall apply except as modified herein, and in the event of a conflict, the provisions herein shall apply:

I. Definitions

A. For purposes of this Supplement CC, the terms “American” and “the Company” mean American Airlines, Inc.

B. For purposes of this Supplement CC, the term “TWA LLC” means TWA Airlines LLC.

C. For purposes of this Supplement CC, the term “AA Pilot” means any pilot hired by American with a date-of-hire on or before April 10, 2001, who had not left the employ of American prior to April 10, 2001.

D. For purposes of this Supplement CC, the term “TWA Pilot” means any pilot hired by TWA with a date-of-hire on or before April 10, 2001, who had not left the employ of TWA prior to April 10, 2001.

E. For purposes of this Supplement CC, the term “Green Book” means the Agreement between American and APA, effective May 5, 1997, as amended, including all Supplements, Appendices and Letters of Agreement.

F. For purposes of this Supplement CC, the term “Transition Agreement” means the Transition Agreement between American and APA dated July 10, 2001.

G. For purposes of this Supplement CC, the term “Implementation Date” means the date on which the National Mediation Board issues a decision finding that American and TWA LLC are or have become a single carrier.

H. For purposes of this Supplement CC, the term “Pilot Operational Procedures Integration Date” means the date on which all pilots in the TWA LLC system cease to operate under separate pilot operational procedures, and commence operation under American’s pilot operational procedures.

I. For purposes of this Supplement CC, the term “Operational Fence” means the existence of separate pilot operational procedures at American and TWA LLC following the Implementation Date and until the Pilot Operational Procedures Integration Date. As more fully set forth below, the parties anticipate that the Implementation Date will be prior to the Pilot Operational Procedures Integration Date, subject to the Operational Fence; and that TWA LLC may continue to exist as a separate corporate and business entity after the Pilot Operational Procedures Integration Date, subject to Section 4.A.(i). of the Transition Agreement.

J. For purposes of this Supplement CC, the term “line pilot” is a pilot who holds a four-part bid status under the Green Book.

K. For purposes of this Supplement CC, the term “aircraft in service” is defined as an aircraft available for revenue service (not to include any aircraft in storage) or in maintenance for the purpose of return to revenue service in either American or TWA LLC. On or before the first day of each contractual month, the Company will provide, in electronic format, a monthly status report to the Association’s Negotiating Committee Chairman identifying the number of aircraft in service for that contractual month, by aircraft type.

L. For purposes of this Supplement CC, the term “small wide-body aircraft” means a B-767-200 or B-767-300, B-757, A-300, or any other aircraft with a maximum gross takeoff weight of more than 200,000 pounds but not more than 409,000 pounds that is not in a higher pay category than the B-767-300 or A-300.

M. For purposes of this Supplement CC, the term “narrow-body aircraft” means a B-737, B-727, MD-80, B-717, F-100, or any other aircraft with a maximum gross takeoff weight of 200,000 pounds or less.

N. For purposes of this Supplement CC, a position “reserved” to the TWA Pilots means a position reserved or allotted to the TWA Pilots under Section IV.A. of this Supplement CC, with the exception of positions referred to in Sections IV.A.2.a.(2) and IV.A.2.b.(2) below. A position “reserved” to the AA Pilots means a position

reserved or allotted to the AA Pilots under Section IV.B. or Section IV.C. of this Supplement CC.

O. Except as otherwise may be provided in this Supplement CC, the parties intend that terms be defined in accordance with their meaning under the Green Book.

II. Construction of Modified System Seniority List

The modified System Seniority List will be constructed by integrating the April 10, 2001 AA Pilot Seniority List (i.e., adjusted for hiring and attrition through April 10, 2001) and the TWA Pilot Seniority List as of April 10, 2001 (i.e., adjusted for hiring and attrition through April 10, 2001) in the following manner.

A. TWA Pilots J.G. Upp, DOH 12/2/63 through Raymond Camus, DOH 3/20/89 will be inserted in the AA Pilot Seniority List on a ratio of approximately one TWA Pilot to 8.1762556 AA Pilots, commencing immediately following AA Pilot W.H. Elder, DOH 10/8/85 and ending immediately following AA Pilot B.D. White, DOH 4/9/01.

B. The remaining TWA Pilots commencing with TWA Pilot Theron Clark, DOH 3/23/89, will be placed in seniority order immediately following TWA Pilot Raymond Camus, DOH 3/20/89.

C. All pilots hired by American after April 10, 2001 who had been assigned to air line flying duty as of October 1, 2001 will be placed on the modified System Seniority List following pilots referred to in Section II.B. above in accordance with their length of service as flight deck crew members at American, in accordance with Section 13 of the Green Book.

D. After furloughed pilots (if any) have been recalled and new pilot positions become available, American will offer employment, in seniority order, to all pilots who were hired by American after April 10, 2001 but who had not been assigned to air line flying duty as of October 1, 2001. Each such pilot will be placed on the modified System Seniority List on the date he is first assigned to air line flying duty with American in accordance with Section 13 of the Green Book, following all pilots then on the modified System Seniority List.

III. Implementation of Integrated Seniority List

A. As soon as possible following the execution of this Supplement CC APA shall, as required by Section 6 of the Transition Agreement, provide the modified System Seniority List, constructed in accordance with Section II. above, to American. American shall review the list and, if acceptable under Section II. above, provide a copy of such list, together with a copy of this Supplement CC, to all pilots on the modified System Seniority List within 60 days. Protests of the modified System Seniority List asserting any omission or incorrect posting affecting a pilot's seniority (other than protests of the application of the methodology (including the ratio agreed to in Section II.A.) agreed to in Section II. above) will be handled at the time of the Implementation Date in accordance with Section 13.G.2. of the current Green Book.

B. The modified System Seniority List established pursuant to this Supplement CC, including all of the attendant provisions hereof, will apply commencing on the Implementation Date. The Company agrees that, commencing on the Implementation Date, the flight operations of American and TWA LLC will be operated under the modified System Seniority List, including all of the provisions of this Supplement CC. The integrated seniority number and placement on the modified System Seniority List of each TWA Pilot under this Supplement CC will be contingent, to become effective only on the Implementation Date, and is not intended to have any force or effect within TWA LLC prior to the Implementation Date.

IV. Fence Provisions

A. TWA Captain and First Officer Positions

1. STL Captain and First Officer Positions

a. (1) All line pilot positions in Captain bid statuses on B-767-200/B-767-300/B-757 aircraft in the STL domicile will be reserved to the TWA Pilots, until TWA Pilot Morgan Fischer, DOH 9/28/90 (or, in the event that Morgan Fischer ceases to be on the modified System Seniority List, the remaining TWA Pilot immediately senior to Morgan Fischer) has sufficient seniority under this Supplement CC to hold a vacancy in a

four-part Captain bid status on B-767-200/B-767-300/B-757 aircraft. At that time, all provisions of this Supplement CC applicable to B-767-200/B-767-300/B-757 aircraft shall expire (except for Section VI.A), and all Captain line pilot positions on such aircraft shall thereafter be unrestricted.

(2) American agrees that, so long as subparagraph a.(1) is in effect, the number of B-767-200/B-767-300/B-757 Captain line pilot positions in the STL domicile in any contractual month will be a minimum of 30 per cent of the combined number of small wide-body Captain line pilot positions in the ORD and DFW domiciles in the contractual month; provided, that the number will also be limited to a maximum of the number of reserved small wide-body Captain line pilot positions for the contractual month based on the number of small wide-body aircraft in service, as set forth in the table in Section IV.A.2.a.(1) below.

(3) TWA Pilots will have a preference to line pilot positions in First Officer bid statuses on B-767-200/B-767-300/B-757 aircraft in the STL domicile, subject to Section V.B.2. below, until TWA Pilot Morgan Fischer, DOH 9/28/90 (or, in the event that Morgan Fischer ceases to be on the modified System Seniority List, the remaining TWA Pilot immediately senior to Morgan Fischer) has sufficient seniority under this Supplement CC to hold a vacancy in a four-part Captain bid status on B-767-200/B-767-300/B-757 aircraft. At that time, all provisions of this Supplement CC applicable to B-767-200/B-767-300/B-757 aircraft shall expire (except for Section VI.A.), and all First Officer positions on such aircraft shall thereafter be unrestricted. In the event that there are insufficient bidders for a position reserved to the TWA Pilots in the STL domicile under this provision, the position shall be filled in accordance with the Green Book; provided, that so long as the position is otherwise reserved to the TWA Pilots, any AA Pilot holding such a position will bid monthly preferences in seniority order, but subordinate to all TWA Pilots in the same bid status.

b. (1) All line pilot positions in Captain bid statuses on MD-80, B-717, and DC-9 aircraft in the STL domicile will be reserved to the TWA Pilots until TWA Pilot Magnus Alehult, DOH 7/17/97 (or, in the event that Magnus Alehult ceases to be on the modified System Seniority List, the remaining TWA Pilot immediately senior to Magnus Alehult) has sufficient seniority under this Supplement CC to hold a vacancy in a four-part Captain bid status on any aircraft. At that time, all provisions of this Supplement CC applicable to MD-80, B-717, and DC-9 aircraft shall expire (except for Section VI.A), and all Captain and First Officer positions on such aircraft shall thereafter be unrestricted.

(2) American agrees that, so long as subparagraph b.(1) is in effect, the number of MD-80/B-717/DC-9 Captain line pilot positions in the STL domicile in any contractual month will be a minimum of 30 per cent of the combined number of narrow-body Captain line pilot positions in the ORD and DFW domiciles in the contractual month; provided, that the number will also be limited to a maximum of the number of reserved narrow-body Captain line pilot positions for the contractual month based on the total number of aircraft in service, as set forth in the table in Section IV.A.2.b.(1) below.

(3) TWA Pilots will have a preference to line pilot positions in First Officer bid statuses on MD-80, B-717, and DC-9 aircraft in the STL domicile, subject to Section V.B.2. below, until TWA Pilot Magnus Alehult, DOH 7/17/97 (or, in the event that Magnus Alehult ceases to be on the modified System Seniority List, the remaining TWA Pilot immediately senior to Magnus Alehult) has sufficient seniority under this Supplement CC to hold a vacancy in a four-part Captain bid status on any aircraft. At that time, all provisions of this Supplement CC applicable to MD-80, B-717, and DC-9 aircraft shall expire (except for Section VI.A.), and all First Officer positions on such aircraft shall thereafter be unrestricted. In the event that there are insufficient bidders for a position reserved to the TWA Pilots in the STL domicile under this provision, the position shall be filled in accordance with the Green Book; provided, that so long as the position is otherwise reserved to the TWA Pilots, any AA Pilot holding such a position will bid monthly preferences in seniority order, but subordinate to all TWA Pilots in the same bid status.

c. Temporary assignments and temporary duty (TDY) in the STL domicile will

be administered in accordance with Section 18.C. and other applicable provisions of the Green Book.

2. Additional TWA Captain Positions

The Company intends that, while the Operational Fence is in effect (i.e., prior to the Pilot Operational Procedures Integration Date), all TWA Pilots will be based in the STL domicile. During that period, no TWA Pilot may be awarded a position outside of the STL domicile; provided, that a TWA Pilot may, with the Company's prior approval, proffer a vacancy outside of the STL domicile, based on system seniority, so long as (i) the TWA Pilots do not hold small wide-body Captain positions in the contractual month in excess of the maximum set forth on the table in Section IV.A.2.a.(1) below based on small wide-body aircraft in service, or narrow-body Captain positions in excess of the maximum set forth on the table in Section IV.A.2.b.(1) below based on the total aircraft in service; and (ii) the award does not require the involuntary assignment of an AA Pilot to a position in the STL domicile. After the Pilot Operational Procedures Integration Date, additional line pilot positions in Captain bid statuses outside of the STL domicile will be reserved to the TWA Pilots based on the number of aircraft in service in the combined American and TWA LLC operation in a given contractual month, in addition to positions reserved under Sections IV.A.1. above, as follows:

a. (1) Prior to the expiration of Section IV.A.1.a. above, for any contractual month in which the total of (a) the B-767-200/B-767-300/B-757 Captain line pilot positions reserved to the TWA Pilots in the STL domicile, and (b) the number of B-767-200/B-767-300/B-757 Captain line pilot positions then held by TWA Pilots in other domiciles, is less than the number of positions indicated below, based on the number of small-wide body aircraft in service, TWA Pilots will be permitted, in accordance with system seniority, to proffer Captain positions, in addition to those reserved in the STL domicile under Section IV.A.1.a. above, in bid statuses on B-767-200/B-767-300/B-757 aircraft in domiciles other than STL until the total number of small wide-body Captain line pilot positions reserved under Section IV.A.1. above and this Section IV.A.2.a.(1) equals the number indicated below for the contractual month in question:

Small Wide-Body Aircraft in Service	Number of Reserved Small Wide-Body Captain Line Pilot Positions
276 or more	260
271-275	238
266-270	200
261-265	167
255-260	132

In any contractual month in which fewer than 255 small wide-body aircraft are in service, no Captain proffers on B-767-200/B-767-300/B-757 aircraft will be allotted to the TWA Pilots outside of the STL domicile. In any such month, the number of B-767-200/B-767-300/B-757 Captain line pilot positions in the STL domicile will be no less than 30 per cent of the combined number of small wide-body Captain line pilot positions in the ORD and DFW domiciles in the contractual month; provided, that the number will also be limited to a maximum of 132 Captain line pilot positions or 30 per cent of the number of small wide-body Captain line pilot positions in the ORD and DFW domiciles in the contractual month, whichever is less.

(2) In a contractual month in which the number of small-wide body Captain line pilot positions reserved to the TWA Pilots declines from the previous contractual month, the most junior TWA Pilots holding such positions outside of the STL domicile in excess of the number of positions reserved to the TWA Pilots will cease to be protected by this provision and shall be subject to displacement. Those pilots will not be displaced solely by reason of losing such protection, but only in accordance with the Green Book.

b. (1) Prior to the expiration of Section IV.A.1.b. above, for any contractual month in which the total of (a) the number of narrow-body Captain line pilot positions reserved to the TWA Pilots in the STL domicile, and (b) the number of narrow-body Captain line pilot positions then held by

TWA Pilots on all aircraft types in domiciles other than STL, is less than the number of positions indicated below, based on the total number of aircraft in service, one of every six proffers to Captain bid statuses on narrow-body aircraft for the contractual month in domiciles other than STL will be reserved to the TWA Pilots, until the total number of narrow-body Captain line pilot positions reserved to the TWA Pilots under Section IV.A.1.b.(1) above and this Section IV.A.2.b.(1) equals the number indicated below for the contractual month in question:

Total Number of Number of Aircraft in Service	Reserved Narrow-Body Captain Line Pilot Positions
901 or more	800
891-900	770
881-890	710
871-880	650
861-870	590
851-860	530

In any contractual month in which fewer than 851 aircraft are in service, no Captain proffers on narrow-body aircraft will be allotted to the TWA Pilots outside of the STL domicile. In any such month, the number of MD-80/B-717/DC-9 Captain line pilot positions in the STL domicile will be no less than 30 per cent of the combined number of narrow-body Captain line pilot positions in the ORD and DFW domiciles in the contractual month; provided, that the number will also be limited to a maximum of 530 Captain line pilot positions or 30 per cent of the combined number of narrow-body Captain line pilot positions in the ORD and DFW domiciles in the contractual month, whichever is less.

(2) In a contractual month in which the number of narrow-body Captain positions protected to the TWA Pilots on all aircraft types declines from the previous contractual month, the most junior TWA Pilots holding such positions outside of the STL domicile in excess of the number of positions reserved to the TWA Pilots will cease to be protected by this provision and shall be subject to displacement. Those pilots will not be displaced solely by reason of losing such protection, but only in accordance with the Green Book.

c. A TWA Pilot based in the STL domicile may not be awarded a position outside of the STL domicile for a contractual month in which there is a vacancy in the pilot's bid status in the STL domicile which cannot be filled by either a pilot on the modified System Seniority List by proffer, by a new hire, or by a pilot being recalled from furlough if the pilot accepts.

B. AA Captain Positions

1. All line pilot positions in any four-part Captain bid status on B-777 aircraft will be reserved to AA Pilots until AA Pilot B.D. White, DOH 4/9/01 (or, in the event that B.D. White ceases to be on the modified System Seniority List, the remaining AA Pilot immediately senior to B.D. White) has sufficient seniority to hold a vacancy in the same bid status. Thereafter, TWA Pilots may bid based on system seniority for positions in such four-part bid status; provided, that any TWA Pilot in such bid status will be restricted to reserve until AA Pilot B.D. White, DOH 4/9/01 (or, in the event that B.D. White ceases to be on the modified System Seniority List, the remaining AA Pilot immediately senior to B.D.White) has sufficient seniority to hold a regular line selection in such bid status. Thereafter, all positions in such bid status will be unrestricted.

2. All line pilot positions in any four-part Captain bid status on MD-11 aircraft will be reserved to AA Pilots until AA Pilot B.D. White, DOH 4/9/01(or, in the event that B.D. White ceases to be on the modified System Seniority List, the remaining AA Pilot immediately senior to B.D. White) has sufficient seniority to hold a vacancy in the same bid status. Thereafter, TWA Pilots may bid based on system seniority for positions in such four-part bid status; provided, that any TWA Pilot in such bid status will be restricted to reserve until AA Pilot B.D. White, DOH 4/9/01(or, in the event that B.D. White ceases to be on the modified System Seniority List, the remaining AA Pilot immediately senior to B.D. White) has sufficient seniority to hold a regular line selection in such bid status. Thereafter, all positions in such bid status will be unrestricted.

3. All line pilot positions in any four-part Captain bid status on A-300 aircraft will be reserved to AA Pilots until AA Pilot B.D. White, DOH 4/9/01 (or, in the event that B.D. White ceases to be on the modified System Seniority List, the remaining AA Pilot immediately senior to B.D. White) has sufficient seniority to hold a vacancy in the same bid status. Thereafter, TWA Pilots may bid based on system seniority for positions in such four-part bid status; provided, that any TWA Pilot in such bid status will be restricted to reserve until AA Pilot B.D. White, DOH 4/9/01 (or, in the event that B.D. White ceases to be on the modified System Seniority List, the remaining AA Pilot immediately senior to B.D. White) has sufficient seniority to hold a regular line selection in such bid status. Thereafter, all positions in such bid status will be unrestricted.

4. All line pilot positions in any four-part Captain bid status on any other aircraft type with a maximum gross takeoff weight of more than 409,000 pounds or in a pay category higher than the B-767-300 will be reserved to AA Pilots until AA Pilot B.D. White, DOH 4/9/01 (or, in the event that B.D. White ceases to be on the modified System Seniority List, the remaining AA Pilot immediately senior to B.D. White) has sufficient seniority to hold a vacancy in the same bid status. Thereafter, TWA Pilots may bid based on system seniority for positions in such four-part bid status; provided, that any TWA Pilot in such bid status will be restricted to reserve until AA Pilot B.D. White, DOH 4/9/01 (or, in the event that B.D. White ceases to be on the modified System Seniority List, the remaining AA Pilot immediately senior to B.D. White) has sufficient seniority to hold a regular line selection in such bid status. Thereafter, all positions in such bid status will be unrestricted.

C. AA First Officer Positions

1. All line pilot positions in any four-part First Officer bid status on B-777 aircraft will be reserved to AA Pilots until AA Pilot B.D. White, DOH 4/9/01 (or, in the event that B.D. White ceases to be on the modified System Seniority List, the remaining AA Pilot immediately senior to B.D. White) has sufficient seniority to hold a vacancy in the same bid status. Thereafter, TWA Pilots may bid based on system seniority for positions in such four-part bid status; provided, that any TWA Pilot in such bid status will be restricted to reserve until AA Pilot B.D. White, DOH 4/9/01(or, in the event that B.D. White ceases to be on the modified System Seniority List, the remaining AA Pilot immediately senior to B.D. White) has sufficient seniority to hold a regular line selection in such bid status. Thereafter, all positions in such bid status will be unrestricted.

2. All line pilot positions in any four-part First Officer bid status on MD-11 aircraft will be reserved to AA Pilots until AA Pilot B.D. White, DOH 4/9/01 (or, in the event that B.D. White ceases to be on the modified System Seniority List, the remaining AA Pilot immediately senior to B.D. White) has sufficient seniority to hold a vacancy in the same bid status. Thereafter, TWA Pilots may bid based on system seniority for positions in such four-part bid status; provided, that any TWA Pilot in such bid status will be restricted to reserve until AA Pilot B.D. White, DOH 4/9/01 (or, in the event that B.D. White ceases to be on the modified System Seniority List, the remaining AA Pilot immediately senior to B.D. White) has sufficient seniority to hold a regular line selection in such bid status. Thereafter, all positions in such bid status will be unrestricted.

3. All line pilot positions in any four-part First Officer bid status on A-300 aircraft will be reserved to AA Pilots until AA Pilot B.D. White, DOH 4/9/01 (or, in the event that B.D. White ceases to be on the modified System Seniority List, the remaining AA Pilot immediately senior to B.D. White) has sufficient seniority to hold a vacancy in the same bid status. Thereafter, TWA Pilots may bid based on system seniority for positions in such four-part bid status; provided, that any TWA Pilot in such bid status will be restricted to reserve until AA Pilot B.D. White, DOH 4/9/01 (or, in the event that B.D. White ceases to be on the modified System Seniority List, the remaining AA Pilot immediately senior to

B.D. White) has sufficient seniority to hold a regular line selection in such bid status. Thereafter, all positions in such bid status will be unrestricted.

4. All line pilot positions in any four-part First Officer bid status on any other aircraft type with a maximum gross takeoff weight of more than 409,000 pounds or in a pay category higher than the B-767-300 will be reserved to AA Pilots until AA Pilot B.D. White, DOH 4/9/01 (or, in the event that B.D. White ceases to be on the modified System Seniority List, the remaining AA Pilot immediately senior to B.D. White) has sufficient seniority to hold a vacancy in the same bid status. Thereafter, TWA Pilots may bid based on system seniority for positions in such four-part bid status; provided, that any TWA Pilot in such bid status will be restricted to reserve until AA Pilot B.D. White, DOH 4/9/01 (or, in the event that B.D. White ceases to be on the modified System Seniority List, the remaining AA Pilot immediately senior to B.D. White) has sufficient seniority to hold a regular line selection in such bid status. Thereafter, all positions in such bid status will be unrestricted.

V. Furloughs and Displacements

A. Furloughs

Furloughs will be administered in inverse system seniority order, and recalls from furlough will be administered in system seniority order, in accordance with the Green Book as modified by the Transition Agreement and Supplement CC. The parties agree that the TWA Pilots will be covered by Section IV. of Supplement W of the Green Book when pilot J.K. Viele, DOH 8/20/01 is given notice of recall from furlough.

[Modified by Letter OO, "Master Shuffle", May 1, 2003 and Letter PP, "Supp W. Implementation", December 8, 2003. See Letter QQ "Summary of Updates".]

B. Displacements

1. No AA Pilot may displace a TWA Pilot holding a Captain position reserved to the TWA Pilots under this Supplement CC, or into a position in the STL domicile which is subject to Section IV.A.1. above (except as provided in Section V.B.2. below with respect to First Officer positions).

2. In the event of a furlough, an AA Pilot without any other displacement right may, to the extent necessary to permit furloughs in inverse seniority order, proffer or be assigned (first from the preference list, and then from the displacement list) to a First Officer bid status in the STL domicile on B-767-200/B-767-300/B-757, MD-80, B-717 or DC-9 aircraft occupied by a more junior TWA Pilot, and will bid monthly bid preferences in such bid status in seniority order, but subordinate to all TWA Pilots in the same bid status.

3. No TWA Pilot may displace an AA Pilot holding a Captain or First Officer position reserved to the AA Pilots under this Supplement CC. No TWA Pilot may displace an AA Pilot holding a Captain position if the displacement would result in the TWA Pilots holding small wide-body Captain positions in the contractual month in excess of the maximum set forth in the table in Section IV.A.2.a.(1) above based on small wide-body aircraft in service, or narrow-body Captain positions in excess of the maximum set forth in the table in Section IV.A.2.b.(1) above based on the total aircraft in service.

4. Displacements will otherwise be administered in accordance with the Green Book.

VI. Miscellaneous

A. Except insofar as pilots are on furlough out of seniority order on the modified System Seniority List as of the Implementation Date, and except as expressly provided in this Supplement CC, neither the implementation of the modified System Seniority List together with the other provisions of this Supplement CC, nor the expiration of any provision hereof, shall result in the loss by any pilot of the seat and aircraft (e.g., B-767/757 Captain) then held.

B. Except as may otherwise be provided in this Supplement CC, in the event that there are insufficient bidders for a position reserved to the AA Pilots or the TWA Pilots under this Supplement CC, the position shall be awarded in accordance with the Green Book.

C. Each and every provision of this Supplement CC is integral to the modified System Seniority List constructed pursuant to Section II. above, and shall remain in full force and effect and continue to apply in the event of a future seniority list

integration arising from a subsequent acquisition, merger or other transaction affecting any pilots on the integrated modified System Seniority list; provided, that, subject to the above, this provision will not limit the integration of seniority lists in the event of said acquisition, merger or other transaction.

D. By separate letter agreement executed contemporaneously herewith, American and the Association will identify those provisions of the Transition Agreement which are superceded by this Supplement CC.

VII. Joint Merger Committee

A. Promptly following the Implementation Date, the APA President shall appoint two members of the APA, and the Company's Vice President of Employee Relations shall appoint two American Airlines representatives to serve as members on the standing AA/APA TWA Merger Committee.

B. The AA/APA TWA Merger Committee shall resolve disputes arising from the interpretation, application, and implementation of this Supplement CC.

C. If a dispute described in Section VII.B. above is not resolved by majority vote of the AA/APA TWA Merger Committee, the unresolved dispute may be referred by either party to the Five Member System Board of Adjustment as provided in Section 23 of the Green Book and related letters and practices.

VIII. Duration

This Supplement CC shall remain in effect so long as any of the provisions hereof remain applicable. Neither party shall seek, without the express consent of the other party, at any time to modify this Supplement CC through the major dispute provisions of the Railway Labor Act.

IN WITNESS HEREOF, the parties hereto have signed this Agreement this 8th day of November, 2001.

AMERICAN AIRLINES, INC.

By:

/signed/
Jeffrey Brundage
Vice President, Employee Relations

ALLIED PILOTS ASSOCIATION

By:

/signed/
John E. Darrah
President

By:

/signed/
Edwin C. White, Jr. Chairman
Mergers & Acquisitions Committee

EXHIBIT 17

2012 WL 1215291
Only the Westlaw citation is currently available.
United States District Court,
E.D. New York.

Seth NAUGLER, et al., Plaintiffs,
v.
AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, and Duane E. Woerth, in his official capacity, Defendants.

No. 05 CV 4751(NG)(VVP). | April 11, 2012.

Attorneys and Law Firms

Michael S. Haber, Law Office of Michael Haber, New York, NY, for Plaintiffs.

James L. Linsey, Joshua John Ellison, Cohen, Weiss & Simon LLP, New York, NY, for Defendants.

OPINION & ORDER

GERSHON, District Judge.

***1** Plaintiffs are U.S. Airways, Inc. ("US Airways") pilots who agreed to work for MidAtlantic Airways ("MidAtlantic" or "MDA"), a division of the U.S. Airways mainline operation. Defendant Air Line Pilots Association International ("ALPA") is an unincorporated labor union that served as the exclusive collective bargaining representative for all the U.S. Airways pilots, including plaintiffs, during all times relevant to this case. Defendant Duane E. Woerth was the President of ALPA and is named in his official capacity.

After all counts in their First Amended Complaint were dismissed, plaintiffs filed a Supplemental Complaint, with leave of court, stating a single claim for breach of the duty of fair representation ("DFR") against ALPA and Mr. Woerth, alleging that ALPA knew of, and stipulated to, the introduction of an erroneous, previously corrected seniority list during arbitration proceedings regarding the integration of pilot seniority lists when U.S. Airways merged with America West Airlines, Inc. ("America West").

Now before the court is defendants' motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure seeking to have the Supplemental Complaint dismissed with prejudice. For the reasons stated below, defendants' motion is granted.

FACTS

Unless otherwise indicated, the following facts are undisputed.

A. Background

Plaintiffs are pilots who flew Embraer–170 aircraft for MidAtlantic Airways, a division of U.S. Airways, from 2004, when MidAtlantic launched until 2006, when MidAtlantic operations ceased. At the time they flew for MidAtlantic, some of the plaintiffs had been furloughed from their positions at U.S. Airways. Others had flown only for wholly-owned subsidiaries of U.S. Airways.

ALPA is a labor union that represents pilots who fly commercial aircraft at approximately 37 airlines in the United States and Canada. At each airline, ALPA acts through a Master Executive Council ("MEC") that is comprised of pilots from the represented airline and serves as the coordinating council for union membership at that airline. At all relevant times, ALPA served as the exclusive bargaining representative for all pilots at U.S. Airways, including furloughed pilots and those at wholly owned subsidiaries, through the U.S. Airways MEC. Defendant Duane E. Woerth is the former President of ALPA and held that office until he was succeeded by Captain John Prater on January 1, 2007. Since April 2008, pilots at U.S. Airways have been represented by the U.S. Airline Pilots Association ("USAPA").

US Airways, like many of the other large airlines, experienced serious financial difficulties in the period subsequent to the terrorist attacks of September 11, 2001. In September 2001, alone, the airline lost $7.52 per share and its debt rating was downgraded by both Moody's and Standard & Poor's. In August 2002, U.S. Airways applied for bankruptcy protection, from which it exited in March 2003. In September 2004, less than 18 months after its first exit from bankruptcy, the airline applied for bankruptcy protection for a second time. When it exited its second bankruptcy approximately one year later, U.S. Airways merged with America West, a low-cost air carrier. The merger was announced on May 19, 2005 and closed on September 27, 2005, the day U.S. Airways emerged from its second bankruptcy.

***2** Prior to filing its first bankruptcy petition, U.S. Airways and ALPA entered into the "2002 Restructuring Agreement" (or the "2002 Agreement"). That agreement contained wage, benefit, work-rule and other concessions and also authorized U.S. Airways to operate a carrier to be known as MidAtlantic. The U.S. Airways MEC agreed to the 2002 Restructuring Agreement on July 13, 2002, and it was ratified by U.S. Airways pilots on August 11, 2002.

Though the parties agree that U.S. Airways initially intended to operate MDA as a wholly-owned subsidiary, ALPA and U.S. Airways agreed in the 2002 Restructuring Agreement that MDA could operate *either* as a new wholly-owned subsidiary of U.S. Airways or as a separate division of U.S. Airways. The parties agree that the 2002 Agreement lacked clarity as to the classification of MDA as either a division, or as a wholly-owned subsidiary. [1] But it is undisputed that, despite the uncertainty of MDA's status during negotiations over working conditions and compensation, MDA ultimately flew on U.S. Airways' operating certificate as a division of U.S. Airways, not as a wholly-owned subsidiary.

It is also undisputed that the rights of the pilots who were to fly for MDA were initially defined in the 2002 Restructuring Agreement and refined by subsequent additional agreements. Based on U.S. Airways' financial realities, ALPA agreed to allow MDA to operate under terms and conditions of employment different from those of the mainline operation. The 2002 Restructuring Agreement provided that "[a]ll MDA positions will be filled first by U.S. Airways Pilots."*See* 2002 Restructuring Agreement, Attachment B, pp. 7–8. If additional pilots were needed, MDA could hire pilots from U.S. Airways' wholly-owned subsidiaries and, as a last resort, pilots from outside U.S. Airways. US Airways was to use the Affected Pilot List ("APL") to determine which pilots were on furlough and the Combined Eligibility List ("CEL") to determine which pilots were available from U.S. Airways' wholly-owned subsidiaries. A furloughed pilot could decline an offer of employment at MDA without losing his place on the APL; in other words, the order of seniority on the APL would not be affected by a pilot's choice to accept or decline work at MDA. *See* 2002 Restructuring Agreement, Attachment B, p. 8, Bullet Point Four (A pilot "may bypass an offer of employment with MDA without losing his position on the Affected Pilot List, regardless of his preference.").

Subsequent Letters of Agreement ("LOAs") modified the 2002 Restructuring Agreement. LOA 84, approved by U.S. Airways and ALPA on December 13, 2002, stated that U.S. Airways could operate MDA "as a separate division within the mainline-U.S. Airways, Inc. with such operation limited to Large SJ's." [2] At the time of LOA 84, MDA's status, as either a division of U.S. Airways or a U.S. Airways wholly-owned subsidiary, had not yet been determined. Either way, it was to be operated under a separate work and benefits agreement. In other words, MDA's status and the status of its pilots were not to be governed by a conventional label, but rather by the conditions laid out in both the 2002 Agreement and in LOA 84.

***3** LOA 84 went on to explain that, "[a] pilot may accept voluntary furlough in lieu of displacement to a Large SJ position ... and a pilot on furlough may bypass *recall* to a Large SJ position; in either case, the pilot will then be offered *recall* when his seniority entitles him to a position on an aircraft larger than a Large SJ." LOA 84 (emphasis added). Although this sentence uses the word "recall" twice, based upon the undisputed documentary evidence, it is clear that a pilot who was *"recall[ed]* to a Large SJ position" was not *"recall [ed]"* to the mainline. Therefore, a furloughed U.S. Airways pilot who was offered and accepted a position at MDA, would still have to wait his turn, in the order listed on the APL, to be *recalled* to fly on the mainline.

In the fall of 2003, MDA began preparations to hire and train pilots by compiling training materials, including operating manuals. In April 2004, MDA began hiring pilots, by extending offers of employment to pilots furloughed from U.S. Airways in order of their seniority. Pilots received letters on MDA letterhead offering them positions at "MidAtlantic Airways, a division of U.S. Airways, Inc." These MDA offer letters did not state that the offers of employment constituted recall to the mainline. Pilots offered positions at MDA also received letters from Frank Blazina, MDA's chief pilot, who welcomed the pilots to "MidAtlantic Airways, a Division of U.S. Airways."Some furloughed U.S. Airways pilots accepted positions at MDA, while others declined outright or worked at MDA for a short period of time before leaving. After offers of employment at MDA had been extended to all furloughed mainline pilots, there remained open positions which MDA looked to fill by extending offers of employment to pilots from U.S. Airways' wholly-owned subsidiaries.

Plaintiffs rely on these offer letters from MDA to bolster their contention that an offer of employment at MDA was a recall to the mainline, but those letters are insufficient to create an issue of fact supporting plaintiffs' contention.

The U.S. Airways Pilots Working Agreement (the "Working Agreement") between ALPA and U.S. Airways fixed a procedure by which U.S. Airways recalled furloughed pilots to the mainline. There is no dispute that such procedures were not used when offering the furloughed mainline pilots employment at MDA. According to the terms of the Working Agreement, recall letters had to be sent to the pilots via "Reply —Requested Telegram" or "Certified Letter—Return Receipt Requested," and the MDA offer letters were not sent by either method. US Airways pilots were required to respond to letters of recall to the mainline within seven days, yet there was no seven-day limitation on response time specified in the MDA offer letters. And, unlike the letter furloughed pilots received recalling them to fly on the mainline, none of the MDA offer letters used the word recall or referenced the provisions of the Working Agreement which explained recall procedures. Significantly, except under certain conditions enumerated in the Working Agreement, a furloughed pilot who refused recall to U.S. Airways lost his place on the seniority list, while furloughed pilots who elected not to accept employment at MDA did not lose seniority standing. In sum, not only did the procedure of recall differ from an offer of employment at MDA, but there were different consequences for declining recall to the mainline and declining an offer of employment by MDA.

B. ALPA's Merger Policy

***4** At the time the merger was announced, ALPA represented both U.S. Airways pilots and America West pilots. ALPA had an established policy governing how to integrate pilot seniority lists of two airlines which both employed ALPA-represented pilots. A Merger Committee was appointed by each MEC, one for U.S. Airways pilots and one for America West pilots, and each MEC had the authority to represent its pilots with respect to integrating the seniority lists of the two airlines. In order to start the integration process, a Policy Initiation Date was chosen, which was the date when it appeared reasonably likely that a merger would occur. The Merger Committees selected a three member Arbitration Board to decide how the seniority lists were integrated in the event that the Merger Committees would be unable to agree on a methodology of integration. Two members of the Arbitration Board were pilot neutrals; each was a non-voting ALPA member chosen by one airline's Merger Committee. The third member of the Arbitration Board was the Chairman, chosen from a list of arbitrators maintained by ALPA. George Nicolau was chosen to be the Chairman of the Arbitration Board. The U.S. Airways Merger Committee selected Captain James Brucia as its pilot neutral and, as its pilot neutral, the America West Merger Committee selected Captain Stephen Gillen.

The Merger Committees compiled and determined the relevant employment data, such as dates of birth, dates of hire, furlough time and leave of absence time, for their respective pilots. The list compiled by each Merger Committee is referred to as that airline's Certified Seniority List (the "List"). Each Merger Committee sent a certified letter containing employment data to each pilot whose data had not been previously verified or updated, meaning those who were hired at a date subsequent to the last time the Merger Committee verified pilot data, or those who had a change in status, such as a furlough or leave of absence, since the last time their data was verified. In this case, the U.S. Airways Merger Committee's letters were dated December 6, 2005 and, for pilots who had flown or were actively flying for MDA, listed their data including, start and end dates for furlough from the mainline and MDA start and end dates. The letter also informed each recipient of the ALPA policy that, if a pilot disagreed with his own employment data, he may protest that data in writing and request a hearing before the Merger Committee. Some pilots responded to the letter in writing, and objected to listing separate MDA start and end dates rather than just listing a U.S. Airways furlough end date as the date they started flying for MDA; these pilots took the position that flying for MDA constituted a recall to the mainline, which ended their furlough.

When the Merger Committee received an employment data protest, it reviewed the protest and determined whether the protest was correct or not, and it responded to the protesting pilot in writing. By letter dated January 24, 2006, the Merger Committee responded to the pilots who protested their employment data on the ground that flight for MDA constituted a recall to the mainline, explaining that the information contained in the letters of December 6, 2005, was correct. [3]

***5** Once all the employment data for an airline was verified, and all protests resolved, the Merger Committee compiled a certified Flight Deck Crew Member Seniority List that reflected the proper seniority order of the pilots at the airline. Then, the Merger Committees of the airlines exchanged their respective seniority lists. The Merger Committees then proceeded through a three step process in an attempt to come to an agreement on a single, integrated list: (1) direct negotiations; (2) if unsuccessful, mediation; and (3) if mediation unsuccessful, binding arbitration. If 100 days

passed without success in direct negotiation or mediation, the process proceeded to binding arbitration. Here, ALPA merger policy dictated that steps two and three, the mediation and arbitration, were to be presided over by the same person, George Nicolau, who, as mentioned above, was chosen as the Chairman of the Arbitration Board.

Upon the failure of direct negotiations and mediation, the Arbitration Board met with the Merger Committees to specify the scope of the evidence to be presented at arbitration and establish a hearing schedule and procedural rules for the arbitration proceeding. Then, the Merger Committees and their legal counsel presented their respective cases to the Arbitration Board. When the arbitration concluded, the Chairman convened an Executive Session of the Arbitration Board, and an Opinion and Award integrating the seniority lists was issued.

C. The May 19, 2005 Certified Seniority List

The U.S. Airways Merger Committee generated its Certified Seniority List as of May 19, 2005, the day on which the two airlines announced their intent to merge. The List was comprised of three categories of pilots: (1) active pilots flying for the mainline; (2) pilots who were furloughed from the mainline; and (3) those combined eligibility pilots who flew for MDA but had never flown for the mainline.

The Certified Seniority List contained a legend on the first page which defined abbreviations used and gave equations for how certain time periods on the List were calculated. There was a column for each pilot's tenure at the airline. Tenure, or TEN, was defined as the number of years from a pilot's DOH, date of hire, until May 19, 2005. The Certified Seniority List also had a column for LOS, or length of service, which was equal to DOH less furlough time, but included a pilot's flying time for MDA, so that pilots were credited for their time at MDA in the LOS column. MDA was defined as time on the E–170 at the MidAtlantic Division of U.S. Airways.

In order to list furlough time, as required by ALPA's merger policy, the U.S. Airways Merger Committee included the following columns on the Certified Seniority List: Furlough Start 1; Furlough End 1; Furlough Start 2; Furlough End 2. Any pilot who was furloughed had a date listed in the Furlough Start 1 column. If a pilot had been furloughed, but was no longer furloughed, there were dates listed in both the Furlough Start 1 column and the Furlough End 1 column. If a pilot had been furloughed twice, then there would be additional dates listed in the Furlough Start 2 column and, if applicable, the Furlough End 2 column. In addition to the aforementioned columns, pilots who were on furlough as of May 19, 2005, but were not flying for MDA, had the abbreviation FUR, for furloughed, placed next to their names in the STS (status) column on the Certified Seniority List.

***6** Pilots who were furloughed from the mainline but flying for MDA did not have an FUR placed in the status column next to their names. However, those pilots had a date listed in a Furlough Start column and no date listed in a Furlough End column. They also had dates listed in the MDA Start column and, if applicable, MDA End column. So, a pilot who was flying for MDA had a date listed in a Furlough Start column in addition to a date listed in the MDA Start column. It is undisputed that such a pilot was understood to be furloughed on the Certified Seniority List, even though not labeled as furloughed in the status column.

D. The Mediation and Arbitration

At the outset of the mediation, the U.S. Airways Merger Committee proposed a “date-of-hire” integration so that the pilots of the two airlines would be merged according to the date they had been hired at their respective airlines. Mediation was unsuccessful, and the issue of how to integrate the seniority lists proceeded to arbitration. During arbitration, the U.S. Airways Merger Committee advocated for integration based upon a length of service period. Arbitration hearings were held over several months beginning in late 2006 and ending in early 2007. At arbitration, the U.S. Airways Merger Committee advocated that the merged list reflect that U.S. Airways pilots had much longer lengths of service than America West pilots. The U.S. Airways Merger Committee sought to have the Arbitration Board recognize MDA pilots' flight time as part of their length of service at U.S. Airways and also proposed that the integrated seniority list be based upon employment data as of July 1, 2006, by which point U.S. Airways had started to recall pilots from furlough to fly for the mainline, rather than May 19, 2005.

On May 1, 2007, the Arbitration Board issued its Opinion and Award (the “Award”) authored by Chairman Nicolau, which decided how to integrate the seniority lists of U.S. Airways and America West. The Award took into account each Merger Committee's arguments with respect to the differences in the composition of the pilot groups and their lengths of service at their respective airlines, the nature of flying done by each airline and the relative financial health of each airline. The Award rejected the U.S. Airways Merger Committee's length of service proposal and its position that the Award be based

upon pilot seniority as of July 1, 2006. The Award also rejected America West's integration proposal, what it called a top to bottom active pilot ratio, which would have integrated the pilots from the two airlines proportionately, despite any difference in length of service.

The Award determined that, at the time of the merger, U.S. Airways had 5098 pilots on its seniority list, of whom 1691 were on furlough from the mainline. The Award placed the 423 most senior pilots, all from U.S. Airways, at the top; furloughed pilots, all from U.S. Airways, were placed at the bottom; and all other U.S. Airways and America West pilots were placed in the same relative position in the middle, despite the fact that America West pilots were decades younger and less experienced. The Award discounted the longer lengths of service of the U.S. Airways pilots in light of their diminished career expectations, based upon the poor financial health of U.S. Airways—evidenced by its multiple bankruptcies in a short period of time-as of the date the merger was announced. It placed the furloughed U.S. Airways pilots below all active America West pilots because "merging active pilots with furloughees, despite length of service of some of the latter, is not at all fair or equitable under any of the stated criteria."May 1, 2007 Arbitration Opinion and Award, p. 28. The Arbitration Board, relying on the May 19, 2005 Certified Seniority List in making its decision as to how to integrate the pilots of the two airlines, determined that U.S. Airways mainline pilots who had been furloughed but had then flown for MDA remained furloughed from U.S. Airways and that the CEL pilots would be included on the integrated seniority list, despite America West's objections that they should not be included on the List at all because they had never flown for the mainline.

E. US Airways Pilots' Efforts to Block Implementation of the Award

***7** Unhappy with the Award, U.S. Airways pilots sought to block its implementation. They asked ALPA's president for a hearing before ALPA's Executive Council, which was granted. The Executive Council determined that ALPA's merger policy had been properly followed and that the Award should be implemented. Upset by this outcome, U.S. Airways pilots voted to decertify ALPA, and, in April 2008, replaced it with USAPA, whose constitution advocates a date-of-hire seniority integration.

To date, the Award has not been implemented, and, despite the merger, the two airlines remain separate with respect to their pilot operations. America West pilots have sued USAPA to implement the Award in the District of Arizona. The District Court held a jury trial where USAPA was found to have breached its DFR by taking actions solely benefitting U.S. Airways pilots at the expense of America West pilots. *Addington v. U.S. Airline Pilots Ass 'n,* No. CV–18–1633, 2009 WL 2169164 (D.Ariz. July 17, 2009). The District Court rejected USAPA's argument that the claim was not ripe for judicial review. *Id.* The Court of Appeals for the Ninth Circuit, in a two to one decision, reversed and remanded the case for dismissal finding it was not ripe for judicial review.*Addington v. U.S. Airline Pilots Ass'n,* 606 F.3d 1174 (9th Cir.2010), *cert. denied*—— U.S. ——, 131 S.Ct. 908, 178 L.Ed.2d 750 (2011).

PROCEDURAL BACKGROUND

Plaintiffs commenced this action on October 7, 2005 against ALPA, Duane E. Woerth, in his official capacity as President of ALPA, U.S. Airways, U.S. Airways Group, Inc., America West Airlines, Inc., Republic Airways Holdings, Inc. ("Republic") and Wexford Capital LLC ("Wexford"). All defendants except ALPA and Woerth were dismissed. No. 05–CV–4751, Doc. 21, July 11, 2006.

On July 6, 2006, plaintiffs filed their First Amended Complaint against ALPA and Woerth alleging that defendants' conduct breached their duty of fair representation under the Railway Labor Act, 45 U.S.C. §§ 151–188, and violated the Racketeer Influenced and Corrupt Organization Act ("RICO"), 18 U.S.C. §§ 1961–1968. On January 22, 2007, defendants filed a motion to dismiss plaintiffs' First Amended Complaint in its entirety under Rule 12(b)(6) of the Federal Rules of Civil Procedure on the grounds that all but one of the duty of fair representation claims were time-barred and that all of the claims failed to state a claim for relief. On October 13, 2007, plaintiffs filed a motion for leave to file a supplemental complaint.

In an opinion and order of March 27, 2008, I granted defendants' motion to dismiss and also granted leave to plaintiffs to file their supplemental complaint. *Naugler v. Air Line Pilots Ass'n Intern.,* 05–CV–4751, 2008 WL 857057 (E.D.N.Y. Mar.27, 2008). In granting leave to plaintiffs to file a supplemental complaint, I explained that, "[t]he alleged breach [of the DFR in the Supplemental Complaint] is not about the process or terms of the arbitration award ... but that the union knew of, and stipulated to, the introduction of

an erroneous, previously-corrected seniority list during the arbitration proceedings."*Id. at* *14.

***8** Plaintiffs subsequently filed their Supplemental Complaint on April 18, 2008. The Supplemental Complaint alleges a single claim that defendants breached their DFR by submitting an allegedly erroneous seniority list to the Arbitration Board. The error, which plaintiffs assert defendants knew at the time of the submission, was that the List did not describe pilots flying for MidAtlantic as pilots flying for the mainline. Specifically, with respect to the pilots who had been furloughed from the mainline and had then chosen to fly for MDA, plaintiffs argue that their employment for MDA should have been treated as ending their furloughs. At the close of discovery, defendants filed this motion for summary judgment seeking to dismiss the Supplemental Complaint on three grounds: (1) that it is time-barred because the statute of limitations began to run more than six months prior to plaintiffs seeking leave to file the Supplemental Complaint; (2) that the issue in the Supplemental Complaint is not ripe for adjudication; and (3) that the List submitted to the arbitrators was factually correct and therefore defendants did not breach their DFR.

DISCUSSION

I. Summary Judgment Standard

Motions for summary judgment are granted if there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. *Lipton v. Nature Co.*, 71 F.3d 464, 469 (2d Cir.1995). The moving party must demonstrate the absence of any material factual issue genuinely in dispute. *Id.* The court must view the inferences to be drawn from the facts in the light most favorable to the party opposing the motion. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). However, the non-moving party may not "rely on mere speculation or conjecture as to the true nature of the facts to overcome a motion for summary judgment."*Knight v. U.S. Fire Ins. Co.*, 804 F.2d 9, 12 (2d Cir.1986). Nor may the non-moving party "rest upon the mere allegations or denials of his pleading."Fed.R.Civ.P. 56(e). Rather, the non-moving party must produce specific facts sufficient to establish that there is a genuine factual issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 32223, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). If the evidence is "merely colorable" or "not significantly probative," summary judgment may be granted. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249252, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986) (stating that the "mere existence of a scintilla of evidence in support of the [non-moving party's] position will be insufficient; there must be evidence on which the jury could reasonably find [for the non-moving party]").

II. Statute of Limitations

The statute of limitations for a breach of the duty of fair representation claim is six months. *See DelCostello v. Int'l Broth. of Teamsters*, 462 U.S. 151, 170–72, 103 S.Ct. 2281, 76 L.Ed.2d 476 (1983); *Eatz v. DME Unit of Local Union Np. 3 of the Int'l Broth. of Elec. Workers, AFL–CIO*, 794 F.2d 29, 33 (2d Cir.1986). In cases where union members have sued their union for a breach of the duty of fair representation, the Second Circuit has long held that "the cause of action accrue[s] no later than the time when plaintiffs knew or reasonably should have known that ... a breach ha[s] occurred."*Santos v. District Council of New York City*, 619 F.2d 963, 969 (2d Cir.1980); *Ramey v. District 141, Int'l Assoc. of Machinists & Aerospace Workers*, 378 F.3d 269, 278 (2d Cir.2004). Plaintiffs' motion to file the Supplemental Complaint was timely, as it was filed within six months of the date of the arbitration decision issued by Chairman Nicolau of the ALPA Arbitration Board. Plaintiffs could not reasonably have known which exhibits were submitted by the union to the Arbitration Board or whether the Arbitration Board relied on those exhibits to plaintiffs' detriment until the Board's decision was handed down, which occurred on May 1, 2007. Therefore, the date of the Arbitration Board's decision is the date from which the statute of limitations for this DFR claim started to run. The Supplemental Complaint, which plaintiffs sought leave of the court to file on October 13, 2007, less than six months from the date of the Arbitration Board's decision, is therefore timely.

III. Ripeness

***9** Defendants' argument that this case is not ripe for decision is rejected for the reasons stated on the record at oral argument on January 6, 2012. *See TRW Inc. v. Andrews*, 534 U.S. 19, 34 n. 6, 122 S.Ct. 441, 151 L.Ed.2d 339 (2001); *Bay Area Laundry and Dry Cleaning Pension Trust Fund v. Ferbar Corp. of Cal.*, 522 U.S. 192, 201, 118 S.Ct. 542, 139 L.Ed.2d 553 (1997).

IV. Duty of Fair Representation

The duty of fair representation, although not an explicit statutory requirement, has been fashioned judicially as a corollary to "the exclusive agent's statutory authority to

represent all members of a designated unit" and requires a union "to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct."*See Air Line Pilots Ass'n, Int'l v. O'Neill*, 499 U.S. 65, 76–77, 111 S.Ct. 1127, 113 L.Ed.2d 51 (1991); *Vaca v. Sipes*, 386 U.S. 171, 177, 87 S.Ct. 903, 17 L.Ed.2d 842 (1967). A union, as the exclusive bargaining representative of the employees it represents, owes the employees a duty to represent them fairly in collective bargaining with the employer and in enforcing the resulting collective bargaining agreement. *See Vaca*, 386 U.S. at 177; *Steele v. Louisville & N.R. Co.*, 323 U.S. 192, 201–02, 65 S.Ct. 226, 89 L.Ed. 173 (1944).

"A union breaches its duty of fair representation when its conduct toward a member of the bargaining unit is arbitrary, discriminatory, or in bad faith."*Marquez v. Screen Actors Guild*, 525 U.S. 33, 44, 119 S.Ct. 292, 142 L.Ed.2d 242 (1998). A union's actions are considered arbitrary if, "in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a 'wide range of reasonableness' ... as to be irrational."*O'Neill*, 499 U.S. at 67 (*quoting Ford Motor Co. v. Huffman*, 345 U.S. 330, 338, 73 S.Ct. 681, 97 L.Ed. 1048 (1953)). It is not enough that a union made a bad or less than optimal decision; its action must be "without a rational basis or explanation."*Marquez*, 525 U.S. at 46. To be discriminatory, the union's conduct must be "intentional, severe, and unrelated to legitimate union objectives," as in the case of invidious discrimination based on race or gender. *Amalgamated Ass'n of St. Elec. Ry. & Motor Coach Employees v. Lockridge*, 403 U.S. 274, 301, 91 S.Ct. 1909, 29 L.Ed.2d 473 (1971). A union acts in bad faith when it acts with "improper intent, purpose, or motive." *Spellacy v. Airline Pilots Ass'n–Int'l*, 156 F.3d 120, 126 (2d Cir.1998). Bad faith can be demonstrated by "substantial evidence of fraud, deceitful action or dishonest conduct."*Amalgamated*, 403 U.S. at 299 (*quoting Humphrey v. Moore*, 375 U.S. 335, 348, 84 S.Ct. 363, 11 L.Ed.2d 370 (1964)) (internal quotation marks omitted). Establishing that the union's actions were "arbitrary, discriminatory, or in bad faith" is "only the first step toward proving a fair representation claim," as the plaintiffs "must then demonstrate a causal connection between the union's wrongful conduct and their injuries."*Spellacy*, 156 F.3d at 126.

Defendants argue that they did not breach their duty of fair representation because the seniority list submitted to the arbitrators was factually accurate. Plaintiffs argue that the defendants breached their duty of fair representation by submitting a seniority list which erroneously placed plaintiffs at the bottom of the seniority list amongst other furloughed pilots and first officers by listing no furlough end date for them, but rather including their start and, if applicable, end dates with MDA, which, in effect, categorized them as remaining on furlough. According to plaintiffs, there was no need to list an MDA start date because each pilot's MDA start date should have been his furlough end date; in short, plaintiffs argue, flying for MDA constituted recall to the mainline. Plaintiffs assert that the List had the effect of not properly crediting their flight time at MDA as flight for the mainline and erroneously placed them at the bottom of the List.

***10** Plaintiffs claim that, because MDA was flying on the mainline operating certificate as a division of the mainline, a recall to MDA was necessarily a recall to the mainline. Defendants, on the other hand, contend that, although MDA was a division of the mainline, there were separate agreements which governed working conditions at MDA and that, based on those separate agreements, the offer and acceptance of a position at MDA was not a recall to the mainline.

As explained above, flying for MDA was not the same as flying for the mainline, despite the fact that there was ambiguity as to MDA's corporate status at U.S. Airways. The undisputed record establishes that there were different working and employment conditions for pilots flying for MDA, governed by the 2002 Restructuring Agreement and LOA 84. Flight for MDA was not flight for the mainline. Most significantly, acceptance or rejection of employment at MDA did not affect a U.S. Airways' pilot's seniority standing. In contrast, except in limited circumstances, a furloughed U.S. Airways pilot who refused recall to U.S. Airways lost his place on the seniority list.

Further supporting this distinction is that a job offer to fly for MDA was not a notice of recall to the mainline. As described in detail above, the process by which MDA extended its job offers did not follow prescribed recall procedures. Letters offering employment positions at MDA did not mention the word recall or refer to any section in the Working Agreement which governed recall. The offer letters were not sent via "Reply–Requested Telegram" or "Certified Letter–Return Receipt Requested," and there was no mention in those offers of employment of the seven-day response period that applied to recall. Thus, accepting a job offer from MDA was not a

recall to flight for the mainline. It was simply an acceptance of a job offer to fly for MidAtlantic Airways.

Since the List correctly identified the relevant employment data and the status of each pilot, the List submitted by ALPA to the Arbitration Board was factually accurate. No breach of the DFR could occur from submitting the accurate List. ALPA's actions in submitting the factually accurate List were not arbitrary because it was reasonable and rational to submit the accurate List. *O 'Neill,* 499 U.S. at 67.

Plaintiffs fail to show any way in which ALPA's conduct could be considered discriminatory. Not treating MDA pilots identically to mainline pilots, based on existing agreements setting the terms of employment, does not constitute discrimination. "Inevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees ... [t]he complete satisfaction of all who are represented is hardly to be expected."*Ford,* 345 U.S. at 338.

Finally, ALPA's submission of the factually accurate List to the Arbitration Board, prepared in accordance with its merger policy, was not in bad faith. Each pilot was given the opportunity to review his seniority information and appeal it both in writing and in person by having a hearing before the Merger Committee. Plaintiffs have offered no evidence of fraud, deceit or dishonesty with regard to any of the information contained in the List. *Id.,* at 299.That ALPA did not label the plaintiffs as furloughed in the status column on the Certified Seniority List was meant to help the plaintiffs' position during the arbitration process and ultimately did help, as plaintiffs were credited with length of service time for their employment at MDA, even though everyone understood they were on furlough.

***11** In sum, based on the undisputed facts, by submitting the accurate List, the union's conduct was not arbitrary, discriminatory, or in bad faith, and it did not breach its duty of fair representation. Since the defendants' conduct did not breach their DFR the court need not analyze whether plaintiffs can demonstrate "a causal connection between the union's wrongful conduct and their injuries."*Spellacy,* 156 F.3d at 126.

In their brief opposing summary judgment at page 83 and at oral argument, plaintiffs, for the first time, advanced another theory as to how defendants breached their duty of fair representation. They argued that defendants breached their DFR by telling plaintiffs prior to the arbitration proceeding that defendants were going to advocate that plaintiffs' flight time for MDA meant that plaintiffs had been recalled to the mainline and were no longer furloughed. Plaintiffs claim that, at the arbitration, defendants did not advocate this position, which left plaintiffs at the bottom of the integrated seniority list among all the furloughed pilots who had never flown for MDA. The Supplemental Complaint, however, is devoid of any mention of representations ALPA made to plaintiffs regarding their furlough status and how ALPA would advocate at the mediation and arbitration in light of plaintiffs' acceptance of positions to fly for MDA. A breach based on these allegations, which are not alleged anywhere in plaintiffs' Supplemental Complaint, will not be considered. *See, e.g. Reed v. Medford Fire Dept., Inc.,* 806 F.Supp.2d 594, 607 (E.D.N.Y.2011) (The court "does not need to address claims raised for the first time on a motion for summary judgment...."). Moreover, plaintiffs' new argument is essentially an attempt to resurrect issues that were previously dismissed by this court as untimely.

CONCLUSION

For the reasons set forth above, defendants did not breach their duty of fair representation. Summary judgment is granted to the defendants, and plaintiffs' Supplemental Complaint is dismissed. The Clerk of Court is directed to enter judgment for the defendants.

SO ORDERED.

All Citations

Not Reported in F.Supp.2d, 2012 WL 1215291, 193 L.R.R.M. (BNA) 3337

Footnotes

1 For example, when the 2002 Agreement spoke of the Placement of Small Jets, there were three categories, one for "Participating Wholly–Owned Carrier[s]," which is defined as "a carrier wholly owned by U.S. Airways Group, Inc., *other than MDA* (emphasis added);" a second for "Participating Affiliate Carrier[s]," which is defined as "a carrier ...*other than*

a Participating Wholly–Owned Carrier or MDA (emphasis added);" and a third category for MDA, defined simply as Mid–Atlantic Airways. *See* 2002 Restructuring Agreement, p. 6.

2 A small jet, or SJ, was categorized as small, medium or large based upon the number of seats it contained. MDA's aircraft, such as the Embraer 170 jets (E–170's), were called "Large SJ's," or large small jets. Aircraft larger than a Large SJ could be operated only by the mainline. Large SJ's are defined in the 2002 Restructuring Agreement to include E–170's. *See* 2002 Restructuring Agreement, Attachment B. Large SJ's "will be placed only at Mid–Atlantic Airways." 2002 Restructuring Agreement, Attachment B, p. 7. MDA could also fly medium and small SJ's. *Id.*

3 The letters in response to the pilot protests in the record stated that, "there are no errors in the employment data we previously sent to you. That data is shown below. We explained in our letter transmitting your individual employment data that we are separately noting the date of your employment at the MDA division of U.S. Airways (as defined by the terms of the U.S. Airways Pilots' Collective Bargaining Agreement) and we noted the date of recall from furlough to the mainline division of U.S. Airways, if any."

End of Document

EXHIBIT 18

SENIORITY INTEGRATION PROTOCOL AGREEMENT

This Agreement is made and entered into by and between the Allied Pilots Association (APA), US Airline Pilots Association (USAPA), American Airlines, Inc. ("American"), and US Airways, Inc. ("US Airways") (American and US Airways collectively, "American"), pursuant to the direction and provisions of paragraph 10.f. of the Memorandum of Understanding Regarding Contingent Collective Bargaining Agreement by and between US Airways, American Airlines, APA and USAPA (the "MOU").

WHEREAS the MOU was entered into on or about January 15th, 2013, among APA, USAPA, American, and US Airways, and

WHEREAS, in Section 10.a. of the MOU, APA, USAPA, American and US Airways agreed that "[a] seniority integration process consistent with McCaskill-Bond shall begin as soon as possible after the Effective Date,"

WHEREAS, consistent with Section 13(b) of the Allegheny/Mohawk LPPs, Section 10.f. of the MOU provides that "[a] Seniority Integration Protocol Agreement consistent with McCaskill Bond and this Paragraph 10" would "set forth the process and protocol for conducting negotiations and arbitration" in the agreed seniority integration process, and

WHEREAS, the merger transaction contemplated by the AMR Plan of Reorganization closed on December 9, 2013, and

WHEREAS, it is desirable to maintain cooperative relationships throughout

the seniority integration process outlined in paragraph 10 of the MOU, and

WHEREAS, the APA has established a Merger Committee and USAPA has established a Merger Committee.

WHEREAS, it is desirable to set out with specificity the process for integrating the existing seniority lists and including the integrated seniority list and all appropriate ancillary provisions, including implementation procedures, into the Joint Collective Bargaining Agreement (JCBA) defined in the MOU, and

WHEREAS, in implementation of the agreements made in the MOU, the following protocols are established.

1. APA, USAPA, and American acknowledge that this Protocol Agreement constitutes the Protocol Agreement referred to in paragraph 10.f. of the MOU consistent with McCaskill Bond.

2. Within 10 days of either the execution of this Protocol Agreement or the receipt from American of the information described in a. below, whichever is later, the Merger Committees shall compile, verify, certify and exchange (in electronic Excel format whenever possible) employment data for each pilot on their respective pre-merger seniority lists, as follows, subject to modification for accuracy.

a. The information certified and exchanged will include the following information to the extent such information is

available and can be compiled/provided by American without undue burden or expense:

(1) Each pilot's name; employee number; seniority number; date of hire; occupational seniority date, if any, and any other date relevant to the pilot's placement on the pre-merger seniority list; date of birth; seat, aircraft, domicile, and information reflecting each pilot's availability to engage in revenue flying (i.e., leave status, instructor status, management pilot status, medical/disability status);

(2) For each pilot, the start and end date of any furlough, period of disability, or leave of absence, or any intervening period of service with the pre-merger carrier other than as a flight deck crew member; an explanation for the furlough, period of disability, leave of absence, or period of service other than as a flight deck crew member; and an explanation of the effect, if any, of the furlough, period of disability, leave of absence, or period of service other than as a flight deck crew member on the pilot's seniority, longevity, compensation and/or benefits;

(3) The identification, with an appropriate designator on the seniority list, of any pilot whose placement on the pre-merger list was determined by a prior seniority

integration agreement or award.

(4) Provide each pilot's dates of employment at predecessor airlines, subject to previous seniority integrations (e.g., TWA, Reno, Air Cal, TCA, America West, Piedmont, US Airways Shuttle, PSA, Empire).

(5) The identification, with an appropriate designator on the seniority list, of any pilots with grandfather, preferential hiring or similar special rights by agreement or prior seniority integration award that are limited as to category, domicile or status within the flight deck crew, and an explanation for each such special rights.

(6) The identification, with an appropriate designator on the seniority list, of any pilots who appear on multiple pre-merger seniority lists (American, US Airways (East), US Airways (West)).

(7) Similar information for any pilot who has been terminated or otherwise removed from the pre-merger seniority list, whose status is the subject of any pending litigation or dispute.

b. The certified seniority lists will reflect the status quo of the three seniority lists in effect at the carriers on December 9, 2013

(i.e., American, US Airways (East), US Airways (West)); provided, that this will be without prejudice to any Merger Committee's position on the appropriate "snapshot" or "constructive notice" date.

3. The Merger Committees will exchange additional relevant data (in electronic Excel format whenever possible) upon written request in the course of the seniority integration process.

4. American will provide information relevant to the seniority integration (in electronic Excel format whenever possible) on the written request of any Merger Committee, provided that the information is relevant to the issues, and the requests are reasonable and do not impose undue burden or expense, and so long as the Merger Committees agree to appropriate confidentiality terms. Such information shall be provided by American to the Merger Committees on an equal basis.

5. a. Subject to paragraph 8.c below, within 14 days of the execution of this Protocol Agreement, the Merger Committees (and American, to the extent consistent with paragraph 10.d of the MOU) may commence negotiations concerning the matters referenced in subparagraph b below. Such negotiations may occur for up to 45 days. Neither the MOU nor this Protocol Agreement shall prohibit such negotiations beyond that date regarding the subjects listed in the following subparagraph by mutual agreement of the Merger Committees.

b. Any such negotiations shall be directed to the following

elements relevant to the establishment of a fair and equitable integrated seniority list within the meaning of the McCaskill Bond Act and Section 3 of the Allegheny/Mohawk Labor Protective Provisions; provided, that any such integrated seniority list shall comply with the conditions set forth in paragraph 10.b. of the MOU. The subjects of the negotiations will include:

(1) to attempt to resolve any and all disputes and inconsistencies with regard to the employment data exchanged pursuant to paragraph 3 above, and to reduce to writing any remaining areas of disagreement, with a statement of each negotiating party's position;

(2) to determine the "snapshot date" as of which the pre-merger seniority lists will be integrated, and the "constructive notice" date after which pilots hired shall be deemed to have been on constructive notice of the merger;

(3) the pre-merger fleets for which each pre-merger group will be entitled to credit and the projected future combined fleet including, without limitation, aircraft on hand, on order, and/or on option as agreed by the negotiators;

(4) the staffing assumptions to be applied to the fleets established pursuant to subparagraph b.(3) above; and

(5) the pilot bidding patterns ("stovepipe" or otherwise) to be assumed in applying the fleet and staffing assumptions established pursuant to subparagraphs b.(3) and (4) above.

c. The Merger Committees (and American, as applicable) may jointly agree to the assistance of a neutral mediator at any point during the negotiations.

d. Subject to paragraph 8.c below, the Merger Committees (and American, as applicable) may enter into written agreements and/or stipulations to resolve and/or limit the issues to be submitted to the Arbitration Board for resolution.

e. No position nor anything said by any participant during negotiations shall be admissible in the seniority integration arbitration.

6. Within 14 days following the effective date of this Seniority Integration Protocol Agreement, the Merger Committees shall complete the selection of three neutral arbitrators to serve as an Arbitration Board in accordance with the MOU and this Protocol Agreement. The Arbitration Board shall be selected by the Merger Committees exchanging lists of five arbitrators. Any names common to the Merger Committees' lists will be appointed to the Arbitration Board; if there are more than three common names, the Merger

Committees shall rank order the common names and the arbitrators shall be designated based on the Committees' relative combined ranking. To the extent that positions on the Arbitration Board remain unfilled and the Merger Committees are unable to agree on the remaining arbitrators, the remaining arbitrators shall be selected by alternate strike from the arbitrators proposed by the Merger Committees. The Merger Committees shall determine by agreement or by lot the order of striking.

7. The Arbitration Board shall have the authority to establish a fair and equitable integrated seniority list as required by the McCaskill Bond Act; provided, that any such integrated seniority list shall comply with the conditions set forth in paragraph 10.b. of the MOU. The Arbitration Board shall also have authority to resolve any dispute regarding the employment data exchanged pursuant to paragraphs 3 and 4 above; to resolve all procedural matters regarding the arbitration; and, subject to paragraph 8.b. below, to resolve any dispute regarding the interpretation and application of this Protocol Agreement arising prior to issuance of the final award under paragraph 13 below.

7a. Any dispute regarding the production of information under this Protocol Agreement may be submitted by any Merger Committee to the procedure established in the Protocol for Resolution of Disputes Pertaining to Seniority-Integration Information Production dated June 24, 2014.

8. a. Effective if and when the NMB certifies APA as the representative of the combined craft and class, the Merger Committees established by APA and USAPA shall continue in existence, solely for the purpose of

concluding an integrated pilot seniority list pursuant to the MOU; provided, that all parties reserve their rights and/or positions with respect to the establishment of a separate Merger Committee to represent the interests of the pilots on the US Airways (West) seniority list referenced in paragraph 2(b) including, without limitation, APA's position that, following certification by the NMB as the single bargaining representative, it will have the discretion to designate such a committee, and USAPA's position that APA will have no such legal authority. APA shall not interfere in the deliberations and decision making of the Merger Committees. APA shall not interfere with any Merger Committee with respect to filling any vacancy, choosing legal counsel or other advisors and experts, or the manner in which legal and other expenses are financed. Nothing in this Protocol Agreement shall be deemed to modify or supersede any provision of the governing documents of any party existing as of the effective date of this Seniority Integration Protocol Agreement that governs the relationship between the party and a Merger Committee which it has established.

b. APA has received requests from pilots on the US Airways (West) seniority list referred to in paragraph 2(b) and/or their representatives that, following certification of APA by the NMB, a Merger Committee be designated to represent the interests of such pilots for purposes of this Seniority Integration Protocol. Upon such certification by the NMB, those requests will be referred to a "Preliminary Arbitration Board." The parties to such Preliminary Arbitration will be American, APA, USAPA, the existing Merger Committees, and any committee of pilots on the US Airways (West) seniority list making such requests to APA or the Preliminary Arbitration Board not later than 14 days after certification of APA by the NMB. . Within five business days following the selection of the Arbitration

Board under paragraph 6 above, the selection of the Preliminary Arbitration Board shall be completed by American, APA and USAPA exchanging lists of five arbitrators, none of whom shall be a member of the Arbitration Board. Any names common to the lists will be appointed to the Preliminary Arbitration Board; if there are more than three common names, American, APA and USAPA shall rank order the common names, and the three arbitrators shall be designated based on the relative combined ranking. To the extent that positions on the Preliminary Arbitration Board remain unfilled and American, APA and USAPA are unable to agree on the remaining arbitrators, the remaining arbitrators shall be selected by alternate strike from the arbitrators proposed by American, APA and USAPA. American, APA and USAPA shall determine by agreement or by lot the order of striking. The Preliminary Arbitration Board shall establish an expedited schedule for a hearing on such requests at which the parties may present argument and/or evidence concerning the requests. The hearing shall consist of no more than five hearing days, and shall be concluded within 30 days of the Preliminary Arbitration Board's receipt of the requests, subject to the arbitrators' schedules. The Preliminary Arbitration Board shall issue an order granting or denying any such requests that APA designate the requested Committee. The order shall be issued within 30 days following the first day of the hearing, subject to the arbitrators' schedules. The order shall be final and binding on APA and USAPA, American and US Airways or their successors, and all of the pilots of American and US Airways. The record of the proceeding before the Preliminary Arbitration Board, and any supporting Opinion of the Preliminary Arbitration Board, shall not be presented to the Arbitration Board. The Preliminary Arbitration Board will have the authority to resolve any dispute regarding the interpretation or application of this Protocol Agreement arising in connection with the proceeding under this

paragraph 8.b.

c. Any Merger Committee authorized by the Preliminary Arbitration Board pursuant to subparagraph b above shall thereafter be treated as a Merger Committee under this Seniority Integration Protocol Agreement for all purposes including, without limitation, the following:

(1) Within 14 days following the Preliminary Arbitration Board's order, American will provide to such Merger Committee all information theretofore provided to the existing Merger Committees established by APA and USAPA.

(2) Within 14 days following the Preliminary Arbitration Board's order, the existing Merger Committees established by APA and USAPA will provide to such Merger Committee all information theretofore exchanged by the Existing Merger Committees.

(3) At such Merger Committee's request, the Merger Committees will together reconsider any issues resolved pursuant to paragraphs 2 and 5 above.

9. The parties to the seniority integration arbitration before the Arbitration Board will be the Merger Committees and American; provided, that the participation of American shall conform to Paragraph 10.d of the MOU.

Representatives of APA and USAPA may attend the arbitration hearing as observers.

10. In accordance with paragraph 10.a. of the MOU, the arbitration proceeding before the Board of Arbitration shall commence a soon as practicable after final approval of the Joint Collective Bargaining Agreement pursuant to the deadlines and procedures in paragraph 27 of the MOU and after any proceeding concerning any requests referred to in paragraph 8.b. above.

11. The arbitration hearing will be limited to 12 hearing days; provided, that with the concurrence of the Merger Committees and American, or at the request of the Arbitration Board, the hearing may be extended up to an additional four days. In advance of the hearing, the Arbitration Board shall convene an in-person or telephonic pre-hearing conference or conferences with the parties, to establish rules of procedure, receive stipulations, establish the location(s) of the hearing, set time limits, define issues, establish a schedule for the submission of pre-hearing statements of position, set the order of proof on issues, and deal with other pre-hearing and procedural matters.

12. At the conclusion of the arbitration hearing, the Arbitration Board will establish a schedule for the submission of post-hearing briefs, and/or oral argument before the Arbitration Board.

13. The Arbitration Board shall issue its final Award within six months of the commencement of the arbitration hearing, and in any event not later than December 9, 2015. Prior to issuance of the final award, the Arbitration Board shall

issue a draft award to the parties for their comment concerning issues they identify in the award. The parties shall submit any comments within 10 days of receiving the draft award. The parties may submit any response to the comments of the other parties within five days of submission of those comments. No new evidence may be presented in either submission.

14. The Arbitration Board will include in its Award a provision retaining jurisdiction until all of the provisions of the Award have been satisfied for the limited purpose of resolving disputes which may arise regarding the interpretation, application or implementation of the Award; and shall establish, as part of the Award, a process for resolution of such disputes as adopted by the parties or, in the absence of agreement, as established by the Arbitration Board.

15. In accordance with paragraph 10.c. of the MOU, the integrated seniority list resulting from the process established by the MOU and this Protocol Agreement, whether arrived at through agreement or arbitration, shall be final and binding on APA and USAPA, American and US Airways or their successors, and all of the pilots of American and US Airways.

16. In accordance with paragraph 7 of the MOU, American will make positive space transportation available to members of the Merger Committees when engaged in activities related to seniority list integration.

17. Pursuant to Paragraph 7 of the MOU, American shall reimburse the Merger Committees for expenses in an aggregate not less than $4 million to be shared equally by the Merger Committees.

18. This Protocol Agreement may be amended, supplemented or modified, either directly or indirectly, only by written agreement of the parties (American, USAPA and APA until NMB certification of APA; American, APA and the Merger Committees following NMB certification of a single bargaining representative).

19. No position taken by the parties in the Seniority Integration Process may be submitted to the National Mediation Board in the proceeding ongoing in NMB File No. CR-7110.

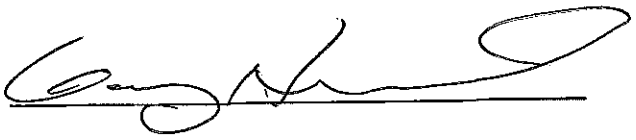
20. APA may present this Seniority Integration Protocol to the NMB in support of its application in NMB File No. CR-7110.

21. The parties to the action captioned *USAPA v. US Airways, Inc.*, 14 Civ. 00328 (DAH) (D.D.C.), agree to dismiss that action and all claims and counterclaims, with prejudice, with each party to bear its own costs, and shall take the necessary steps to effect such dismissal with prejudice within seven calendar days of the execution of this Agreement.

ALLIED PILOTS ASSOCIATION

By: _____ Date: 4 SEP 14

US AIRLINE PILOTS ASSOCIATION

By:  Date: 4 SEP 14

AMERICAN AIRLINES, INC.

By: _____ Date: _____

US AIRWAYS, INC.

By: _____ Date: _____

US AIRLINE PILOTS ASSOCIATION

By: _____ Date: _____

AMERICAN AIRLINES, INC.

By: Paul D. Jones Date: Sept. 4, 2014

US AIRWAYS, INC.

By: Paul D. Jones Date: Sept. 4, 2014

EXHIBIT 19

ARBITRATION PROCEEDINGS BEFORE
DANA E. EISCHEN, IRA JAFFE AND M. DAVID VAUGHN

In the matter of the seniority integration involving the Pilots of	)
NEW AMERICAN AIRLINES	)

PRE-HEARING POSITION STATEMENT OF
AMERICAN AIRLINES PILOTS SENIORITY INTEGRATION COMMITTEE

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Counsel for American Airlines Pilots
Seniority Integration Committee

June 19, 2015

TABLE OF CONTENTS

ARBITRATION PROCEEDINGS BEFORE
DANA E. EISCHEN, IRA JAFFE AND M. DAVID VAUGHN

In the matter of the seniority integration involving the Pilots of	)
NEW AMERICAN AIRLINES	)

PRE-HEARING POSITION STATEMENT OF
AMERICAN AIRLINES PILOTS SENIORITY INTEGRATION COMMITTEE

Pursuant to the Procedural Ground Rules ("Ground Rules") agreed to by the parties (Jt.Exh. 1), the American Airlines Pilots Seniority Integration Committee (the "AAPSIC"), by its undersigned counsel, hereby submits this prehearing statement of position in anticipation of the hearing scheduled to commence on June 29, 2015.

Introduction

This is a proceeding to effect the fair and equitable integration of pilot seniority lists in connection with the merger of American Airlines, Inc. ("American") and US Airways, Inc. ("US Airways"), consummated on December 9, 2013. At the time of the merger, the "status quo" was that there were three seniority lists in effect – American, US Airways (East), and US Airways (West). In anticipation of the merger, effective on or about February 8, 2013, a Memorandum of Understanding ("MOU")(Jt.Exh. 9) was entered into by American, US Airways, and the respective pre-merger bargaining representatives of the pre-merger pilot groups – the Allied Pilots Association ("APA"), then the bargaining representative of the American Pilots; and the U.S. Airline Pilots Association ("USAPA"), then the bargaining representative of the US Airways (East and West) Pilots. The MOU provided, *inter alia*, for "[a] seniority integration process consistent with [the] McCaskill-Bond [Act]." (Jt.Exh. 9, at 6.) Pursuant to paragraph 10.a. the MOU, as of 90 days after

December 9, 2013, the seniority integration was submitted to arbitration. (Jt.Exh. 9, at 6.)

On or about September 4, 2014, the carriers, APA and USAPA entered into a Seniority Integration Protocol Agreement ("Protocol")(Jt.Exh. 7), establishing the procedural framework for the seniority integration. Among other things, the Protocol anticipated that APA would be certified by the National Mediation Board ("NMB") as the single bargaining representative of the combined pilot craft and class; and provided for the continuation by APA of the Merger Committees (including the AAPSIC) established by APA and USAPA. However, the Protocol also provided for a Preliminary Arbitration, following the NMB's certification of APA as the single bargaining representative, to determine whether APA could and should designate a separate Merger Committee to represent the interests of the former America West Pilots (the "West Pilots") in the seniority integration process. The NMB certified APA as the single bargaining representative on September 16, 2014. The Preliminary Arbitration was conducted before a Preliminary Arbitration Board consisting of Joshua Javitz, Shaym Das, and Steven Crable. In an Award entered on January 9, 2015, the Preliminary Arbitration Board held that APA had the authority to designate a West Merger Committee, and that it was proper for APA to do so. Pursuant to the Preliminary Arbitration Board's order, APA designated a separate West Pilots Merger Committee.

The parties to the arbitration have further established the Ground Rules, which have been approved by the Arbitration Board. (Jt.Exh. 1.) Pursuant to those Ground Rules, the arbitration hearing is scheduled to commence in Washington, D.C. on June 29, 2015. The parties have agreed to submit, 10 days prior to the commencement of the hearing, prehearing statements of position. Pursuant to that understanding, the AAPSIC submits this prehearing statement.

As more fully discussed below, as of December 9, 2013 – the stipulated "Snapshot Date" and

"Constructive Notice Date" – the American Pilots had superior pre-merger career expectations based, *inter alia*, on American's superior route network and hub structure; American's superior fleet on hand, and fleet growth and enhancement opportunities; American's superior competitive position; and the American Pilots' superior, industry-standard compensation and benefits. The East and West Pilots have benefitted disproportionately from the merger, as the economic improvements associated with merging the pilot groups' collective bargaining agreements have gone disproportionately to the East and West Pilots; and the post-merger "rationalization" of the combined fleet is fleet plan is largely at the expense of the American Pilots' growth expectations. The proper starting point for the seniority integration is the three pre-merger seniority lists in effect as of December 9, 2013 (American, US Airways (East) and US Airways (West)), rather than the May 1, 2007 Award of Arbitrator George Nicolau in the US Airways/America West merger (the "Nicolau Award"); however, the West Pilots' claim to the Nicolau Award is one equity to be weighed by the Arbitration Board.

The AAPSIC proposes an Integrated Seniority List ("ISL") based largely on "category and status"[1] ratios among the three pre-merger lists, adjusted to reflect the superiority of pre-merger American jobs in the same category and status groupings. However, for pilots added to each of the pre-merger seniority lists following the constructive notice date of the USAirways/America West merger, the AAPSIC integrates the East and West Pilots based on date-of-hire as required by the US Airways/America West Transition Agreement; and ratios the affected American Pilots with those East and West Pilots. The AAPSIC also proposes:

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[1] "Category" refers to aircraft type or grouping; "status" refers to a pilot's position (Captain, First Officer) on an aircraft.

* Conditions and Restrictions including provisions required by paragraph 10.b. of the MOU; a fence protecting the expectations of the US Airways (East and West) Pilots to Group IV Captain positions until the amendable date of the Joint Collective Bargaining Agreement ("JCBA") (January 1, 2020); and a provision to clarify the protection of former TWA Pilots pursuant to Supplement C of the JCBA; and

* an implementation provision calling for the implementation of the ISL as soon as practicable, but in no event later than the third flying month following the issuance of the Arbitration Board's award.

The AAPSIC's proposal is fair and equitable. The proposal reflects the pilot groups' reasonable pre-merger career expectations, and will equitably distribute the anticipated future benefits of the merger; the proposal will equitably distribute post-merger downside risks; and, while constructed utilizing the three separate pre-merger lists, the proposal recognizes the West Pilots' claim to the Nicolau Award as an equity, and appropriately allocates that equity in relation to the East Pilots without adverse effect on the AA Pilots.

The Issue and the Arbitration Board's Authority

The Ground Rules and Protocol. Section II of the Ground Rules provides: "The issues and the Board's authority shall be as set forth in Paragraph 7 of the Protocol Agreement." (Jt.Exh. 1, at 1.) Paragraph 7 of the Protocol, in turn, provides:

> The Arbitration Board shall have the authority to establish a fair and equitable integrated seniority list as required by the McCaskill Bond Act; provided, that any such integrated seniority list shall comply with the conditions set forth in paragraph 10.b. of the MOU. The Arbitration Board shall also have authority to resolve any dispute regarding the employment data exchanged pursuant to paragraphs 3 and 4 above; to resolve all procedural matters regarding the arbitration; and, subject to paragraph 8.b. below, to resolve any dispute regarding the interpretation and application of this Protocol Agreement arising prior to issuance of the final award under paragraph 13 below.

(Jt.Exh. 7, at 8.) Pursuant to paragraph 7, the Arbitration Board's principal task is " to establish a fair and equitable integrated seniority list as required by the McCaskill Bond Act; provided, that any

such integrated seniority list shall comply with the conditions set forth in paragraph 10.b of the MOU. " (Id.)

The McCaskill Bond Act. Section (a) of the McCaskill Bond Act provides, in pertinent part:

> With respect to any covered transaction involving two or more covered air carriers that results in the combination of crafts or classes that are subject to the Railway Labor Act (45 U.S.C. 151 et seq.), sections 3 and 13 of the labor protective provisions imposed by the Civil Aeronautics Board in the Allegheny-Mohawk merger (as published at 59 C.A.B. 45) shall apply to the integration of covered employees of the covered air carriers;

42 U.S.C. § 42112 note.

The Allegheny/Mohawk LPPs. Section 3 of the Allegheny/Mohawk LPPs, incorporated by the McCaskill Bond Act, provides:

> Insofar as the acquisition or merger affects the seniority rights of the carriers' employees, provisions shall be made for the integration of seniority lists in a fair and equitable manner, including, where applicable, agreement through collective bargaining between the carriers and the representatives of the employees affected. In the event of failure to agree, the dispute may be submitted by either party for adjustment in accordance with Section 13.

(Allegheny/Mohawk LPPs, Section 3.)[2]

The MOU. Section 10 of the MOU governs this seniority integration proceeding. Among other things, Sections 10.b. and c. of the MOU provide:

> b. The panel of arbitrators may not render an award unless it complies with all of the following criteria: (i) the list does not require any active pilot to displace any other active pilot from the latter's position; (ii) furloughed pilots may not bump/displace active pilots; (iii) except as set forth in Paragraphs 12 and 13 below, the list does not require that pilots be compensated for flying not performed (e.g.,

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[2] Pursuant to Section 13(b) of the Allegheny/Mohawk LPPs, the application of the arbitration provisions of Section 13(a) of the LPPs has been superceded by the seniority integration process established by paragraph 10 of the MOU, as elaborated in the Protocol Agreement and Ground Rules.

> differential pay for a position not actually flown); (iv) the list allows pilots who, at the time of implementation of an integrated seniority list, are in the process of completing or who have completed initial qualification training for a new category (e.g., A320 Captain or 757 First Officer), or who have successfully bid such a position but have not been trained because of conditions beyond their control (such as a company freeze), to be assigned to the positions for which they have been trained or successfully bid, regardless of their relative standing on the integrated seniority list; and (v) it does not contain conditions and restrictions that materially increase costs associated with training or company paid move as specified in the JCBA.
>
> c. The integrated seniority list resulting from the McCaskill-Bond process shall be final and binding on APA and USAPA (and/or the certified bargaining representative of the combined pilot group), the company(ies) and its(their) successors (if any), and all of the pilots of American/New American Airlines and US Airways.

(Jt.Exh. 9, at 6-7.)

The "Fair and Equitable" Standard

As the members of the Arbitration Board well know, this proceeding arises against the backdrop of many years of arbitration awards and agreements, involving pilots and other employee crafts and classes, applying the "fair and equitable" standard.[3] In an oft-quoted observation in Federal Express/Flying Tiger, Arbitrator Nicolau stated, with respect to the standard:

> Both pilot groups cited a goodly number of prior pilot seniority integration proceedings; some the result of negotiations; others finally determined by arbitration. There are four basic lessons to be learned from those submissions: that each case turns on its own facts; that the objective is to make the integration fair and equitable; that the proposals advanced by those in contest rarely meet that standard; and that the end result, no matter how crafted, never commands universal acceptance.

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[3] Much of that history has arisen under various historical permutations of the Merger Policy of the Air Line Pilots Association, International ("ALPA Merger Policy"). It bears noting that, while such precedents may be illuminating under the general "fair and equitable" standard, none of the three pilot groups involved here were represented by ALPA at the time of the merger. Accordingly, ALPA Merger Policy is not binding or applicable in this matter.

Federal Express/Flying Tiger, at 27-28 (Nicolau 1990).[4] See, e.g., United/Continental, at 44 (Eischen/Nolan/Kaplan 2013); Delta/Northwest, at 14 n.7 (Bloch/Eischen/Horowitz 2009). At the same time, while Arbitrator Nicolau aptly noted that each case under the fair and equitable standard turns on its own facts, there are some truths which can be divined from the case law which are pertinent to this case.

The fair and equitable standard is based on an evaluation of the affected pilot groups' reasonable pre-merger career expectations. The essence of the fair and equitable standard is an examination of the pilot groups' reasonable pre-merger career expectations – constructing the integrated seniority list to reflect those expectations; to share the future "upside" and "downside" in a manner consistent with those expectations; and to avoid undue windfalls to one pre-merger group. Arbitrator Richard Kasher succinctly summarized the essence of the standard in Chautauqua/Shuttle America:

> ... At bottom, the objective is to preserve, to the extent possible, what each group 'brings to the party' ... and to share equitably the growth opportunities created by the transaction, based on the groups' contributions to that growth.

Chautauqua/Shuttle America, at 12 (Kasher 2005). Similarly, in Delta/Northwest, Arbitrators Bloch, Eischen and Horowitz stated:

> On the one hand, dealing with the future prospects of anything in the airline industry is nothing short of reading tea leaves or, to cite a far more daunting venture, predicting fuel prices. On the other hand, those sorts of assessments are the stuff of which "career expectations" are made. Therefore, it is appropriate that one examine possibilities and potentials to whatever extent is reasonable, in the court of constructing a merged seniority list that is fair and equitable ... In constructing this list, we have inquired as to where the respective groups have been and we have made reasoned judgments as to where they were going. We have attempted, at all times,

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[4] Copies of the of the prior arbitrations and agreements cited in this pre-hearing statement will be submitted to the Arbitration Board.

> to recognize reasonable expectations of both parties while, in all instances, rejecting proposals that, however facially logical, resulted in untenable windfalls.

Delta/Northwest, at 15.

To the same effect, Arbitrator Thomas Roberts described his charge under the standard as follows:

> A study of the record made before the Arbitration Board, as well as a review of applicable arbitral precedent, confirms that to whatever extent possible the career expectations of the respective pilot groups, as those expectations existed prior to the merger, are to be maintained and protected. Any recognition of career expectations must include elements of individual pilot income, the nature of the flying assignments available, and pre-merger status advancement opportunities.

Northwest/Republic, at 4 (Roberts 1989).

Similarly, In Southwest/AirTran (Ramp, etc.) (Jaffe/Golick/Vaughn 2012), Arbitrator Jaffe stated, writing for the panel:

> The seniority integration arbitration decisions under the Allegheny-Mohawk LPPs and the McCaskill Bond Act ... focus upon the particular facts of the case when determining what constitutes a fair and equitable integration of seniority lists. A number of factors are traditionally given significant weight by arbitrators in the exercise of this responsibility. The preservation of previously earned job security, bidding rights, and wages and benefits is an important goal of a fair and equitable integration seniority list. Similarly, appropriately sharing in the potential rewards and risks of the newly merged carrier based upon the "contribution" made by the entry of the pre-merger carrier into the new combination has been viewed as significant. If one group is given more than its fair share of the reasonably expected gains associated with the new merged carrier, it is deemed to have received an undue windfall from the proposed integrated list. Seniority is not viewed in a vacuum, but rather as an integral part of the overall risks and benefits of future employment at the new merged carrier.

Id., at 32 (emphasis added).

Seniority for these purposes is significant, not as a date or number, but based on the bidding power it confers on the pilot within a particular system. As Arbitrator David Feller observed in his "Expert Recommendation" regarding the integration of the "Domestic" and

"Overseas" pilots of Air New Zealand, quoting other leading arbitrators:

> There is general agreement among those who have dealt with pilot seniority questions following airline mergers that, in the words of the late David A. Cole in the Easter-Mackey case, "The essential object of our exercise is to prevent impairment so far as possible of the job security and the earning and promotional opportunities which each of the pilot groups had on its own airline prior to the merger." Much earlier, in connection with the Braniff-Mid-Continent merger the principle was stated by the arbitrators in the following words: "It is our purpose to see that each man on the two lists would retain all they had prior to the merger, would accrue those things which they would have had without the merger, and at the same time be in a position on the integrated lists to permit them to share equitably in any promotional opportunities which will arise as a result of the merged operation."
>
> Seniority is, of course, highly relevant in the achievement of the objective stated, in various forms, by almost everyone who has dealt with this question. Seniority, however, is a relative factor. As Professor Benjamin Aaron has said, quoting David Cole in the Pan-American case, "A seniority list (is) not determined solely by time, ... it reflects the priority of job rights and opportunities of employees as among themselves which the employer agrees to respect." (Emphasis added.)

Report of the Expert Witness, Promotion and Seniority Rights of Pilots Employed by Air New Zealand, at 10 (Feller 1980). See, e.g., Delta/Northwest, at 16 ("Date-of-hire versus a Status and Category/Ratio approach. Although there are advantages and disadvantages to each method, the facts of this case persuade this Board that the Status and Category approach is the more fair and equitable"); Federal Express/Flying Tiger, at 28 ("I cannot accept the Flying Tiger proposal because its emphasis on date of hire and positions brought to the merger fails to recognize the difference between the condition of the airlines as well as their prospects").[5]

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[5] As such, metrics such as pre-merger date-of-hire and/or length-of-service do not measure the relative pre-merger career expectations between separate pre-merger pilot groups, *per se*. Measures of time alone, disconnected from the other equities reflecting the economic and work opportunities available to the pre-merger group relative to the other group(s) to be integrated, do not measure career expectations relative to the other group(s) unless the groups being integrated are effectively identical in demographics, pre-merger flying and work opportunities, and pre-merger compensation and benefits.

(continued...)

A fair and equitable solution should follow the principle of simplicity, achieving a fair and equitable result to the extent possible through the operation of the integrated seniority list, with limited conditions and restrictions for the purpose of transitioning to the fair, unrestricted operation of the list. Thus, in Delta/Northwest, the panel observed:

> ... Because we are mindful that attenuated disputes too frequently have emanated from other seniority integration decisions, we have opted for a list that seeks to achieve relative simplicity in its construction and application.

Delta/Northwest, *supra*, at 18. Similarly, in United/Continental, the panel stated:

> ... Moreover arbitral attempts to ameliorate the inevitable career expectation distortions of an ISL based on one or the other method by means of elaborate and lengthy Conditions and Restrictions have proven counterproductive and only served to perpetuate the pre-merger disputes. See Northwest/Republic (Roberts, 1989) and 24 subsequent interpretation awards between 1989 and 2010.
>
> ...
>
> Our review of many prior ISL arbitration decisions teaches that elaborate conditions and restrictions unduly complicate implementation of an Integrated Seniority List. The interminable disputes they generate tend to breed animosity that corrodes flight crew relations. Our Award seeks to achieve its goals of fairness and equity primarily through the construction and creation of the ISL itself, while awarding only standard and necessary conditions and restrictions of limited reach and duration.

Id., at 34, 40.

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[5](...continued)

Nor are such measures of "sweat equity" a group equity, in contrast (for example) to the flying opportunities represented by pre-merger fleets, domiciles and staffing. Equities such as fleets, domiciles and staffing are equities "brought to the party" by the pre-merger group as a whole; among other things, such equities have the same value as they are passed from one pilot to another. In contrast, longevity is an individual equity belonging to the individual pilot. Its value is measured by the pilot's individual longevity and relative placement on the seniority list. The value of that equity changes if the individual's equity is transferred to another pilot with different placement on the seniority list. Moreover, as an individual equity, longevity has a specific duration – that is, until the individual pilot reaches retirement age or otherwise leaves the seniority list – and then expires, without transferring to another pilot. The weight of longevity as an equity changes if it is transferred to a different pilot, with a different expected "life span."

Based on factors such as the foregoing, the trend has been away from date-based integrations. The last significant arbitrated integrated pilot seniority list to be constructed solely (or even predominantly) on a "date" basis was in 1989, in Northwest/Republic. Even then, Arbitrator Roberts found that the date-of-hire integrated list could operate fairly and equitably only based on lengthy conditions and restrictions that fenced off Captain and First Officer positions in the two pre-merger operations for 20 years.[6]

Pre-merger jobs in different categories or statuses may be comparable in weighing pre-merger expectations and constructing a fair and equitable integrated seniority list. In multiple cases involving both agreed and arbitrated integrated seniority lists, jobs in different statuses and aircraft have been ranked together. For instance, in several cases wide-body First Officer positions have been treated as comparable to narrow-body Captain positions. See, e.g., Federal Express/Flying Tiger; Delta/Western (Agreement 1987); Texas International/Continental (Greenbaum 1983); Pan Am/National (Gill 1981). Similarly, in Republic/Frontier/Midwest/Lynx (Eischen 2011), Arbitrator Eischen recognized the different role that regional aircraft play in the typical pilot career path from mainline aircraft.

Differences in pre-merger compensation and benefits, and disproportionate economic

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[6] The Northwest/Republic experience – seared into the consciousness of arbitrators in ensuing pilot seniority integrations (see, e.g., Delta/Northwest, at 18; United/Continental, at 34, 40) – illustrates the proposition that date-of-hire or length-of-service do not equate with career expectations in integrating seniority lists. In the face of any difference between the affected pre-merger groups in the nature or health of their pre-merger operations, equal increments of time do not equate to equal pre-merger career expectations.

It may be argued that longevity is a necessary component of a fair and equitable integration based, in part, on the recent United/Continental case. The arbitration board's reliance on longevity in United/Continental was, necessarily, based on the specific facts of that case. In addition, it was based on the recent change in ALPA Merger Policy adding a specific reference to "longevity" as a factor to be considered. As noted above, ALPA Merger Policy is not binding on the parties or the Arbitration Board in this matter.

gains from the merger, are appropriate equities to be taken into account in constructing a fair and equitable integrated seniority list. Conversely, jobs in the same category and status may vary in value, depending on the flying opportunities, compensation and benefits, and future opportunities they carry with them. Numerous cases – including cases in which each of the members of this Arbitration Board have served as arbitrators – demonstrate that material differences in pre-merger compensation, and in the economic gains achieved by virtue of the merger, are equities to be weighed in measuring the affected pilot groups' pre-merger expectations, and in the gains and losses to be shared equitably in the seniority integration. Thus, in Federal Express/Flying Tiger, Arbitrator Nicolau found:

> Based on this record, it's evident enough that Tiger was not a "failing" carrier, as that term is commonly understood. It is equally evident, however, that it was not markedly robust, nor the beneficiary of a sustained period of well-being.
>
> Arbitrators in prior cases have generally not found the relative weakness of one pre-merger partner vis-a-vis the other of overwhelming significance. Nevertheless, they have taken into account the benefits, monetary and otherwise, that pilots of a weaker carrier attain by virtue of a merger with one or more stable even when, as here, it cannot be said that the more stable actually rescued the other from an imminent demise.
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> ...
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> ... In my judgment, what should be compared are Tiger widebody jobs, either held or to be attained absent the merger, and narrowbody jobs at Federal Express, for it is the former that are lost or not attained and the latter that are after the merger has taken place. While it is unusual to compare the 747 and 727, this is hardly a usual case. As stated elsewhere in this Opinion, FEC 727 captain pay outstrips pre-merger FTL 747 captain pay ... Though the level of prestige associated with the two aircraft may differ as well as the flying factors arising from the 747's greater stage lengths, the plain fact is that the pilot receiving a FEC 727 captaincy in lieu of an FTL captaincy does not lose monetarily, but gains.

Federal Express/Flying Tiger, at 28-29, 62-63 (emphasis added).

In Delta/Northwest, Arbitrator Bloch observed, writing for the panel:

> ... It is also appropriate to consider gains that flow from the merger. While it is true that both pilot forces are compensated relatively well, by comparison with the average U.S. airline, it is also the case that, on a stand-alone basis, Northwest Pilots were paid less than their counterparts at Delta.

Delta/Northwest, at 22 n.20 (emphasis added). Similarly, in Pinnacle/Colgan/Mesaba, Arbitrator Bloch observed:

> ... These numbers represent some obvious near-term bidding advantages for the Mesaba pilots at the topmost levels of the ISL. These results are, however, not anomalous when viewed in light of the various equities to be considered ...
>
> The Mesaba CBA meaningfully influenced, and dramatically benefitted, their merger colleagues.

Pinnacle/Colgan/Mesaba at 16 (Bloch 2011) (emphasis added).

To the same effect, in Chautaqua/Shuttle America, Arbitrator Kasher pointed to this factor as one reason to reject the Shuttle America Pilots' date-of-hire proposal:

> Simply stated, the rates of pay, rules and working conditions in the Chautauqua Pilots' collective bargaining agreement ... are far superior to those found in the Shuttle America Pilots' collective bargaining agreement ... As a result of the acquisition Shuttle America Pilots will be the beneficiaries of the superior rate of pay, rules and working conditions found in the Chautauqua Pilots collective bargaining agreement.

Chautauqua/Shuttle America, at 17 (emphasis added).

In integrating the US Airways and America West Flight Dispatchers, Arbitrator Bloch held (writing in the stead of the late Arbitrator Robert Harris, who had presided at the arbitration):

> ... If, on the one hand, Airways Dispatchers were the beneficiaries of new life in general, it is also true that the AWA inherited a labor agreement that treats them better; in many cases, substantially so ...
>
> ...
>
> Most meaningful are the gains realized by West Dispatchers when operating under the US Airways labor agreement. It is, by most measures, the more generous document of the two ...

US Airways/America West (Dispatchers), at 3, 7 (Harris/Bloch 2007) (emphasis added).

And, in integrating the Southwest and AirTran ground employees, Arbitrator Jaffe wrote (for the panel), in addition to the observations quoted above:

> The economic health of each pre-merger carrier is relevant to measuring the value of the previously earned benefits associated with pre-merger service and is relevant when determining whether the new integrated seniority list adequately protects the status quo ... The fact that AirTran employees will be receiving significant improvements in pay and benefits and working conditions immediately upon becoming Southwest employees also is an appropriate factor for consideration in determining the "fair share" of the new Southwest that is allocated to the former AirTran group. Viewed somewhat differently, these substantial gains in pay and benefits and working conditions are not a windfall to the AirTran employees, but rather are part of the overall measure as to whether the integrated seniority list treats them fairly and equitably when compared with their coworkers from Southwest.

Southwest/AirTran (Agents), at 32 (Jaffe/Golick/Vaughn 2012) (emphasis added).

Projected attrition is one equity to be weighed with other equities. One factor that can contribute to pre-merger expectations is anticipated attrition, which creates advancement opportunities for more junior pilots. In some cases, the argument is advanced that expected attrition for a particular group presents a unique equity commanding special attention. Even in such a case, however, anticipated attrition is only one equity to be weighed among others in arriving at a fair and equitable integration. For instance, in Delta/Northwest, the pre-merger Northwest Pilots sought a special "pull and plug" mechanism for older Northwest Pilots to assure them the Northwest Pilots the full benefit of anticipated asymmetric attrition. Id., at 21-22. The Arbitration Board found that, while such a mechanism was justified, it was mitigated by the other economic gains the Northwest Pilots had achieved as a result of the merger:

> Equity demands that the Northwest pilots' expectations [based on attrition] not be fully foiled by the merger. Fairness, however, reflects some tempering of the potential impact power of the adjustment mechanism. It would be myopic for this Board to focus solely on the stand-alone attrition expectations of the NWA Pilot

> group. We accept they may constitute a legitimate career expectation, but one must also consider other elements reasonably regarded as potentially damaging those expectations ...

Delta/Northwest, at 22 (emphasis added).

A fair and equitable integration should continue in place pre-existing conditions and restrictions governing the relationship among pilots in a pre-merger group. When the drafters of an integrated seniority list have been faced with existing conditions and restrictions governing the relationships among the pilots of one pre-merger group based on a prior seniority integration, those conditions and restrictions have been maintained to continue governing the relationships among the pilots within the affected pre-merger group. For instance, in Republic/Hughes Airwest (Bloch 1981), the Republic Pilots remained subject to conditions and restrictions imposed by Arbitrator Theodore Vass in the previous North Central/Southern integration. In integrating the Republic and Airwest seniority lists, Arbitrator Bloch continued the Vass conditions and restrictions in place as they applied to the former North Central and Southern Pilots:

> The restrictions imposed via the Vass Award are to be continued and applied via this instant Merger…it must be readily recognized that when one speaks in terms of expectations, the restrictions brought to the merger by the Republic pilots were clearly expected.

Republic/Hughes Airwest, at 37. See, e.g., Nicolau Award, at 34 ("The Conditions and Restrictions imposed by the Kagel Award, effective October 31, 1988, shall not be affected by the foregoing Conditions and Restrictions").

Demographic anomalies between the affected pre-merger lists can be a factor to consider in determining the appropriate integration methodology. The decision makers' ability to create an integrated seniority list based on "apples to apples" comparisons of pre-merger seniority and/or length of service may be impacted by differences in the metrics by which is seniority

measured at the pre-merger carriers. Thus, for instance, in Pinnacle/Colgan/Mesaba, Arbitrator Bloch rejected a date-of-hire proposal based, in part, on such anomalies:

> The record in this case reflects at least one anomaly: The parties to this process have presented pre-merger seniority lists that reflect differing approaches to Date of Hire calculations. All lists reflect the hire date as the time the pilot first enters training. According to the record, however, Pinnacle pilots, at times, were not paid until completion of the training ...

Pinnacle/Colgan/Mesaba, at 15 n.10.

Factual Background

The Pre-Merger Carriers

As of December 9, 2013, both American and US Airways were carriers with long histories; and with networks providing domestic and international service through multiple domiciles on narrow-body and wide body aircraft.[7] Each airline is also the product of previous mergers and other transactions. However, as discussed below, at the time of the merger American (although in Chapter 11 bankruptcy) had a superior route and hub network; superior fleet on hand, and prospects for fleet growth and enhancement; and superior pilot work opportunities and compensation and benefits.

American Airlines

American's history traces back at least to 1926, when Charles Lindbergh flew the U.S. Mail for Robertson Aircraft Corporation, which in 1930 was consolidated with other carriers into American Airways Corporation. In 1934, American Airways became American Airlines. Over the course of its history, American evolved into a "legacy" airline with an extensive domestic and

[7] Prior to the merger with US Airways, America West was a smaller domestic carrier focused on the Western United States, operating primarily narrow-body aircraft, with limited overseas operations such as service from Phoenix to Hawaii. As discussed below, due to the failure of USAPA and US Airways to conclude a single collective bargaining agreement including a single seniority list, that remained the West operation as of December 9, 2013.

international route structure, numerous hubs, and a varied fleet of narrow-body, small wide-body and large wide-body aircraft.

In addition to pilots hired directly by American, American's pe-merger seniority list was the product of at least four prior mergers and acquisitions resulting in the addition of pilots to the list:

* American/TCA (1974);[8]

* American/AirCal (1987);

* American/Reno Air (1999); and

* American/TWA (2001).[9]

As a result, the pre-merger American seniority list is not arrayed in a linear fashion based on longevity. It is an amalgam of pilots placed on the list on a variety of bases. Longevity is distributed unevenly on the list in a manner often bearing little relationship to date-of-hire or adjusted length of service.

Like the entire airline industry, American experienced a period of retrenchment in the wake of 9/11. In 2003, American and APA entered into an out-of-bankruptcy Restructuring Agreement,

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[8] All pilots subject to the American/TCA seniority integration have retired.

[9] Other pilots attained positions on the pre-merger American seniority list pursuant to the former Supplement W of the American/APA CBA, which for a period of time provided, *inter alia*, for "flow up" rights to pilots flying at American's regional affiliate American Eagle. Some or all of those pilots achieved placement on the seniority list (based on their "occupational seniority" dates per the American CBA) before they left American Eagle to fly at American. Accordingly, those "Supplement W" pilots' placement on the list does not correspond to the actual dates they commenced service at American.

The Merger Committees have stipulated that service at regional affiliates (including American Eagle) is not credited for purposes of longevity in this proceeding. As of December 9, 2013, all identifiable American Eagle pilots with prior placement on the American seniority list had commenced service at American. Accordingly, they are to be treated as any other pre-merger American Pilots for purposes of this matter.

under which the carrier's pilots provided hundreds of millions of dollars in economic relief. At the same time, the 2003 CBA provided for periodic compensation increases. Under the 2003 CBA, the American Pilots experienced smaller pay reductions than their network airline counterparts during the 2002-2006 restructuring period, and recouped over half of their pay reductions with subsequent raises through 2008. The American Pilots further preserved their defined benefit pension plan, as well as other benefits and work rules. By 2011, the American Pilots compensation was again at industry standard levels.

That 2003 CBA remained in place as of November 29, 2011 when American's parent, AMR Corporation, filed for protection under Chapter 11 of the federal Bankruptcy Code. In re AMR Corp., No. 11-15463 (SHL) (S.D.N.Y.). Unlike prior "legacy" airline bankruptcies – such as United, Continental, Delta, Northwest, and US Airways' 2002 and 2004 bankruptcies – the AMR filing was not initiated out of immediate distress or risk of business failure, but as a strategy to accomplish the restructuring of American's finances. Thus, American entered bankruptcy with a strong network of routes and hubs; financial strengths; and other competitive advantages. American entered bankruptcy with more than $4 billion in cash, which obviated any need for debtor-in-possession (DIP) financing. The larger goal of the AMR bankruptcy was to make structural changes that competitors had achieved in the preceding decade which could not be accomplished outside of bankruptcy.[10]

As a result of the foregoing, at the time American entered bankruptcy and thereafter, the American Pilots worked under industry-standard wages, benefits and working conditions, operating

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[10] Indeed, in July 2011 – just months before the bankruptcy filing – American had placed orders and options for narrow- and wide-body aircraft which contemplated substantial growth and enhancement of American's fleet – fleet growth and enhancement opportunities which, as discussed below, became part of the American Pilots' pre-merger career expectations. Those orders were supported by backstop financing that was never at risk in the bankruptcy proceeding.

a varied fleet based in multiple hubs, on an extensive domestic and international route network. For instance, at the time of the merger, American Pilots were assigned to the following domiciles and aircraft based therein:

DCA	BOS	DFW	LAX[11]	LGA[12]
B-737	B-737 B-757/767	S-80 B-737 A-320 B-757/767 B-777	S-80 B-737 A-320 B-757/767 B-777	B-737 A-320 B-757/767 B-777

MIA[13]	ORD	SFO	SLT
B-737 B-757/767 B-777	S-80 B-737 B-757/767 B-777	B-737	S-80

The pertinent facts regarding the bankruptcy filing and ensuing proceedings are discussed below.

US Airways

US Airways also had a long history, and at the time of the merger was a network carrier providing domestic and international service through multiple hubs with a multi-aircraft fleet. The carrier that became US Airways had its origins in the 1930s and 1940s, with the founding of All-American Airlines and Piedmont Airlines.

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[11] As of December 9, 2013, American had awarded positions on A-320 aircraft in LAX, effective January 1, 2014.

[12] As of December 9, 2013, American had awarded positions on A-320 aircraft in LGA, effective January 1, 2014.

[13] In addition, the A-320 was deployed in MIA commencing December 1, 2014.

In addition to pilots hired directly by the carrier, the US Airways (East) seniority list is the product of prior mergers and acquisitions, including the following:

* Allegheny/Lake Central (1968);

* Allegheny/Mohawk (1972);[14]

* Piedmont/Empire (1985);

* USAir/PSA (1986);

* USAir/Piedmont (1987);[15] and

* USAirways/Trump Shuttle (1997).

In consequence, like the American seniority list, the pre-merger US Airways (East) is not a linear, date-based list.

In 1998, the US Airways Pilots, then represented by ALPA, negotiated a collective bargaining agreement which, as modified in a series of concessionary agreements, remained in place until the merger with American. The 1998 ALPA-US Airways CBA was negotiated, in part, to secure a large aircraft order from Airbus, and included an airline growth commitment and improved productivity. The 1998 CBA, in lieu of identified pay raises, included a "mainline parity adjustment" to benchmark hourly pay and productivity at "parity plus 1%" of a composite competitor (AA, DL, NW, UA). US Airways pilots received a 17% raise on May 1, 2001; and a 16.1% raise on May 1, 2002, following the new CBAs at Delta (2000) and United (2001). The amendable date of the 1998 CBA was January 2, 2003.

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[14] In 1979, Allegheny changed its name to USAir.

[15] USAir changed its name to US Airways in 1997.

However, in the industry recession following 9/11, with growing financial losses, negative cash flow and weak liquidity, US Airways filed for Chapter 11 bankruptcy on August 12, 2002. In re US Airways, Inc., No. 2:14-cv-00007-RCM (E.D.Va.). In the course of that proceeding, ALPA entered into a series of restructuring agreements with US Airways, granting $3.6 billion in aggregate contract concessions, including a 34.5% cumulative pilot pay cut; and $1.9 billion in lost accrued benefits from the termination of the pilot defined benefit plan. The pilots received 19.33% of common equity in US Airways with an approximate value of $85 million (based on company valuation of $438 million upon exit, vesting over 3 years), and profit sharing. The amendable date of the 1998 CBA was extended to December 31, 2008. US Airways emerged from Chapter 11 bankruptcy on March 31, 2003.

Thereafter, with ongoing losses, acute liquidity issues, being at risk of default on loan covenants and seeking to reduce labor and other costs to combat low fare competition, US Airways filed for Chapter 11 a second time on September 12, 2004. In re US Airways, Inc., No. 04-13819-SSM (E.D.Va.). Immediately following that filing, Us Airways demanded emergency concessions under Section 1113(e) of the Bankruptcy Code to avoid liquidation. Facing a Section 1113(e) order granted to US Airways by the bankruptcy judge, ALPA agreed to a "Transformation Plan" in LOA 93, including:

* $1.5 billion in contract concessions, including pay cuts in excess of 18% and the elimination of all future pay raises;

* all defined contribution plan contributions reduced to 10%; and

* cumulative pay cut of 45% from 2002, causing USAir hourly pay rates to be the lowest among major airlines from 2004 through 2012.

The amendable date of the 1998 CBA was extended to December 31, 2009.

In addition, as discussed below, USAirways emerged from the 2004 bankruptcy through its merger with America West.

America West

America West was founded in 1981 in Tempe, Arizona, and commenced operations in 1983 at Phoenix Sky Harbor airport. America West filed for Chapter 11 protection in 1991, and exited in July 1994.

ALPA became the America West Pilots' bargaining representative in 1993. The original ALPA-America West CBA was amendable in 2000, with pay rates were significantly below industry standard. That CBA was replaced by a new CBA effective December 30, 2003. ALPA was able to secure modest improvements in compensation in the 2003 CBA, including:

* an 11% pay raise on 1/21/04 and a 3% pay raise on January 1, 2007;

* a 7% contribution to the defined contribution plan.

Prior to the merger with US Airways, America West was the second largest low-cost carrier in the United States. The amendable date of the 2003 American West CBA was December 30, 2006.

At the time US Airways entered its second bankruptcy in 2004, America West was operating out of hubs in Phoenix and Las Vegas, with a fleet of narrow-body and small wide-body aircraft providing domestic service, with additional service to Hawaii from Phoenix.

The US Airways/America West Merger

In 2005, US Airways and America West agreed to merge. The merger became the basis of US Airways' exit from its 2004 bankruptcy proceeding, at which time US Airways charged its designator to "LCC," signifying a low-cost business model. As the Arbitration Board well knows, there was never closure on a joint pilot collective bargaining agreement including a single seniority

list. At the time of the events leading to the present merger, the East and West Pilots continued to operate in their pre-merger systems, on their pre-merger seniority lists, under their separate pre-merger CBAs (the 1998 US Airways CBA, as modified in US Airways' two bankruptcies, and the 2003 America West CBA).

The US Airways/America West Transition Agreement

The September 23, 2005 US Airways/America West Transition Agreement (Letter of Agreement 96 to the 1998 US Airways CBA) provided, *inter alia*, for the continued separate operation of the East and West pilot groups until the implementation of a single collective bargaining agreement including an integrated seniority list. The Transition Agreement provided for the creation of an integrated seniority list pursuant to the then-current ALPA Merger Policy, through negotiation, mediation and arbitration between the pilot groups' merger representatives; to be presented by ALPA to the merged carrier as the proposed seniority list, and accepted by the carrier. However, no integrated seniority list was to be implemented until the conclusion of a single joint collective bargaining agreement covering the combined pilot group.

The Nicolau Award

The US Airways and American West Merger Committees could not agree on an integrated seniority list, and the dispute was submitted to arbitration before Arbitrator Nicolau under the then-applicable ALPA Merger Policy. The East Pilots proposed an integrated seniority list based on date-of-hire and/or adjusted length of service. The West Pilots proposed a category and status integration. Arbitrator Nicolau issued the Nicolau Award on May 1, 2007, creating an integrated seniority list by placing the most senior 423 US Airways Pilots at the top of the list; ratioing the America West Pilots with the remaining US Airways Pilots in active service as of May 19, 2005; and the placement of

more than 1,400 US Airways Pilots on furlough as of that date at the bottom of the list.

Arbitrator Nicolau began by weighing the pilot groups' pre-merger equities, including the America West Pilots' superior pre-merger collective bargaining agreement:

> Of considerable importance is the question of career expectations. As previously stated, America West argues that the career expectations of the US Airways pilots were nil; that if the airline was not a failing carrier saved from certain liquidation by its purchase by America West, it was so close as to make little difference. On the other hand, America West, in the view of its pilots, was robust and on its ways to sustained achievement. The US Airways pilots argue that neither description fits the facts. In their view, US Airways, though in bankruptcy for the second time, had lowered its costs and secured additional investment capital ensuring its survival and prospects of emerging from bankruptcy. Beyond this, as shown by repeated post-merger statements by America West's CTO and by expert analysis, that airline was also in poor financial condition. Thus, both airlines needed each other and both have benefitted from the merger. The US Airways pilots assert that this, as well as cases it cites as precedent, argue for the proposition that the financial picture of the two airlines was relatively the same and, as such, should not even be considered.
>
> Our view is that neither picture is persuasive. The US Airways reliance on post-merger statements by America West's CEO, clearly made to assuage growing concerns of America West pilots who had seen a post-merger end to hiring, an increasing return of long-furloughed US Airways pilots and a flattening in their own advancement, is misplaced. Equally so is America West's insistence that US Airways was about to disappear. Yet, it cannot be disputed that there were differences in the financial condition of both carriers and that US Airways was the weaker. This necessarily means that career expectations differed and the US Airways pilots had more to gain from the merger than their new colleagues.
>
> Gains also came in other ways. Though the US Airway pilots argue that the collective bargaining agreements are comparable, that is not the case. In pay, the America West Contract is better for comparable aircraft except for the B757. Though A330 and B767 pay did not exist at America West, those 19 aircraft are only 5% of the combined fleet and the B757s only add another 13%. The bulk of the fleet (81%) is comprised of the 292 A320s and B737s, where America West's higher rates, even without increases that a combined contract may bring, will result in a collective benefit to US Airways pilots of $23 million a year. There are other benefits that will accrue to US Airways pilots in the form of increased vacations, higher caps and pay guarantees as well as salaries, that would have been unachievable until, at the earliest, the December 31, 2009 amendable date of the US Airways/ALPA Agreement. The same can be said for the post-merger relaxation of onerous work rules that US Airways pilots had agreed to in concessionary negotiations sought by the Company

as a means of survival.

Nicolau Award, at 25-26.

Based on those equities, Arbitrator Nicolau found that neither pre-merger group's proposal was fair and equitable:

> This, however, does not justify ratios beginning at the top of the list as America West proposes, for there are compensating factors such a methodology ignores. Though Date of Hire, whether adjusted for Length of Service or not, is no longer listed as a determinant or even stated as a integration criterion, there are occasions when consideration should be given to that factor. Here, US Airways is far older than America West, a fact reflected in the average age difference between the two groups. Consideration must also be given to the different career expectations based on equipment flown. US Airways pilots fly wide-body international aircraft, while America West pilots do not. Those elements weigh in US Airways favor both in placement and interim restriction and thus argue against the America West proposal, as do the benefits US Airways pilots will achieve through their agreed upon receipt of stock options, increasing sums not factored into simple hourly rate comparisons. Equally worthy of consideration as an offsetting benefit to America West pilots is the US Airways attrition, whether swift or slower, that will accrue to the America West pilots in a measure that did not previously exist.
>
> Though America West pilots can therefore expect some gain from factors US Airways brought to the merger, this by no means justifies the proposal on which US Airways insists. As previously stated, giving sole consideration to date of hire and length of service would put the senior America West pilot some 900 to 1100 numbers down the combined list. US Airways proposed restrictions, both as to aircraft and length, would unduly deprive too many senior America West pilots of upgrade opportunities for too long a time, and would also put a number of active America West pilots below long-furloughed US Airways pilots who, until the merger, had little prospect of an early return.

Id., at 26-27.

Arbitrator Nicolau explained the list he adopted as follows, in part:

> In our view, these competing considerations result in a list that has the effect of reserving a certain number of positions in present wide-body international aircraft to US Airways pilots, thus giving consideration to both their longer service and the fact that America West pilots did not have an immediate expectation of such flying. However, the placement of a number of US Airways pilots on the top of the list as a means of accomplishing that is not the 900 to 1100 they seek, but 423, which is equal

> to number of Captains and First Officers flying the A330 and B767 International. This would give those senior US Airways pilots the opportunity to bid into such vacant positions if they so chose for an additional period of four years, making a total of six years since the merger unless, as we said before, Age 65 legislation or rule-making were to change the retirement age.
>
> On balance, it is our judgment that this allocation is equitable and, since such protection has already existed for more than two years, that it is for a sufficient length so as to then allow the list to operate independently for such aircraft. Except for this restriction, all other present flying, as defined in the Conditions and Restrictions that follow, is to operate by the list. As set forth in those Conditions and Restrictions, new flying, as defined therein is to be equitably shared in the formula set forth.
>
> A majority of the Board has also decided that the totality of pre-merger career expectations weighs in favor of active pilots as of the date of the announcement. When one considers the number and length of furloughs on the US Airways side and the dim prospects the airline faced and compares it to the lack of furloughs on the America West side, which furloughs ceased to exist long before the merger took place, merging active pilots with furloughees, despite the length of service of some of the latter, is not at all fair or equitable under any of the stated criteria.

Id., at 27-28.

The East Pilots' Rejection of the Nicolau Award and the Creation of USAPA

The US Airways (East) Pilots never acceded to the Nicolau Award. Following the issuance of the Nicolau Award, the ALPA US Airways MEC petitioned the ALPA Executive Council to reject the award as contrary to ALPA Merger Policy; and filed suit in the Municipal Court of the District of Columbia to vacate the Award. US Airways MEC v. American West MEC, No. 0004358-07. The American West MEC petitioned for removal to Federal District Court. US Airways MEC v. American West MEC, No. 1:07-cv-01309 (D.D.C.).

Ultimately, in November 2007, ALPA submitted the Nicolau Award to US Airways as the proposed integrated seniority list; and the carrier accepted the Award as the seniority list to be included in a single collective bargaining agreement. However, in accordance with the Transition

Agreement, the Nicolau Award could not be implemented, pending the conclusion of a single collective bargaining agreement including an integrated seniority list.

A group of East Pilots formed USAPA for the express purpose of decertifying ALPA to prevent the implementation of the Nicolau Award. USAPA's Constitution and Bylaws enshrined the date-of-hire standard as the basis for any integrated seniority list – stating as one of USAPA's objectives, "to 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." (USAPA Constitution & Bylaws, Section 8.D.) In addition, the USAPA Constitution and Bylaws required that any CBA (including any integrated seniority list) be approved by the USAPA Board of Pilot Representatives ("BPR"), which at all times had a majority of East Pilots; and be ratified by the USAPA membership, the large majority of whom were East Pilots.

In April 2008, USAPA was certified by the NMB as the bargaining representative of the combined US Airways pilot group. US Airways, 35 NMB 135 (2008). Thereafter, USAPA refused to agree to the inclusion of the Nicolau Award in a combined collective bargaining agreement; instead, in September 2008 USAPA made a new seniority proposal based on a date-of-hire seniority list with 10-year conditions and restrictions. That was the last seniority proposal by either party in the negotiations.

The Litigation Between the West Pilots and USAPA

In response to the creation and certification of USAPA, the West Pilots created multiple organizations through which to oppose USAPA and pursue the implementation of the Nicolau Award. There ensued litigation between the West and East Pilots in multiple fora which as continued to the present day.

For instance, in May 2008, USAPA unsuccessfully sued a number of individual West Pilots under the federal RICO statute, based on their participation in the America West Airlines Pilot Protection Alliance (AWAPPA). See USAPA v. AWAPPA, LLC, No. 08-1858 (4th Cir. July 30, 2010).

Most significantly, the America West Pilots formed the organization Leonidas, LLC "to safeguard the legal rights of the former America West pilots, for the express purpose of enforcing the Nicolau Award without compromise." Leonidas' organic documents provided, in part, for the following objectives:

* "We fully demand all of our legal rights, in their entirety, within the new US Airways, or any successor airline."

* "We require full, good faith compliance with our existing contract, the Transition Agreement and ALPA merger policy from all parties."

* "We will not allow our rights to be trod upon by USAPA, the East MEC, ALPA National, or the Company."

* "We will aggressively seek any and all available legal remedies against any party which might seek to dilute our rights."

* "We will not tolerate discrimination against the pilots of America West in any form, including the dilution of the Nicolau Award by any means, contractual or otherwise."

* "We will not engage in fruitless debates over matters already settled."

* "We will remain perpetually poised to aggressively defend our rights until such time when we are no longer threatened."

"Leonidas, LLC Objectives," www.cactuspilot.com.

In September 2008, American West Pilots supported by Leonidas initiated a class action against USAPA for breach of the duty of fair representation, based on USAPA's refusal to propose the Nicolau Award in the negotiation of a combined CBA. Addington v. USAPA, No. 2:08-cv-

01633-NVW (D. Ariz.) ("Addington I"). The Addington I plaintiffs prevailed in a jury trial in May 2009.[16] However, on appeal the U.S. Court of Appeals for the Ninth Circuit reversed, finding that the plaintiffs' claims were not ripe until a single collective bargaining agreement was concluded which included a seniority list other than the Nicolau Award. Addington v. USAPA, 606 F.3d 1174 (9th Cir. 2010).

Following the Ninth Circuit decision, US Airways filed an action against USAPA and the class of West Pilots, seeking declaratory relief as to whether the carrier could agree to a seniority list other than the Nicolau Award without incurring liability, including liability for colluding in a breach of duty by USAPA. US Airways, Inc. v, Addington, et al., 2:10-cv-01570 (D.Ariz.) ("Addington II"). On October 12, 2012, U.S. District Court Judge Roslyn Silver denied the requested relief, relying on the Ninth Circuit's holding that the issue was not ripe. Judg Silver summarized the parties' postures:

> US Airways contends it needs this guidance in order to determine the range of permissible proposals in the collective bargaining agreement negotiations. According to US Airways, if it accepts USAPA's seniority proposal, the West Pilots have said they will sue US Airways for facilitating or assisting USAPA's breach of the duty of fair representation. And, if US Airways insists on adopting the new collective bargaining agreement incorporating the Nicolau Award, USAPA has promised a work stoppage.
>
> USAPA now seeks summary judgment that its seniority proposal does not breach its duty of fair representation while the West Pilots seek summary judgment that USAPA's proposal does breach its duty of fair representation. US Airways has filed briefs stating it is neutral on these issues but offering some guidance on the applicable legal framework.

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16 In its Findings of Fact and Conclusions of Law following the jury verdict, the Court emphasized: "USAPA claims that the East Pilots hold such strong objections to the Nicolau Award that they always will vote as a bloc against any new CBA with it, enjoying the self-denial of a single CBA with improved wages and working conditions into perpetuity." Findings of Fact and Conclusions of Law, at 32.

Slip. Op., at 5.

Judge Silver also summarized the limits of USAPA's obligation under the labor laws to refrain from negotiating a different seniority regime:

> But being "bound" by the Transition Agreement has very little meaning in the context of the present case. It is undisputed that the Transition Agreement can be modified at any time "by written agreement of [USAPA] and the [US Airways]." (Doc. 156-3 at 38). Moreover, USAPA and US Airways are now engaged in negotiations for an entirely new collective bargaining agreement and there is no obvious impediment to USAPA and US Airways negotiating and agreeing upon any seniority regime they wish. As explained by the Ninth Circuit, "seniority rights are creations of the collective bargaining agreement, and so may be revised or abrogated by later negotiated changes in this agreement." Hass v. Darigold Dairy Products Co., 751 F.2d 1096, 1099 (9th Cir. 1985). And a union "may renegotiate seniority provisions of a collective bargaining agreement, even though the resulting changes are essentially retroactive or affect different employees unequally." Id. [17]
>
> Of course, in negotiating for a particular seniority regime, USAPA must not breach its duty of fair representation. Accordingly, if USAPA wishes to abandon the Nicolau Award and accept the consequences of this course of action, it is free to do so. By discarding the result of a valid arbitration and negotiating for a different seniority regime, USAPA is running the risk that it will be sued by the disadvantaged

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This is consistent with the principle that seniority is a creature of contract. "Seniority arises only out of contract or statute. An employee has no inherent right to seniority in service." Trailmobile Co. v. Whirls, 331 U.S. 40, 53 n.21 (1947). Accordingly, seniority rights arise from and are defined by the pertinent union contract. Id.; Aeronautical Indus. Dist. Lodge 727 v. Campbell, 337 U.S. 521, 526 (1949). See e.g., Wightman v. Springfield Terminal Ry., 100 F.3d 228, 232 (1st Cir. 1996); Dempsey v. Atchison, Topeka & Santa Fe Ry. Co., 16 F.3d 832, 839 (7th Cir. 1994) (citations omitted). As creatures of contract, seniority rights do not "vest." Wightman, 100 F.3d at 232; Local 1251 UAW v. Robertshaw Controls Co., 405 F.2d 29, 33 (2d Cir. 1968); McMullans v. Kan., Okla. & Gulf Ry., 229 F.2d 50, 53 (10th Cir. 1956). To the same effect, see Rakestraw v. United Airlines, Inc., 981 F.2d 1524, 1533, 1534-1535 (7th Cir. 1992). As the Seventh Circuit made clear in Rakestraw:

> Once a seniority system is in place, many employees come to think of their position in the pecking order as a form of property. Higher seniority means more desirable assignments and greater security of employment ... Yet seniority does not "belong" to an employee, any more than he "owns" the prospect of receiving a given wage next year or flying the St. Louis-Paris route rather than the leg from Minneapolis to Duluth. Seniority is a creation of collective bargaining agreements and equivalent contracts between unions and employers.

981 F.2d at 1535.

> pilots when the new collective bargaining agreement is finalized. An impartial arbitrator's decision regarding an appropriate method of seniority integration is powerful evidence of a fair result. Discarding the Nicolau Award places USAPA on dangerous ground.

Id., at 7.

Judge Silver therefore denied US Airways' request for declaratory relief:

> In the end, the Court cannot provide as much guidance as it had hoped it could. Pursuant to the Ninth Circuit's decision, any claim for breach of the duty of fair representation will not be ripe until a collective bargaining agreement is finalized. Addington v. U.S. Airline Pilots Ass'n, 606 F.3d 1174, 1181-82 (9th Cir. 2010). In this case, that means even though an integrated seniority regime is an incredibly important issue, and USAPA appears totally committed to a particular seniority regime, it is not possible to determine the viability of any claim for breach of the duty of fair representation until a particular seniority regime is ratified. When the collective bargaining agreement is finalized, individuals will be able to determine whether USAPA's abandonment of the Nicolau Award was permissible, i.e. supported by a legitimate union purpose. Thus, the best "declaratory judgment" the Court can offer is that USAPA's seniority proposal does not automatically breach its duty of fair representation.

Id., at 7-8.

At the same time, in her Memorandum Opinion and Order, Judge Silver offered cautionary advice to all sides:

> This is a hard case. As set forth in the parties' summary judgment filings, the underlying facts are undisputed but the appropriate conclusions to be drawn from those facts differ greatly. Having reviewed all of the filings and considered the arguments made by counsel at the oral argument, the Court concludes Defendant US Airline Pilots Association ("USAPA") is free to pursue any seniority position it wishes during the collective bargaining negotiations. But with that freedom comes risk because the West Pilot Defendants may have viable legal claims in the future should the collective bargaining agreement contain a seniority provision harmful to a subsection of the union. As for US Airways, it must negotiate with USAPA and it need not insist on any particular seniority regime. But US Airways must evaluate any proposal by USAPA with some care to ensure that it is reasonable and supported by a legitimate union purpose.
>
> ...

> This conclusion places US Airways in a difficult position. At the present time, it is not possible to predict what will result from the collective bargaining negotiations. Thus, the Court cannot grant US Airways prospective immunity from any legal action by the West Pilots. But based on the representation at oral argument that the seniority list is unlike other matters addressed in collective bargaining, it is unlikely the West Pilots could successfully allege claims against US Airways merely for not insisting that USAPA continue to advocate for the Nicolau Award. See Davenport v. Int'l Broth. of Teamsters, AFL-CIO, 166 F.3d 356, 361-62 (D.C. Cir. 1999) (addressing, without deciding, "the proper standard for determining whether an employer can be implicated in a union's breach of duty").

Id., at 1, 8.[18]

The East and West Pilots could not even agree on the meaning of Judge Silver's ruling. Each side proclaimed "victory" – USAPA that it had been freed to negotiate a seniority list other than the Nicolau Award; and, the West Pilots that Judge Silver had made clear that USAPA would do so at its peril and face future duty of fair representation liability.[19]

At the time of the merger, Judge Silver's October 12, 2012 ruling in Addington II was the "last word" on the parties' respective rights and obligations with respect to the Nicolau Award and the negotiation of a single CBA.

The Failure of USAPA and US Airways to Conclude a Single Collective Bargaining Agreement

From 2007 to 2012, the intractable dispute over the Nicolau Award prevented the conclusion of a single collective bargaining agreement covering the East and West Pilots. As noted above, in

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[18] US Airways filed a notice of appeal to the Ninth Circuit from Judge Silver's October 12, 2012 ruling. That appeal was dismissed following the consummation of the merger with American.

[19] As will be clear from the evidence, the East-West conflict over the Nicolau Award remains as deep and intractable today as it has been since 2007. It remains one of the defining elements of this proceeding. A third Addington case ensued after the conclusion of the January 2013 MOU. Leonidas and USAPA remain locked in competing lawsuits over the use and disposition of the USAPA treasury. And, the USAPA and West Merger Committees cannot agree on who represents the West Pilots in this proceeding.

September 2008, USAPA made a seniority proposal based on date-of-hire, which the carrier never agreed to – having accepted the Nicolau Award in November 2007, and being faced with the inalterable internal conflict within the combined pilot group over the legal status of the Nicolau Award. Indeed, in February 2012, the NMB "parked" the negotiations, where they remained until the merger with American.

As a result, until the consummation of the merger with American, the East and West Pilots continued to work under their separate pre-merger CBAs – the 1998 US Airways CBA, as amended in US Airways' two bankruptcies; and the 2003 America West CBA. As such, in contrast to the pre-merger American Pilots, who had achieved the 2012 CBA and were working under that industry-standard agreement for a year before the merger, the East and West Pilots continued until December 9, 2013 to work under their substantially inferior standalone CBAs.

As noted above, at the time of the merger, the "last word" was Judge Silver's October 12, 2012 decision in Addington II, admonishing both the carrier and USAPA on their respective risks, but offering no clear guidance to the parties. As such, absent the merger there was no clear pathway to a single CBA, industry-standard or not; and no expectation that such an agreement could be concluded.

US Airways' Publicly-Stated Desire to Merge

Indeed, throughout the period following the US Airways/America West merger, US Airways had no real "standalone" strategy. US Airways management's publicly–stated goal was to consolidate with another carrier, particularly as the rest of the "legacy" segment of the industry consolidated. For instance, in 2006, US Airways openly courted and launched a hostile bid for Delta, before Delta merged with Northwest. In 2008, US Airways openly courted United and Continental,

before those carriers chose to merge with each other.

Throughout, US Airways management made clear that its standalone business model was successful based only on its existing low-cost structure, including the existing CBAs covering the East and West Pilots. As US Airways Chairman Douglas Parker stated in a 2011 interview:

> "The reality is we are doing as well as United, Delta and JetBlue so what we are doing works," said Mr. Parker. But, he explained, US Airways has to do it differently by having a 16% cost advantage, especially since it has a 15% PRASM disadvantage to its legacy counterparts.
>
> "It means we cannot pay the same as United, American and Delta. It doesn't work and if it doesn't work it will all go away. That doesn't mean that there is no room for pay increases, but it does mean we can't take our cost structure to where they are."

Centre for Aviation, "How Consolidation Has Changed the Us Airline Industry; More to Come - US Airways' Doug Parker," April 12, 2011. As such, industry standard compensation for the East and West Pilots would only be possible through a merger.

The Continued Separate East and West Operations as of December 9, 2013

In the absence of a single collective bargaining agreement, the East and West pilot groups continued to work in separate, fenced operations under their separate CBAs and seniority lists until the merger with American. During that period, management closed the Las Vegas domicile, leaving the West Pilots based only in Phoenix. In addition, the Phoenix operation stagnated or shrank, while the East operation was maintained or grew. As a result, and, together with attrition among the East Pilots, all of the East Pilots furloughed at the time of the America West merger were ultimately recalled, and more than 500 pilots were hired into the East operation. Almost no new pilots were hired into the West operation, and they and incumbent West pilots were subsequently furloughed.

As of December 9, 2013, the East and West domiciles, and the aircraft based on those domiciles, was as follows:

US Airways (East)			US Airways (West)
PHL	DCA	CLT	PHX
E-190	A-320	A-320	A-320
A-320		B-737	B-757
B-737		B-757/767	
B-757/767		A-330	
A-330			

Thus, among other things, there was no prospect for West Pilots to fly on any aircraft other than narrow-body and small wide-body operations in the Phoenix domicile, at the wage rates under the 2003 America West CBA, which paid a single First Officer pay rate and a single Captain pay rate.

Since there was no clear pathway to a single collective bargaining agreement as of December 9, 2013, there was also no prospect absent the merger for the operations to be combined.

The Events Leading to the American/US Airways Merger

American's Standalone Business Plan

As noted above, AMR filed for protection under Chapter 11 of the Bankruptcy Code on November 29, 2011. American began the bankruptcy proceeding committed to its "Standalone" business plan, which contemplated that the carrier would emerge from bankruptcy as a separate standalone airline. As later summarized the Bankruptcy Court in ruling on American's Section 1113 motion, "[t]he fundamental principles behind the Business Plan include[d]:"

* Concentrating on the five key hub markets for American: Dallas-Fort Worth, Miami, Chicago, Los Angeles, and New York;

* Expanding American's international presence, particularly through the use of joint business agreements and code-sharing;

* Increasing passenger feed to American's hub and across its network through codesharing with domestic air carriers and increased use of regional jets;

* Implementing a long-term fleet plan sufficient for both replacement and growth;

* Creating a capital structure that allow[ed] American to grow and compete, attract capital at favorable rates and withstand external shock to the business; and

* Setting up a sustainable cost structure.

Memorandum Opinion and Order, August 15, 2012, at 16.

The Section 1113 Process and the 2012 American/APA CBA

American's Initial Term Sheets and the Section 1113 Motion

On February 1, 2012, American presented APA and the other American unions with its Standalone Plan and term sheets proposing concessionary modifications to the applicable CBAs as part of that Standalone Plan. American initially sought an asserted $370 million in annual concessions over six years from APA, but sought no reductions in the wage rates in the CBA; in fact, from the outset, American proposed wage increases over the term of the proposal. Instead, American targeted non-wage terms of the 2003 agreement that other airlines had already modified in prior restructurings and bankruptcies, such as the defined benefit pension plan (initially proposing termination of the plan); work rules; and active and retiree medical benefits.

American and APA engaged in initial negotiations, in which American modified the term sheet on or about March 21, 2012. On March 27, 2012, American filed motions under Section 1113(c) of the Bankruptcy Code to reject the affected CBAs, including the CBA with APA. On April 19, 2012, American presented another modified term sheet to APA, which became the basis for the Section 1113 motion at trial in the Bankruptcy Court. The Bankruptcy Court conducted a trial on the Section 1113 motion from April 23 to May 25, 2012. The Section 1113 motion was thereafter submitted to the Court for decision.

"LBFO I"

American and APA continued to negotiate while the Section 1113 trial was ongoing. On June

15, 2012, American management presented its "last, best and final offer" ("LBFO I"). The APA Board of Directors ultimately presented LBFO I to the APA membership for ratification, commencing on June 27, 2012. The Court held its Section 1113 ruling in abeyance pending the ratification vote. However, in a ballot concluding on August 8, 2012, the APA membership rejected LBFO I.

The Court's Section 1113 Rulings

With the APA membership's rejection of LBFO I, American's Section 1113 motion was again ripe for decision. The Court issued its Memorandum Opinion and Order on August 15, 2012, substantially upholding American's rationale for the motion. In particular, the Court rejected APA's reliance on a potential merger with US Airways as a basis for possible reorganization, and upheld American's reliance on the Standalone Plan: "[W]hile the Court recognizes the possibility that American's future might involve a merger of some kind – a possibility conceded by American – the Court rejects the notion that this possibility bars the current application under Section 1113 for several reasons." August 15, 2012 Memorandum Opinion and Order, at 33.[20]

"First and foremost," the Court relied on

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[20] In a footnote, the Court elaborated:

> In arguing that the possibility of a US Airways merger bars rejection of these collective bargaining agreements, numerous provisions of Section 1113 are implicated. In addition to arguing that American's proposals are not necessary for reorganization, the APA argues that the proposal is not based on complete and reliable information, see Section 1113(b)(1)(A), that the proposed changes are not fair and equitable, see Section 1113(b)(1)(A), that it has good cause to reject American's Section 1113 proposals, see Section 1113(c)(2), and that the balance of the equities does not clearly favor rejection, see Section 1113(c)(3). All these arguments, of course, presuppose that it is proper for the Court to consider a possible merger with US Airways in this Section 1113 analysis. Based on the facts before the Court and for the reasons stated above, the Court rejects that notion.

August 15, 2012 Memorandum Opinion and Order, at 33 n.17.

> ... the evidence before the Court about the possibility of a US Airways and American merger. Put simply, there is no merger for the Court to consider. While the Unions have signed term sheets with US Airways, there is no evidence before the Court of a proposed merger between the two airlines. While American has begun the process of considering strategic alternatives to its Business Plan, that process has not yet been completed. [citation omitted]. Indeed, no merger transaction with any airline has been presented to the Court. Nor is there evidence that the two airlines have reached an agreement in principle ...[21]

Id., at 34 (emphasis added).

The Court also found that "[t]he APA's argument is also undercut by history, which demonstrates that proposed airline mergers do not always succeed," specifically noting the evidence that "US Airways itself has been a party to unsuccessful merger talks in the past." Id., at 35. See id. at 35 ("prior to merger with Continental in 2010, United had unsuccessful merger talks with Continental that fell apart in 2008 ... prior to merger with Northwest, Delta was approached by US Airways about a merger").

Finally, the Court emphasized that "the Section 1113 inquiry is tethered to the proposal made by a debtor, not some other party." Id., at 37 (emphasis added). The Court again emphasized:

> There was no strategic transaction in existence at the time of the Section 1113 proposal, nor is there one today. The only thing that was (and still is) in place is an initial agreement between the unions and US Airways as to what US Airways would offer the unions if a merger were eventually to be consummated. The agreement itself is tentative at best, and several key terms are still subject to further negotiation.

Id., at 38.

In addition to generally rejecting any reliance on a potential merger, the Court rejected APA's

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21 As discussed below, as of August 15, 2012, APA and US Airways had reached agreement on a "Contingent Labor Agreement," outlining the framework of a potential collective bargaining agreement in the event of a merger. However, neither American nor USAPA were parties to that CLA. Indeed, as set forth above, AMR and US Airways did not even begin formal merger discussions until more than two weeks after the Court's August 15, 2012 decision.

objections to the motion. The Court reiterated that the proper reference point for the motion was the Standalone Plan:

> ... The APA's threshold objection to the Business Plan is simply to the fact that it exists at all. In its view, American's stand-alone plan is not the appropriate platform for this Section 1113 application because of a potential merger with US Airways. But for the reasons explained above, the Court concludes that the possibility of a merger is not a bar to Section 1113 relief. Moreover, the Court agrees with American that it is appropriate – and indeed necessary – for American to formulate a stand-alone business plan at this point in time. ...

Id., at 40. The Court then found "that Debtors have established—by a preponderance of the evidence—that American's Business Plan is a reasonable stand-alone business strategy to serve as the basis for American's Section 113 Motion." Among other things, the Court found that AMR's focus on pre-merger "Cornerstone" plan was reasonable (id., at 44) based, *inter alia*, on its similarity to business plans in other "legacy" bankruptcies:

> ... [T]he new elements in the Business Plan – reduction in labor costs and the purchase of new aircraft – are also reasonable steps. The focus in American's Business Plan on cutting its labor costs is not much different from the business plans in Section 1113 proceedings in other airline bankruptcies. So while the Unions attack American's Business Plan as being without basis, the evidence shows that American has in fact followed an unfortunately well-worn path blazed by earlier airline bankruptcies ... In each prior airline bankruptcy the, the pattern appears the same: the airline enters bankruptcy with labor costs that are at or near the top of the industry and then emerges with costs at or near the low end of the group. [citations omitted]. American now seeks to follow in the same path ...
>
> This is also true for the purchase of new aircraft. The business plan discussed in Northwest's Section 1113 proceeding is remarkably similar to American's Business Plan here: both include reductions to labor costs, revisions to work rules and scope provisions, and feature sizable new aircraft acquisitions to replace an aging fleet. [citation omitted] ...

Id., at 44-46 (emphasis added).

However, the Court denied American's Section 1113 motion based on American's failure to prove the necessity of certain discrete elements of its proposal to the Standalone Plan. Id., at 74-75,

77. On August 17, 2012, American renewed its Section 1113 motion based on modifications to the discrete items found objectionable by the Court. In a ruling in open court on September 4, 2012, the Court granted the renewed Section 1113 motion. In granting the motion, the Court reiterated its conclusion that a potential US Airways merger was not an appropriate benchmark, even if AMR's consideration of a transaction had progressed since the Court's original ruling:[22]

> As to the second issue of consolidation, the Court has already acknowledged in its prior decision that there is no merger for the Court to consider. That has not changed today. "While American has begun the process of considering strategic alternatives to its business plan, that process has not yet been completed." *In re AMR Corp*., 2012 WL 3422541, at *18.
>
> While that process has continued since the issuance of the Court's decision, there is still no fixed outcome for the Court to take into consideration. Thus, as nothing has changed on this subject since the issuance of the Court's opinion on August 15th, the Court rejects the arguments on consolidation for the same reasons set forth in its prior decision.

September 12, 2012 Bench Ruling, at 15 (emphasis added).

The 2012 CBA

Following the Court's September 4, 2012 decision, American announced plans to begin the implementation of the terms approved by the Court. In the same time frame, the official Committee of Unsecured Creditors in the bankruptcy ("UCC") indicated that it would not support a plan of reorganization that did not include a consensual, ratified agreement between American and APA.

Thereafter, while American was proceeding with the implementation of its imposed terms of employment, American continued to negotiate with APA toward a consensual agreement. On November 6, 2012, American presented another "last, best final offer" ("LBFO II"), based on

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[22] As noted below, as of August 31, 2012, AMR and US Airways had commenced formal merger negotiations, subject to a Non-Disclosure Agreement.

revisions to LBFO I, which was submitted by the APA Board of Directors to membership ratification. The membership ratified LBFO II as of December 7, 2012, and the new CBA (the "2012 CBA") was formally approved by the Bankruptcy Court on December 19, 2102.

The 2012 CBA took effect on January 1, 2013. The 2012 CBA reflected a realignment to address issues competitors had tackled in their earlier bankruptcies and restructurings while maintaining industry standard terms, including pilot compensation. Pilots received meaningful value in exchange for the contract modifications. In fact, the American pilots accrued an unprecedented net gain in the 2012 CBA. Rather than losing value in Chapter 11, the American pilots gained an aggregate of $228 million over the 6-year duration of the 2012 CBA. Such a net gain in a pilot bankruptcy contract was unprecedented. The 2012 CBA enabled the American pilots to continue to maintain industry standard compensation.

Thus, as of January 1, 2013 – nearly a year before the merger – the American Pilots commenced working under a new pre-merger, standalone CBA which continued their compensation and working conditions at the industry standard – in contrast to the East and West Pilots, who continued to work under the 1998 US Airways CBA as modified in US Airways' two bankruptcies, and the 2003 America West CBA, respectively.

The CLA and the MOU

The "Contingent Labor Agreement"

Although never contending that American would be unable to exit bankruptcy or would fail as a result of the Standalone Plan, from the outset APA (along with the other American unions) did not believe that the Standalone Plan represented the best business strategy for the carrier. Instead, APA and the other unions took the position that consolidation with another carrier represented the

best platform for American to compete with the newly-merged Delta (Northwest) and United (Continental). To that end, while the Section 1113 motion was pending, APA entered into discussions with US Airways management – which, as noted above, had for a number of years publicly stated that its own competitive future lay in a merger rather than a standalone operation.

On April 13, 2012, APA and US Airways reached agreement on a "Contingent Labor Agreement" ("CLA"), representing a framework for the CBA which would govern in the event that US Airways merged with American. The CLA was negotiated based on modifications to the 2003 American CBA, rather than American's Section 1113 term sheet to APA.

The Initial MOU Discussions and the "NDA Blackout" Period

USAPA was not party to the CLA. In the wake of the CLA, USAPA negotiated a proposed "Memorandum of Understanding" with US Airways regarding issues related to a potential merger with American, on which tentative agreement was reached between USAPA and US Airways on or about August 20, 2012, subject to approval by the USAPA BPR and ratification by the USAPA membership.[23]

On August 31, 2012, American and US Airways announced that they had entered into a Non-Disclosure Agreement governing formal merger negotiations between the carriers. That "NDA blackout period" continued until the public announcement of the merger. After that date, no further negotiations took place regarding the August 20, 2012 USAPA-US Airways MOU, and the USAPA BPR determined not to submit the proposed MOU to membership ratification. There were no further discussions regarding the merger involving APA or USAPA until December 2012, after the

[23] In addition, by its terms the proposed MOU would have been applicable to APA and the American Pilots, which would have required further negotiations with APA and APA's agreement.

conclusion of the 2012 American CBA.

The MOU

As just noted, commencing August 31, 2012 AMR and US Airways began formal discussions of a possible merger pursuant to an NDA. In December 2012 – after the standalone American 2012 CBA was concluded, subject to APA membership ratification and Bankruptcy Court approval – the carriers summoned representatives of APA and USAPA to Dallas, Texas for intensive negotiations to resolve pilot labor relations issues associated with a possible merger, which was necessary to support for the merger by the UCC and approval of a merger by the corporations. The negotiation of the MOU was concluded on or about December 28, 2012, subject to approval by the APA Board of Directors and the USAPA BPR, and ratification by the USAPA membership.[24] The MOU accomplished several significant things.

First, the MOU established the terms and condition of employment to govern the AA and US Airways Pilots, to be effective upon the consummation of a merger. The MOU provided for the establishment, upon the consummation of an American/US Airways merger, a "Merger Transition Agreement" ("MTA"). Paragraph 1 of the MOU clearly provided that the MTA was to

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[24] USAPA membership ratification was required because the MOU would represent a new US Airways CBA, to succeed the 1998 US Air CBA (as modified) and the 2003 America West CBA. Ratification by the American Pilots was not necessary because the American Pilots already had a CBA in the form of the 2012 CBA; for the American Pilots, the MOU was a letter of agreement modifying the 2012 CBA, which did not require membership ratification.

Thus, at the time the MOU was concluded, the American Pilots were going to enjoy virtually all of its economic benefits based on the pre-merger 2012 CBA – even though the MOU was concluded prior to USAPA's ratification of the MOU; corporate approvals of the merger; Bankruptcy Court approval of the proposed reorganization plan and approval of that plan by the AMR creditors; the initiation and settlement of the Justice Department antitrust suit; and final Bankruptcy Court approval of the merger. In contrast, the East and West Pilots, who were still working under their separate (and inferior) pre-merger contracts, would only achieve the benefits of the MOU after those contingencies were fulfilled.

be based on the 2012 American standalone CBA:

> US Airways and APA agreed to a Conditional Labor And Plan Of Reorganization Agreement executed April 13, 2012 and as amended from time-to-time (the "CLA"). Upon the Memorandum Approval Date (as defined in Paragraph 18), this Memorandum shall supersede and replace the CLA. This Memorandum provides a process for reaching:
>
> > (a) A Merger Transition Agreement (the "MTA") between APA and an entity ("New American Airlines") formed in connection with a plan of reorganization ("POR") for such of those AMR Corporation-related debtors required to effectuate a combination of American and US Airways (the "Merger"). The MTA shall consist of the collective bargaining agreement between American and APA approved on December 19, 2012 by the Bankruptcy Court in In Re AMR Corporation, et al., jointly administered Ch. 11 Cast No. 11-15463 (SHL) (the "2012 CBA"), as amended pursuant to the provisions of this Memorandum;
> >
> > (b) a Joint CBA (the "JCBA") to apply to a merged workforce composed of pilots employed by American and US Airways.

(Jt.Exh. 9, at 1.) In determining the transitional terms and conditions of employment, paragraph 24 of the MOU provided that "APA is entitled to modifications to the 2012 CBA valued at an average of $87 million/year over six years." (Jt.Exh. 9, at 11.) The improvements were to be negotiated by American and APA; those terms would then become effective upon the consummation of the merger and, in accordance with paragraph 1 of the MOU, become applicable at that time to the East and West Pilots as well.

That MTA would not take effect until the consummation of the merger; indeed, paragraph 18.c. of the MOU expressly provided that "[t]his Memorandum shall be null and void in its entirety and as to all Parties if the Merger is not consummated." (Jt.Exh. 9, at 10.)[25] Until then, the three pilot

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[25] Similarly, paragraph 18.d. of the MOU provided:

(continued...)

groups would continue to work under their existing, standalone CBAs – the 2012 CBA for the American Pilots; the 1998 US Airways CBA, as modified in the two US Airways bankruptcies, for the East pilots; and the 2003 America West CBA for the West pilots.[26] Accordingly, by definition, upon consummation of the merger, the American pilots would receive a total of $87 million immediate contractual improvements by reason of the merger, while both the East and West pilots would immediately reap exponentially larger gains over their respective pre-merger CBAs.

Second, the MOU established fence and other transitional provisions to govern the separate AA and US Airways operations, pending the conclusion of a Joint Collective Bargaining Agreement ("JCBA") and integrated seniority list. Paragraph 8 of the MOU generally provided for the continuation of the three separate operations – including the continuation of the separate fleets and fleet plans[27] – until "the earlier of eighteen (18) months after US Airways and the New American Airlines obtain a single operating certificate, or the date on which a JCBA and integrated seniority list are in effect." (Jt.Exh. 9, at 3.)

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[25](...continued)
This Memorandum will only apply to this Merger, and will apply to this Merger regardless of the corporate structure. This Memorandum shall not affect or have any applicability to American's stand-alone plan or any merger or transaction other than this Merger.

(Jt.Exh. 9, at 10.)

[26] As the events leading to the MOU unfolded, USAPA continued to pursue negotiation of a separate single US Airways CBA. In October 2012, in the wake of Judge Silver's decision in Addington II, USAPA requested that the NMB "unpark" its negotiations with US Airways. US Airways opposed that request.

[27] Those pre-merger fleets and fleet plans as they existed on the date on which the MOU was concluded, were attached as confidential Attachments to the MOU. (Jt.Exh. 9, at 3.) Those Attachments were subsequently updated as of December 31, 2013, the end of the month in which the merger was concluded, and the stipulated Snapshot Date and Constructive Notice Date fell.

Third, the MOU established a process for the certification of APA as the representative of the combined craft or class, and thereafter the conclusion of a JCBA. Paragraph 26 of the MOU provided that "APA shall file a single carrier petition with the NMB as soon as practicable after the Effective Date ..., but in no event later than four months after the Effective Date." (Jt.Exh. 9, at 12.) Paragraph 27 of the MOU provided for a process of negotiation and expedited interest arbitration for the conclusion of a JCBA following NMB certification of a single bargaining representative, with an agreed deadline for the interest arbitration award, if needed. The interest arbitrator was to be limited to "fashioning provisions which are consistent with the terms of the MTA or facilitate the integration of pilots under the terms of the MTA," including specifically the value of the 2012 CBA and the $87 million of annual improvements thereon contemplated by paragraph 24. (Jt.Exh. 9, at 12.)

Fourth, as noted above, the MOU established the seniority integration process leading ultimately to this proceeding. Paragraph 10 of the MOU provided for "[a] seniority integration process consistent with McCaskill Bond ..." (Jt.Exh. 9, at 6), including the submission of the seniority integration issue to the Arbitration Board in the absence of an agreement within 90 days after the consummation of the merger, as summarized above. Significantly, the MOU provided that "it is understood that, in no event, shall the seniority integration arbitration proceeding commence prior to final approval of the JCBA ..." (Jt.Exh. 9, at 6.) Thus, absent an agreed seniority list, the MOU assured (in contrast to US Airways/America West and other previous cases) that a JCBA would be in place before an arbitrated integrated seniority list was established to be implemented under that JCBA.

Approvals and Ratification of the MOU

Paragraph 18.a. and b. of the MOU provided for the requisite approvals of the MOU, as follows:

> a. This Memorandum shall become effective (the "Memorandum Approval Date") upon the date when all of the following have occurred: (I) approval by APA's Board of Directors; (ii) approval by the US Airways' Board of Directors; and (iii) approval by AMR Corporation's Board of Directors. If all of these approvals do not occur, this Memorandum shall be null and void in its entirety and as to all parties.
>
> b. This Memorandum shall become applicable to USAPA upon the later of (I) the Memorandum Approval Date; and (ii) USAPA's Board of Pilot Representatives' recommending that USAPA's membership ratify this Memorandum and USAPA's memberships subsequent ratification of this Memorandum. USAPA will inform the Parties whether its Board of Pilot Representatives has agreed to recommend that its membership ratify the MTA on or before January 4, 2013. If recommended, the ratification vote of USAPA's membership shall be completed no earlier than approval of the Merger by AMR Corporation's Board of Directors and no later than 60 days after such approval (if any). If such recommendation and ratification do not timely occur, this Memorandum shall be of no force or effect as to USAPA but shall remain in full force and effect as to the other parties.

(Jt.Exh. 9, at 9-10.) The MOU was approved by the APA Board of Directors on or about December 29, 2012, and by the corporations' Boards of Directors. The USAPA BPR submitted the MOU to membership ratification by the USAPA membership pursuant to paragraph 18.b. of the MOU. The USAPA membership ratified the MOU as of February 8, 2013.[28]

In negotiating the MOU and presenting the MOU to its membership for ratification, USAPA advised its membership that the estimated total economic increase for US Airways Pilots over the

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[28] Under Section 18.b. of the MOU, had the MOU not been approved by USAPA, it would "be of no force or effect as to USAPA but shall remain in full force and effect as to the other parties." (Jt.Exh. 9, at 10.) The parties thus contemplated a scenario in which the merger would occur without USAPA's support, with the carriers and the American pilots continuing forward with the MOU – including the $87 million in annual improvements over the economic value of the 2012 CBA – with the East and West pilots continuing to work under their standalone CBAs until the conclusion of a JCBA.

next six years was $1.6 billion – in contrast to the $87 million annually (or $522 million over six years) gained by the larger American pilot group in the MOU/MTA. USAPA's leadership and advisors repeatedly stated that the US Airways Pilots (East and West) could not achieve those economic gains absent the merger with American.

The Finalization of the MTA by American and APA

Pursuant to paragraph 24 of the MOU, American and APA negotiated regarded improvements to the 2012 CBA valued at $87 million per year, to become effective upon the consummation of the merger and the effectiveness of the MTA. American and APA reached agreement on the revised terms on March 20, 2013, and were incorporated into a formal letter of agreement, LOA 13-08. The 2013 MTA maintained the 2012 CBA's amendable date of January 1, 2019.

The Corporate Approvals of the Merger,
and the Bankruptcy Court's Approval of the Plan of Reorganization

Following the conclusion and ratification of the MOU, the AMR and US Airways Boards of Directors approved the merger on or about February 13, 2013. The Bankruptcy Court approved the merger on April 11, 2013. The Court approved the proposed Disclosure Statement to Creditors on June 7, 2013. The Plan was approved by US Airways' shareholders on July 12, 2013, and by AMR's creditors (and the UCC) on August 2, 2013. The Plan was scheduled for final approval by the Bankruptcy Court on August 15, 2013.

The Department of Justice Suit

The merger also remained subject to approval by the U.S. Department of Justice under the Hart Scott Rodino Act. On August 13, 2013 – two days before the scheduled final Bankruptcy Court hearing on the proposed Plan of Reorganization – the Justice Department (and several State governments) filed suit to enjoin the merger, as a violation of antitrust law. U.S. v. US Airways

Group, No. 1:13-cv-01236-CKK (D.D.C.). In light of the Justice Department suit, the Bankruptcy Court deferred its final ruling on the proposed Plan of Reorganization. The carriers answered the Amended Complaint, taking the position that the merger was actually pro-competitive – that, while each carrier could survive and compete on a standalone basis, the merged carrier would be a more effective competitor with the newly-merged Delta (Northwest) and United (Continental).

On or about November 12, 2013, the carriers and the Justice Department announced the proposed settlement of the Justice Department suit, based on terms including the sacrifice of certain gates, slots and other assets by the merged carrier. The District Court approved procedures allowing the merger to go forward pending the Tunney Act settlement approval process. The Bankruptcy Court approved the settlement on November 27, 2013.

Final Bankruptcy Court Approval and Consummation of the Merger

In the wake of the Justice Department settlement, the Bankruptcy Court resumed its consideration of the proposed Plan of Reorganization. On December 9, 2013, the Court gave final approval to the Plan. The merger was consummated on that date.

As set forth below, the Merger Committees have agreed that December 9, 2013 is the appropriate Snapshot Date and Constructive Notice Date for the seniority integration.

American's Performance Under the Standalone Plan and the 2012 CBA

Prior to final approval and consummation of the merger, American continued to operate as a standalone carrier for nearly one year after the effective date of the 2012 CBA. During that period, the American Pilots enjoyed the economic benefits of the 2012 CBA; American's financial performance continued to improve; and American's performance tracked with and/or exceeded the targets of the Standalone Plan.

Events Subsequent to the Merger

The NMB Single Carrier Finding and Certification of APA.

As noted above, paragraph 26 of the MOU required APA to file a "single carrier" representation petition with the NMB. (Jt.Exh. 9, at 12.) APA filed such a petition on January 10, 2014. On August 8, 2014, the NMB found that American and US Airways were operating as a single carrier. American Airlines, Inc., 41 NMB 174 (2014). On September 16, 2014, the NMB certified APA as the single bargaining representative of the combined craft and class, without an election. American Airlines, Inc., 41 NMB 289 (2014).

The JCBA

In accordance with the MOU, New American and APA concluded a JCBA, which was ratified by the APA membership on January 30, 2015, and took effect as of January 1, 2015. Among other things, the JCBA included compensation increases for all affected pilots from the rates established in the 2012 American CBA and the MOU/MTA, retroactive to December 1, 2014. The JCBA extended the amendable date of the agreement by one year, to January 1, 2020.

At the hearing, the AAPSIC will present detailed analyses of the impact of the MOU, MTA and JCBA on the three pre-merger pilot groups.

The Negotiation of the Protocol Agreement and the Preliminary Arbitration

Paragraph 10.f. of the MOU contemplated the negotiation of a "seniority integration protocol agreement" within 30 days after December 9, 2013, while APA and USAPA continued to represent the separate crafts and classes. The carriers, APA and USAPA were unable to conclude a protocol agreement during that period, which was extended through February 18, 2015. The issues preventing agreement on a protocol included whether, once APA was certified as the single bargaining

representative, USAPA would have any role in the seniority integration process, and/or APA would have the authority to designate a separate Merger Committee to represent the West Pilots.

On February 27, 2014, USAPA filed suit to compel arbitration under the McCaskill Bond Act and Section 13(a) of the Allegheny/Mohawk LPPs. USAPA v. US Airways, Inc., No. 1:14-cv-00328 (D.D.C.). APA and the carriers contended, *inter alia*, that paragraph 10 of the MOU constituted an alternative process under Section 13(b) of the LPPs, and counterclaimed for arbitration of the matter as a minor dispute under the MOU.

In August 2015, the carriers, APA and USAPA engaged in mediated discussions regarding the outstanding issues for the Seniority Integration Protocol. Ultimately, the parties agreed to the Protocol Agreement; and the USAPA Complaint and the carrier and APA counterclaims were voluntarily dismissed, with prejudice. (Jt.Exh. 7.)

As noted at the outset of this prehearing statement, paragraph 8.b. of the Protocol Agreement contemplated a Preliminary Arbitration over whether, once certified as the single bargaining representative, APA could and should designate a separate Merger Committee to represent the interests of the West Pilots. (Jt.Exh. 7, at 9-10.) That proceeding was conducted by a Preliminary Arbitration Board consisting of arbitrators Joshua Javitz, Shaym Das, and Steven Crable. In an Order issued on January 9, 2015, the Preliminary Arbitration Board held that APA had the authority to designate a West Committee, and that APA should do so.

Continued Disputes Between the East and West Pilots

Neither the consummation of the merger, nor the NMB's finding of a single carrier and certification of APA as the single bargaining representative, has led to any abatement in the intractable conflict and litigation between the East and West Pilots.

Addington III. Following the conclusion of the MOU, West Pilots supported by Leonidas initiated a new class action alleging that USAPA had breached its duty of fair representation in entering into the MOU/MTA and maintaining separate East and West seniority lists, rather than implementing the Nicolau Award; and that US Airways had colluded in that breach. Addington v. USAPA, No. 2:13-cv-00471-RGR (D.Ariz.) ("Addington III"). The case ultimately led to a two-day hearing before on the West Pilots' motion for preliminary injunction, on October 22-23, 2013. In an Order entered on January 10, 2014, Judge Silver denied the motion. Among other things, Judge Silver found that, regardless of its obvious hostile motivation toward the West Pilots, USAPA had established a legitimate union purpose for entering into the MOU. Judge Silver articulated the "low standard" for satisfaction of the duty of fair representation:

> Any change in seniority "must rationally promote the aggregate welfare of employees in the bargaining unit." Id. This low standard means that so long as a Court can find some legitimate union purpose motivating a seniority change, the union has not breached its duty of fair representation.

January 10, 2014 Order, at 10. Judge Silver found that USAPA had met that standard, albeit just barely:

> The MOU does not contain a provision adopting a particular seniority regime. Thus, while the West Pilots' DFR claim is ripe, it is an exceptionally difficult claim to prove because no "new" seniority regime has been adopted. That is, the Court cannot compare the Nicolau Award to a new and different seniority list. Instead, the Court must compare the Nicolau Award to the facially neutral seniority provision in the MOU. Despite the difficulty in making this comparison, USAPA's actions are sufficiently disturbing to make this a very close call. Viewed as a whole, however, the present record does not establish the facially neutral provision was completely divorced from legitimate union objectives. Therefore, the West Pilots have not proven their DFR claim.

Id., at 9.

Judge Silver found that, "[i]n light of the increased compensation provisions, there is no doubt

that legitimate union objectives motivated some aspects of the MOU." Id., at 11. Judge Silver also found that the increased compensation justified the provision of paragraph 10.h. of the MOU continuing the separate East and West seniority lists in place: "A rational person could conclude that making the MOU explicitly neutral served the legitimate union purpose of securing the additional compensation contained in the MOU while putting off to another day the question of the appropriate seniority regime. The fact that USAPA might have, in truth, been motivated by a desire to weaken the chances of eventual adoption of the Nicolau Award is not enough." Id., at 12 (footnote omitted).

At the same time, Judge Silver emphasized the "pyrrhic" nature of USAPA's victory:

> USAPA has succeeded here but it is a Pyrrhic victory. As contemplated by the MOU, in the very near future an election will take place and a new representative will be chosen by all of the post-merger pilots. It is almost certain USAPA will lose that election. Once that happens, USAPA will no longer be entitled to participate in the seniority integration proceedings. The Court has no doubt – as is USAPA's consistent practice – USAPA will change its position when it needs to do so to fit its hard and unyielding view on seniority. That is, having prevailed in convincing the Court that only certified representatives should participate in seniority discussions, once USAPA is no longer a certified representative, it will change its position and argue entities other than certified representatives should be allowed to participate. The Court's patience with USAPA has run out. USAPA avoided liability on the DFR claim by the slimmest of margins and the Court has serious doubts that USAPA will fairly and adequately represent *all* of its members while it remains a certified representative. But all the Court can do at this stage is implore USAPA to, in the words of CAB, "make every effort to see that [the West Pilots'] are given extensive consideration, and that their interests are fairly and fully represented" during seniority integration. *National Airlines, Acquisition*, 84 C.A.B. 408, 477 (1979). And when USAPA is no longer the certified representative, it must immediately stop participating in the seniority integration.

(Id., at 20-21 [footnotes omitted].)[29]

Litigation Over the USAPA Treasury. In addition, the East and West Pilots have each

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[29] Judge Silver's decision in Addington III is pending on appeal and cross appeal in the U.S. Court of Appeals for the Ninth Circuit. Addington v. USAPA, Nos. 14-15757, 14-15874, 14-15892 (9th Cir.).

initiated litigation over the disposition of the USAPA treasury, now that USAPA ceased to be the bargaining representative of any pilots. On September 16, 2014 – the day USAPA ceased to be the US Airways' pilots' bargaining representative – USAPA initiated a declaratory judgment action in North Carolina state court, seeking a declaration that its retention of the USAPA treasury, *inter alia*, to support the USAPA Merger Committee, was proper. The defendant West Pilots petitioned to remove the action to federal court. The removal petition is pending. USAPA v. Velez, No. 3:14-cv-577 (W.D.N.C.)

Conversely, the West Pilots have initiated a suit against the principals of USAPA under Section 501 of the Labor-Management Reporting and Disclosure Act, alleging breaches of fiduciary duty, including the continued use of monies collected as dues from the US Airways Pilots (East and West) to support a Merger Committee representing the interests of the East Pilots. Bolleier v. Hummel, No.3:15-cv-00111-RJC-DCK (W.D.N.C.). The plaintiffs have filed a motion for temporary restraining order, which is pending.

Representation of the West Pilots in This Proceeding. Finally, as noted above, the possible separate participation of the West Pilots in this proceeding was one of the principal issues of contention in the negotiation of the Protocol. While that issue was ultimately resolved through the Preliminary Arbitration and APA designation of the West Committee, the issue has not been put entirely to rest. The USAPA Committee professes to represent both the East and West Pilots, and "certified" both an East seniority list and a purported West seniority list under the Protocol.[30]

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[30] For the record, since APA has designated the West Committee to represent the interests of the West Pilots, the AAPSIC treats the list produced by the West Committee as the pre-merger West seniority list to be relied on this matter.

Fleet Developments

Since the consummation of the merger, the merged carrier has continued to operate the American and US Airways systems separately, in accordance with Section 8 of the MOU. During that period, the Company has modified the separate pre-merger fleet plans discussed above, to "rationalize" the fleet and fleet plan in connection with the consolidation of the carriers. Since the vast majority of the projected fleet growth pre-merger was in American's pre-merger operation, the effect of this post-merger rationalization has been to reduce the growth expectations of the AA pilots. For instance, in a Form 8-K filed with the Securities and Exchange Commission on June 15, 2015, the Company has disclosed that it has delay the scheduled deliveries of 35 A-321neo aircraft which American had on order prior to the merger.[31]

The Pre-Merger Seniority Lists

The Protocol references the three pre-merger lists in effect as of December 9, 2013 – the American seniority list, the US Airways (East) seniority list, and the US Airways (West) seniority list. (Jt.Exh. 7, at 6.)[32]

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[31] American has provided fleet plan information to the Merger Committees, which is confidential. To simplify the submission of this prehearing statement, undersigned counsel has refrained from reciting specific projected fleet information. The AAPSIC will present evidence regarding the projected fleet in its case-in-chief at the hearing.

[32] Under the US Airways/AWA Transition Agreement, until a single seniority list was implemented, US Airways was required to maintain a third "New Hire Seniority List," in addition to the East and West lists, for pilots hired by the merged US Airways following the US Airways/America West merger. For purposes of this proceeding, those "Third List" pilots have been included in the pre-merger seniority list for the operation to which they were assigned (East or West).

In producing the pre-merger American seniority list, pursuant to the Protocol Agreement, the AAPSIC has not certified the information referenced in paragraph 2.a.(2) of the Protocol regarding pilot absence data. As discussed below, the Protocol contemplated the production of the pre-merger seniority lists

(continued...)

The Demographics of the Pre-Merger Lists

There are a number of demographic characteristics which may be material to the issues before the Arbitration Board.

As of December 9, 2013, the American seniority list included a total of 9,845 pilots; the East list included a total of 3,566 pilots; and the West list included a total of 1,608 pilots. Those totals included, in addition to "active" pilot, pilots in inactive statuses. The breakdown between active and inactive pilots on the three lists was as follows:[33]

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[32](...continued)
based on data provided by the Company; the Company has not produced data regarding the subjects referenced in paragraph 2.a.(2) that are accurate, reliable or consistent.

[33]

Certain statuses were treated differently at the pre-merger carriers. For instance:

* At American, pilots bid for assignments to the Tulsa maintenance base to ferry aircraft to and from maintenance and perform other flying assignments, and are therefore considered active pilots. This may not be the case at the other carriers.

* Similarly, check airmen at American hold active pilot positions. This may not be true to the same degree at East and West.

* The 2003American West CBA had a "short-term disability" status in addition to long-term disability; both were inactive statuses. The 2012 American CBA and 1998 US Airways CBAs had no short-term disability status; pilots assumed long-term disability status after exhausting contractual sick leave.

* Under the 2012 American CBA, pilots on long-term disability were removed from the seniority list after five years. Under the 2003 America West CBA, pilots were removed after eight years of long-term disability. Under the 1998 US Airways CBA, as amended, there was no provision for removal of pilots on long-term disability from the seniority list; East pilots on long-term disability thus remained on the seniority list until they reached mandatory retirement age.

In addition, among the American Pilots in inactive status as of December 9, 2013 were pilots protected by Section 17 and Letter T of the 2012 CBA and predecessor CBAs. Those pilots had originally been furloughed by American; under Section 17 and Letter T, when offered recall they exercised the right to defer their return to active status subject to various conditions; following deferral, those pilots were effectively in a voluntary leave of absence status under the CBA, from which they could return to active status
(continued...)

	Active	Inactive
AA	8034	1811
US(E)	3025	541
US(W)	1403	205
Total	12,462	2557

As discussed above, both the American seniority list and the US Airways (East) seniority list include, in addition to pilots hired directly by those airlines, many pilots who achieved placement on the pre-merger seniority list as a result of prior corporate transactions and seniority integrations. The breakdowns were as follows, as of December 9, 2013:

[33](...continued)
only if American was otherwise adding pilots. Section 17 and Letter T have continued to apply under the MTA and JCBA.

The AAPSIC's proposed methodology gives each pre-merger group the benefit of its pre-merger expectations, by treating pilots as active or inactive in accordance with their treatment at the respective pre-merger carriers under the respective pre-merger CBAs. To that end, the AAPSIC takes the certified seniority lists produced by the USAPA and West Committees at face value, and does not contest the attribution of particular pilots, with two exceptions:

* The West Committee has credited a number of pilots, whom it acknowledges were in short-term disability status (STDS) as of December 9, 2013, as holding active jobs at that time. The AAPSIC treats those pilots as inactive, inasmuch as they were contractually disqualified from active status as of December 9, 2013, and management was therefore assigning other pilots to cover the staffing need which the pilots in question otherwise would fill.

* The East seniority list certified by the USAPA Merger Committee identified pilots in "SPV" status, including check airmen who are treated as active pilots. The USAPA Committee has separately identified 17 of those "SPV" pilots who were management positions as of December 9, 2013. The AAPSIC treats those 17 pilots as inactive management pilots.

AA		US Airways	
Direct Hires	8066	Allegheny/USAir	1993
TWA	1541	Empire	110
Reno	195	Piedmont	1253
AirCal	43	PSA	143
		Trump Shuttle	67
		US (East) Total	3566
		America West	1608
TOTAL	9845		5174

As a result, neither the American nor the US Airways (East) seniority list is arranged on a date basis. Each includes pilots whose placement on the pre-merger list was based on a metric other than date of hire, length of service, or other measure of longevity.

In addition, each pre-merger carrier had distinct historical patterns of hiring and furloughs. The patterns can be summarized as follows:

American	US Airways
Hiring 1973-1980	Hiring 1970-1982 (East)
	Hiring 1983-1991 (West)
Furloughs 1980-1984	Furloughs 1982-1984 (East)
Hiring 1984-1993 (+ Air Cal)	Hiring 1985-1990 (Piedmont, PSA) (East)
Furloughs 1993-1998	Furloughs 1991-1998 (Trump Shuttle) (East)
	Furloughs 1992-1996 (West)
	Hiring 1996-2001 (West)
Hiring 1998-2001 (+ Reno Air & TWA)	Hiring 1998-2001 (East)
Furloughs 2001-2008	Furloughs 2001- 2010 (East)
	Furloughs 2001-2002 (West)
	Hiring 2003-2008 (West)
	Furloughs 2008-Present (West)
Hiring 2013-Present	Hiring 2011-Present (East)

The pre-merger lists also had distinct patterns of anticipated attrition based on the mandatory pilot retirement age of 65. Those patterns can be summarized as follows:

ACTIVE PILOT AGE-65 RETIREMENTS
(Absolute; Per Cent of 12/9/13 Active Pilots)

YEARS	AA	US(E)	US(W)
2015-2019	1019 (12.68%)	887 (29.32%)	209 (14.90%)
2020-2024	2893 (36.01%)	888 (29.36%)	302 (21.53%)
2025-2029	2584 (32.16 %)	455 (15.04%)	376 (26.80%)
2029-2039	1452 (18.07%)	324 (10.71%)	448 (31.93%)
TOTAL:	7948 (98.93%)	2554 (84.43%)	1335 (95.15%)

As indicated by these figures, for a period – roughly corresponding to the term of the JCBA – the East Pilots expect greater attrition as a proportion of their pre-merger seniority list. However, thereafter, the American Pilots anticipate disproportionate attrition through 2029; only in 2029 and beyond does the West Pilots' attrition exceed that of the American Pilots on a proportional basis.

The Differing Measurements of Seniority at the Pre-Merger Carriers

In addition to the demographic issues just noted, the pre-merger carriers did not share the same metrics by which seniority was measured. Thus, at US Airways (East and West), a pilot began accruing seniority on the date he or she commenced initial qualification training – his or her "date of hire." At American, management keeps several separate dates, including "occupational date," on which the American seniority list is built; "classification date;" "company date;" and "date of hire," which does not correspond with the "date of hire" at East or West, and which has no significance to competitive seniority or any other purpose. A pilot was placed on the American seniority on his or her "occupational date," which has been defined in various ways over time, but with exceptions corresponds roughly to the date the pilot completes training and commences revenue flying.

The Lack of Reliable Absence Data

Paragraph 2.a. of the Protocol called for the exchange of specified seniority data by the

Merger Committees, "to the extent such information is available and can be compiled/provided by American without undue burden or expense." (Jt.Exh. 7, at 2.) Such data was to include data regarding pilots' absences from active service – "For each pilot, the start and end date of any furlough, period of disability, or leave of absence, or any intervening period of service with the pre-merger carrier other than as a flight deck crew member; an explanation for the furlough, period of disability, leave of absence, or period of service other than as a flight deck crew member; and an explanation of the effect, if any, of the furlough, period of disability, leave of absence, or period of service other than as a flight deck crew member on the pilot's seniority, longevity, compensation and/or benefits." (Id., at 2.)

It is undisputed that the Company has been unable to provide data regarding these subjects that are accurate, consistent, or reliable. As a result, it is not possible to calculate adjustments to length of service that are reliable.

Argument

I. THE APPLICABLE PRE-MERGER EQUITIES

As discussed above, the linchpin of the "fair and equitable" standard is the respective reasonable pre-merger career expectations of the American, East and West Pilots – to base the ISL on what the respective pilot groups "brought to the merger;" the equitable sharing of post-merger upsides and downsides consistent with those respective expectations; and the avoidance of undue windfalls. The parties have agreed that December 9, 2013 (the date of final Bankruptcy Court approval and consummation of the merger) is the appropriate Snapshot Date – i.e., the equities of the pre-merger American and US Airways (East and West) pilot groups will be measured immediately prior to that date. The parties have also stipulated that December 9, 2013 is the

Constructive Notice Date – i.e., the date after which any pilot hired by a pre-merger airline is deemed to know that he or she will be working for a combined entity and that his or her career expectations will be a product of the success or failure of the combined airline, irrespective of which airline hired the pilot.

As such, the first equitable question before the Arbitration Board is the determination of the respective groups' reasonable career expectations immediately prior to December 9, 2013. Immediately prior to that date, the American Pilots' expectations were superior on every significant metric – the carriers' pre-merger networks; the carriers' pre-merger fleets and fleet plans; the carriers' pre-merger, standalone competitive positions; and the pilots' pre-merger compensation and benefits. The East and West Pilots have already benefitted disproportionately from the merger, while the carrier's post-merger "rationalization" of its combined fleet has come at the expense of the American Pilots' pre-merger growth expectations. Finally, the proper starting point of the integration should be the three separate lists in operation as of December 9,2013 (American, East and West), rather than the Nicolau Award, although the West Pilots' interest in the Nicolau Award is an equity to be weighed in constructing the integrated seniority lists.

A. The American Pilots Had Superior Pre-Merger Career Expectations

The evidence will demonstrate that, on every significant metric, the American Pilots' reasonable career expectations immediately prior to December 9, 2013 were superior to those of the East and West Pilots.

American had a superior network. As set forth above, immediately prior to the merger, the American Pilots worked in a network that provided superior work opportunities. American's domestic and international route networks were larger and superior in scope. American had more

hubs, and those hubs and domiciles were stronger from a competitive standpoint.

In addition to making for a stronger carrier, American's route and hub network made for more varied and desirable work opportunities for its pilots. Thus, for instance the American Pilots had nine domiciles from which to choose, compared with three East domiciles and one West domicile; and the American pilots had more long-haul international flying opportunities than the East and (especially) West pilots.

American had a superior fleet, and superior fleet growth and enhancement opportunities. As also discussed above, immediately prior to the merger, the American Pilots worked in a superior fleet, with superior opportunities for fleet growth and enhancement. American's fleet on hand as of December 9, 2013 was superior, in number, and in the type of aircraft in operation. American had a far more extensive "book" of orders and options, providing opportunities for growth and enhacement, including new-generation, more efficient aircraft.

American's fleet similarly translated into more varied and desirable work opportunities for the American Pilots, and American's pre-merge fleet plan created greater opportunities for future job growth.

American was in a superior competitive position. As set forth above, as of December 9, 2013, American was in a competitive position superior to US Airways. This was fueled, in part, by American's superior route network, hubs, fleet on hand and anticipated fleet growth, discussed above. American had been operating under its Standalone Plan – including one year's experience under the 2012 American/APA CBA. American's performance was profitable and improving on that basis. That performance was tracking well against the goals of American's Standalone Plan.

The American Pilots had superior compensation and benefits. Perhaps the largest – and

most undeniable – difference in pre-merger expectations was in compensation and benefits. During the period following 9/11, each pilot group made economic sacrifices to support its carrier in the difficult environment during that period. However, as of December 9, 2013, it is indisputable that the AA Pilots had been and were at industry-standard compensation, as confirmed in the 2012 CBA, effective January 1, 2013. The American Pilots had, by strenuously resisting American's Section 1113 proposals to the point of abrogation of the 2003 CBA by the Court, achieved the 2012 CBA. That 2012 CBA was negotiated based on American's Standalone Plan, and was approved by the Bankruptcy Court based on American's Standalone Plan. As noted above, American operated successfully under that CBA, in accordance with the goals of its Standalone Plan for nearly one year prior to the merger. The American Pilots were going to continue to work under those industry-standard terms and conditions of employment, regardless of whether the merger proceeded.

In contrast, the East and West Pilots were still operating under the less desirable turns of the 1998 US Airways CBA (as modified in US Air's two bankruptcy proceedings) and the 2003 America West CBA. Absent the merger, they had no prospect of achieving an industry-standard CBA, because US Airways' network and business model would not support an industry-standard contract, and the continuing impasse over the Nicolau Award prevented the conclusion of a single agreement.

At the hearing, the AAPSIC will present detailed analyses of the differing pre-merger compensation and benefits of the three pre-merger groups.

The anticipated attrition of US Airways (East and West) Pilots must be weighed against the anticipated attrition of American Pilots, and the disproportionate economic gains by the East and West Pilots as a result of the merger. The USAPA Committee is likely to point to the anticipated age-65 attrition of East Pilots as an equity which the Arbitration Board must take into

account; and, the West Committee can be expected to claim the benefit of that East attrition as members of the combined US Airways pilot group. As set forth above, expected attrition is one equity, but must be weighed with the other equities relevant to the integration.

One such counterveiling equity is the American Pilots' own expected age-65 attrition. As set forth above, the American Pilots also have significant projected attrition. In fact, when viewed proportionally, the period in which the East Pilots have disproportionate projected attrition is occurring largely before the ISL will be implemented, when the East Pilots are already capturing 100 per cent of that attrition;[34] and ends in 2020 or 2021 (roughly coinciding with the amendable date of the JCBA), at which point projected American attrition will exceed East attrition on a proportional basis. In other words, the East Pilots are already receiving most of the benefit of this equity, regardless of the construction of the ISL.[35]

Moreover, the East (and West) Pilots' interest in the projected East attrition must be weighed against the unprecedented economic gains already derived by the East and West Pilots from the merger, regardless of the construction of the ISL. As in Delta/Northwest (discussed above), in which the consideration of Northwest attrition was offset by the Northwest Pilots' economic gains from the merger, so it is here – even if the East and/or West Pilots can claim an equity based on projected attrition, they are already reaping economic gains equivalent to multiple "virtual upgrades" in positions as a result of the MTA and JCBA, which they could never have expected absent the merger.

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34 To the extent that this harms the West Pilots, based on the lack of a single pre-merger US Airways seniority list, that is an equity to be weighed between the East and West Pilots, not the American Pilots, for the reasons discussed below.

35 Moreover, as discussed below, to the extent that this is a legitimate US Airways equity, the AAPSIC proposal protects it through a proposed Group IV Captain fence until the amendable date of the JCBA, after which the pre-merger American attrition will overtake the East attrition on a proportional basis.

Indeed, the Northwest Pilots' economic gains in Delta/Northwest, based on which the arbitration board in that case offset the Northwest attrition, absolutely pales in comparison to the unprecedented gains already achieved by the East and West Pilots as a result of this merger.[36]

B. The Economic Benefit Of The MOU, MTA And JCBA Have Gone Disproportionately To The East And West Pilots

As discussed above, the MOU and MTA (including the improvements negotiated by American and APA in LOA 13-08) set the terms and conditions of employment, effective on consummation of the merger on December 9, 2013. By the express terms of paragraph 1 of the MOU, the economics of the MOU/MTA were negotiated from the foundation of the American Pilots' standalone, pre-merger 2012 CBA. Accordingly, for the American Pilots, the MOU and MTA represented modest improvements over the pre-merger compensation the AA Pilots already enjoyed, and under which they were going to continue to work, merger or no merger. In contrast, through the MOU/MTA the East and West Pilots achieved an entirely new CBA, with wages and benefits far exceeding their pre-merger terms and conditions of employment, and far exceeding anything they had any prospect of achieving absent the merger. Consequently, the vast majority of the economic improvements in the MOU and MTA have gone to benefit the East and West Pilots. Indeed, simply by reason of the consummation of the merger and the implementation of the MOU effective on

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[36] In United/Continental, the arbitration board declined to place material weight on pre-merger compensation or economic gains from the transaction, but that was based on a finding that, when taking all compensation and the pilot groups' relative size into account, the supposed disparity was not material. United/Continental, at 11-12.

Given the relative age of the pilots affected, and the circumstances of the industry in recent years, the importance of this economic equity is magnified. The last (lost) decade has seen the earnings and retirements of the pilot groups negatively impacted by the economic challenges, exacerbated by the stagnation created as a result of the change from age-60 retirement to age-65. The limited horizon available to many pilots to recoup some of these losses – and especially the loss of the ability to capture the effects of compounding – makes compensation, and the need to get it sooner, that much more important.

December 9, 2013, the East and West Pilots received the economic equivalent of "virtual upgrades" in position, without any change in their flying status. And, those gains were "front-loaded" – the East and West Pilots achieved them immediately, and they will continue to enjoy those improvements, regardless of the outcome of this proceeding.

The JCBA, effective January 1, 2015, produced further improvements for all of the affected pilots, across the board. However, those across-the-board benefits do not materially alter the vast disparity in the economic benefits to the pre-merger pilot groups from the merger. Regardless of how the seniority lists are integrated, the East and West Pilots stand to gain, on average, hundreds of thousands of dollars per pilot in additional compensation during the term of the JCBA, simply by reason of the merger.

In contrast, the American Pilots have to date received the relatively modest improvements in the MTA over the 2012 CBA, and the shared improvements over the MTA in the JCBA. And, unless these disparities in pre-merger compensation and post-merger economic gains are taken into account in constructing the integrated seniority list, in the event of a contraction in the expected size of the airline the American Pilots will be at risk of losing the relatively modest gains they have enjoyed due to the merger, while the East and West pilots will continue to receive compensation far beyond what they had prior to the merger regardless of how the lists are integrated.

C. The Post-Merger Rationalization Of The Combined Fleet And Fleet Plan Is At The Expense Of The American Pilots' Growth Expectations

As discussed above, as of December 9, 2013, American had a significant "book" of aircraft orders and options, which supported American Pilots' expectations for fleet growth and enhancement. In contrast, the East and West Pilots had significantly lesser expectations. Since the merger, as the merged carrier has begun to seek out the "synergies" of the merger, the merged fleet plan is reduced

in relation to the aggregate of the carriers' pre-merger fleet plans. The consequence is that less growth in the aggregate fleet is projected than before the merger. Because the American Pilots had the vast majority of the pre-merger growth expectations, the effect of these post-merger changes in the fleet plan has been to degrade the growth expectations brought to the merger by the American Pilots.

D. The Treatment Of The Nicolau Award

One large "elephant in the room" to be addressed by the Arbitration Board is the treatment of the Nicolau Award. Given the eight years of intractable warfare between the East and West Pilots, it is effectively assured that the West Pilots will propose that the integrated seniority list be based on the Nicolau Award; conversely, the USAPA Committee will presumably urge that the Nicolau Award is irrelevant and should be disregarded entirely. The AAPSIC takes the middle ground. The proper starting point for the integration is the three seniority lists in effect as of December 9, 2013, rather than the Nicolau Award; but, the West Pilots' claim to the Nicolau Award is one equity to be weighed in constructing the integrated list.

1. The Proper Starting Point For The Seniority Integration Is The Three Pre-Merger Lists In Effect As of December 9, 2013

This case is about the integration of the three seniority lists in effect as of the Snapshot date – the American, East and West seniority lists – in the context of the American-US Airways merger, as of December 9, 2013. The applicable equities to weigh in this matter are the pre-merger expectations of those three distinct pilot groups, immediately prior to that Snapshot Date – as stipulated by the parties. In that context, the Nicolau Award does not reflect the equities of these groups, at that time, in the context of this transaction, for a variety of reasons, including the

following:

* The Protocol Agreement expressly provided for the exchange of information based on "the status quo of the three seniority lists in effect at the carriers on December 9, 2013 (i.e., American, US Airways (East), US Airways (West))." (Jt.Exh. 7, at 5.)

* The Nicolau Award arose in the context of the 2005 merger of US Airways and American West. Arbitrator Nicolau weighed the equities at that time, given the transaction and parties before him, not the equities applicable to the present case.

* The Nicolau Award did not, and does not, take into account the equities of American Pilots, who were not parties before Arbitrator Nicolau.

* The Nicolau Award has never been implemented or governed seniority.

* As of December 9, 2013, there was no realistic prospect that the Nicolau Award would be implemented.

* The equities underlying the Nicolau Award have been superseded by the continued maintenance of the separate East and West operations and seniority lists since 2007.

* The hypothetical implementation of the Nicolau Award with a single US Airways CBA would have impacted US Airways' performance, and led to a different set of realities as of December 9, 2013 than existed on that date.

Accordingly, the proper starting point for the integration is "the three seniority lists in effect at the carriers on December 9, 2013 (i.e., American, US Airways (East), US Airways (West))" identified in the Protocol. (Jt.Exh. 7, at 5.)

2. The West Pilots' Claim To The Nicolau Award Is One Equity To Be Weighed Between The East And West Pilots, But Not At The American Pilots' Expense

The foregoing notwithstanding, the AAPSIC acknowledges that the Nicolau Award is not irrelevant. The West Pilots have always asserted that they are entitled to the benefits of the Nicolau Award, and continue in that assertion today. The East Pilots have always resisted that assertion, and prevailed before Judge Silver both before and after the American/US Airways merger, in the argument that there is no requirement that the Nicolau Award be implemented; but, that does not

necessarily extinguish the West's equitable argument in its entirety. The Protocol Agreement and the Preliminary Arbitration Board's order acknowledge the East and West Pilots' competing interests. In short, while the Nicolau Award is not binding on the Arbitration Board, the West Pilots' claim to its benefits is one equity to be weighed in constructing the integrated seniority list.

At the same time, to be clear, the West Pilots' claim to the Nicolau Award is a claim against the East Pilots, not the American Pilots. The American Pilots are innocent bystanders in the "Hatfields-and-McCoys" feud between the East and West Pilots. If the West Pilots are to be given any credit based on the Nicolau Award in the construction of the integrated list, that credit should come at the expense of the East Pilots, not the American Pilots.

II. THE AAPSIC PROPOSAL

The AAPSIC has constructed a seniority integration proposal, a copy of which is Appendix A to this Prehearing Statement, which reflects the equities summarized in the immediately preceding section. For pilots from each of the three groups with seniority pre-dating the US Airways/American West merger, the AAPSIC proposes that the pre-merger seniority lists as of December 9, 2013 (with inactive pilots as of December 9, 2013 "pulled and plugged") be integrated on an adjusted category and status basis utilizing the active pilot jobs as of December 9, 2013, with the category and status rankings adjusted to reflect the superior value of pre-merger American jobs in the same category and status groupings. For pilots who were placed on the pre-merger seniority lists subsequent to the constructive notice date in the US Airways/America West merger, East and West Pilots are integrated on a date-of-hire basis, and American Pilots are integrated with those East and West Pilots on a ratio basis. The AAPSIC proposes conditions and restrictions required under the MOU; to recognize the US Airways (East and West) Pilots' interest in capturing projected attrition through Group IV

Captain positions through the amendable date of the JCBA; and to preserve Supplement C's protections for the former TWA Pilots. The AAPSIC proposes, in agreement with the other Merger Committees, that the integrated seniority lists and conditions and restrictions be implemented as soon as practicable, and in no event later than the third flying month after the issuance of the Arbitration Board's award. Finally, the Merger Committees have agreed to defer the development of the post-award dispute resolution procedure, in the hope that an agreed procedure can be arrived at.

A. The Construction Of The Proposed Integrated List

1. The Pre-Merger Seniority Lists, Snapshot Date And Constructive Notice Date

Pursuant to the Protocol Agreement, the Merger Committees have exchanged seniority-related information for the pre-merger American, East and West seniority lists as of December 9, 2013.[37] In addition, the Merger Committees have agreed that December 9, 2013 represents –

* the "Snapshot Date" – i.e., the equities of the pre-merger American and US Airways (East and West) pilot groups will be measured immediately prior to that date; and

* the "Constructive Notice Date" – i.e., the date after which any pilot hired by a pre-merger airline is deemed to know that he or she will be working for a combined entity and that his

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[37] As noted above, because the West Committee has been designated by APA to represent the interests of the West Pilots, the AAPSIC relies on the list produced by the West Committee in constructing and analyzing its proposal.

As of December 9, 2013, some former TWA Pilots who had been awarded jobs protected under Supplement C of the 2012 CBA, had not assumed those positions. As of December 9, 2013, the Company was implementing Supplement C to arrive at the required number of pilots fully trained and in places by May 1, 2016. By the terms of Supplement C, those position awards could not result in the displacement of an incumbent legacy American pilot. Accordingly, in its certified list, the AAPSIC has credited those pilots with the awarded positions.

As of December 9, 2013, there were West Pilots who had been furloughed from the West operation and were holding positions in the East operation, pursuant to the US Airways/America West Transition Agreement. For purposes of constructing the proposed ISL, the AAPSIC treats those pilots as active West Pilots, holding positions attributable to West.

> or her career expectations will be a product of the success or failure of the combined airline, irrespective of which airline hired the pilot.

Accordingly, the AAPSIC proposal begins with the three pre-merger seniority lists, as of December 9, 2013. Pilots who achieved placement on one of the seniority lists after that date are to be placed on the integrated list following all pilots on the pre-merger lists as of December 9, 2013, in order based on their seniority as defined under the JCBA.

2. The Treatment Of Inactive Pilots

As noted above, each pre-merger seniority list included, in addition to pilots in active status, pilots in various inactive statuses as defined under the respective pre-merger CBAs. With two exception,[38] the AAPSIC takes those pilots as it finds them on the December 9, 2013 certified seniority lists – a pilot's status is treated as active or inactive in accordance with his treatment on the pre-merger seniority list, under the applicable pre-merger CBA.

The AAPSIC treats inactive pilots in the "usual" manner, by "pulling and plugging" each inactive pilot – removing him or her before constructing the integrated list; and re-inserting him or her after construction of the integrated list, just below the pilot he or she was below on the pre-merger seniority list. See Delta/Western (Feller 1989)(reciting that Delta and Western negotiators had agreed to pull and plug, "in accordance with the usual practice with respect to such pilots"). There is ample precedent for this treatment of categories of inactive pilots in previous cases. See, e.g., Air Transport

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[38] As noted above, the West Committee credits pilots with holding active pilot jobs as of December 9, 2013, who were in fact in short-term disability status (STDS) at that time. The AAPSIC treats those pilots in accordance with their contractual status as of the snapshot date – as being disabled and therefore inactive.

As also noted above, the AAPSIC treats 17 East Pilots identified as "SPV" as inactive, based on their management status.

International/Capital Cargo International (Bloch 2013); Republic/Frontier/Midwest/Lynx; Delta/Northwest; Northwest/Republic (pull-and-plug used in determining staffing and constructing category and status quota); Texas International/Continental (Greenbaum 1983).

3. The Category And Status Job Rankings

The AAPSIC proposed methodology begins with a ranking of the pre-merger groups' jobs on a pure category and status basis. The AAPSIC relies on the "groups" of aircraft defined by the 2012 CBA, MOU/MTA, and JCBA – Group I; Group II; Group III; and Group IV:

> **Group I**: With the exception of aircraft identified in Groups II through V below, any aircraft configured (i.e. as operated by American Airlines) with greater than seventy-six (76) seats and less than one-hundred-eighteen (118) seats, including E190/195, CRJ-1000, MRJ- 100, and Bombardier CS100.
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> **Group II**: Bombardier CS300, A319, A319neo, B737-700, B737-7MAX, MD80, B737-800, B737-8MAX, B737-900, B737-9MAX, A320, A320neo, A321, A321neo
>
> **Group III**: B757, B767-200, B767-300, A300
>
> **Group IV**: B767-400, B777-200, B777-200ER, B777-200LR, B777-300, B777-300ER, B787-8, B787-9, B787-10, A332, A333, A340, A350
>
> **Group V**: A380, B747 (all variants)

The AAPSIC ranks those jobs as follows, based on aircraft categories in service in the three pre-merger operations as of December 9, 2013:

AA	US (East)	US (West)
Group IV CA	Group IV CA	
Group III CA	Group III CA	Group III CA
Group II CA	Group II CA	Group II CA
Group IV FO	Group IV FO	
Group III FO	Group III FO	Group III FO
Group II FO	Group II FO	Group II FO
	Group I CA	
	Group I FO	

Based on the pre-merger seniority lists, as of December 9, 2013 the three pre-merger groups held the following active pilot jobs in those categories and statuses:[39]

	AA	US (East)	US (West)
Group IV CA	454	180	
Group III CA	1008	172	69
Group II CA	2243	946	624
Group IV FO	826	332	
Group III FO	1257	208	73
Group II FO	2246	940	637
Group I CA		131	
Group I FO		116	

The evidence will demonstrate that a Group IV First Officer job is comparable to a Group II Captain job, based on the pay, working conditions and bidding patterns associated with those jobs. Similarly, the evidence will demonstrate that a Group I Captain job is comparable to a Group II First Officer job. The AAPSIC therefore combines those respective groups, resulting in the following category and status job rankings as of December 9, 2013:

[39] This December 2013 "snapshot" of the carriers' staffing is the basis for the staffing assumptions utilized by the AAPSIC in its analysis of the impact of its proposed ISL.

	AA	US (East)	US (West)
Group IV CA	454	180	
Group III CA	1008	172	69
Group II CA/ Group IV FO	3069	1278	624
Group III FO	1257	208	73
Group II FO/ Group I CA	2246	1071	637
Group I FO		116	

4. The Treatment Of Post-2007 Pilots

The US Air/America West Transition Agreement required the maintenance of a "New Hire Seniority List" for pilots hired after the constructive notice date in that merger:

> ... New pilots hired during the Separate Operations will be placed by date of hire on a third seniority list entitled "New Hire Seniority List," will be junior to all pilots on the pilot seniority lists at America West and US Airways on the effective date of this Letter of Agreement and will continue to be junior to those pilots on the integrated seniority list of America West and US Airways pilots.

(US/AWA Transition Agreement, at 5.) Whatever the merits or *bona fides* of the Nicolau Award, those "Third List" pilots were on constructive notice when they were hired that their seniority was subordinate to pilots hired by either US Airways or American West prior to that constructive notice date; as such, all pilots on that "Third List" should be junior to all original East and West Pilots.

The AAPSIC therefore makes a further adjustment to the job rankings, placing those "Third List" pilots below all pre-2007 US Airways/America West pilots on the ISL, an a date-of-hire basis. The AAPSIC places all Pilots who came onto the pre-merger American seniority list during the same period, in the same portion of the ISL, integrating them with the East and West "Third List" pilots

on a ratio basis.

5. The Adjusted Category And Status Job Rankings

The pure category and status rankings above do not adequately reflect the pre-merger equities of the pre-merger pilot groups. As discussed above, across the board, jobs at American in a given category and status were more valuable than jobs in the same equipment category and status groupings in either the East or West operation, based on the pay, flying opportunities and other working conditions associated with those jobs. To take the additional value of the pre-merger American jobs into account, the AAPSIC adjusts the status and category rankings by moving the American Pilot jobs in each of the foregoing category and status groupings upward *vis a vis* 50 per cent of the East and West pilots in the same original category and status grouping.

The foregoing methodology results in the following series of ratios, on the basis of which the integrated list is constructed:[40]

	AA	US (East)	US (West)
Ratio 1	454	90	
Ratio 2	1008	176	35
Ratio 3	3069	725	346
Ratio 4	1257	743	349
Ratio 5	2122	416	348
Ratio 6		312	312
Post-2007	124	[563 (DOH)	13]

[40] In addition to these numbers of active pilots as of December 9, 2013, the Company has added approximately 900 pilots to the three separate seniority lists since December 9, 2013. Based on the stipulated Constructive Notice Date, those pilots will be placed on the ISL after all pilots on the pre-merger lists as of December 9, 2013.

6. The Resulting ISL

In mathematical terms, the AAPSIC's proposed list is constructed as follows:

1. All pilots holding seniority on a respective list but who were inactive on the date of constructive notice/snapshot date (December 9, 2013) are to be removed from the respective purged and updated pre-merger lists.

2. The first 544 positions on the ISL are to be filled with the first 454 American Airlines pilots and the first 90 US Airways (East) pilots in a ratio of 454 : 90, beginning with an American Airlines pilot.

3. The next 1,219 positions on the list will be filled by the next 1,008 American Airlines pilots, the next 176 US Airways (East), and the first 35 US Airways (West) pilots in a ratio of 1,008 : 176 : 35, beginning with an American Airlines pilot.

4. The next 4,140 positions on the list will be filled by the next 3,069 American Airlines pilots, the next 725 US Airways (East), and the next 346 US Airways (West) pilots in a ratio of 3,069 : 725 : 346, beginning with an American Airlines pilot.

5. The next 2,349 positions on the list will be filled by the next 1,257 American Airlines pilots, the next 743 US Airways (East), and the next 349 US Airways (West) pilots in a ratio of 1,257 : 743: 349, beginning with an American Airlines pilot.

6. The next 2,886 positions on the list will be filled by the next 2,122 American Airlines pilots, the next 416 US Airways (East), and the next 348 US Airways (West) pilots in a ratio of 2,122 : 416 : 348, beginning with an American Airlines pilot.

7. The next 624 positions on the list will be filled by the next 312 US Airways (East), and the next 312 US Airways (West) in a ratio of 312 : 312, beginning with a US Airways pilot.

8. The next 700 positions on the list will be filled by the next 124 American Airlines pilots, integrated in a ratio of 124 : 576 with the next 563 US Airways (East) and the next 13 US Airways (West) pilots, who are pre-integrated with each other on a date of hire basis in accordance with the US Airways/America West Transition Agreement.

9. Each pilot pulled pursuant to 1. above will be re-inserted into the ISL immediately below the pilot who appeared immediately above that pulled pilot on the pre-integration list.

10. The relative position of each pilot on the pre-merger lists remains unchanged on the ISL. Pilots added after December 9, 2013 are to be placed at the end of the ISL,

in order based on seniority as defined in the JCBA.

The AAPSIC's proposed ISL is submitted contemporaneously with this Prehearing Statement, as AAPSIC Exhibit ISL.

B. Proposed Conditions And Restrictions

1. Conditions And Restrictions Required By The MOU

As set forth above, paragraph 10.b of the MOU requires that the integrated seniority list be consistent with the following:

> The panel of arbitrators may not render an award unless it complies with all of the following criteria: (i) the list does not require any active pilot to displace any other active pilot from the latter's position; (ii) furloughed pilots may not bump/displace active pilots; (iii) except as set forth in Paragraphs 12 and 13 below, the list does not require that pilots be compensated for flying not performed (e.g., differential pay for a position not actually flown); (iv) the list allows pilots who, at the time of implementation of an integrated seniority list, are in the process of completing or who have completed initial qualification training for a new category (e.g., A320 Captain or 757 First Officer), or who have successfully bid such a position but have not been trained because of conditions beyond their control (such as a company freeze), to be assigned to the positions for which they have been trained or successfully bid, regardless of their relative standing on the integrated seniority list; and (v) it does not contain conditions and restrictions that materially increase costs associated with training or company paid move as specified in the JCBA.

(Jt.Exh. 9, at 6.) The AAPSIC proposes Conditions and Restrictions reflecting these requriements.

2. Group IV Captain Fence

The AAPSIC's proposed integrated seniority list is designed to be fair and equitable in the long run, based on the equities discussed above. However, in the near term (roughly corresponding with the term of the JCBA), age-65 attrition will disproportionately affect the US Airways Pilots – following which the American Pilots expect disproportionate attrition, until at least 2029. The AAPSIC recognizes that, during that near-term period, the construction of the integrated list may impact the ability of US Airways Pilots to advance into Group IV Captain positions which they

would have expected absent the merger. Accordingly, the AAPSIC proposes a transitional fence provision, effective until the amendable date of the JCBA, providing that the US Airways Pilots (East and West) continue to hold the proportion of the Group IV Captain bid positions that they hold on the date on which the integrated seniority list is implemented.

3. Supplement C

Supplement C of the 2012 CBA, now Supplement C of the JCBA, codifies protections for former TWA Pilots, established in an interest arbitration conducted pursuant to LOA 12-05 of the 2012 CBA, to substitute for protections for TWA Pilots negotiated by American and APA in connection with American's acquisition of TWA's assets in 2001. Supplement C provides for specified numbers of Captain and First Officer positions on "Small Wide-Body" aircraft in domestic operations, and on "Narrow-Body" aircraft. Those protections continue until specified triggers are met, defined by the dates on which specified pilots can hold the affected positions based on their system seniority. In particular, the Narrow-Body protection continues until "the date that Magnus Alehult, DOH 7/17/97 (or, in the event that Magnus Alehult ceases to be on the System Seniority List, the remaining TWA Pilot immediately senior to Magnus Alehult) has sufficient seniority to hold a four part bid status as CA on any aircraft." (Supplement C, at 8.)

Paragraphs 10.i. and 28 MOU require that Supplement C be continued in effect without modification as part of the integrated seniority list. (Jt.Exh. 9, at 7, 12.) The AAPSIC proposes one respect in which the intended meaning of Supplement C be confirmed. Supplement C was established prior to the merger, in the context of the pre-merger American standalone operation and the standalone 2012 American CBA. By its terms, Supplement C was drafted to apply within that operation. The parties have accordingly stipulated that Supplement C will continue to govern the

relationship among the American Pilots, including the legacy American Pilots and the former TWA Pilots.

American operated no Group I aircraft. In fact, according to the MOU, which was in place at the time that Supplement C was established, all E-190 aircraft (the only Group I aircraft in any of the affected operations) were to be allocated to US Airways until there were 31 E-190 aircraft on hand; thereafter, additional E-190 aircraft beginning with the 32nd aircraft were to be allocated by a ratio of two aircraft to American and one aircraft to US Airways – an allocation carried over in Supplement D of the JCBA. The fleet has never reached 30 E-190 aircraft. Accordingly, absent the merger no American Pilot would have been able to hold a Group I Captain position, and the Narrow-Body protections of Supplement C would have continued until an American Pilot junior to Alehult could hold a Group II Captain position.

Based on the foregoing, the AAPSIC proposes that the Arbitration Board confirm that the award of a Group I Captain position does not cause the termination of the Supplement C S-80 protection, until the merged carrier has at least 32 Group I aircraft in operation.

4. Insufficient Bidders

Finally, the AAPSIC proposes that, in the event that there are insufficient bidders for any position reserved to a pilot group under the award, the position shall be filled in accordance with the JCBA.

C. Implementation Of The ISL

In agreement with the other Merger Committees, the AAPSIC proposes that, effective as soon as practicable, and in no event later than the first day of the third flying month following the issuance of the award, the Company shall apply the ISL issued by the Board, including any attendant

conditions and restrictions (the "ISL") as the Pilot System Seniority List for all American Airlines Pilots (i.e. American Airlines and US Airways pilots) provided for by Section 13.G. of the JCBA, and shall apply the ISL to all events as to which system seniority is applicable under the JCBA.

D. Dispute Resolution Procedure

The Protocol Agreement requires that the Arbitration Board "include in its Award a provision retaining jurisdiction until all of the provisions of the Award have been satisfied for the limited purpose of resolving disputes which may arise regarding the interpretation, application and implementation of the Award," and establish a dispute resolution procedure for such disputes. (Jt.Exh. 7, at 13.) The Merger Committees have agreed to defer the specifics of the dispute resolution procedure until following the parties' cases-in-chief, in an effort to pursue an agreement among the affected parties on a procedure to be submitted to the Arbitration Board.

IV. THE AAPSIC PROPOSAL IS FAIR AND EQUITABLE

A. The Proposal Reflects The Pilot Groups' Pre-Merger Expectations And Will Equitably Distribute The Future Economic Benefits Of The Merger

As demonstrated above, the weighing of equities must take into account the superiority of pilot jobs at American over jobs at East or West in the same categories and statuses based on pay, domicile and flying opportunities, and other metrics. The AAPSIC proposal reflects the superiority of those American jobs by those equities, by shifting those American jobs *vis a vis* East and West jobs in the same category and status groups in the ratio rankings on which the proposed integrated list is built. The evidence will demonstrate that the proposed integrated seniority list will, based on the Company's current fleet plan, preserves the American Pilots' pre-merger expectations, with modest economic improvements based on the MTA and JCBA; while providing the East and West

Pilots with unprecedented economic gains, far beyond what they would have expected absent the merger, and experientially larger than the American Pilots' gains.

The AAPSIC proposal also deals with the distinct demographic challenges presented by the integration of the three pre-merger seniority lists. Thus, for instance, while the list places post-2007 East and West pilots in the last tier of the ISL,[41] even in that placement those pilots will reap enormous economic gains from the merger. Moreover, those pilots – both East and West – are of an age that they can expect to occupy senior positions on the ISL for extended periods at the ends of their careers.

Similarly, to the extent that the US Airways Pilots have a particular pre-merger expectation based on disproportionate projected near-term age-65 attrition of East Pilots, the AAPSIC proposal addresses that equity by providing a fence to protect the US Airways (East and West) Pilots' access to Group IV Captain positions until the amendable date of the JCBA, roughly corresponding to the period in which their attrition exceeds American attrition on a proportional basis.

B. <u>The Proposal Equitably Allocates Future Downside Risk</u>

The AAPSIC has also "stress tested" its proposal against potential further reductions in the projected fleet. In those scenarios, under the AAPSIC proposal, the East and West pilots will continue to enjoy economic value far beyond what they could have expected absent the merger; and

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41 To say that the junior pre-merger East, West and American Pilots represent the "bottom" of the integrated list is very much a misnomer. As of this writing, approximately 900 pilots have been hired since December 9, 2013, all of whom will be junior to <u>every</u> pre-merger pilot. By the time the integrated seniority list is implemented, that number of junior "constructive notice" pilots is projected to be substantially larger.

Of the current post-Constructive Notice pilots, 561 were hired by American, 310 were hired by US Airways and assigned to the East operation, and 29 were hired by US Airways and assigned to the West operation. American's hiring was required, in part in part by attrition, and in part by growth associated with added aircraft. The East and West hiring was required almost entirely by attrition.

the American Pilots' pre-merger expectations will be preserved.

C. The Proposal Recognizes The Nicolau Award And Subsequent Events, And Allocates The Equities Of The Nicolau Award Between The East And West Pilots

As demonstrated above, while the Nicolau Award is not the required starting point for the seniority integration, the West Pilots' claim to its benefits is one equity to be weighed in constructing the integrated list. The AAPSIC proposal does so. Indeed, the AAPSIC's adjusted category and status methodology can be seen as applying Arbitrator Nicolau's methodology to the East and West Pilots, taking into account the events of the intervening years. The proposal treats the former East furloughees as active pilots, in accordance with their status as of December 9, 2013; it integrates the East and West Pilots on a category and status basis, as did Arbitrator Nicolau; and it places all "Third List" pilots below all East and West Pilots.

In addition, the AAPSIC proposal recognizes the West Pilots' claimed equities based on the Nicolau Award by *inter alia*, placing American West Pilots on the ISL so as to have access to some desirable Group IV flying that they could not have accessed in their standalone West operation. Moreover, to the extent that the proposed integrated seniority list enhances the seniority placement and expectations of the West Pilots *vis a vis* their separate West expectations as of December 9, 2013, it does so at the expense of the East Pilots, rather than the AA Pilots who are innocent bystanders in the long-running East-West fight.

Conclusion

For the foregoing reasons, the AAPSIC submits that its proposal is fair and equitable, and should be adopted by the Arbitration Board. The AAPSIC will present evidence in support of this proposal in its case-in-chief at the hearing.

Respectfully submitted,

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By: /S/ Wesley Kennedy

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June 19, 2015

APPENDIX A - AAPSIC PROPOSAL

ARBITRATION PROCEEDINGS BEFORE
DANA E. EISCHEN, IRA JAFFE AND M. DAVID VAUGHN

In the matter of the seniority integration involving the Pilots of	)
NEW AMERICAN AIRLINES	)

PROPOSAL OF
AMERICAN AIRLINES PILOTS SENIORITY INTEGRATION COMMITTEE

I. PROPOSED INTEGRATED SENIORITY LIST

The Integrated Seniority List (ISL) shall be constructed as follows:

A. Pilots on the pre-merger AA, US Airways (East) and US Airways (West) seniority lists as of December 9, 2013 shall be placed on the ISL as set forth in AAPSIC Exhibit ISL.

B. Pilots added to the pre-merger AA, US Airways (East) and/or US Airways (West) seniority lists subsequent to December 9, 2013 shall be placed on the ISL following the pilots referred to in paragraph I.A. above, in order based on their seniority as defined in the American/APA Joint Collective Bargaining Agreement.

II. CONDITIONS AND RESTRICTIONS

A. No Bump/No Flush

Neither the implementation of the ISL nor the expiration of any Condition and Restriction shall require any active pilot to displace any other active pilot from the latter's position.

Neither the implementation of the ISL nor the expiration of any Condition and Restriction shall require that a furloughed pilots to bump or displace an active pilot.

B. Compensation For Flying Not Performed

Neither the implementation of the ISL nor the expiration or any Condition and Restriction shall require that pilots be compensated for flying not performed (e.g., differential pay for a position not actually flown);

C. Pilots In Training

Pilots who, at the time of implementation of the integrated seniority list, are in the process of

completing or who have completed initial qualification training for a new category (e.g., A320 Captain or 757 First Officer), or who have successfully bid such a position but have not been trained because of conditions beyond their control (such as a company freeze), may be assigned to the positions for which they have been trained or successfully bid, regardless of their relative standing on the integrated seniority list.

D. Group IV Captain

Until January 1, 2020, pre-merger US Airways (East and West combined) Pilots will be entitled to the proportion of Group Captain IV bid positions which they hold as of the date on which the ISL is implemented. For any bid process which begins with fewer than such proportion of Captain bid positions, Captain vacancies on Group IV aircraft will be allocated to the US Airways (East and West combined) Pilots until their proportionate share of Group IV Captain bid positions is achieved.

E. Supplement C

Nothing in this award shall modify the decision of the arbitration panel in Letter of Agreement 12-05 of the 2012 CBA, as implemented in Supplement C of the American/APA Joint Collective Bargaining Agreement, which shall continue to govern the relationship between the legacy AA and former TWA Pilots.

A bid award to a Group I Captain position to Magnus Alehult or a pre-merger American Pilots junior to Magnus Alehult will not cause the termination of the Narrow-body protections of Supplement C until New American has at least 32 Group I aircraft in service.

F. Insufficient Bidders

In the event that there are insufficient bidders for any position reserved to a pilot group under the award, the position shall be filled in accordance with the JCBA.

III. IMPLEMENTATION OF INTEGRATED SENIORITY LIST

Effective as soon as practicable, and in no event later than the first day of the third flying month following the issuance of the award, the Company shall apply the ISL issued by the Board, including any attendant conditions and restrictions (the "ISL") as the Pilot System Seniority List for all American Airlines Pilots (i.e. American Airlines and US Airways pilots) provided for by Section 13.G. of the Joint Collective Bargaining Agreement between American Airlines and the Pilots in the Service of American Airlines ("JCBA") and shall apply the ISL to all events as to which system seniority is applicable under the JCBA.

IV. Dispute Resolution Procedure

[T/B/D]

June 19, 2015

EXHIBIT 20

BEFORE THE MCCASKILL-BOND AMENDMENT SECTIONS 3 AND 13 ARBITRATION BOARD

DANA E. EISCHEN, IRA F. JAFFE, M. DAVID VAUGHN

In the matter of the seniority integration involving the Pilots of	)
NEW AMERICAN AIRLINES	)

USAPA MERGER COMMITTEE POSITION STATEMENT

This seniority list integration proceeding is governed by the McCaskill-Bond Amendment, Section 3 of the Allegheny-Mohawk Labor Protective Provisions and the Section 13(b) protocol agreement established by the APA, the Company and USAPA. Section 3 tasks this Board with integrating the seniority lists of the covered employees in "a fair and equitable manner." That outcome--creation of a fair and equitable integrated seniority list--is the purpose of this process.

This proceeding enables the Arbitration Board to complete one of the remaining steps in arguably the most successful merger in the history of the airline industry. As results since December 2013 have shown, the merger of American Airlines and US Airways has exceeded all expectations. It is truly a "merger of equals" with both airlines contributing their strengths to the transaction to create a single airline that is greater than the sum of its parts.

The USAPA Merger Committee thinks it indisputable that the pilot groups enter this merger on equal terms. The American pilots and US Airways pilots, through their collective bargaining representatives, made this merger happen by

negotiating the unique four-party Memorandum of Understanding with American and US Airways in December 2012. That four-party agreement allowed the merger to occur, advanced the rates of pay, rules and working conditions of both pilot groups, and permitted the American and US Airways pilots to support the merger of the airlines as the best path forward to achieve their career ambitions. And, through the MOU, the parties established a joint collective bargaining agreement process, involving APA and USAPA negotiators, which resulted in a JCBA that dramatically improved pay, benefits and work rules for all pilots even above the terms of the MOU. The pilots are now ideally positioned to move forward together as equals in the largest airline in the world.

Pilot seniority integration proceedings have frequently devolved into partisan squabbles in which parties present subjective and self-serving characterizations of their own seniority equities and those of the other pilot group in order to justify proposals for seniority integration that are not fair and equitable to affected employees. Parties harp on negative conditions in place at the other premerger carrier to diminish the premerger career expectations of the other pilot group. Conversely, pilot groups exaggerate their position in the merger to support advancing themselves at the expense of their peers. This self-serving advocacy ignores the reality that airlines choose to merge because it is in their rational economic interest to do so. Air carrier transactions since deregulation demonstrate uniformly that each carrier brings strengths to a merger just as each had needs that were best addressed by a merger. If that were not the case, the airlines would not have chosen a merger as the best option available to advance their businesses.

The USAPA Merger Committee proposal is based on the reality that the American-US Airways merger is a merger of equals, with each carrier contributing strengths to the new American Airlines and each carrier having needs that were best addressed by the merger. It is also based on the reality that the pilot groups are moving forward on a level playing field in the merged carrier. For example, our proposal is not premised on discounting the premerger career expectations of American pilots because of the challenges facing American that led to its 2011 bankruptcy. Nor will we accept the notion that premerger US Airways (East) pilots had lesser expectations for advancing to widebody flying that somehow means they should not equitably share in the expanded widebody fleet and international operation of the New American that is made possible only because of the merger. And we do not take the position that because US Airways (West) pilots did not have the premerger expectation of advancement to widebody flying that they should be shut out of that flying in the merged carrier.

Of course, we will show that the American pilots vigorously supported American's merger with US Airways, just as US Airways pilots backed their Company's merger with American Airlines. This is part of the factual background that led to this successful merger of equals. But we do not indulge in the fiction that either carrier "did not need the merger" or that aircraft not actually in the carriers' fleets at the time of the merger, and which will only be paid for and delivered to the merged airline to be deployed in the merged operation, somehow "belong" to one pilot group to the inequitable detriment of the others in the seniority integration.

The USAPA Merger Committee's proposal for integrating the seniority lists, discussed in Section II below, in addition to considering the equities of length of service and status and category, has sought to make the equity of premerger career expectation a quantifiable and objective measurement of a pilot's premerger career *progression* in his airline. This allows this equity to be considered more objectively and visibly in the balancing of the differing equities. It is this part of the proposal that is innovative by using a computer model to create an analytical tool for evaluating the effect of proposed integrated lists on a pilot's premerger career progression. We believe it will also help the Board determine if pilots' given placement on the integrated list adversely affects other pilots, so it may more accurately determine when one or more pilots have received an improper "windfall" at the expense of other pilots, as opposed to having obtained the benefits of the merged operation that is the whole point of the merger. This will hopefully aid the Board both in the evaluation of appropriate integrated list outcomes but also the need for conditions and restrictions.

This objective measurement of career progression/expectation is achieved by plotting a pilot's progression into higher paying equipment using an assumption the pilot bids for the highest paying position available ("stovepipe bidding"). The total earnings produced by that progression over the pilot's career until age 65 are also calculated using JCBA pay rates. Computer modeling using the data as of December 9, 2013, creates a progression for each American, US Airways (East) and US Airways (West) pilot.

An initial integrated list constructed by a hybrid method of weighted length of service and status and category methodology lists, using an equal weighting of length of service and status and category for the sake of neutrality, is measured against that career progression baseline for each pilot to identify deviations from the baseline. If deviations are too large or inequitably distributed, pilots are moved to limit the deviation from the baseline. This practice of analysis and revision can be repeated many times to improve the result.

In addition to arranging the list so pilots are listed reasonably in accord with their progression baseline, a condition is applied to limit length of service differences between pilots at the same point on the integrated list as a balancing of the sometimes conflicting equities of premerger expectation and length of service. This is done to limit prejudice to a pilot's sweat equity in the merged carriers without inequitably impairing a more junior pilot's premerger career progression.

A pilot's premerger career progression reflects a baseline, or floor, for determining the appropriate progression of the pilot (and by extension a pilot group) in the merged operation. It is not a ceiling that keeps a pilot from one carrier from enjoying the expanded opportunities that may not have been available in his premerger operation. This is proper because creating new opportunities by expansion through the merger is the purpose of the merged operation. No pilot group can be deprived of those opportunities. This baseline analysis provides a reliable and uniform measurement of whether a proposed integrated seniority is "fair and equitable" to the affected pilots premerger career

progression/expectation. We believe that this analysis method and the computer modeling tools associated with it will aid the Panel in its work to achieve a fair result for all pilots.

I.

BACKGROUND LEADING TO THE MERGER

As mentioned already, both American and US Airways, along with their pilots, chose a merger as their best path forward to the future. The two carriers took different paths to reach that point. We present a summary of significant events leading up to the merger of American and US Airways to sketch for the Arbitration Board the lay of the land for the pilot groups involved in this seniority integration proceeding.

1. American's path into bankruptcy

American filed for bankruptcy in November 2011 after suffering a decade of decline in which it shrank from being the largest airline in the world to becoming a distant third behind Delta and United. It described the history that compelled its bankruptcy case in various filings submitted to the bankruptcy court.[1] American saw its unit costs rise relative to its competitors and its unit revenue fall. UMC Exh. 1.2 (Goulet Decl.) at 4. Over that period, while other network carriers moved to profitability, American suffered losses of more than

[1] *See* USAPA MC Exh. 1.1 First Day Declaration of American Airlines Chief Financial Officer Isabella Goren, Section II and USAPA MC Exh. 1.2 Updated Declaration of Beverly Goulet in Support of American Airlines Section 1113(c) motion to reject the collective bargaining agreement of the Allied Pilots Association, pp. 2-33.

We will refer to USAPA Merger Committee exhibits as "UMC."

$10 billion. *Id.* at 5. Its negative competitive position was exacerbated by the Delta/Northwest and Continental/United mergers. *Id.* 5 (¶), 29 ¶36). As of 2011, American had the highest overall unit costs and could not invest and grow its airline to compete with its larger rivals. *Id.* at 5(¶8), 27 (¶34). In 2011 alone, American was the only major carrier to lose money, with losses exceeding $1 billion. *Id.*, p. 6 (¶9). American filed for Chapter 11 after exhausting, without success, its efforts outside bankruptcy to restructure its business to permit investment and growth, including leveraging its assets to obtain necessary liquidity. *Id.* p. 6 (¶9), 31 (¶39), 33 (¶42).

2. ***American seeks to impose a concessionary agreement on its pilots and the American pilots choose a merger of American and US Airways as their best strategic alternative***

In April 2012, American filed a motion under Section 1113(c) of the Bankruptcy Code to reject collective bargaining agreements with its employees, including the pilots represented by APA, and impose the terms of a Section 1113 Term Sheet. UMC Exh. 1.3. American sought $1.2 billion in annual concessions from its employees with $370 million in annual concessions sought from its pilots. UMC Exh. 1.2 p. 41 (¶54).

The APA viewed American's Section 1113 proposal as a gutting of the American pilots 2003 agreement, which would leave American pilots with the worst labor contract in the airline industry. UMC Exh. 2.1 (APA Public News, "AA-US Airways: Our Best Alternative"). It also viewed the standalone business plan presented by American in tandem with the Section 1113 proposal as inadequate and unable to fix American's revenue and network problems. *Id.* at 2.

It concluded the plan did not make good business sense and carried too much risk, while also reducing pilot jobs at American. *Id.*

Instead, the APA concluded that the best alternative to secure the careers of American pilots was a merger between American and US Airways. US Airways management approached the American pilots to explore a merger with American. UMC Exh. 2.1 at 2. From those discussions, the APA and US Airways developed terms that would be included in a pilot agreement after a merger. It presented to its pilots the conclusions of extensive analysis by APA's professional advisors, which stated both that the American standalone plan would not work and the merger with US Airways was the best outcome for American pilots. UMC 2.1 at 3 ("We're confident that a merger between American Airlines and US Airways would be best possible course of action for both our profession and for the future of our airline.") It concluded that a merger with the complementary US Airways network, which had a "formidable" East Coast presence of high-yield business travel, for example, would best address the revenue and network problems that were the primary challenge facing American and create a comprehensive network on a scale with Delta and United. *Id.* at 4-5. *See also* UMC Exh. 2.3 (Report of Thomas Bacon to Board of Directors of the Allied Pilots Association.) Throughout 2012 and 2013, the APA then pursued a strategy in AMR's the bankruptcy case and in negotiations to bring about a merger of US Airways and American.

3. US Airways' pursuit of a merger with American

The least surprising player in pursuit of the American-US Airways merger is US Airways management. New American's CEO, Doug Parker, has long been the foremost industry advocate for consolidation, not simply his own airline, but among all major airlines. As early as May 2006, while in the midst of the US Airways-America West merger, Parker stated his desire for further consolidation. UMC Exh. 3.1. Later, Parker endorsed the merger of Delta and Northwest as beginning what he viewed as needed consolidation and rationalization among major carriers. UMC Exh. 3.2. Parker pursued a merger with United in 2009 for the same reason. UMC Exh. 3.3. And US Airways management began examining a merger with American when AMR filed bankruptcy. UMC Exh. 3.4, pp. 4-5. Parker's consistent advocacy for industry consolidation, under varying economic conditions, both at his own airline and in the industry as a whole, indicates that modern airline managers choose mergers as a matter of business strategy, not survival.

Parker explained in a National Press Club speech in July 2012 why the merger of American and US Airways made sense. UMC Exh. 3.4. Merger transactions had been effectively used by Delta, United and Southwest to strengthen their networks and market position. UMC Exh. 3.4 at 4. Because American sat out the round of mergers it had been surpassed by Delta and United as larger carriers with much better developed route networks. *Id.* at 5. Parker asserted that American's revenue problem could not be fixed by bankruptcy. *Id.* It could only cure its network weakness by a merger with US Airways. *Id.* American was the fourth or fifth carrier in three major regions in the United

States. *Id. at* 6. A merger with US Airways would put American the first carrier in the lucrative East Coast travel market, first also in the Midwest and the third carrier on the West Coast. *Id.* A combined American-US Airways would have a stronger network and provide greater value to shareholders, employees and customers than either carrier standing alone. *Id.* at 6. US Airways agreement with the APA and other unions of American employees was its first step in pursuit of the merger. It then entered formal discussions with American management beginning in August 2012, which led to the formal merger agreement.

4. USAPA initiates bargaining for a four-party memorandum of understanding

Shortly after the announcement of the conditional agreement between US Airways and APA, the APA Board of Directors met with the USAPA Board of Pilot Representatives. USAPA itself evaluated the potential merger and pursued negotiations with US Airways, which occurred in Summer 2012, for a "Memorandum of Understanding" to facilitate the merger. Also, during the same period, American presented a final offer for an amended contract to APA which APA submitted for pilot ratification. The American pilots rejected the proposed agreement in August 2012. USAPA concluded a tentative agreement for a Memorandum of Understanding ("MOU 1"), on August 20, 2012, which provided merger protection for US Airways pilots and enhanced the economic provisions of APA's conditional labor agreement, which was submitted to the USAPA BPR for approval. The USAPA BPR voted to send the MOU 1 out for membership ratification with a recommendation to reject the agreement and instructed its

negotiators to continue bargaining. At the end of August 2012, however, American and US Airways entered formal merger negotiations which resulted in the suspension of further labor negotiations with their respective pilot groups.

5. Labor negotiations resume after American and US Airways reach a merger agreement, leading to a ratified APA contract and then to the final four-party Memorandum of Understanding

Until November 2012, a "blackout" on labor negotiations was in place while the carriers pursued their merger negotiations. After that agreement was reached, US Airways and USAPA agreed to resume negotiations over the Memorandum of Understanding. During this time, the APA and American also negotiated and reached agreement in November for an amended pilot contract that was then submitted for a pilot vote. The restarted labor negotiations were strongly supported and encouraged by the Official Committee of Unsecured Creditors of AMR, which believed consensual labor agreements between the airlines and their respective unions were crucial for a successful merger and reorganization of American. UMC Exh. 4.1 at 2-3 (Statement of UCC in Support of Approval of Memorandum of Understanding; "in November 2012, the Committee encouraged both airlines and their respective labor organizations to commence negotiations concerning employment terms that would prevail in the event of a merger...the MOUs are a critical component of the Merger")

In early December 2012, the American pilots approved the tentative agreement for a new American pilot contract. This new American contract then became the baseline upon which American, US Airways, APA and USAPA, with the active involvement of the Unsecured Creditors, negotiated the four-party

MOU. UMC Exh. 4.2 at 3 (Statement of AMR Unsecured Creditors Committee in Support of Approval of amended American pilot contract; "the standalone business plan [of American] serves as a baseline against which the Debtors and Committee...can evaluate strategic alternatives...the collaborative exploration is well underway, and the ratification of the new APA CBA will bolster these efforts.")

In mid-December, the four parties and the Creditors Committee met in Dallas-Fort Worth to negotiate terms for a MOU covering the pilots in the event of a merger and, largely at the insistence of the Creditors, in order to facilitate the merger. The APA and USAPA negotiating committees worked closely throughout these negotiations. The negotiations resulted in a MOU signed by all parties and supported by the Creditors Committee, which set the improved terms that would apply to American and US Airways pilots in the merger. Building on MOU 1, the MOU provided for $522 million dollars in contractual improvements to the APA December 2012 agreement over six years. UMC Exh. 2.5 (APA Negotiating Committee summary of MOU). It also provided that on the effective date of the merger, US Airways pilots would enjoy the same terms and conditions as the American pilots. In particular, the MOU made the December 2012 APA contract effective as of the merger closing date as the Merger Transition Agreement and provided for retroactive pay for US Airways pilots at the APA contract rates retroactive to the date they ratified the MOU. The MOU amended the December 2012 APA agreement by establishing a wage adjustment procedure that pegged rates for New American pilots to the average of Delta and United pilot pay rates after three years from the six-year period of the APA agreement. The MOU

further provided that following the merger New American and the pilot representatives would enter into negotiations for a Joint Collective Bargaining Agreement covering all pilots.

The APA Board of Directors approved the MOU in late December 2012. The USAPA Board of Pilot Representatives unanimously voted in early January 2013 to send the MOU out for pilot ratification with a recommendation to approve the agreement. The USAPA negotiating committee provided extensive information on the value of the MOU to US Airways pilots during the ratification vote. UMC Exh. 4.1 (USAPA ratification document "Flight Plan to a Merger.") USAPA valued the economic improvements to US Airways pilots over their current contracts at $1.6 billion for the six-year term. *Id.* at 9. The US Airways pilots overwhelmingly approved the MOU in early February 2013.

6. American and US Airways announce and gain approval of their merger and later resolve a challenge to the merger by the United States

Following ratification of the MOU, the airlines officially announced their merger in February 2013. The MOU was later approved by the Bankruptcy Court in the AMR bankruptcy case. The MOU was a critical component of the airlines' merger. UMC 4.1 at 3. A final plan of reorganization of American providing for a merger with US Airways was approved by the Bankruptcy Court in early April 2013. Both pilot unions submitted statements to the court supporting the merger.

In August 2013, the United States Department of Justice filed suit against the American-US Airways merger asserting it failed to satisfy antitrust

requirements. While expedited litigation of the DOJ challenge occurred, the airlines and government reached a settlement in November 2013 to resolve the DOJ challenge and permit the merger to proceed. The merger closed on December 9, 2013 and the "Merger Transition Agreement" which consisted of the MOU and the incorporated December 2012 APA Agreement became the collective bargaining agreement governing the employment of all pilots.

7. APA and USAPA engage in joint negotiations with American for a joint collective bargaining agreement; the APA, after its certification as the single pilot representative, establishes a negotiating committee that included former USAPA negotiators to conclude a JCBA

After the merger closed, the pilot unions began preparation and consultation under the JCBA process established by the MOU. Their negotiating committees coordinated positions for joint proposals to management. Over the second half of 2014 JCBA negotiations occurred including American and US Airways (East and West) pilot negotiators. In late December 2014, American presented a final offer to the APA, which was then the single representative after its NMB certification on September 16, 2014. The offer made substantial improvements even above those contained in the Merger Transition Agreement.

The APA Board of Directors voted in early January 2015 to submit the Company's final offer to the pilots for a ratification vote. Both American and US Airways pilots participated in the ratification vote. The APA negotiating committee provided a detailed summary of the final offer, including pay rate increases over the MOU pay rates of approximately 23 percent which put American pilot pay rates an average of 7 percent higher than Delta Air Lines pilot

pay rates, and improvements to retirement benefits, work rules and other terms. UMC 2.6 (APA negotiating committee briefing of JCBA). It also included a mid-term adjustment of pay rates to account for improvements at Delta and United Air Lines. The APA valued the proposed JCBA at a net increase in value of $1.73 billion over the contract established by the MOU for its five-year term. UMC 2.6 at 58. The pilots voted in late January to approve the final offer and it became effective to cover the pilots of both American and US Airways on January 31, 2015.

II.

THE USAPA MERGER COMMITTEE PROPOSAL

While the pilot groups worked closely together to bring about the American-US Airways merger and the successful JCBA, they obviously bring differing equities to this proceeding. American was the larger carrier, whose operation included a larger widebody operation; the American pilots therefore bring more pilots in the highest paying widebody positions. US Airways (East) is a predominantly narrowbody operation with a smaller international widebody operation. US Airways (West) is an exclusively narrowbody operation limited to the Phoenix domicile.

On average, US Airways (East) pilots are older than pilots at American and US Airways (West) and those in the top half of the US Airways (East) seniority list are even older. As a result the US Airways (East) list will experience significant near-term attrition, with over 1,500 pilots leaving in the next five years, many from widebody positions. As a result, on a stand-alone basis, East

pilots will experience rapid upward movement over the next five years. The American and West pilots have far less near term attrition.

The carriers had different hiring patterns. All three hired during the 1980s, with the former America West beginning in 1983. From 1991-98, American and the former America West (US Airways (West)) hired while the former US Airways did not. From 2001-2005, the former America West hired while American and the former US Airways did not. And from 2007-2013, US Airways hired pilots into the East operation while furloughing pilots in the West. American had not hired since 2001. The pilot groups also experienced furloughs at differing periods, with all three furloughing pilots in the 1990s. American and US Airways furloughed pilots after the events of September 11, 2001. US Airways (West) pilots experienced a furlough beginning in 2008. US Airways (East) pilots were recalled beginning in 2007 and all US Airways (East) pilots who had been on furlough were recalled by 2008. Pilots on the American and US Airways (West) lists were furloughed up to the date of the merger announcement. These different hiring and furlough patterns necessarily create differences in length of service among the pilot groups at similar relative points on their premerger seniority lists.

The USAPA Merger Committee proposal seeks to reconcile the differences among the groups, while preventing the inevitable differences from prejudicing the pilots' placement on the integrated seniority list. The proposal uses a computer model that constructs a premerger career progression for each pilot involved in this dispute using uniform criteria for all three groups. The program

is written in the Python computer programming language. Python is a high-level programming language that has existed since 1991. It is currently the most popular language for introductory computer science courses at top American universities and is used for writing programs that people use every day such as Google, You Tube, Dropbox, and Netflix. Python is free and open source. It is the standard for data analysis. The program was developed by US Airways Captain and USAPA Merger Committee Member Bob Davison and will be validated by Brandon Rhodes, an expert in the field of Python programming.

The initial assumptions underlying the program and the career progression calculations are the following:

- Actual premerger seniority lists that include relative position, seat, equipment type, date of birth, active or inactive
- Integrated list of active pilots that includes the same information transferred for each pilot from his or her premerger list
- No bump, no flush
- Groupings – pay groups, block hour rates by years, first officer and captain, reserve percentage, average block hour for reserve, average block hours for block holders
- JCBA Contract pay rates for each group
- "Stovepipe" assumption for all future bidding
- Mandatory age 65 retirement

Job groups are derived from the contract pay groups and in each group are divided into lineholder and reserve. The program stovepipes the jobs in the order of the groupings using the actual number of jobs held Based on these assumptions, the program calculates the monthly block hour compensation for

each pilot both on the premerger lists and, aggregating a pilot's total monthly calculated compensation, calculates each pilot's career earnings. This same method can be used with any integrated list and the results from the premerger lists can be compared with the results from the integrated list.

Construction of the USAPA Merger Committee list begins with a hybrid status and category/longevity list created based on the process explained in the United-Continental SLI proceeding and using an equal "50/50" weighting for neutrality. In creating this initial starting point, length of service is calculated from a pilot's actual or adjusted date of hire with credit only for mainline service at American and US Airways, including service at a predecessor airline credited to a pilot in his employment at American or US Airways. Any time on furlough or furlough equivalent is deducted from that mainline service time.

The computer model is then applied to the hybrid list to analyze how a pilot's career progression on that ISL compares to the pilot's premerger career progression baseline. The same method for calculating that progression that was used for the baseline is used to calculate a pilot's monthly and career earnings based on his or her placement on the hybrid integrated list. The results can be displayed as a plot that shows, for each pilot, the amount by which his or her career earnings either exceed or fall below the pilot's career earnings calculated based on the premerger list. The position of each pilot relative to the x-axis shows the difference from the premerger baseline calculation. Some pilots will fall in line with their premerger career progression. Some will improve over their baseline and some will lose against their baseline.

That initial analysis shows deviations from the baseline across the entire integrated list to identify where adjustments need be made to bring pilots in line with the baseline. A position on the line indicates that there is no difference, a position below the line indicates a loss and the amount of the loss over the pilot's career, and a position above the x-axis indicates a gain over the premerger baseline calculation. The analysis shows pilots or groups of pilots above or below the x-axis who should be moved up or down the list -- up the list if they are below the x-axis or down the list if they are above the x-axis in order to reduce, as much as possible, the losses to premerger career progression created by the proposed integrated list. This exercise is performed across the entire integrated list to minimize the deviations from the baseline. Adjustments are made, the resulting list is re-analyzed and the process repeats so that as many pilots are as close to the baseline as possible and losses from premerger career earnings are reduced as much as possible. These adjustments are currently done manually, but we are working to develop the process to automatically adjust the pilots' placement against the baseline analysis. This career progression baseline analysis can be applied to a list constructed by any methodology, including obviously those proposed by the other parties.

As noted already, the pilot groups' differing demographics lead to differences between the groups in length of service, relative seniority in status and age of pilots at various points on their premerger lists. There can be points on the list where an adjustment to move pilots closer to their premerger career progression creates disparities of length of service between pilots adjacent to one another on the proposed integrated list. The differences are largely, but not

exclusively, the result of the significant attrition US Airways (East) pilots would experience on a stand-alone US Airways (East) list. This attrition translates into rapid advancement and upgrades as more senior pilots retire.

We believe the integrated seniority list currently produced by the USAPA methodology and model closely balances the equities in the top half of the integrated seniority list. In the bottom half, however there are instances where adjusting the list to achieve the least deviation from the premerger career progressions created material length of service disparities among the pilots. Those that concern us primarily include placing US Airways (East) pilots with substantially less length of service together with US Airways (West) pilots and/or American pilots with substantially more length of service. Since the list reflects a balancing of the equities, not all of which march in tandem, it is not surprising such conflicts occur. Focusing just on length of service among the balanced equities highlights the concern. But at the same time, increasing the emphasis or weight given length of service to reduce a length of service disparity at any given point on the list will result in preventing a more junior pilot from taking advantage of the premerger attrition brought by the US Airways (East) pilots and the attendant upgrades in equipment type and status, and will likely impair his or her postmerger progression. Any adjustments to the emphasis given length of service, therefore, should be made carefully with consideration given to the adverse impact on the more junior pilot's career progression.

Recognizing that the accepted seniority equities considered in seniority integration may at time conflict with one another, the USAPA Merger Committee decided to apply a rule that any length of service disparity among pilots at the

same point on the integrated list should not exceed seven years in an effort to mitigate the identified longevity disparities. That judgment reflects what we think is an appropriate balancing of the various equities, recognizing the service to the premerger carrier and career years remaining to a pilot reflected in length of service with the more junior pilot's career progression expectancy. Applying this limitation will reduce the career progression expectancy of these US Airways (East) junior pilots. And using less than seven years of service as the limit affected too many pilots in the bottom half of the seniority list. We believe therefore that the seven-year longevity limit worked best to balance the competing equities and achieve an equitable result. But we do not assert it is the only method to balance the competing equities reflected in these disparities and may well develop a better approach over the course of this proceeding.

III.

PROPOSED CONDITIONS AND RESTRICTIONS

Given the placement of pilots in the top portion of the USAPA Merger Committee's proposed integrated list, which closely accords with length of service, status and category and premerger career progression of the different pilots integrated together, we did not believe that conditions or restrictions were necessary to facilitate implementation of the proposed list. Further, the parties prehearing stipulations recite certain agreed conditions and restrictions to the integrated seniority list.

IV.

CONDITION ON IMPLEMENTATION OF THE INTEGRATED SENIORITY LIST

The three pilot committees have agreed to the following condition on implementation of the Board's Award:

Effective as soon as practicable, and in no event later than the first day of the third flying month following the issuance of the award, the Company shall apply the ISL issued by the Board, including any attendant conditions and restrictions (the "ISL") as the Pilot System Seniority List for all American Airlines Pilots (i.e. American Airlines and US Airways pilots) provided for by Section 13.G. of the Joint Collective Bargaining Agreement between American Airlines and the Pilots in the Service of American Airlines ("JCBA") and shall apply the ISL to all events as to which system seniority is applicable under the JCBA.

IV.

THE BOARD'S AUTHORITY UNDER THE MCCASKILL-BOND AMENDMENT IS LIMITED TO INTEGRATING THE PILOT SENIORITY LISTS ON THE BASIS OF THE STATUS QUO OF THREE SEPARATE SENIORITY LISTS IN EFFECT ON DECEMBER 9, 2013

The USAPA Merger Committee anticipates that the APA West Pilot Committee may assert that the pilots of US Airways should be integrated together on the basis of the arbitration award issued by Arbitrator George Nicolau in the ALPA Merger Policy proceeding initiated by the merger of US Airways and America West. This Arbitration Board has no authority to integrate the pilots of US Airways and American on any basis other than the three separate seniority lists in effect on December 9, 2013.

The Section 3 and 13 process is a prospective one to establish an integrated seniority list for the merged carrier. It is not a retrospective process to remedy claims for past injuries from the pilot groups. The Board has no authority to reset the existing status quo on December 9, 2013 or grant pilots employment rights they did not have prior to that date.

Further, the McCaskill-Bond Amendment expressly states that it only applied to mergers that occurred after its December 2007 effective date. 49 U.S.C. § 42112, Note 117(c)(" This section shall not apply to any covered transaction involving a covered air carrier that took place before the date of enactment of this Act [Dec. 26, 2007].") This excludes the America West-US Airways merger from the Amendment's coverage. And the McCaskill-Bond Amendment is triggered by a "covered transaction" between air carriers to combine into a single air carrier. 49 U.S.C. § 42112, Note 117(b)(4). The covered transaction that invoked McCaskill-Bond's provisions for the American and US Airways pilots was the merger of American Airlines and US Airways. The US Airways (West) Pilots are "covered employees" under McCaskill-Bond only because they are "members" of the US Airways pilot craft or class established by the NMB in Case No. R-7147, 35 NMB 65 (2008). 49 U.S.C. § 42112, Note 117(b)(3)(B). The APA West Pilot Committee may not assert equities or rights in this proceeding on the basis of the America West-US Airways merger or on the basis of the Nicolau Award that arose from that merger. And the Board may not retroactively apply the provisions of the statute to the America West-US Airways merger without violating the statute's exclusion of that merger from its coverage.

The APA West Pilot Committee also may not assert that the Nicolau Award establishes any seniority rights for US Airways (West) Pilots vis-à-vis US Airways (East) Pilots. That award has been adjudicated three times to not govern the seniority rights of US Airways pilots by the federal courts in the litigation *Addison, et al v. US Airline Pilots Assn*. "Arbitrators are not free to ignore the preclusive effect of prior judgments under the doctrines of res judicata and collateral estoppel". Elkouri & Elkouri, How Arbitration Works, 7th ed., 11-34 (2012), quoting Aircraft Braking Systems Corporation v. Local 856, United Auto Workers, 97 F.3d 155, 159 (6th Cir. 1996). This Arbitration Board must give effect to the final court judgments that the Nicolau Award does not govern the seniority rights of US Airways pilots.

The agreements governing this proceeding require that the Arbitration Board integrate all three pilot groups on the basis of three separate seniority lists. The December 2012 Memorandum of Understanding in its paragraph 10(h) recited that it did not alter the status quo of three separate lists in effect on December 9, 2013. The Section 13(b) protocol agreement signed by American, APA and USAPA also provided that the certified seniority lists would reflect the status quo of three separate seniority lists on December 9, 2013. Section 13(b) agreement, ¶ 2(b). These agreements preclude any claim that the US Airways pilots should first be integrated among themselves and then integrated with American pilots in a "two-step" process on the basis of equities claimed from the US Airways-America West merger. Accordingly, the USAPA Merger Committee proposal integrates the three pilot seniority lists into a single, integrated seniority list.

CONCLUSION

The USAPA Merger Committee seeks to provide the Arbitration Board with a sound framework under which an integrated seniority list may be established that is truly fair and equitable to all pilots. We believe the methodology and analytical tool we present will aid the Board in that effort. We anticipate that the parties and the Board will have much to say on the subject of a fair and equitable list. We will take into account the varying perspectives of all those involved in striving to achieve a good result for all the pilots whose careers are affected by this proceeding.

Dated: June 19, 2015.

/s/William R. Wilder
William R. Wilder
Patrick J. Szymanksi

Counsel for USAPA Merger Committee

EXHIBIT 21

ARBITRATION PROCEEDINGS BEFORE
DANA E. EISCHEN, IRA JAFFE AND M. DAVID VAUGHN

In the matter of the seniority integration involving the Pilots of **NEW AMERICAN AIRLINES**	**PRE-HEARING BRIEF ON BEHALF OF THE WEST PILOT MERGER COMMITTEE**

INTRODUCTION

In this Pre-Hearing Brief, the West Pilots' Merger Committee (the "West Committee") intends to focus its attention on what we believe the Board really cares about – how to go about building a fair and equitable integrated seniority list ("ISL"). We will not spend pages of text trying to build up the strength of a stand-alone US Airways and the weakness of a stand-alone American Airlines in a misguided effort to claim that one pilot group's stand-alone career expectations exceeded the other's. The simple truth is that after the Delta-Northwest and United-Continental mergers, neither US Airways nor American could continue to exist as stand-alone airlines in the long term.[1] That being the case, wasting the Board's time describing a future that

[1] We believe that the US Airlines Merger Committee (the "USAPA Committee" or the "East Committee") shares that view. We do not know what the American Airlines Pilots Seniority Integration Committee (the "AAPSIC") position will be on this issue. We do know that during American's bankruptcy case and the run-up to the merger, the Allied Pilots' Association ("APA") clearly and publicly stated to the courts, the media and to Congress on behalf of American Pilots that American's stand-alone plan was simply a fantasy. For example, APA submitted written testimony to Congress making this exact point:

> APA strongly supports the proposed merger. Well before American Airlines declared Chapter 11 Bankruptcy on Nov. 29, 2011, we understood that our airline needed to make significant changes to become more competitive . . . With the mergers of Delta-Northwest and United-Continental, American Airlines has been

is nothing more than a fantasy by arguing over which carrier needed the merger more would be a pointless exercise; both carriers badly needed the merger in order to remain competitive. Accordingly, our focus in this brief is squarely on how the West Committee believes the Board should integrate the legacy American Airlines pilots and the legacy US Airways pilots in light of the realistic career expectations of both pilot groups that follow inexorably from that reality.

The West Committee's Seniority List Integration ("SLI") proposal is for a hybrid longevity/status-and-category ISL constructed in the manner the panel in the *United/Continental* (Eischen, Kaplan, Nolan 2013) case structured that ISL. But there should be no mistake; it is also premised on a fundamental reality that should surprise no one. While the USAPA Committee operates under the fiction that there are two separate US Airways seniority lists that are due to be merged – an East and a West list – with a third list, the legacy American Airlines list, and while APA and the Company agreed to that fiction in order to bring to an end litigation that threatened to derail the prompt resolution of this SLI proceeding and the concomitant full realization of the synergies the merger will bring, that is simply not the case.[2] There is, in fact,

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> relegated to a distant third in terms of revenue generation and the breadth of our network. . . .
>
> The most expedient way to address American Airlines' revenue and network shortfalls is to merge with another carrier, and US Airways is the most logical merger partner . . . .

Attachment 3 (Written Statement of Capt. Robert Coffman, Chairman, APA Government Affairs Committee, before House Committee on Judiciary, Subcommittee on Regulatory Reform, Commercial and Antitrust Law, February 26, 2013) 12-13.

[2] In 2014, to settle litigation brought by USAPA, the APA, American Airlines, US Airways, and USAPA entered into a protocol agreement that provided a framework for this SLI proceeding, as well as provided for a preliminary arbitration regarding whether a West Committee could participate in these proceedings. *See* Attachment 1 (Protocol Agreement). Written into that agreement was the assumption that there were "three seniority lists in effect" at the two merging airlines as of December 9, 2013, and that those three lists are due to be merged

already a single combined US Airways pilot seniority list: the list created by Arbitrator George Nicolau in his 2007 Seniority List Integration ("SLI") Award following the merger of US Airways and America West. That list is the product of a fair process, identical in every respect to the process employed in countless seniority list arbitrations preceding it, one to which the pilots at both airlines agreed and accepted as a fair process until the East – now USAPA – pilots decided that they did not like the outcome. It is a list that US Airways accepted as the list that would control the seniority of all of its pilots once a joint collective bargaining agreement ("JCBA") with the pilots' bargaining agent was achieved. Unhappily, for reasons that we are certain the Board already knows, that day never came: the East pilots, through USAPA, prevented a new US Airways JCBA from being reached prior to the US Airways-American merger resulting in the East and West pilots working under the wage rates in their pre-2005 merger CBAs until now, and, for that reason, the Nicolau list has never been implemented.[3] As a consequence, although US Airways has been a single unified airline since 2005, managed by a single management team that structures its routes and deploys its assets in a single coordinated manner, and an otherwise unified workforce (*i.e.,* flight attendants, ramp workers, mechanics, and all the rest), the West Pilots and the East Pilots have been artificially separated due solely to the intransigence of the East Pilots.

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in this proceeding. *See id.* at ¶ 2.b. The West Committee was not a party to that Agreement and does not accept its assumptions. Nevertheless, as noted in text (*infra* at 4), we are prepared to pretend that is the case and build our proposed ISL accordingly.

[3] Even when they did reach a JCBA as part of the merger process between American and US Airways, they insisted that it contain a provision to the effect that this JCBA would not be deemed a JCBA that, under the Transition Agreement regarding the US Airways/America West merger, would trigger the implementation of the Nicolau Award. The question whether USAPA breached its duty of fair representation to the West pilots by so agreeing is currently pending before the Court of Appeals for the 9th Circuit. *See infra* at 12-13 n.10.

The West Committee will not retry the case Arbitrator Nicolau heard and decided eight years ago about a merger that took place a decade ago (although it will bring to the hearing the entire record of that case if the Board feels the need, or has the desire, to review it). It is enough to say that the Nicolau Award is a valid award produced by a fair and impartial process, fully grounded in the facts presented therein, entirely consistent with the governing SLI jurisprudence and never characterized by any tribunal that has had occasion to review it as unsound in any way.

With that as background, the West Committee's proposal for integrating the seniority lists necessarily begins with the fiction that there are three lists to be integrated – an East list, a West list and a legacy American list.[4] The proposal's methodology has four steps. First, it integrates the East and West lists as provided for by the Nicolau Award. A contrary decision on this threshold issue would result in the product of the Nicolau arbitration – a product produced by an indisputably premier neutral following an undeniably fair process – becoming, to the best of the West Committee's knowledge, the only arbitrated seniority list in the history of pilot seniority integration cases that was never implemented and would deprive the West pilots of ever enjoying their fair share of the benefits of either merger. Second, the West proposal adds to that list, in date of hire order, pilots hired and placed on the East and West lists after May 19, 2005, the merger announcement date and constructive notice date under the Nicolau Award for the US Airways-America West merger. Third, the proposal "ages" that integrated list to reflect the disappearance of those US Airways pilots who retired or were otherwise removed from the list as of December 9, 2013, the agreed-upon constructive notice date for the US Airways-American Airlines merger.

[4] The West Committee entertains this fiction so that the Board can conduct an "apples-to-apples" comparison of the West Committees' proposal with those from other Committees. *See supra* at 2-3 n.2.

After completing this exercise, the West Committee's proposal integrates that list with the legacy American pilots (from the AAPSIC list) using a hybrid methodology that is built to account for two of the three dominant and measurable pilot group equities that arbitrators have considered in past cases when determining what approach to take to ordering an integrated seniority list: status-and-category on the one hand, and longevity on the other. It does so by assigning proportionate values to longevity and status-and-category – here, the West Committee proposes 35% and 65%, respectively – and it builds a list based on those values.

The West Committee's proposal aims to create an ISL that is not only fair and equitable as of the agreed-to snapshot date (December 9, 2013), but that is fair and equitable over the course of pilots' careers. That is to say, although it is true that "merged lists . . . change career expectations," *Republic/Frontier/Midwest/Lynx* (Eischen 2011) 30 (quoting *US Airways/America West* 19 (Nicolau 2007)), it its nonetheless the goal of a fair and equitable SLI proceeding to create a list that will minimize the disruption to pilots' career expectations over time and prevent any pilot group from obtaining a windfall at the expense of any other, *see id.*

In this merger, counterintuitive though this fact may be, the West Committee's extensive analysis shows that the *American* pilot group on the whole stands to gain opportunities—especially opportunities to achieve narrow body captain flying positions that they would not have otherwise had on a stand-alone basis. As we will show, this is due to structural factors regarding the jobs that each group is "bringing" to the merger, chief among them the large number of wide body first officers positions currently held the American pilot group whose occupants will "crowd out" US Airways pilots' advancement opportunities. The West Committee's proposal seeks to provide the least disruption to the settled, reasonable career expectations of the two pilot

groups over time in light of these factors – but, in fact, slightly favors the American pilots overall.

Our Brief is in three parts and accompanied by two appendices[5] and various attachments. While normally an SLI brief would begin with a discussion of the stand-alone condition of the merging airlines and their respective competitive positions in the market and the stand-alone career expectations of the pilot groups, we do not include a discussion of that subject in text because, as we explained, we are of the view that nothing turns on those facts. *See supra* at 1 n.1. Instead, we have simply attached the exhibits our expert witnesses will sponsor regarding the inevitability and necessity of this merger for both carriers and leave it to the Board either to review them in connection with this Brief or to wait until the experts testify to consider them. *See* Attachment 4 (M. Garfinkle Exhibits); Attachment 5 (D. Akins Exhibits). Thus, the Brief is focused entirely on methodology. Part I explains why this Board should begin the process of integrating the US Airways pilots with the American pilots by utilizing the list produced by Arbitrator Nicolau as its starting point – or, more technically, why this Board should begin the list integration process by placing the East and West pilots together as directed by the Nicolau Award and aging that list to December 9, 2013, the constructive notice date for the American-US Airways merger. Part II describes for the Board the key building blocks for any ISL constructed under the "fair and equitable" standard, and the manner in which the West Committee's proposal

[5] The first appendix is a compendium of direct quotes from APA, American Airlines, and US Airways, made in pleadings and testimony acknowledging – indeed urging – the conclusion that American's stand-alone plan could not be successful and that a merger with US Airways was a necessity for long term survival. *See supra* at 1 n.1. The source documents are available on the Sharepoint site, and we can make them available in paper to the Board as well. The second appendix is a discussion of certain technical issues that the Board will have to come to grips with no matter what method it adopts to create an ISL. We place those in an appendix because, while they require resolution and while some may be contentious, they are secondary to the more fundamental decisions the Board will have to make.

has taken those building blocks into account. Finally, Part III of the Brief describes the heart of the West Committee's proposal – a hybrid Longevity and Status-and-Category ISL with minimal conditions and restrictions, as well as the rationale for the Board adopting it.

I. The Board Should Begin the SLI Process by Integrating the East and West Pilots Using the List Produced by the Nicolau Award, Aged to December 9, 2013

A. At the threshold, we must dispel one canard that we anticipate will be given significant air time by at least one of the other Committees: that is, the notion that this is an SLI process involving three separate and independent lists on equal footing – a legacy "East" list, a legacy "West" list, and a legacy American Airlines list. That canard falls apart in the face of an undeniable reality: that the integration of the East and West lists has already been fully heard and decided, and that the result of that integration is the Nicolau Award.

The Nicolau Award was the product of a fair and equitable SLI process that was binding on the East and West pilot groups, that has never been found to have been outside of the range of reasonable outcomes under the prevailing SLI standards governing that process, and that was accepted by the Company as *the* seniority list that would govern US Airways pilots. The only fair and equitable starting point for *this* SLI proceeding – and the only starting point consistent with the principle that the results of SLI proceedings agreed to in advance by all interested parties are to be respected—is the Nicolau Award.

B. As we said at the outset, the West Committee will *not*, either in this brief or at hearing, re-litigate the facts developed in the SLI proceeding that led to the Nicolau Award. Nonetheless, we include what follows to make a single, defining point: there was nothing in the SLI process that led to the Nicolau Award, nor in the Award itself, that can justify the *rejection* of the results of that Award as a starting basis for this integration.

1. The SLI proceeding that resulted in the Nicolau Award was conventional in every way. In May 2005, US Airways and America West Airlines merged. ALPA represented the pilots from both airlines. Pursuant to ALPA Merger Policy, the US Airways ("East") and America West ("West") MEC's – acting for their respective pilot groups – and the two airlines entered into a Transition Agreement that, together with ALPA Merger Policy, governed the process by which the two seniority lists were to be integrated. Taken together, those documents provided that an arbitrator selected by the two separate merger committees would conduct an arbitration and issue a "fair and equitable" integrated seniority list if the parties were unable to negotiate their own solution, that "[t]he Award of the Arbitration Board shall be final and binding on all parties to the arbitration" and that the Company "will accept such integrated seniority list" so long as it complied with certain baseline criteria. However, they also provided that the resulting list, while accepted by the Company and thus while the list governing the order of pilots at US Airways, would not be implemented by the merged airline until a joint collective bargaining agreement ("JCBA") was negotiated and in effect. *See* Attachment 6 (2006 ALPA Merger Policy) Part 1.H.5.b; Attachment 7 (US Airways-America West Transition Agreement) Articles IV.A-C and VI.A.

George Nicolau was the joint selection of the US Airways and America West Merger Committees.[6] Arbitrator Nicolau and two pilot neutrals held 18 days of hearing spread out over

[6] Arbitrator Nicolau was considerably better known to the East Committee and its lawyer than to the West Committee and its lawyer. Arbitrator Nicolau had served as the arbitrator in the *US Airways/Shuttle* seniority integration arbitration and had written an opinion in that case. Two pilots on the US Airways Merger Committee had participated in that case – one on the Shuttle Committee (who is also now on the USAPA/East Committee) and one on the US Airways Committee. Counsel for the US Airways Committee – Dan Katz – also knew Arbitrator Nicolau in the context of the seniority integration process well. Mr. Katz was counsel to the US Airways Merger Committee in the Shuttle case and was also counsel for the Federal Express Merger Committee in the *Flying Tiger/Federal Express* seniority integration, another case in which

nearly three months; the record included thousands of transcript pages – recording the testimony of 20 witnesses – and 14 volumes of exhibits. *See* Attachment 2 (Nicolau Award, also referred to as *US Airways/America West*) 3. After the close of the evidentiary portion of the hearing, Arbitrator Nicolau told both Merger Committees that he would not award the list each was seeking and offered them the opportunity to modify their proposals. The West Pilots accepted his invitation and modified their proposal. The East Pilots did not, telling Arbitrator Nicolau that "we are comfortable with our [date-of-hire] proposal as it is." Attachment 8 (Excerpt of US Airways-America West SLI Hearing) 2; Attachment 2 (Nicolau Award) 13. Following that session, the parties submitted comprehensive post-hearing briefs. At no point in those three months did the US Airways Committee raise a single objection to the process.

2. On May 1, 2007, Arbitrator Nicolau issued his Award. After summarizing the parties' respective proposals, Arbitrator Nicolau recited his oft-quoted set of observations, first made in *Federal Express/Flying Tiger* (Nicolau 1990), that:

> There are four basic lessons to be learned from those submissions; that each case turns on its own facts; that the objective [is] to make the integration fair and equitable; that the proposals advanced by those in context rarely meet that standard; and that the end result, no matter how crafted, never commands universal acceptance.

Attachment 2 (Nicolau Award) 19. In fashioning his award, Arbitrator Nicolau rejected both the America West Committee's proposal (a status-and-category proposal with all furloughed US Airways pilots plus several hundred working US Airways pilots at the bottom of the list) as well as the US Airways Committee's proposal (a "date-of-hire" proposal that would have pushed the

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Arbitrator Nicolau served as the arbitrator. In contrast, while the America West Merger Committee's counsel certainly knew Arbitrator Nicolau's reputation, neither he nor any members of the America West Committee had ever appeared before him. Despite their varying experiences (or perhaps because of them) both the US Airways and America West Committees selected Arbitrator Nicolau to serve as the arbitrator.

most senior America West pilots nearly half-way down the list and would have placed hundreds of furloughed US Airways pilots ahead of working America West pilots). Instead, Arbitrator Nicolau constructed a list that was designed to take both status-and-category and longevity into account in an effort to most fairly preserve pilots' realistic career expectations: while his Award used status-and-category principles as a starting point, it took date of hire into account by putting hundreds of US Airways pilots at the very top of the ISL, well beyond their status-and-category entitlement, and put many fewer US Airways pilots at the bottom of the list than the America West Committee proposed (and many fewer at the top and many more at the bottom than the US Airways Committee proposed). *Id.* at 29-33.

In his opinion, Arbitrator Nicolau expressly considered the dominant equities that drive SLI decisions – status-and-category achieved by pilots, longevity, and career expectations, *id.* at 24-25 (describing "weaker" financial condition of US Airways); 26 (explaining that "consideration" should be given to "Date of Hire" and "different career expectations based on equipment flown") – and constructed a list that took each of those equities into account. To be sure, Arbitrator Nicolau rejected the position, which he ascribed to the US Airways pilots, that "sole consideration" should be given to "date of hire and length of service." *Id.* at 27. However, contrary to the myth perpetuated by the East Committee following the issuance of the Award, he emphatically did not ignore longevity; to the contrary, in rejecting the West pilots' position that Date of Hire/longevity should not be considered, he held that:

> Though Date of Hire, whether adjusted for Length of Service or not, is no longer listed as a determinant or even stated as an integration criterion, there are occasions when consideration should be given to that factor. Here, US Airways is far older than America West, a fact reflected in the average age difference between the two groups. Consideration must also be given to the different career expectations based on equipment flown. US Airways pilots fly wide-body international aircraft, while America West pilots do not. *Those elements weigh in*

> *US Airways[’] favor both in placement and interim restriction and thus argue against the America West proposal . . . .*

Id. at 26 (emphasis added).

3. Despite the consensual nature of the process, the Award’s thoughtful analysis, and the absence of even a hint of procedural irregularity, the East pilot group expressed its extreme displeasure with the result immediately after its issuance.[7] Within days of the Award, the East MEC filed a petition with ALPA’s Executive Council seeking to overturn the Award, despite the clear and unambiguous language in the ALPA Merger Policy providing that the Award “shall be final and binding on all parties to the arbitration.”[8] *Supra* at 8. That petition was ultimately denied, and, in December 2007, ALPA submitted the Award to the Company – which accepted it on December 19, 2007. Attachment 11 (12/19/07 Company Acceptance of Award).

Concurrently, the East pilot group, led by current USAPA President Steve Bradford, engaged in an effort to replace ALPA as the representative of the combined US Airways pilot group with a new union – USAPA – that was dedicated to preventing the implementation of the Nicolau Award.[9] On April 18, 2008, as a result of the East pilots’ numerical superiority,

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[7] Views among the East line pilots ranged from merely irrational disapproval to the absurd; one pilot, who was later elected to a leadership position within USAPA, asserted in a missive that the Award was the product of an “obviously senile arbitrator.” Attachment 10 (5/16/07 R. Nelson Email). Time has not diminished that level of irrationality among East pilot leaders. USAPA’s co-founder and former officer Mark King recently posted: “It [the Nicolau Award] was an obscene and flawed ruling by a senile arbitrator.” Attachment 13 (5/11/15 M. King Message Board Posting).

[8] In June 2007, the East MEC filed a lawsuit in District of Columbia Superior Court to set aside the Nicolau Award. *US Airways Master Executive Council, Air Line Pilots Association, Int’l, et al. v. America West Master Executive Council, Air Line Pilots Association, Int’l, et al.*, Civil Action No. 0004358-07 (D.C. Super. Ct.). That lawsuit was later dismissed as moot after USAPA displaced ALPA as the certified bargaining representative of the US Airways pilots.

[9] In an email to a member of the ALPA Executive Council in May 2007, Bradford wrote:

USAPA was certified by the NMB as the bargaining agent for all US Airways pilots. USAPA began its status as bargaining representative with a constitutional provision that *a fortiori* abandoned the Nicolau Award; it requires seniority to be based strictly on date of hire:

> To maintain uniform principals 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.

Attachment 12 (USAPA Constitution) Article I, Sec. 8(D).

After its formation, USAPA used its leverage as the certified bargaining agent of the US Airways pilot group to prevent the implementation of the Nicolau Award.[10] To that end, it has

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> We must leave ALPA if this award stands because our great leader, Doug Parker, thinks the industry needs more consolidation. He has already made a very ill advised run on Delta and he will be looking for another partner soon. The pilots of US Airways cannot go into *another round of seniority negotiations with this award as the starting point in our negotiations*.

Attachment 9 (5/16/07 S. Bradford Email) (emphasis added).

[10] At this juncture, since the West pilots have separate representation in this proceeding, there is no need to recount in detail the efforts USAPA undertook to injure and silence the West pilot group prior to this proceeding, and prevent the implementation of the Nicolau Award—all at a time that USAPA had a statutory duty to represent the interests of the West pilot group. Nonetheless, it is useful to have an understanding of some of those efforts as they provide a context to the positions that USAPA is taking here.

In September 2008, USAPA presented US Airways with its own seniority list based on each pilot's date of hire as required by USAPA's Constitution. US Airways never accepted that seniority list.

On May 30, 2008, USAPA filed a RICO action in federal district court in North Carolina against 19 West Pilots and an entity formed by some West pilots to protect the West pilots' interests, *USAPA v. AWAPPA LLC, et al.*, 3:08-cv-00246-MR-CH (W.D.N.C.). That lawsuit was dismissed on July 11, 2008. Dismissal of the suit by the trial court did not stop USAPA; it filed an appeal and on July 30, 2010 the Court of Appeals for the 4th Circuit affirmed the dismissal.

USAPA has also vigorously opposed litigation brought by West pilots, as well as US Airways, to settle the question of whether USAPA breached its duty of fair representation by refusing to advance the Nicolau Award. *See Addington, et al. v. USAPA, et al.*, 2:08-cv-01633-NVW (Wake, J.) (D. Ariz.) ("*Addington I*") (duty of fair representation ("DFR") suit by West pilots against USAPA for failing to implement the Nicolau Award; unanimous jury verdict in favor of West pilots on DFR claim subsequently reversed by Ninth Circuit solely on ripeness grounds); *US Airways, Inc. v. Addington, et al.*, 2:10-cv-01570-ROS (D. Ariz.) ("*Addington II*")

avoided entering into a joint collective bargaining agreement concerning wages and working conditions for the US Airways pilots to avoid triggering the implementation of the Nicolau Award under the Transition Agreement *that the Company had years prior accepted.*[11] *See supra* at 8. As a result, in order to prevent the implementation of the Nicolau Award, East and West pilots have been working under the same wage rates and working conditions that have been in place since US Airways second bankruptcy in 2004 – a turn of events that makes a total mockery of the principles and objectives of "fair and equitable" seniority integration. Indeed, in *Republic/Frontier/Midwest/Lynx,* Arbitrator Eischen alluded to the experience of pilots at US Airways as a basis for holding that the effective date of the ISL in that case should not be tied to the successful negotiation of a joint CBA:

> Recent experience demonstrates that concerns over such a disastrously destructive epilogue are neither alarmist nor simply academic. *See,* [A]ddington v. US Airline Pilots Association, 606 F.3d 1174 (9th Cir. 2010). Delaying implementation of the IMSL for an undefined open-ended period of time would be more than intolerably corrosive of labor-management relations. Finally, it would be manifestly unfair and inequitable for the Award to require furloughed pilots, with integrated but indefinitely tolled seniority numbers on the awarded IMSL, to remain mired in unemployment as RAH hires new pilots off the street.

(declaratory judgment action filed by US Airways to resolve the risk that it might face if it accepted a seniority list other than the Nicolau Award dismissed on ripeness grounds); *Addington v. U.S. Airline Pilots Association, et al.*, 2:13-cv-00471-ROS (D. Ariz.) (Silver, J.) ("*Addington III*") (DFR suit by West Pilots regarding USAPA's failure to require that the Nicolau Award be used in the SLI process and seeking declaration that the West Pilots were entitled as a matter of law to participate through their own merger committee in this SLI process; appeal currently pending in the 9th Circuit).

In all of the aforementioned lawsuits, USAPA has used dues and agency fee revenue involuntarily collected from West Pilots either to sue the West Pilots or to defend against the West Pilots' efforts to protect the Nicolau Award. The West Pilots have been forced to fund all of their litigation efforts through voluntary contributions, which total to date over $3 million.

[11] It has been the position of the West pilot group in the *Addington III* litigation that the Memorandum of Understanding Regarding Contingent Collective Bargaining Agreement entered into by USAPA, APA, American Airlines, and US Airways in January 2013 triggered the obligation of USAPA to advance the Nicolau Award as the basis for USAPA's proposal in this SLI proceeding. That issue is currently pending before a panel of the United States Court of Appeals for the 9th Circuit. *See supra* at 12-13 n.10.

Republic/Frontier/Midwest/Lynx 45. That "manifestly unfair and inequitable" result is exactly what occurred as a result of USAPA's efforts.

In September 2014, APA was certified as the exclusive bargaining representative of all of the pilots at American Airlines, and, as a result, USAPA lost its statutory authority to represent pilots of US Airways.

C. What the foregoing shows is that there exists an integrated list of East and West pilots that (1) was adjudicated under ALPA merger policy, in a proceeding in which both parties agreed in advance that the result would be "final and binding"; (2) was the product of a proceeding in which representatives of the East and West pilot groups, who were selected by the former America West and US Airways democratically elected MECs, each had a full and fair opportunity to present their positions and best evidence as to what the competing equities of the pilots groups were and what the resulting list should look like; (3) was accepted by US Airways as the ISL that would govern its pilots; and (4) has never been held by any court or forum to be unfair or inequitable with respect to either the process used to obtain it or its result. Furthermore, the East Pilots have avoided the implementation of the list solely by fiat, motivated either by the belief, false as it may be, that the Nicolau Award did not take longevity into account or by the opinion that it did not take longevity into account as much as they would have preferred.

In light of these circumstances, there is no principled basis on which anything other than the Nicolau Award could be used as the basis for the integration of the East and West pilots. Rather, fairness and equity require that it be used as the starting point for the SLI proceedings in this matter. To hold otherwise would deal a serious blow to the integrity of the long-established "fair and equitable" SLI process, and would only encourage the type of sour-grapes, by-any-means-necessary exercise of brute power that the East pilots have engaged in to avoid the

implementation of an award that is not to their liking. The East pilots had a full and fair opportunity to litigate the equities regarding the merger of US Airways and America West in 2007 and from that case a final and binding award was issued; they should not now be permitted to assume the role of a "new George Nicolau" and propose a new, alternative basis on which the East and West lists can be integrated as if the previous proceeding had not occurred.[12] Indeed, as far as we are aware, setting aside the Nicolau Award as the starting point for the integration of East and West pilots in this proceeding would leave the Nicolau Award the only SLI award that has never been implemented.[13] This Board should not countenance such a result.

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[12] Indeed, allowing USAPA to re-open the US Airways-America West SLI arbitration to determine how East and West lists should be re-integrated here would be a practical nightmare: given that, in SLI proceedings under the fair and equitable standard, pilot group equities are assessed at the time of the merger of the pilot groups' *separate* airlines, *see* Appendix II at AII-3 to 5 (discussing the concept of a snapshot date), this Board would have to consider the equities of those two pilot groups as of the time of *the US Airways-America West* merger, which was announced more than ten years ago – including fleets and stand-alone prospects for two airlines that no longer exist, as well as the longevity and status-and-category for pilots who are no longer flying.

There is no basis, of course, for treating the East and West pilots as having separate group equities as of the snapshot date for *this* merger, *see* Appendix II at AII-4 n.1, since the East and West pilots comprise a single pilot group that has worked for single unified airline since 2005, managed by a single management team that structures its routes and deploys its assets in a single coordinated manner. It would be the height of chutzpah to suggest that the East and West pilot groups are to be judged as having separate equities *now*, despite having the same employer, merely because the East pilots have succeeded until now in preventing the implementation of the Nicolau list.

[13] There is an SLI case that was proceeding to decision at the same time the Nicolau arbitration occurred that puts an exclamation point to this observation. *See Atlas/Polar* (Harris 2006). The pilots of Atlas Airlines and Polar Airlines – both ALPA carriers and both owned by the same holding company – commenced an SLI process before Arbitrator Robert Harris. On November 21, 2006, Arbitrator Harris issued his Award. Many of the Atlas pilots, who outnumbered the Polar pilots, were unhappy with the Award (and were unhappy with ALPA for a variety of reasons). In December 2008, they replaced ALPA with the International Brotherhood of Teamsters. Notwithstanding that the pilot group was no longer "bound" by ALPA Merger Policy (and therefore could have made the same argument that USAPA has made for the past 8 years), the Teamsters-Atlas Air-Polar Air collective bargaining agreement adopted the Harris Award and its ISL controls to this day.

D. Thus, what the West Committee proposes is that the first step in this SLI proceeding is to adopt the Nicolau Award list as the method for integrating the East and West pilot lists. The second step in our proposal is to "age" the list to December 9, 2013, which is the agreed upon "snapshot" and "constructive notice" date for the American-US Airways merger.[14] To "age" the list, the West Pilots propose removing from the Nicolau Award list all pilots who have retired or have otherwise been removed from the East or West pilot lists between the Nicolau Award's issuance date and December 9, 2013. The third step is to append to the list, in date of hire order, all pilots who have commenced employment at US Airways since May 19, 2005, the constructive notice date of the Nicolau Award – so called "Third Listers."[15] The resulting list will have all current US Airways pilots integrated according to the Nicolau Award and updated to the relevant date for this SLI proceeding.

II. The Building Blocks for the Construction of an ISL

Before turning to the details of the West Committee's proposal and the rationale supporting them in Part III, it is important to discuss some of the critical building blocks of an ISL, especially as they relate to the objective of developing a "fair and equitable" ISL.

The Board is tasked with developing an ISL according to the same "fair and equitable" standard that has historically been applied by arbitrators in SLI proceedings.[16] As Arbitrator

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[14] While the Committees have agreed on December 9, 2013 as the snapshot and constructive notice dates, we describe both of them in the Technical Appendix to this Brief along with the West Committee's rationale for agreeing on those dates.

[15] While we call this the third step, it is really nothing more than the further application of the Nicolau Award, which by its terms placed all "constructive notice pilots" below the last of the US Airways and America West pilots hired prior to May 19, 2005.

[16] Here, the "fair and equitable" standard applies by operation of the McCaskill-Bond Amendment to the Federal Arbitration Act. 49 U.S.C. § 42112 note § 117(a). Specifically, the

Eischen observed in *Republic/Frontier/Midwest/Lynx*, that standard is "satisfied if the integration preserves the job expectations and relative bidding positions that employees held prior to merger." *Republic/Frontier/Midwest/Lynx* 29. "At bottom, the objective is to preserve, to the extent possible . . . the pilots' career expectations at the time they learned of the transaction and to share equitably the growth opportunities created by the transaction, based on the groups' contribution to that growth." *Id.* at 30 (quoting *Chautauqua/Shuttle America* (Kasher 2005)). *See also Delta/Northwest* (Bloch, Eischen, Horowitz 2008) 15 ("The resulting list neither realizes nor maintains each and every career expectation, nor could it do so. No recitation of career expectations ever includes a merger, and no merger can leave all hopes and plans unaffected"). It has also been observed that the benchmark under this standard is the "'*reasonable*' career expectations" of the affected pilot groups. *Chautauqua/Shuttle America* 13 (emphasis added). This is so because, "no matter the effort in minimizing unfavorable changes to career expectations, merged lists do change career expectations; it is in their nature that they do." *Republic/Frontier/Midwest/Lynx* 30 (quoting *US Airways/America West* 19). Consistent with this standard, an important part of the Board's task is also to ensure that no pilot group obtains any "windfalls . . . at the expense of [any] other(s)." *Id.* at 29 (quoting *Delta/Northwest* (Bloch, Eischen, Horowitz 2008) 13).

Arbitrator Eischen further observed that a large body of arbitral precedent has been developed under the "fair and equitable" standard, both in ALPA and non-ALPA cases. *Id.* at

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McCaskill-Bond Amendment provides in relevant part that with the respect to a covered airline merger, "sections 3 and 13 of the labor protective provisions ["LPPs"] imposed by the Civil Aeronautics Board in the *Allegheny-Mohawk* merger (as published at 59 C.A.B. 45) shall apply to the integration of the covered air carriers." 49 U.S.C. § 42112 note § 117(a). In turn, *Allegheny-Mohawk* LPP Section 3 provides that "provisions shall be made for the integration of seniority lists in a fair and equitable manner," and that if the "employees affected" by a merger cannot agree on how to merge their seniority lists, "the dispute may be submitted by either party for adjustment in accordance with section 13." 59 C.A.B. at 45.

29. In constructing lists under this standard, arbitrators routinely take into account certain fundamental equities – longevity, status-and-category and reasonable career expectations – that inform how a list should be structured in the aggregate. We discuss each of these concepts in turn before turning to the West Committee proposal.

A. Longevity

A pilot's longevity – that is, his time spent at his pre-merger airline available for or engaged in revenue flying – has long been considered a baseline equity to be considered in the construction of a fair and equitable ISL. The rationale underlying this equity is simple: a pilot's longevity is a measure of the individual sweat equity that he has given in service to his airline over his career. This type of sweat equity is ordinarily thought of as a defining characteristic of seniority; indeed, it is rare that an ISL can be constructed without taking this component of seniority into account. *See, e.g., US Airways/America West* 26 (giving consideration to date of hire despite the fact that it was "no longer listed as a determinant or even stated as an integration criterion" in ALPA merger policy).

Given the vagaries of the available data and the different methods of accounting for a pilot's time in revenue service and their absences from revenue service in this case, there are a number of technical issues that have to be resolved to be comfortable that calculations of longevity are based on substantially similar measures. The West Committee's proposal is based on a number of assumptions and decisions – some agreed between the Committees and some not – designed to maximize the reliability and evenhandedness of these calculations. Rather than burden this Brief with a discussion of them in text, we have attached a Technical Issues Appendix ("Appendix II") that describes these assumptions and decisions, and we will offer a witness at the hearing who will explain them.

B. Status and Category

Simply put, status-and-category accounts for the jobs each pilot group "brings to the party [*i.e.*, merger]." *Chautauqua/Shuttle America* 12. *See also Northwest/Delta* 25; *Continental/Frontier* (Nicolau 1987) 46. This equity recognizes that pilots of different "status" (captain versus first officer, or, in past times, flight engineer) who came to the merger flying in fundamentally different aircraft types, or "categories," have individual career expectations that vary based on the status and category that they have already achieved and the type of flying opportunities available at their airlines.

Taking status-and-category into account requires first, deciding which aircraft ought to be grouped together for comparison purposes, and second, how many Captains and First Officers each airline used to operate each aircraft or aircraft grouping. This second step is performed by counting the number of pilots assigned to the status-and-category grouping on each airline's certified seniority list. Third, the staffing numbers at the respective airlines are compared to each other to create ratios. *See Delta/Northwest* 17 ("The Status and Category/Ratio method . . . proceeds by establishing a series of aircraft-based categories, the staffing of which generates discrete ratios within each of those categories."). Finally, in a pure status-and-category integration, the legacy airline lists are integrated according to the ratios for each grouping.

There are three subsidiary issues to resolve in establishing the ratios necessary to construct a status-and-category list. First, because merging airlines often operate different equipment types, status-and-category integrations require making decisions about which aircraft types within and between the airlines ought to be grouped together. If one airline operates A-

319s, A-320s and A-321s, should they be treated as three separate categories or a single category for job counting purposes and, assuming the other airline doesn't operate Airbus aircraft but rather Boeing aircraft, should B-737s be treated as the same category as the A-319, A-320 and A-321 aircraft at the other airline? Should an A-330 be placed in the same category as a B-777? And, at a more refined level, should all B-737s be considered the same or is there a rationale for distinguishing between B-737 models based on size or mission?

The West Committee's proposal identifies eight separate status-and-category tiers, which generally mirror the aircraft groupings for wage scale purposes in the New American JCBA .[17] *See* Attachment 14 (New American JCBA Wage Scale Excerpt). In decreasing order of desirability, the tiers are:

Tier	Description	JCBA Grouping	Aircraft Types on Property
1	Large Wide Body Captains	Group IV	All B-777s, All A-330s
2	Small Wide Body Captains	Group III	B-757-200, All B-767s*
3	Narrow Body Captains	Group II	All B-737s, A-319, A-320, A-321, MD-80
4	Large Wide Body First Officers	Group IV	All B-777s, All A-330s
5	Small Wide Body First Officers	Group III	B-757-200, All B-767s
6	Narrow Body First Officers and Embraer 190 Captains	Group II (and Group I CAs)	All B-737s, A-319, A-320, A-321, MD-80 EMB-190 (CA)
7	Embraer 190 First Officers	Group I	EMB-190 (FO)
8	Furloughees		

[17] Embraer 190 Captains are grouped with narrow body first officers because their wage rates are comparable and Embraer 190 First Officers are in a group of their own as their wage rates are too far below the lowest First Officer rate in the next aircraft grouping to be included in that tier.

The second issue is deciding how many pilot jobs there are in each status-and-category tier and the third is deciding how to distribute within each tier (and therefore ultimately within the ISL) the positions for pilots who were not engaged in revenue flying and who are thus not associated with a "job" brought to the merged airline, recognizing that in the final ISL, pilots' order in relation to their colleagues on their pre-merger lists cannot be changed. These are also technical issues and are often subject to debate. The West Committee believes that in the end, nothing much in terms of the overall equities turns on how these two issues are resolved, and like the technical issues related to longevity calculations, we discuss them in the Technical Appendix.

C. Reasonable Career Expectations

Career expectations recognizes that when pilots of two carriers had markedly different pre-merger stand-alone expectations for their working future due to, among other things, the economic forecast for their respective carriers on a stand-alone basis, or the type or magnitude of different flying opportunities at the respective carriers, these divergent expectations should be taken into account in creating an ISL. Essentially, while longevity and status-and-category are "backward-looking" and account for pilots' past and present circumstances, career expectations is "forward-looking" and attempts to account for what pilots could reasonably expect the future to bring.

For reasons described in the Introduction to this Brief (and in Appendix I and the Garfinkle and Akins Exhibits), the comparative economic positions in the industry for the two merging airlines should play a very minor role in this case. By reason of the competitive state of the airline industry following the Delta-Northwest and United-Continental mergers, neither American pilots nor US Airways pilots could legitimately assert that they had realistic distinct or

superior stand-alone career expectations based on the economic health of their carrier. *See supra* at 1 n.1; Appendix I; Attachment 4 (M. Garfinkle Exhibits); Attachment 5 (D. Akins Exhibits). Therefore, there is no reason why the Board should place a "thumb on the scale" in favor of either pilot group in weighing the groups' respective status-and-category or longevity equities based on this factor.

As we discuss further *infra*, however, this merger poses a particular challenge in light of the type and magnitude of flying opportunities that each pilot group is bringing with them. On the whole, the US Airways pilot group brings with them a disproportionate amount of narrow body-flying opportunities, in addition to international and domestic wide body flying opportunities. American pilots bring with them more wide body flying – and, as a result, there is an overwhelming class of current American wide body first officers that stand to accede, under almost any conceivable proposal, to the disproportionate narrow-body captain positions that the US Airways pilots bring to the merger. US Airways first officers in the lower half of the list therefore are likely to suffer delays in becoming narrow body captains and experience losses in career expectations for time spent as captains. The West Committee's proposal is one that we believe entails the least amount of disruption to the expectations of the US Airways pilots who expected to achieve a narrow-body captain position at a certain point in their careers while, at the same time, does no violence to the American pilots' expectations.

III. The West Committee's Proposal – A Hybrid Longevity/Status-and-Category ISL Weighting Longevity at 35% and Status-and-Category at 65% with Minimal Conditions and Restrictions

A discussion of the three components of a fair and equitable ISL would not be complete if we did not point out the obvious: the three dominant equities identified *supra* at Part III "pull in different directions," *United/Continental* 33, and two of them – longevity and status-and-

category – are objective, while the third – career expectations – is considerably more subjective. A simple hypothetical makes the point. Assume a merger of Airlines A and B. Airline A is a pure domestic carrier operating almost exclusively narrow body aircraft (*e.g.*, B-737s or A-320s) with a few B-777s, but has been in business for a long time and has pilots with considerable longevity. Airline B is a carrier operating largely, but not exclusively, wide body aircraft (*e.g.*, B-747s or B-777s) internationally but has been in operation for only a short time and therefore its pilots have considerably less longevity. If the seniority lists were to be integrated purely by ratios based on status-and-category, Airline B's pilots would dominate the top of the list and would have access to the most desirable flying even though their longevity is inferior to the longevity of Airline A's pilots. If the lists are integrated purely based on longevity, Airline A's pilots would dominate the top of the list and have access to the most desirable flying even though they had limited opportunities to enjoy that flying in those statuses and categories at their pre-merger carrier. And if the economic outlook for the airlines were quite different, the career expectations of the pilots at the two airlines may be enhanced or impeded to one degree or another by either of the two solutions.

Despite these tensions, historically, arbitrators have had to choose whether to use status-and-category or longevity as the starting point for ordering a list. As a result, in past arbitrations, perhaps the most significant decision that arbitrators were required to make was an either/or choice as to whether status-and-category or longevity would be the prevailing equity by which the ISL would be generally ordered, and, predictably, parties to those arbitrations often advocated for one approach while their counterparties advocated for the other. *See, e.g.*, *Northwest/Delta* 16 ("We turn first to the competing proposals concerning the underlying integration method: Date-of-Hire versus a Status and Category/Ratio approach. Although there

are advantages and disadvantages to each method, the facts of this case persuade this Board that the Status and Category approach is the more fair and equitable."); *Chautauqua/Shuttle America* 6-7, 11, 18; *Re: Seniority Integration at Air Canada* (Mitchnik 2001) 33-36; *Federal Express/Flying Tiger* 35-36; *Continental/New York Air* (Bloch 1987) 3-4, 7-9. Typically, after choosing longevity or status-and-category as a starting point, arbitrators would employ various list-building exceptions, or impose sometimes lengthy conditions or restrictions, to ameliorate the consequences of choosing one approach over the other—even though such conditions and restrictions often led to additional disputes. *See United/Continental* 34 ("Conditions under which either traditional method, standing alone, produces an equally fair and equitable merged list are indeed rare."); *Delta/Northwest* 21-26 (after first selecting status-and-category as the starting point for the integration, panel adopted a "pull and plug" methodology to account for greater longevity and retirement rates at Northwest); *America West/US Airways* 27-28 (after first selecting status-and-category as the starting point for the integration, moving the entire US Airways list up the combined list by some 517 numbers to account for the greater longevity of the US Airways pilots).

The hybrid approach Arbitrators Eischen, Kaplan and Nolan adopted in the very recent *United/Continental* case constitutes an important innovation in that it removes entirely the need to base the list on only one equity and offset it with conditions and restrictions to take into account the other. Instead, it permits an arbitration panel to take longevity and status-and-category into account to the exact degree that the panel believes is appropriate. By doing so, the hybrid approach enables an arbitration panel to design an elegant and fair allocation of work opportunities with the most minimal set of conditions and restrictions included only if necessary

to avoid giving either pilot group a "windfall" as a result of the merger due to a discreet pre-merger difference or quirk in the pre-merger lists.

The hybrid methodology has other virtues that commend its use. Before the airline consolidations following the events of the post-911 era, mergers were between airlines of relatively modest size. In this latest round of consolidation, Delta-Northwest produced an ISL with over 11,000 names; United-Continental produced a list with 12,000 names and this case will produce a list with 15,000 names. No previous SLI cases required arbitrators to manage anything close to these numbers of pilots. And while it has always been true that, as the panel noted in *Delta/Northwest*, seniority integration was about the interests and equities of *groups* of pilots, not *individual* pilots,[18] it is even more the case when the list contains thousands of names. The hybrid methodology is uniquely designed to manage large seniority lists from two airlines, each of which has its own unique quirks,[19] and assign and reward the equities of the pilots on each list to that group of pilots collectively. *See United/Continental* 34 ("It is also clear to us

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[18] "As in all such exercises, the focus here is necessarily on groups, not on any individual pilot. Inevitably, and unavoidably, there will be perceived disparities and mismatches on individual levels, on both sides, under the merged list." *Delta/Northwest* 15 n.8.

[19] By "quirks," we mean simply the following: pilot seniority lists now contain pilots in numerical seniority order whose individual circumstances do not fit neatly into what one would have found years ago, largely as a consequence of previous mergers. On any seniority list, less senior pilots often have dates of hire earlier than more senior pilots, greater longevity than more senior pilots and fly higher-paid equipment than more senior pilots as a result of prior seniority integrations, personal decisions or both. Those circumstances differ in both magnitude and placement in the list from one list to another. The American list, for example, contains Air Cal, Reno and TWA pilots who are not on the list in date-of-hire or longevity order nor are they holding the most senior positions their seniority number would permit them to hold. The US Airways list (the Nicolau list) has America West pilots in the same circumstances and the East list standing alone is comprised of pilots from Trump Shuttle, Allegheny, Mohawk, Piedmont and Empire with similar anomalies. Trying to parse the lists and make decisions on an individual pilot basis has nothing to commend it, as it would require an infinite number of subjective decisions that really have nothing at all to do with the broad principles at stake and that would inevitably result in "apples to oranges" comparisons.

that using a hybrid methodology that combines elements of both the Date-of-Hire and Status/Category ratio models can reduce aggregate equity distortion. The fairly straightforward combination of those two most commonly used methods in the UAL model was a good conceptual base for building our ISL.").

A. The Mechanics of, and the Rationale for, the West Committee's Hybrid Longevity/Status-and-Category Proposal

The *United/Continental* panel adopted a multi-step hybrid methodology proposed by the United pilots, *United/Continental* 35, that "creat[es] separate seniority lists using longevity for one and status & category for the other, [and] then merg[es] the two to produce a hybrid list," *United/Continental* 21. The steps in the hybrid methodology approach adopted by that panel are as follows:

First	An integrated seniority list is created based purely to longevity according to a "snapshot" date. *See id.* at 15.
Second	An integrated seniority list is created based purely on status-and category tiers and ratios. *See id.* [20]
Third	The two separate lists are merged with each other according to a weighted proportion. In *United/Continental*, the United pilots proposed a 50%/50% weighting, and the panel concluded that, in the circumstances of that case, a 35%/65% weighting in favor of status-and-category was appropriate. *See id.* at 35-36. The result

[20] Both out of design and out of necessity, the intermediate status-and-category and longevity lists that are created in the first two steps of this process are ordered on a "stovepipe" basis. A "stovepiped" list accounts for the fact (among other "quirks" described *supra* at 25 n.19) that not all pilots exercise their maximum bidding rights according to their seniority. A stovepiped status-and-category list re-orders the pilots' positions (but not the pilots themselves) as if all pilots sought to achieve the highest status-and-category before integrating the separate lists. In accordance with the "no bump, no flush" principle and the obvious proposition that no pilots can have their order changed with respect to their pre-merger group, once the integrated list is constructed, the pilots are placed on the ISL in the same order, and in the same status-and-category, that they had prior to the integration. A stovepiped longevity list is constructed in the same manner according to pilots' respective longevity for the same reason; despite differing longevity periods, no pilot's order can be changed vis-à-vis the pilot's pre-merger colleagues.

is an integrated list with blank slots for pilots from each respective airline.

Fourth Pilots are assigned to the blank slots on the new ISL in the order in which they appeared on the pre-merger lists for each airline.

See generally id. at 15-16, 21, 33-36.[21] Finally, where appropriate, conditions and restrictions can be used to ensure that pilots' pre-merger career expectations are sufficiently protected. *See id.* at 16. The result is a list that incorporates "longevity, status & category and career expectations."

The West Committee's proposal adopts the same hybrid methodology that panel adopted. The West Committee also proposes that the same weighting that the *United/Continental* panel found appropriate be applied here as well: a 35% for longevity and 65% for status-and-category. In choosing that weighting, it is important to remember that it is not the *integration methodology* that is measured against the fair and equitable standard, it is the *list* any methodology produces. To that end, the West Committee will demonstrate at the hearing that the ISL the hybrid methodology produces is fair and equitable – not only as of the stipulated-to snapshot date, but also over the length of the careers of the two pilots groups. Our analysis will show that pilots from both pilot groups, and from all places on the ISL, will only experience modest changes to their stand-alone career expectations. Furthermore, not only are the changes modest for pilots overall (and fall well within the type of "reasonable" changes to career expectations that occur as a result of a merger, *see supra* at 17), but on the whole, due to the stand-alone structural factors discussed *supra* at 22, the West Committee's analysis actually suggests that it will be *American*

[21] The technical aspects of the hybrid methodology used in the *United/Continental* case to building a hybrid ISL are explained in detail in Attachment 15 to this Pre-hearing Brief, which is the technical exhibit offered by the United pilots in that case.

pilots who, on average, will experience gains in narrow-body captain opportunities, as a result of this merger. The West's proposed ISL is attached to this Brief as Attachment 17.

B. Proposed Conditions and Restrictions

Other than the conditions and restrictions contained in the Memorandum of Understanding ("MOU") between the airlines, APA, and USAPA that governs this case, and those additional conditions and restrictions separately agreed to by the Committees and the Company in the Parties' Stipulation, the West Committee's proposal contains only a limited number of conditions and restrictions, which are in Attachment 18 to this Brief. Experience has taught that extensive conditions and restrictions of long duration are nothing more than a recipe for disputes.[22] The environment created by these disputes is not a healthy one for the pilot group as a whole, which will have to work cohesively following the integration of the lists.

1. Under the West Committee's proposal, the proposed ISL "does the work"; that is, in light of the minimal disruption to pilots' career expectations under the West Committee's proposal, *see supra* at 27, equipment fences should not be necessary, especially since they have the potential to be sources of continued dispute among legacy pilot groups after an otherwise successful integration. We urge the Panel not to impose equipment fences. However, we recognize that both carriers had wide body aircraft on order but not yet on property as of the snapshot date – B-787s at American and A-350s at US Airways. Accordingly, out of fairness and a concern for parity, if AAPSIC proposes that a fence be imposed for the B-787s that were on order for American Airlines, and if the Panel is inclined to impose that fence, the West

[22] "[A]rbitral attempts to ameliorate the inevitable career expectation distortions of an ISL based solely on one or the other method by means of elaborate and lengthy Conditions and Restrictions have proven counterproductive and only served to perpetuate the pre-merger disputes. *See Northwest/Republic* (Roberts 1989) and 24 subsequent interpretation awards between 1989 and 2010." *United/Continental* 34.

Committee proposes that a fence be imposed for the A-350s that were on order for US Airways for the same duration as any fence on the B-787 but commencing on the date that the Company issues the first vacancy bid for the A-350. *Id.* at ¶ 2.

2. The West Committee also proposes that a certain number of A-330 captain and first officer positions that would otherwise go to either East or West pilots under the operation of the ISL go exclusively to West pilots until the specified quota is reached. *Id.* at ¶ 3. As will be explained in detail at the hearing, the reasons for this proposed condition and restriction is rooted in the US Airways-America West Transition Agreement, which provided a mechanism under which the East and West pilots could determine the allocation of aircraft between East and West pilots that were added to the US Airways fleet during the pendency of the Transition Agreement. As we will explain, the East pilots, through USAPA, prevented the West pilots from obtaining a fair allocation of A-330 flying to which they would have been entitled. The West Committee therefore proposes this condition and restriction to remedy this inequity.

3. Finally, in order to avoid future potential disputes with the Company regarding the implementation of the ISL, the West Committee proposes that the Board include in its award a condition and restriction specifying both that the award shall be effective "as soon as practicable, and in no event later than the first day of the third flying month following the issuance of the award," and that the Company apply the ISL "to all events as to which system seniority is applicable under the JCBA." *Id.* at ¶ 5.

CONCLUSION

For the reasons presented herein and for the reasons that will be presented at the hearing in this matter, the Board should adopt the proposal of the West Committee.

Respectfully submitted,

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APPENDIX I

STATEMENTS BY APA, AMERICAN AIRLINES, AND US AIRWAYS REGARDING THE NON-FEASIBILITY OF A STAND ALONE FUTURE

After the Delta-Northwest and United-Continental mergers, neither US Airways nor American Airlines would have been able to survive on a stand-alone basis. This appendix sets out quotes from representatives and professional advisors of the Allied Pilots Association ("APA"), US Airways, and American Airlines which illustrate the widespread acceptance of this plain fact. The source documents are available on the Sharepoint site and can be made available in paper as well.

1. Statements by Representatives of the APA

"[H]ere we have a business plan, [and] other than the company's paid witnesses you're going to find few [who] will say this business plan makes sense and is going to succeed. Every analyst says consolidation is what has to occur. [Opposing counsel] says this airline needs heft, it needs to grow . . . U.S. Air has talked to American Airlines. Were U.S. Air and American to combine it'd be the biggest airline in the world. It'd be the biggest on the east coast, the biggest in the Midwest, probably third on the west [coast]. This stand-alone plan no one has confidence in."

–*In re: AMR Corporation*, Case No. 11-15463-shl (Bankr. S.D.N.Y.) (Trial Tr. at 69:22–70:12 (Apr. 23, 2012)) (Edgar James, General Counsel of APA).

"[W]e believe in a combination, it's going to occur, the only question is when it occurs."

–*In re: AMR Corporation*, Case No. 11-15463-shl (Bankr. S.D.N.Y.) (Trial Tr. at 72:8–10 (Apr. 23, 2012)) (E. James).

"Finally, we think we have good cause to reject [American's proposals in the context of its stand-alone plan], and that's because the company stubbornly refuses to consider any other alternative in their stand-alone business plan, and again to underline that one, you're going to find very few people other than the people they're paying to get on the stand who say this business plan has a reasonable chance of success. It's a place holder.

"What people – everyone believes is going to occur is they're going to get out of this bankruptcy and they'll consolidate with another company, and there are very few choices out there. With U.S. Air they become number one. With the employees these mergers are painful to employees, Your Honor, we have to go through seniority mergers. They're not something this union has ever advocated or wanted to get involved in because they're incredibly painful, but we see no other choice if this company is going to succeed.

"We're not trying to rob the bank and get a short term keep our compensation in a short term and get a company that's limping along. We've got to get a successful company and we believe the only way to do that is to take some pain and do a merger with another company and cut us to market. We're willing to do that."

–*In re: AMR Corporation*, Case No. 11-15463-shl (Bankr. S.D.N.Y.) (Trial Tr. at 73:4–20; 73:24–74:4 (Apr. 23, 2012)) (E. James).

"One is we believe and the – virtually every analyst believes that this company, in order to succeed, is going to have to consolidate. There's going to be a merger in this industry. There aren't a lot of merger partners out there. Indeed, there's probably one major merger partner out there.

"[W]e have historically been opposed to mergers. Employees get hurt in mergers. They – there are efficiencies that will occur. There are dislocations. But, frankly, as I said before and I'll say again, the pilots are going to be around this company for an average of thirty-two years. They have a deep vested interest in a successful company, so they're willing to go where they have not been willing to go before and say, we'll look at a merger; we'll consider a merger."

–*In re: AMR Corporation*, Case No. 11-1546-shl 3 (Bankr. S.D.N.Y.) (Trial Tr. at 11:18-23; 12:6-14 (May 14, 2012) (E. James).

"[Y]ou'll hear from our representative of Lazard that the company's stand-alone plan models extraordinary profit levels, levels that no major network career has achieved in the last decade."

–*In re: AMR Corporation*, Case No. 11-15463-shl (Bankr. S.D.N.Y.) (Trial Tr. at 14:6–9 (May 14, 2012)) (E. James).

"[T]he five cornerstone business plan, which has been the business plan for a number of years . . . is stumbling along and we don't think is going to ultimately cause this company to [emerge] as a successful stand-alone, but it is the business plan."

–*In re: AMR Corporation*, Case No. 11-15463-shl (Bankr. S.D.N.Y.) (Trial Tr. at 17:2–7 (May 14, 2012)) (E. James).

"Every major competitor has consolidated. You have America West and U.S. Air, United and Continental, and Delta and Northwest. The industry has changed significantly as a result of [these] consolidation[s]. American used to be number one a couple of years ago and now it has fallen to the number three place.

–*In re: AMR Corporation*, Case No. 11-15463-shl (Bankr. S.D.N.Y.) (Trial Tr. at 15:12–17 (May 14, 2012)) (E. James).

"We have two alternative proposals: A painful, but necessary consolidation proposal, we believe, and a stand-alone proposal. Ours are based on market-based terms, not a hole in the business plan. And we believe they are market-tested."

–*In re: AMR Corporation*, Case No. 11-15463-shl (Bankr. S.D.N.Y.) (Trial Tr. at 22:9–13 (May 14, 2012)) (E. James).

"[W]e've historically been opposed to mergers because they have not a pretty history at American Airlines, but we've gone into thinking that consolidation is the way . . . [W]hat's

happened in this industry is [that] the effect of Northwest and Delta, United, Continental and U.S. Airways and America West has fundamentally altered the landscape of this industry."

–*In re: AMR Corporation*, Case No. 11-15463-shl (Bankr. S.D.N.Y.) (Trial Tr. at 95:7–14 (May 25, 2012)) (E. James).

"The piece that interests us about a U.S. Airways merger . . . historically pilots resist mergers because of the difficult seniority issues. Usually, there's contraction rather than growth. So we put a lot of thought and analysis into the business plan and I think the business plan is what appeals to us the most strongly. We look at the American stand-alone business plan that we had put in front of us prepetition, the five cornerstones. We know we're struggling in New York. We know we're struggling in Chicago.

"And the U.S. Airways business plan, when merged with our business plan, we see that as creating an entity that puts us on a scale of Delta . . . or United and that puts us [i]n a position to compete for corporate accounts because what's really been, you know, driving the decline I'll say of American Airlines the last couple of years has been the migration of corporate accounts over to Delta and United. And it's very real and it's hit us . . . on the revenue side.

"And we look at the business plan for American Airlines and we want to hitch our careers to a successful and thriving business plan, but it's not just for us. We think this entire process is about maximizing value for all the stakeholders and we – for us, it was very clear after seeing these – you know, doing the initial due diligence and expiration of the business plan that it presented a more viable exit from this process that we would support and – and pursu[e]."

–*In re: AMR Corporation*, Case No. 11-15463-shl (Bankr. S.D.N.Y.) (Trial Tr. at 66:2–67:4 (May 14, 2012)) (Neil Roghair, pilot and chairman of the APA's Military Affairs and Negotiating Committees).

"[I]t seems unreasonably high and unprecedented frankly relative to its peers over this time period . . . My personal opinion is that the analysts would be shocked at this range of profitability as a future projection."

–*In re: AMR Corporation*, Case No. 11-15463-shl (Bankr. S.D.N.Y.) (Trial Tr. at 172:8–16 (May 14, 2012)) (Andrew Yearley, APA's financial expert, discussing American's target EBITDAR under its stand-alone plan).

"Look, at the end of the day this is . . . probably not the forum to necessarily, you know, weigh the benefits and challenges of a US Air consolidation, but having said, that I think we all have to have our eyes open that American admittedly has a network problem. It's seeking to solve it through a cornerstone strategy and some other initiatives, but it's always been our view that it's not a matter of if, but when American would transact given the challenges it faces and we believe can't necessarily easily overcome without some sort of strategic transaction.

"So in that context, you know, we took the meeting with US Air, we heard what they had to say about their view of the world in terms of the opportunities and the benefits of a merger, and we provided our advice to both the APA and the board relative to, you know, the pros and cons and the like."

–*In re: AMR Corporation*, Case No. 11-15463-shl (Bankr. S.D.N.Y.) (Trial Tr. at 183:12–184:3) (May 14, 2012) (A. Yearley).

"AMR's court pleading and Business Plan materials acknowledge its strategy challenges including a network whose size and reach put it at a competitive disadvantage relative to its largest major network carrier competitors – United and Delta. As a result, AMR's share in most regions of the U.S. market, including its so-called 'cornerstone' cities, has significantly eroded over the last decade as its key network carrier competitors have consolidated and extended their network and scale advantages. Equally troubling has been the steady defection of AMR's share of high-yield corporate customers and elite travelers to the superior networks of United and Delta – a development that has caused AMR, which once enjoyed a 'premium' in relative RASM to the rest of the industry, to now suffer from a RASM 'discount.' AMR's most recent strategy to arrest this decline – the so-called 'Cornerstone Strategy' – has not, to date, shown obvious signs of success.

"AMR's Business Plan largely reflects the same (generally speaking, unsuccessful) 'Cornerstone Strategy,' paired with a historically unprecedented and costly aircraft purchase whose size and timing (as discussed below) has not been justified by any disclosed business case or other supporting financial analysis. AMR also proposes a package of take-it-or-leave-it labor concessions designed to "patch" AMR's lagging network using a mix of upgauged regional jets and hypothetical future domestic codeshare agreements and to impose unnecessarily extensive modifications to the pilot contract – modifications that were determined on a "top down" basis with no relation to the market."

–*In re: AMR Corporation*, Case No. 11-15463-shl (Bankr. S.D.N.Y.) (Decl. of A. Yearley at ¶¶ 10, 11 (May 11, 2012)).

"The profitability level that American seeks in its Restructuring Business Plan not only exceeds what it needs to be competitive but also targets a profitability level that ***no network carrier*** has achieved since September 11, 2001. Indeed, in the last eleven years, domestic network airlines have achieved an EBITDAR margin above 15% only 6.7% of the time and have ***never*** achieved an EBITDAR margin above 16.5% .

–*Allied Pilots Association Memorandum in Opposition to Debtors' Motion to Reject Collective Bargaining Agreements Pursuant to 11 U.S.C. § 1113* (May 11, 2012) ("APA Memo") 18 (emphasis in original).

American's earnings target is completely outside the norms of the airline industry . . . American's own paid consultants have refused to validate the Company's earnings target as appropriate or necessary . . . Instead, the Company developed its earning target at its own discretion."

–APA Memo 46.

"[T]he consolidation contemplated by the Plan Support Agreement between American and US Airways would enable American to emerge from Chapter 11 with the network and synergies it needs to compete successfully against the other network carriers.

"If American merged with US Airways, it would become the largest carrier in the world, fix many of the network structure issues which plague its East Coast operation, and most importantly offer the services that would attract high value customers back to AMR. Annual synergy benefits from this merger have already been estimated by US Airways at $1.5 billion, which would allow the carrier to achieve its targeted EBIDTAR margins without having to rely on unrealistic growth and the uncertain assumptions which underlie its stand-alone plan."

–APA Memo 19–20 (quoting declaration of Dan Akins, who has been designated as an expert by the West Committee in these SLI proceedings).

"American's current Restructuring Business Plan, however, does not contemplate consolidation with another airline. Instead, it is based on a strategy in which American continues to operate as a standalone network airline, whose operations would be heavily invested in five "cornerstone" cities: Dallas/Fort Worth, Miami, Chicago, Los Angeles, and New York. American has followed this "cornerstone" strategy since at least 2009, when it invested 98% of its assets in those five cities. That strategy, however, failed American because it was unable to keep up with its competitors who were able rapidly and dramatically to expand their networks through consolidation."

–APA Memo 21 (quoting and referencing declaration of Dan Akins, who has been designated as an expert by the West Committee in these SLI proceedings).

"The APA has 'good cause' to reject American's demands because the Union reasonably believes that consolidation with US Airways offers a better path forward for all stakeholders at less cost to employees . . . All three unions agree that consolidation with US Airways is the best path forward for American, and all three unions are willing to sacrifice to make consolidation a reality. American's management admits that consolidation is inevitable . . . Thus, there can be no serious dispute that the Company's current business plan is a temporary placeholder while the Company develops its real long-term strategy."

–APA Memo 74.

"The evidence is undisputed that American is at a severe competitive disadvantage because its network is significantly smaller than that of its two main competitors, Delta and United. Delta combined with Northwest in 2008. United combined with Continental in 2010. As a direct result of those mergers, American went from having the largest network in the world to a distant third. Consequently, American has struggled in recent years while Delta and United thrived. Nearly every analyst who has considered the issue has concluded that American's best path forward is to consolidate with another airline, most likely US Airways . . . Consolidation with US Airways would substantially mitigate American's draconian labor demands, thereby returning fair and productive labor relations to the airline. It would also be in the best interest of nearly all stakeholders, excluding current Company management. Consolidation would make 'new American' the largest airline in the world, allowing it to compete effectively with Delta and United. Among the many benefits of consolidation articulated by the Company's own experts, new American's larger network would make it more attractive to business passengers and thereby allow it to achieve a higher fare premium and more revenue."

–APA Memo 76–77.

"Labor unions, creditors, and equity holders will all be better served by pursuit of a viable consolidation prospect without delay and on terms that do not disproportionately enrich current executives."

–APA Memo 78.

"Until the DOJ action was resolved, American had to operate without a long-term strategy. American did not know if it should market and work to implement the anticipated combination – as it had before August 15 – or emphasize a stand-alone posture. And American has had to compete from this uncomfortable posture against Delta Airlines and United Airlines – hub and spoke network carriers, each with domestic networks currently about 30% larger than American's – and large low cost carriers such as Southwest Airlines and Jet Blue with the cost advantages implicit in their point to point structures."

–*Statements in Support of Debtors' Motion for Order Approving Settlement* 3 (Nov. 21, 2013) ("Statements in Support").

"The Employees of American have sacrificed much to permit this reorganization and should not have to wait longer before their airline can compete with a network equal to others. Following years of losses in a market increasingly dominated by United, Delta, and booming LCCs, on November 29, 2011, AMR Corporation, American Airlines, Inc. and affiliates filed these Chapter 11 reorganization proceedings. After over a year of these proceedings, all of the estates' constituencies agreed that the best way to make American a durable and successful competitor was to follow the same approach as practiced by the other network airlines – building American's domestic network to equal its competitors through a merger."

–Statements in Support 8.

"American's union-represented employees were hopeful that the combination of American and U.S. Airways would quickly enhance American's ability to compete in the very tough airline industry. Increased American flying means more competitive routes, higher airline capacity, and more jobs for APA's pilots and APFA's flight attendants."

–Statements in Support 9.

"APA . . . believe[s] that Settlement of the DOJ Action to allow the consummation of the Plan and Merger promptly will result in a more competitive American Airlines and a brighter future for APA pilots . . . A stronger airline will create a large network carrier choice for consumers and an employer where the Employees can spend the rest of their careers."

–Statements in Support 10.

"APA strongly supports the proposed merger. Well before American Airlines declared Chapter 11 Bankruptcy on Nov. 29, 2011, we understood that our airline needed to make significant changes to become more competitive . . . With the mergers of Delta-Northwest and United-Continental, American Airlines has been relegated to a distant third in terms of revenue generation and the breadth of our network. One of the adverse consequences of this marginalization has been the defection of high-value corporate customers from American Airlines to our larger network-carrier competitors. For those consumers and companies needing an array of travel options, their choices have effectively been narrowed to Delta and United.

"The most expedient way to address American Airlines' revenue and network shortfalls is to merge with another carrier, and US Airways is the most logical merger partner . . . By combining the two carriers, the new American Airlines would serve 336 destinations in 56 countries, giving the traveling public access to a third comprehensive global network comparable to what Delta and United already operate.

"The past 10-plus years have been extremely challenging for our industry . . . We now face the prospect of relative stability thanks to consolidation."

– Written statement of Capt. Robert Coffman, Chairman, APA Government Affairs Committee, Competition and Bankruptcy in the Airline Industry: The Proposed Merger of American Airlines and US Airways: Hearing before the Committee on the Judiciary, Subcommittee on Regulatory Reform, Commercial and Antitrust Law, House of Representatives, 113th Cong. (February 26, 2013) ("Competition and Bankruptcy") 12-13.

2. Statements by Executives of American Airlines

"Our customers support the merger. They have told us, loudly and clearly, that both the American and US Airways networks need to be improved in ways we cannot accomplish on our own. By combining our complementary systems, we will create the network our customers want, one that can compete with the larger networks of Delta and United and with the cost advantage of Southwest Airlines and a host of fast growing low cost airlines.

"Bankruptcy, however, did not address the fundamental network issue that was enabling competitors to win away important business. Thus, it was not long, before American was approached by US Airways with a proposal that would enable the two airlines together to build a better network through a merger. While American Airlines initially had intended to emerge from bankruptcy first, and then examine potential partners, it quickly became clear that the potential cost savings and improved network offered by the unsolicited proposal from US Airways warranted careful examination.

"More than ever, consumers want the ability to reach a broad range of destinations, whenever they want, on one airline system. Because of the limited size and scope of our respective networks, neither American nor US Airways is able to respond fully to that demand and both operate at a competitive disadvantage to the larger networks of Delta and United. The merger will join two highly complementary networks across the globe, filling critical competitive service gaps for each airline, and create a better and more competitive alternative for consumers."

– Joint statement of Doug Parker, CEO of US Airways, and Tom Horton, CEO of American Airlines, The American Airlines/US Airways Merger: Consolidation, Competition, and Consumers: Hearing before Judiciary Committee, Subcommittee on Antitrust, Competition Policy, and Consumer Rights, Senate (Mar. 19, 2013) 1, 3-4.

"As we worked hard to avoid a bankruptcy filing, our largest competitors were embarked on a different course and new entrants were poised to take advantage of the turmoil being experienced by the legacy carriers. In 2001, American was the largest airline in the world. With the mergers

of Delta and Northwest, United and Continental, and Southwest and AirTran, American became the fourth largest carrier domestically and dropped to the third largest carrier globally. At the same time, low cost carriers, old and new, continued to grow and enter more markets. Today, the vast majority of our passengers are flying on routes with competition from one or more low cost carriers, and that number is expected to increase.

"In addition to the changes occurring on the domestic front, the configuration of international global airline alliances was also changing. Although the joint business venture among British Airways, Iberia, and American was finally approved after 13 years, we had fallen far behind our US competitors, all of which enjoyed the benefit of a much earlier approval of their joint ventures. In short, on a competitive and financial basis we continued to lag far behind the rest of the industry.

"American did not stand idly by during these years. . . . Despite our efforts and the substantial progress we made to succeed in the long term, our losses continued to mount, reaching $12 billion over the previous 10 years. And, there was no end in sight.

"It was clear from the outset of our review that a merger with US Airways could create significant value for our stakeholders and bring substantial benefits to the traveling public. We have conservatively estimated that by 2015 revenue and cost synergies will outweigh cost dis-synergies by over $1 billion. The majority of these revenue synergies are derived by combining two complementary networks that will offer consumers more service at more times to more places. . . .The combination will make our company a much stronger competitor against the other large airlines.

"The new American will have the financial strength to invest the resources needed to improve the customer experience, including new aircraft, cutting edge products and services, and the technology and tools designed to help our employees deliver superior service to our customers . . . This transaction will give us the opportunity to become a stronger competitor, one with a degree of financial stability that we have not experienced in many years. We will be a company that is better positioned to deliver for customers and its people."

– Prepared statement of Gary F. Kennedy, Senior Vice President, General Counsel and Chief Compliance Officer, American Airlines, Competition and Bankruptcy 25–27.

"[T]he competitive landscape and the macroeconomic environment continued to change around us in ways that further eroded our competitive position and our financial strength. In 2001, American was the largest airline in the world. However, the mergers of Delta and Northwest, United and Continental, and Southwest and AirTran, moved American from the largest to the fourth largest airline in terms of U.S. domestic passengers. And, despite our best efforts, our losses continued to mount, reaching $12 billion over the previous 10 years.

"The combination puts together two highly complementary networks, with minimal loss of competition, and creates a network that consumers, of all types, will find substantially more attractive than the network American, standing alone, could produce. The combined network will be comparable in size to the networks of United and Delta, which have both used bankruptcies and mergers of their own to leapfrog American."

– Prepared statement of Gary F. Kennedy, Senior Vice President, General Counsel and Chief Compliance Officer, American Airlines, Airline Industry Consolidation: Hearing before the Committee on Commerce, Science, and Transportation, Subcommittee on Aviation Operations, Safety, and Security, Senate, 113th Cong. 28–29 (June 19, 2013) ("Airline Industry Consolidation") 28-29.

3. Statements by Executives of US Airways

See supra at AI-7 (quoting joint statement by CEOs of American Airlines and US Airways)

"Delta merged with Northwest, United merged with Continental, and Southwest merged with AirTran. We at US Airways were cognizant of that trend, but while we worked to meet our customers' demands for broader networks, we were unable to participate in the series of merger . . . . Earlier this year, we announced a merger agreement with American Airlines. We are very excited about what that means for our customers, our employees, our investors, and the communities we each serve. The combination of American and US Airways will create a new, more competitive global airline. We will be roughly the same size as United and Delta, and better able to compete with each of those airlines.

– Prepared statement of Doug Parker, Chairman and Chief Executive Officer, US Airways, Airline Industry Consolidation (June 19, 2013) 25.

APPENDIX II

TECHNICAL ISSUES

There are a number of technical issues that the Board will have to consider in constructing any ISL that is premised on longevity or status-and-category or some combination of the two. The resolution of most of these issues is unlikely to have any material effect on the list as a whole. Nevertheless, it is possible that the Committees will have different positions on some or all of them, and the Board will have to deal with and reconcile those differing positions when it begins the process of list construction by asking the Committees' Technical Advisors to produce lists for the Board's consideration if the Committees' separate approaches are based on different assumptions. This Appendix describes those issues and the West Committee's position on how they should be resolved.

A. The Constructive Notice and Snapshot Dates

The parties have reached agreement on the constructive notice date and snapshot date for the merger between US Airways and American Airlines. Nonetheless, a brief discussion of these concepts and the basis for the West Committees' agreement on them is instructive.

1. Because there is almost always a lag time from the date an airline merger is announced and the date an ISL is constructed, arbitrators have adopted the notion of a "constructive notice date." The concept of a constructive notice date is straightforward; it is the date after which any pilot hired by either pre-merger airline is deemed to know that he or she will be working for a combined entity and that his or her career expectations will be a product of the success or failure of the combined airline, irrespective of which airline hired the pilot. The date is important because it sets the demarcation line between pilots whose seniority position will be determined by the arbitration board and those whose placement will not be effected. *See, e.g.*,

Atlas-Polar (Harris 2006) 9 ("The concept of 'Constructive Notice' is that when newly-hired pilots know, or should know, that their flying careers, and specifically their seniority status, may be determined in reference to an additional group of pilots, such pilots cannot be considered to be part of the pre-merger group and must be treated in a manner consistent with what should have been their realistic expectations at the time they were hired."). Pursuant to this doctrine, arbitrators place "constructive notice pilots" on an ISL after all pilots on the seniority list of either pre-merger airline with dates of hire prior to the constructive notice date. *See id.* ("Accordingly, . . . November 2, 2001, must be considered the constructive notice date, and all pilots hired after that date should be placed on the combined list in date-of-hire order below the last pilot of either carrier integrated by this award."); *see also Alaska/Jet America* (Bloch 1989) 7.

While it is often the case that the merger announcement date is set as the constructive notice date, the three Committees have agreed that this case warrants a modest departure from the norm and have stipulated that December 9, 2013 – the date of the approval of the merger of American Airlines and US Airways – is the appropriate constructive notice date for the US Airways-American Airlines merger.

This date is warranted here because the US Airways-American Airlines merger was the product of a hostile takeover during bankruptcy – an unprecedented transaction – and there were significant hoops to jump through before anyone could be certain that the merger would actually close. In particular, although US Airways began its public quest to force the merger in January 2012, it was only after American's principle unions – APA, APFA and TWU – announced their support for a merger in April 2012, and after the Creditors Committee weighed in, that a merger agreement was reached. Even at that point, the merger agreement could not be effectuated until

after the bankruptcy court approved American Airline's plan of reorganization, and until after the antitrust action brought by the United States to stop the merger was a resolved – a resolution that was by no means a certainty before it occurred. Thus, while it is surely the case that many constituencies hoped and expected as early as February 2013, when the merger was announced, that the merger would be consummated, it was not until December 9, 2013 that one could fairly say that the merger was a "done deal." It was only after that date that pilots newly hired by either airline could know with reasonable certainty that they were going to work for a merged airline.

2. The snapshot date is the date on which the equities of the two pre-merger pilot groups, and the makeup and staffing of their respective fleets, are to be measured. The vast amount of arbitral precedent establishes that the correct date to use as the snapshot date is on or shortly after the date of the merger announcement, since the goal of the proceeding is to evaluate the pilots' longevity, status-and-category, reasonable career expectations, and other equities at their pre-merger airline at that time. *See, e.g., Delta/Northwest* (Bloch, Eischen, Horowitz 2008) 18-19 (rejecting Northwest proposal for use of a snapshot date before the merger agreement was reached); *Alaska/Jet America* 18 (Bloch 1987) ("[T]he purposes of these proceedings is to effect a merged list as of the date of the merger."); *United/Continental* (Eischen, Kaplan, Nolan 2013) 22 (rejecting Continental Committee proposal for using April 2013 as the snapshot date in favor of October, 2010 – when the merger was consummated).

There is typically a logical, business-driven reason for taking the "snapshot" of the equities on the day the merger is announced. Decisions made by either of the airlines from that date forward are invariably influenced by the fact that the airlines are to be merged. Accordingly, events effecting one pilot group or the other – following the snapshot date – cannot

be said to fairly reflect the base on which their stand-alone career expectations can be measured. To be sure, while an arbitration board may properly consider post-merger facts and projections of what will take place in the future in determining how any particular ISL will effect pilots, choosing a snapshot date that varies significantly from the date of the merger itself loses sight of the fact that the purpose of an SLI proceeding is to produce a fair and equitable list as of the date of the merger. *Alaska/Jet America* 18.

In this case, the Merger Committees have agreed that December 9, 2013 – the same date as the constructive notice date – should be used as the snapshot date for the US Airways-American Airline merger. The West Committee agreed to select that date for the reasons, discussed *supra* at AII-2 to 3, that it selected that date as the constructive notice date. Before December 9, 2013, the uncertainties surrounding the merger of necessity required each airline to manage itself separately. Once the merger was approved, however, decision regarding the fleet, the markets that would be served and the future direction of the Company were made by a single management team deploying a single set of assets in a manner designed to maximize the profitability of a single entity. Accordingly, any assessment of the "equities" either the US Airways or the American pilot group brought to the merged airline must be frozen as of that date.[1]

[1] While we believe it is obvious, we pause briefly to observe that the snapshot date is the date on which the equities of *these two pilot groups* – the American Airlines pilots and the US Airways pilots – are to be measured. The relative equities of the West and East pilots (and the constructive notice date as between them) were determined in the SLI arbitration arising from their merger in 2005. *See* Brief at 9-10. Once that merger was effective, decisions regarding the fleet, the markets that would be served and the future direction of US Airways were made and carried out by a single management team deploying a single set of assets in a manner designed to maximize the profitability of a single entity. There is no occasion to revisit those comparative equities now (or as of December 9, 2013) on some fictional notion that the East and West pilots at the merged US Airways had differing career expectations at a hypothetical stand-alone US Airways as of that date or any date following the US Airways-America West merger.

Setting the snapshot date at December 9, 2013 means that for purposes of the formulas utilized to create an ISL based on longevity or status-and-category or both:

- Each pilot's longevity calculation runs from the pilot's date of hire to December 9, 2013 (less any reductions in longevity credit, discussed more fully *infra* at AII-6 to 9).
- The number of each aircraft type ("category") operating in each of the two fleets for purpose of category calculations is determined as of December 9, 2013.
- The number of pilots operating in revenue service in each seat ("status") in each category is determined as of December 9, 2013.

Finally, while not applicable to any formulas used to construct either a status-and-category-based ISL, a longevity-based ISL or a hybrid ISL, a December 9, 2013 snapshot date sets the date we submit the Board should select to determine the fleet plan for both US Airways and American based on firm orders and replacement schedules then in place, solely for the purpose of assessing whether and for how long any aircraft fences may be appropriate.

B. Longevity-Related Issues

As a theoretical matter, calculation of a pilot's longevity should be no more complicated than determining the number of days between the pilot's date of hire and the snapshot date reduced by the number of days during that period the pilot engaged in activities other than in support of revenue flying.[2] Unfortunately, it is rarely that uncomplicated. There are two technical issues that have to be resolved in any SLI case regarding longevity: first, what flying counts toward longevity and, second, what non-flying periods of absence serve to reduce a pilot's total longevity.

[2] *See, e.g., Continental/Texas International* (Greenbaum 1983) 30-31 (applying four-step process of then-operative ALPA Merger Policy).

1. As to what flying counts toward a pilot's longevity, the Committees have stipulated that – and the West Committee's proposal is premised on the proposition that – only flying for a "main line" carrier counts. In our view, this approach is the only one that comports with the basic concept of longevity, which rewards the sweat equity a pilot has contributed to the merging carrier, not to a regional carrier before "starting over" at the mainline. *Republic/Midwest/Frontier/Lynx* (Eischen 2011) 33; *see also United/Continental* 28-29.

This approach has two consequences for the list construction methodology employed by the West Committee (and, presumably, the other Committees). First, any time spent by American pilots at an Eagle carrier, American's wholly-owned regional partner, does not count toward their longevity, in the same manner and for the same reason time flying at Continental Express was not credited to the Continental pilots in *United-Continental*. *See United/Continental* 28-29. Second, the time East pilots spent flying for Mid-Atlantic Airlines, a low-cost subsidiary of US Airways created during US Airways second bankruptcy, also does not count toward those pilots' longevity. *See* Attachment 2 (Nicolau Award) 20-21. ("None [of the MDA pilots] had flown at the mainline; all were pilots at Mid-Atlantic Airways, a regional carrier designed to be a US Airways wholly-owned subsidiary . . .").[3]

[3] In the interest of completeness, we set out in this note a summary of the story of the MDA pilots. In the US Airways-America West SLI proceeding, the West pilots urged that the MDA pilots not be treated as covered by the eventual Award at all, notwithstanding that they were on the East pilot's certified seniority list. Arbitrator Nicolau rejected that position but, for reasons explained in text, then treated them as though they had not been covered by the Award by treating them as Constructive Notice pilots and integrating them behind the most junior East pilot in their date of hire order. Since the Nicolau Award, the treatment of the MDA pilots as different in all respects from the mainline East pilots has been confirmed by Gerald E. Wallin in an arbitration concerning the appropriate longevity credit for MDA pilots who eventually migrated to main line US Airways and by the United States District Court for the Eastern District of New York in *Naugler v. ALPA*, 05 CV 4751 (NG) (VVP) (April 10, 2012) in a case in which the MDA pilots claimed that ALPA breached its DFR by acknowledging in the Nicolau arbitration that the MDA pilots were not engaged in flying for US Airways (East).

2. As to the question of what periods of absence from mainline revenue flying ought to be deducted from a pilot's service between his hire date and the snapshot date, the West Committee's proposal is simple: the only period of absence that should be deducted from pilots' longevity is furlough time. In other words, the West Committee proposal does not attempt to ascertain other types of leaves-of-absence (such as disability leave or military leave) and reduce pilots' longevity by the length of those leaves. We believe that this is the appropriate approach for two reasons. First, our level of confidence in the accuracy of the available information about other types of leaves-of-absence is quite low. Despite having sought information from the Company, the three Committees have been unable to verify that the information is either accurate in the aggregate or that it was maintained in similar ways across the many airlines that the pilots of these two airlines originally came from. Second, as a matter of both intuition and experience, we expect that while there may be differences between the patterns at the airlines for types of absences other than furloughs, there is a certain randomness to it that likely makes those absences immaterial when looking at groups of roughly 10,000 and 5,000 pilots respectively.

There are, however, some complications that arise even using the simple concept of deducting from a pilot's longevity only "furlough time" during the period between the pilot's date-of-hire and the snapshot date. First, the coding of when a particular pilot was "hired" at American or US Airways, or at either airline's previous mainline airline merger partners (*e.g.* for American: TWA, Reno, AirCal; for US Airways: America West, Trump Shuttle, Allegheny, Mohawk, Piedmont and Empire to name just a few), is not consistent. And as to the AAPSIC list, each pilot is shown as having the following dates: "HireDte," "CompDte," "OccDte," and "ClassDte." The HireDte – what appears to be the pilot's date of hire as a mainline pilot – is the earliest of the reported dates for each pilot. Accordingly, the West Committee's proposal uses

that date for the commencement of American pilots' longevity. As best we can ascertain from the reported information, this reflects *either* the date the American pilot began class at his or her respective mainline or the date of the pilot's initial operating experience (which could be as much as seven weeks after beginning class). It does not appear to reflect any pilot's hire date at a non-mainline carrier, such as an Eagle carrier. As for the US Airways lists, the West Committee uses the more clearly described date of hire shown on the East and West lists as the starting point for calculating their longevity

The second issue related to calculating how much furlough time to deduct from a pilot's employment from his date of hire to December 9, 2013 relates to ascertaining the correct furlough time for American pilots. There are two sub-issues on this point. First, for some American pilots, the furlough periods are unknowable (*e.g.*, there is no furlough information for former TWA pilots during their service at TWA). Second, some American pilots' time on furlough is recorded in the AAPSIC's certified seniority list as "Letter T" or later "DEFER"[4] rather than "furlough."

As regards the absence of TWA furlough information, there is simply nothing to be done, and the West Committee has deducted no furlough time from them between their date of hire at TWA and their appearance on the American seniority list. We recognize that this artificially increases the amount of credited longevity on the American list, but there is no other solution that we can divine.

The Letter T/DEFER issues, however, can be accommodated. Letter T is a reference to a Letter of Agreement between APA and American that allows a pilot on furlough to bypass recall for a period of time and thereby remain off the rolls as a revenue flying pilot with a bid position.

[4] The first list AAPSIC provided the other Committees included specific reference to Letter T. In AAPSIC's second, updated list, all Letter T references were changed to DEFER.

Attachment 19 (Letter T). If a furloughed pilot exercises his rights under Letter T, the Company simply hires another pilot who appears on the seniority list as a new hire.

Recall bypass rights are common in the airline industry, and the West Committee does not contest either Letter T's legitimacy or the rights of the pilots who take advantage of Letter T's provisions.[5] But it does not follow from that that pilots who have exercised their rights under Letter T should be treated as accruing longevity *for SLI purposes*. If a pilot is accorded longevity for his time while on recall bypass, two pilots will receive SLI longevity credit for the revenue flying accomplished by only one of them and neither will be reflected as on furlough when – in fact – one is flying and the other is not because he simply has not returned to work after having been furloughed. Crediting the Letter T/DEFER time to the American list's total pilot longevity would add 5111 years of longevity that is simply a fiction. So far as the West Committee knows, there have been no prior SLI cases in which pilots who have bypassed return from furlough have been treated as anything other than furloughed pilots for purposes of determining both the number of furloughed pilots at the carrier and the longevity of the pilots who have exercised bypass rights, and the West Committee's proposal for calculating these pilots' longevity treats them as on furlough for that period.[6]

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[5] The Letter T pilot may be accruing longevity for purposes of calculating benefits under his collective bargaining agreement. But that should have no implications for trying to construct an "apples-to-apples" longevity comparison between two pilot groups, each of which had furloughed pilots at one time or another and each of which had provisions allowing pilots to bypass recall without losing their position on the seniority list.

[6] There is one "footnote" to this treatment. 186 American pilots who were furloughed and bypassed under the provisions of Letter T ultimately came off of furlough but went directly on to Military Leave. While those pilots were no more engaged in revenue flying than were the Letter T pilots who did not go on Military leave and while treating their military leave as creditable service for SLI longevity calculations effectively understates the cumulative furlough time of American pilots, in the interest of maintaining a uniform position that only furlough time will be

C. Status-and-Category Related Issues

As we explained in our Brief at 19-20, the first and most fundamental issue that must be decided in building a status-and-category list is what aircraft should be grouped together for the purpose of determining categories. Our Brief sets out the West Committee's proposal on that point. Once that is decided, there are two technical issues that must be resolved: first, how to determine how many pilots are within each status-and-category tier, and, second, how to account for pilots who are not assigned to a particular piece of equipment or status as of the snapshot date.

1. With respect to determining the number of pilots in each category, one could simply count the number of pilots on each certified seniority list who are shown as holding a particular bid position as of the snapshot date. But that would likely both overstate the number of pilots the airline actually requires for operation of that equipment (*i.e.*, the true number of jobs) and would likely treat the pilot groups at the different airlines differently. In particular, here, the problem is the disparate treatment of short term disability by the airlines.

As of the snapshot date, all three pilot groups operated under collective bargaining agreements that contained long-term disability programs. However, American pilots and East pilots operated under CBAs that did not provide any short-term disability program, and thus pilots on those lists who were unable to fly were required to bid and then use up their sick leave and vacation leave until they qualified for long term disability. At American and for US Airways pilots flying under the East CBA, pilots on long-term disability are shown without any bid positions, while pilots on the functional equivalent of short-term disability are shown on the seniority lists as having bid and held active positions even though they were actually not engaged

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charged against longevity, our longevity calculation formula does not reduce these pilots' longevity.

in revenue flying. On the West list, all pilots – whether on short or long-term disability are shown in bid positions.

The West list contains 139 pilots who were on either short or long term disability on December 9, 2013. The West Committee has concluded that 104 of those pilots were on long-term disability and 35 on short-term disability. To do a correct "apples-to-apples" comparison of the lists, the West Committee has stripped the bid positions from the 104 West pilots on long term disability but has included the bid positions for the 35 West pilots on short term disability. A list of these 139 pilots is attached as Attachment16. The West Committee believes that is the correct method to perform an "apples-to-apples" accounting for these pilots and the West Committee's proposal uses this accounting decision as part of its determination of the number of jobs at American and US Airways as of December 9, 2013.

2. As to the second issue, every pilot position on the seniority list has to be accounted for by being placed in some status-and-category tier to build a status-and-category list; even pilots who are not actually assigned a status and aircraft position. These pilots are typically not in assigned positions for a variety of non-seniority based reasons; they are on long term disability (as described above), or union or company business leave, for example – and thus any assignment of a position to them for the purpose of counting jobs in various positions to build a status-and-category list will be arbitrary, despite being necessary.

There are two ways to "account" for these pilots. The first is to simply "remove" them from the separate seniority lists, count the number of remaining pilot slots in each tier, integrate the two separate lists of pilot slots based on the calculated ratios, put the "active" pilots from each airline in those slots and reinsert the removed pilots one number senior to the pilot they were one number senior to on their unmerged seniority lists. The second accounting method is

identical to the first, except that it distributes the removed slots on a pro-rata basis into the integrated slots based on the separate ratios for each status-and-category and then fills in all the slots with the pilots' names from each pre-merger list.[7] In each case the pilots remain in relative seniority order. The first method is simpler while the second method arguably produces an ISL that from an "aesthetic" standpoint more accurately portrays the "true" distribution of working pilots from the two respective airlines across the ISL. The West Committee proposes using the first of the two methodologies simply as a matter of ease but is fully prepared to use the second methodology if the other Committees or the Board prefer it.

D. Miscellaneous Issue

There is one final technical issue, unique to this SLI proceeding, that requires discussion. There are a small number of pilots – 38 in total – who are listed on both the American and US Airways list. Generally speaking, these are pilots who obtained flying positions at one airline after being furloughed at the other. (Five of these pilots are currently not in active flying positions for either airline, and two pilots are actually currently listed on the East, West, and American lists). In preparing the West Committee proposed ISL, the West Committee has preserved the pilots' place on all lists in which they appear, which has resulted in the pilots' names appearing on the proposed ISL twice. The West Committee proposes that these 38 pilots be allowed to maintain their dual positions on the ISL until they exercise recall rights from furlough, or until their recall rights expire. This solution would permit the pilots to continue to preserve their current positions and preserve their legacy contractual recall rights, and it only

[7] By way of example only, if Airline A has 1000 pilots, 750 of whom are active in revenue flying, and 200 of the 750 (27%) are wide body CAs, Airline A would be treated as having 267 wide body CA positions: (200 active wide body CAs) + (27% x 250 non-active pilots) = 267 pilot positions. The same methodology would be used to spread the remaining 183 pilot positions among the other status and categories and would, of course, be used in determining the pilot counts in each status-and-category tier at Airline B.

requires that their seniority be reduced to a single place on the list when they make a choice between where on the list they would like to be by exercising or abandoning recall rights at one of the airlines.

EXHIBIT 22

ARBITRATION PROCEEDINGS BEFORE THE MCCASKILL-BOND BOARD OF ARBITRATION

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In the Matter of the Seniority Integration Involving the Pilots of

NEW AMERICAN AIRLINES

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Subject: Procedural Questions Submitted Pursuant to Protocol Agreement ¶ 7

BOARD OF ARBITRATION

Dana E. Eischen, Esq,
Ira F. Jaffe, Esq.
M. David Vaughn, Esq.

Appearances

For American Airlines:	O'MELVENY & MYERS LLP By Robert A. Siegel, Esq. Paul D. Jones, Esq. Senior Vice-President and General Counsel
For APA:	JAMES & HOFFMAN, PC. By Steven K. Hoffman, Esq. Edgar James, Esq. Daniel M. Rosenthal, Esq. Mark R. Myers, Esq. Attorney, APA
For AAPSIC:	ALLISON SLUTSKY & KENNEDY,PC By Wesley A. Kennedy, Esq.
For the West Committee:	BREDHOFF & KAISER, P.L.L.C. By Jeffrey R. Freund, Esq. Roger Pollak, Esq. Joshua B. Shiffrin, Esq. Marty Harper, Esq. ASU Alumni Law Group

BACKGROUND

On Friday June 26, 2015, virtually the eve of the opening day of ISL arbitration hearings scheduled in accordance with collectively negotiated terms of the Protocol Agreement and Ground Rules, *infra*, the Court of Appeals for the Ninth Circuit issued its opinion in *Addington, et al. v. US Airlines Pilot Association, et al., No. 14-15757* .

Because the Board concluded that issues raised by that decision and related communications from the Parties significantly compromised our ability to begin the scheduled hearings on June 29, we notified all parties as follows:

> On behalf of the Panel, this is notification to all concerned that, after careful consideration of the 9th Circuit decision of June 26 and related communications from the Parties, the Panel will not convene the opening session of the hearing when we meet with you on Monday morning, June 29.
>
> Instead, we ask Counsel for each of the Merger Committees, the Company and the APA to plan for a meeting with the Panel beginning at 11:00 am on Monday June 26, at the designated hearing location, for an off the record conference to discuss these developments and consider the appropriate way(s) to proceed.
>
> All other scheduled hearing dates remain in place until further notice from the Panel, pending the outcome of those discussions and any necessary rulings by the Panel.
>
> * * *
>
> The Panel is well aware of the strictures at page 54 of the 9th CA Opinion in D.C No. 2:13-cv-00471-ROS. None of the of the attending Parties in that meeting will be asked to advocate any substantive ISL position or waive any legal rights to other recourse. Our purpose simply is to become as fully informed as possible of the views of all Parties to our proceeding, before we address your own pending motion to suspend the presently scheduled hearing dates.

At the outset of the Board's June 29 conference with Counsel for each of the Merger Committees, the APA and American Airlines, Counsel for the USAPA Merger Committee announced that the USAPA Committee was irrevocably withdrawing from any and all further participation in these ISL proceedings. That oral notification was formally confirmed, in a letter that reads as follows:

Arbitration Panel, Seniority List Integration Dispute Involving the Pilots of New American Airlines, Inc.

Re: Withdrawal of the USAPA Merger Committee

Gentlemen:

The decision of the United States Court of Appeals for the Ninth Circuit in Addington, et al v. USAPA, requires that the USAPA Merger Committee permanently withdraw from this proceeding. The order directed by the court of appeals prohibits USAPA from participating in the McCaskill-Bond process subject to an exception that the position of the USAPA Merger Committee submitted to the Panel does not satisfy. The USAPA Merger Committee is therefore prohibited by the court of appeals' decision from further participation.

Moreover, the USAPA Merger Committee is not an adequate representative of US Airways (East) pilots in this proceeding. Those pilots have a statutory right as "covered employees" under the McCaskill-Bond Amendment to a representative who is free to formulate a position that is in the best interest of the US Airways (East) pilots. Both the premerger American pilots and the premerger US Airways (West) pilots have SLI representatives who are unrestricted in the positions they are permitted to take before the Panel. The USAPA Merger Committee, however, is restricted by the decision of the Ninth Circuit from taking any position other than to "advocate for the Nicolau Award." It therefore cannot be an adequate representative of US Airways (East) pilots and must withdraw from this proceeding.

The USAPA Merger Committee's withdrawal includes withdrawal as a party under the Seniority Integration Protocol Agreement and the Ground Rules entered by the Panel. The USAPA Merger Committee will not seek to reenter the seniority list integration process at a later point, irrespective of any further ruling by the United States Court of Appeals for the Ninth Circuit.

cc: J. Freund, S. Hoffman, W. Kennedy, M. Meyers, R. Siegel

A few hours later, on June 29th, the Board received the following letter from Steve Bradford, President of the US Airline Pilots Association:

Arbitration Panel, Seniority List Integration Dispute involving the Pilots of New American Airlines, Inc.

Re: USAPA Merger Committee

Gentlemen:
It has come to the attention of USAPA that USAPA Merger Committee Counsel unilaterally submitted its position of USAPA in regards to the McCaskill-Bond seniority list integration process and its party status under the Seniority List Integration Protocol Agreement. USAPA disavows any representations made in the letter that was submitted and the USAPA Merger Counsel has no authority to bind the Association or make any further representations on its behalf.

In addition, USAPA is currently weighing its options in regards to its further participation in the McCaskill-Bond process and may wish to participate at later date.

cc: Brian O'Dwyer, Esq., Gary Silverman, Esq.

In the wake of these developments, Counsel for the AAPSIC, APA and American Airlines propounded three (3) procedural questions and invoked the following provisions of Protocol Agreement ¶ 7 (emphasis added):

> 7. **The Arbitration Board shall have the authority to establish a fair and equitable integrated seniority list as required by the McCaskill Bond Act;** provided, that any such integrated seniority list shall comply with the conditions set forth in paragraph 10.b. of the MOU. **The Arbitration Board shall also have authority** to resolve any dispute regarding the employment data exchanged pursuant to paragraphs 3 and 4 above; **to resolve all procedural matters regarding the arbitration; and, subject to paragraph 8.b. below, to resolve any dispute regarding the interpretation and application of this Protocol Agreement arising prior to issuance of the final award under paragraph 13 below.**

Counsel for the West Committee declined to join in that submission and advocated against consideration of the questions. After due consideration of these positions, the Board accepted the submitted questions and agreed to render an expedited decision by Monday, July 6, 2015. We heard oral argument on the record on June 30, 2015, followed by written briefs on July 1, 2015; whereupon the record was closed.[1]

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[1] The Board then received the following July 2nd letter from USAPA President Bradford:
Arbitration Board Pilot Seniority List Integration
Re: USAPA Merger Committee

Dear Arbitrators Eischen, Jaffe, and Vaughn:
Upon further review, USAPA withdraws its letter of June 29, 2015 signed by President Stephen Bradford. The letter of withdrawal sent to you by counsel for the USAPA Merger Committee on June 29, 2015 is effective and stands as the position of USAPA concerning the withdrawal of the USAPA Merger Committee from the McCaskill-Bond proceeding.
Thank you very much for the opportunity to clarify USAPA's position to the Panel

THE SUBMITTED QUESTIONS

1. Whether APA should engage in best efforts to establish a new merger committee to represent legacy U.S. Airways East pilots ("East Merger Committee")?

2. Whether a new East Merger Committee, if any, should be deemed bound by the Ninth Circuit's decision in *Addington*?

3. What shall be the revised schedule for the ISL hearing (including, without limitation, the schedule for establishing a new East Merger Committee, if any)?

GOVERNING AGREEMENTS AND STATUTORY PROVISIONS

The McCaskill-Bond Act Amendments to the Federal Aviation Act

SEC. 117. LABOR INTEGRATION.

(a) LABOR INTEGRATION.-

With respect to any covered transaction involving two or more covered air carriers that results in the combination of crafts or classes that are subject to the Railway Labor Act (45 U.S.C. 151 et seq.), sections 3 and 13 of the labor protective provisions imposed by the Civil Aeronautics Board in the Allegheny-Mohawk merger (as published at 59 C.A.B. 45) shall apply to the integration of covered employees of the covered air carriers; except that-

(1) if the same collective bargaining agent represents the combining crafts or classes at each of the covered air carriers, that collective bargaining agent's internal policies regarding integration, if any, will not be affected by and will supersede the requirements of this section; and

(2) the requirements of any collective bargaining agreement that may be applicable to the terms of integration involving covered employees of a covered air carrier shall not be affected by the requirements of this section as to the employees covered by that agreement, so long as those provisions allow for the protections afforded by sections 3 and 13 of the Allegheny-Mohawk provisions.

Allegheny-Mohawk Labor Protective Provisions (59 C.A.B 45)[2]

Section 1.
The fundamental scope and purpose of the conditions hereinafter specified are to provide for compensatory allowances to employees who may be affected by the proposed

[2] Congress expressly incorporated the CAB's labor protective provisions in Sections 3 and 13 into McCaskill-Bond. *See Thomas v. Republic Airways Holdings, Inc.*, No. 11-cv-01313-RPM, 2012 WL 683525, at *2 (D. Colo. 2012) (Under McCaskill-Bond, "[S]ections 3 and 13 of the CAB's labor protective provisions in the Allegheny–Mohawk merger became statutory law.")

merger of Allegheny Airlines, Inc., and Mohawk Airlines, Inc., approved by the attached order, and is the intent that such conditions are to be restricted to those changes in employment due to an resulting from such merger. Fluctuations, rises and falls, and changes in volume or character of employment brought about by other causes are not covered by or intended to be covered by these provisions.

Section 2.
(a) The term "merger" as used herein means to join action by the two carriers whereby the unify, consolidate, merge, or pool in whole or in part their separate airline facilities or any of the operations or services previously performed by them through such separate facilities.
(b) The term "carrier" as used herein refers to either Allegheny or Mohawk or to the Corporation surviving after consummation of the proposed merger of the two companies.
(c) The Term "effective date of merger" as used herein shall mean the effective date and he amended certificates of public convenience and necessity transferred to Allegheny pursuant to be approved granted in the attached order.
(d) The term "employee" as used herein shall mean an employee of the carriers other than a temporary or part- time employee.

Section 3.
Insofar as the merger affects the seniority rights of the carriers' employees, provisions shall be made for the integration of seniority lists in a fair and equitable manner, including, where applicable, agreement through collective bargaining between the carriers and the representatives of the employees affected. In the event of failure to agree, the dispute may be submitted by either party for adjustment in accordance with section 13.

* * *

Section 13.
(a) In the event that any dispute or controversy (except as to matters arising under section 9) arises with respect to the protections provided herein which cannot be settle by the parties within 20 days after the controversy arises, it may be refined by any party to an arbitrator selected from a panel of seven names furnished by the National Mediation Board for consideration and determination. The parties shall select the arbitrator from such panel by alternatively striking names until only one remains, and he shall serve as arbitrator. Expedited hearings and decisions will be expected, and a decision shall be rendered within 90 days after the controversy arises, unless an extension of time it is mutually agreeable to all parties. The salary and expenses of the arbitrator shall be borne equally by the carrier and (i) the organization or organizations representing employee or employees or (ii) if unrepresented, the employee or employees or group or groups of employees. The decision of the arbitrator shall be final and binding on the parties.

(b) The above condition shall not apply if the parties by mutual agreement determine that an alternative method for dispute settlement or an alternative procedure for selection of an arbitrator is appropriate in their particular dispute. No party shall be excused from complying with the above condition by reason of having suggested an alternative method or procedure unless and until that alternative method or procedure shall have been agreed to by all parties.

* * * * * *

MEMORANDUM OF UNDERSTANDING REGARDING CONTINGENT COLLECTIVE BARGAINING AGREEMENT

* * *

10. a. A seniority integration process consistent with McCaskill-Bond shall begin as soon as possible after the Effective Date. . . .

* * *

c. The integrated seniority list resulting from the McCaskill-Bond process shall be final and binding on APA and USAPA (and/or the certified bargaining representative of the combined pilot group), the company(ies) and its(their) successors (if any), and all of the pilots of American/New American Airlines and US Airways.

d. During the McCaskill-Bond process, including any arbitration proceeding, US Airways, American or New American Airlines, or their successors (if any), shall remain neutral regarding the order in which pilots are placed on the integrated seniority list, but such neutrality shall not prevent said carriers from insuring that the award complies with the criteria in Paragraph 10(b)(i)-(v).

e. The obligations contained in this Paragraph shall be specifically enforceable on an expedited basis before a System Board of Adjustment in accordance with Paragraph 20, provided that the obligations imposed by McCaskill-Bond may be enforced in a court of competent jurisdiction.

f. A Seniority Integration Protocol Agreement ("Protocol Agreement") consistent with McCaskill-Bond and this Paragraph 10 will be agreed upon within 30 days of the Effective Date. The Protocol Agreement will set forth the process and protocol for conducting negotiations and arbitration, if applicable, and will include a methodology for allocating the reimbursement provided for in Paragraph 7. The company(ies) will be parties to the arbitration, if any, in accordance with McCaskill- Bond. The company(ies) shall provide information requested by the merger representatives for use in the arbitration, if any, in accordance with requirements of McCaskill-Bond, provided that the information is relevant to the issues involved in the arbitration, and the requests are reasonable and do not impose undue burden or expense, and so long as the merger representatives agree to appropriate confidentiality terms.

g. This Memorandum is not a waiver of any argument that participants may make in the seniority integration process . . .

h. US Airways agrees that neither this Memorandum nor the JCBA shall provide a basis for changing the seniority lists currently in effect at US Airways other than through the process set forth in this Paragraph 10.

* * * * * *

SENIORITY INTEGRATION PROTOCOL AGREEMENT

This Agreement is made and entered into by and between the Allied Pilots Association (APA), US Airline Pilots Association (USAPA), American Airlines, Inc. ("American"), and US Airways, Inc. ("US Airways") (American and US Airways collectively, "American"), pursuant to the direction and provisions of paragraph 10.f. of the Memorandum of Understanding Regarding Contingent Collective Bargaining Agreement by and between US Airways, American Airlines, APA and USAPA (the "MOU").

* * *

1. APA, DSAPA, and American acknowledge that this Protocol Agreement constitutes the Protocol Agreement referred to in paragraph 10.f. of the MOU consistent with McCaskill Bond.

* * *

7. The Arbitration Board shall have the authority to establish a fair and equitable integrated seniority list as required by the McCaskill Bond Act; provided, that any such integrated seniority list shall comply with the conditions set forth in paragraph 10.b. of the MOU. The Arbitration Board shall also have authority to resolve any dispute regarding the employment data exchanged pursuant to paragraphs 3 and 4 above; to resolve all procedural matters regarding the arbitration; and, subject to paragraph 8.b. below, to resolve any dispute regarding the interpretation and application of this Protocol Agreement arising prior to issuance of the final award under paragraph 13 below.

* * *

8. a. Effective if and when the NMB certifies APA as the representative of the combined craft and class, the Merger Committees established by APA and USAPA shall continue in existence, solely for the purpose of concluding an integrated pilot seniority list pursuant to the MOU; provided, that all parties reserve their rights and/or positions with respect to the establishment o f a separate Merger Committee to represent the interests of the pilots on the US Airways (West) seniority list referenced in paragraph 2(b) including, without limitation, APA's position that, following certification by the NMB as the single bargaining representative, it will have the discretion to designate such a committee, and USAPA/s position that APA will have no such legal authority. APA shall not interfere in the deliberations and decision making of the Merger Committees. APA shall not interfere with any Merger Committee with respect to filling any vacancy, choosing legal counselor other advisors and experts, or the manner in which legal and other expenses are financed. Nothing in this Protocol Agreement shall be deemed to modify or supersede any provision of the governing documents o f any party existing as o f the effective date of this Seniority Integration Protocol Agreement that governs the relationship between the party and a Merger Committee which it has established.

b. APA has received requests from pilots on the US Airways (West) seniority list referred to in paragraph 2(b) and/or their representatives that, following certification of APA by the NMB, a Merger Committee be designated to represent the interests of such pilots for purposes o f this Seniority Integration Protocol. Upon such certification by the NMB, those requests will be referred to a "Preliminary Arbitration Board." The parties to such Preliminary Arbitration will be American, AP A, USAP A, the existing Merger Committees, and any committee of pilots on the US Airways (West) seniority list making such requests to APA or the Preliminary Arbitration Board not later than 14 days after certification of APA by the NMB. Within five business days following the selection of the Arbitration Board under paragraph 6 above, the selection of the Preliminary Arbitration Board shall be completed by American, APA and USAPA exchanging lists of five arbitrators, none of whom shall be a member of the Arbitration Board. Any names common to the lists will be appointed to the Preliminary Arbitration Board; if there are more than three common names, American, APA and USAPA shall rank order the common names, and the three arbitrators shall be designated based on the relative combined ranking. To the extent that positions on the Preliminary Arbitration Board remain unfilled and American, APA and USAPA are unable to agree on the remaining arbitrators, the remaining arbitrators shall be selected by alternate strike from the arbitrators proposed by American, AP A and USAP A. American, APA and USAPA shall determine by agreement or by lot the order of striking. The Preliminary Arbitration

Board shall establish an expedited schedule for a hearing on such requests at which the parties may present argument and/or evidence concerning the requests. The hearing shall consist of no more than five hearing days, and shall be concluded within 30 days of the Preliminary Arbitration Board's receipt of the requests, subject to the arbitrators' schedules. The Preliminary Arbitration Board shall issue an order granting or denying any such requests that APA designate the requested Committee. The order shall be issued within 30 days following the first day of the hearing, subject to the arbitrators' schedules. The order shall be final and binding on APA and USAPA, American and US Airways or their successors, and all of the pilots of American and US Airways. The record of the proceeding before the Preliminary Arbitration Board, and any supporting Opinion of the Preliminary Arbitration Board, shall not be presented to the Arbitration Board. The Preliminary Arbitration Board will have the authority to resolve any dispute regarding the interpretation or application of this Protocol Agreement arising in connection with the proceeding under this paragraph 8.b.

c. Any Merger Committee authorized by the Preliminary Arbitration Board pursuant to subparagraph b above shall thereafter be treated as a Merger Committee under this Seniority Integration Protocol Agreement for all purposes including, without limitation, the following:

(1) Within 14 days following the Preliminary Arbitration Board's order, American will provide to such Merger Committee all information theretofore provided to the existing Merger Committees established by APA and USAP A.

(2) Within 14 days following the Preliminary Arbitration Board's order, the existing Merger Committees established by APA and USAPA will provide to such Merger Committee all information theretofore exchanged by the Existing Merger Committees.

(3) At such Merger Committee's request, the Merger Committees will together reconsider any issues resolved pursuant to paragraphs 2 and 5 above.

9. The parties to the seniority integration arbitration before the Arbitration Board will be the Merger Committees and American; provided, that the participation of American shall conform to Paragraph 10.d of the MOU.

* * *

18. This Protocol Agreement may be amended, supplemented or modified, either directly or indirectly, only by written agreement of the parties (American, USAPA and APA until NMB certification of APA; American, APA and the Merger Committees following NMB certification of a single bargaining representative).

* * * * * *

PROCEDURAL GROUND RULES

The following procedures shall apply to the seniority integration arbitration under the Parties' Memorandum of Understanding (the "MOU") and Protocol Agreement (the "Protocol Agreement"), copies of which are attached hereto. The Parties are the Merger Committees established by the Protocol Agreement and designated by the Allied Pilots Association (the "APA"), namely the AA Pilots Seniority Integration Committee ("AAPSIC"), the USAPA Merger Committee ("USAPA Committee"), the West Pilots' Merger Committee ("West Committee") (collectively the "Merger Committees");

American Airlines and US Airways (collectively the "Company" and, together with the Merger Committees, the "Parties").

I. Arbitrator Selection.
Pursuant to paragraph 6 of the Protocol Agreement, the Parties have selected Dana Eischen, Ira Jaffe and M. David Vaughn to serve as an Arbitration Board (the "Board") in accordance with the MOU and the Protocol Agreement. The Board shall select a Chairman from among the members of the Board, to serve as the chief presiding officer at any prehearing conference and the arbitration hearing.

II. Authority of Arbitration Board.
The issues and the Board's authority shall be as set forth in Paragraph 7 of the Protocol Agreement.

III. Arbitration Hearings.
A. Location and Timing of Arbitration Hearings.

This matter has been submitted to arbitration before the Board pursuant to Paragraph 6 of the Protocol Agreement; provided that the Merger Committees may engage in negotiations in accordance with Paragraph 5 of the Protocol Agreement.

Arbitration hearings are scheduled for the following periods: June 29,30, July 1,2, 3,13,14,15 and 16, September 29, 30, October 1,2,12,13,14,15 and 16,2015, in Washington, D.C.

* * *

G. Administration of Hearing Schedule.
The Board shall administer the scheduling provisions above keeping in mind that nothing in the scheduling of these proceedings should jeopardize any Party's ability to make a full and careful presentation of the evidence and arguments necessary and appropriate for the important matters at issue and to permit a reasoned and orderly development of a fair and equitable integrated seniority list. To that end, while the Board will administer the schedule in accordance with these procedures to see to it that the hearing is completed within sixteen (16) hearing days as provided for in Section D, the Board may, at the request of any Party, schedule longer or additional hearing days to permit a Party to complete its presentation if the Board, in its sole discretion, determines that such additional time is required.

* * *

XII. Interpretation of MOU. Protocol Agreement and Ground Rules.
These Ground Rules will be interpreted in a manner consistent with the MOU and the Protocol Agreement. In the event of any conflict, the terms of the Protocol Agreement will prevail.

XIII. Modification of Ground Rules.
These Ground Rules may be suspended or modified by agreement of the Parties or order of the Board

* * * * * *

OPINION OF THE BOARD

The Board's Jurisdiction and Authority: Source and Scope

This Board's jurisdiction and authority to accept the proffered submission and respond to the procedural questions presented are established clearly by the McCaskill-Bond Act ("McCaskill-Bond"), the Seniority Integration Protocol Agreement ("Protocol Agreement" or "Protocol") and the negotiated Procedural Ground Rules ("Ground Rules").[3]

Paragraph 7 of the Protocol Agreement provides three specific grants of authority, all of which apply here. First, "[t]he Arbitration Board shall have the authority to establish a fair and equitable integrated seniority list as required by the McCaskill-Bond Act." Second, "[t]he Arbitration Board shall also have the authority to ... resolve all procedural matters." Third, "[t]he Arbitration Board shall also have the authority to ... resolve any dispute regarding the interpretation and application of this Protocol Agreement."

Ground Rules Section II reiterates and affirms the Board's authority granted by Protocol Agreement ¶ 7 and Section III.G further specifies: "The Board shall administer the scheduling provisions above keeping in mind that nothing in the scheduling of these proceedings should jeopardize any Party's ability to make a full and careful presentation of the evidence and arguments necessary and appropriate for the important matters at issue and to permit a

[3] The Parties to the negotiated Procedural Ground Rules are the Merger Committees established by the Protocol Agreement and designated by the Allied Pilots Association (the "APA"), namely the AA Pilots Seniority Integration Committee ("AAPSIC"), the USAPA Merger Committee ("USAPA Committee"), the West Pilots' Merger Committee ("West Committee") (collectively the "Merger Committees"); American Airlines and US Airways (collectively the "Company" and, together with the Merger Committees, the "Parties").

reasoned and orderly development of a fair and equitable integrated seniority list." Ground Rules Section XIII authorizes the Board to order suspension or modification of the Ground Rules for good cause shown. Finally, Ground Rules Section XII requires that all such Board authority be exercised "in a manner consistent with the MOU and the Protocol Agreement" [but] "in the event of any conflict, the terms of the Protocol Agreement will prevail."

Question No. 1

Whether APA should engage in best efforts to establish a new merger committee to represent legacy U.S. Airways East pilots ("East Merger Committee")?

The Board answers Question No. 1 in the affirmative: APA should engage in best efforts to establish a new merger committee to represent legacy U.S. Airways East pilots.

It is the obligation of the Board under the Protocol Agreement and its incorporated McCaskill-Bond mandate to ensure a process which is fair and equitable in design and which also produces a fair and equitable integrated pilot seniority list. The groups of pilots whose seniority rights will be governed by that list each have interests separate and distinct from the others; and each of those groups, including East pilots, are presumptively entitled to have their interests represented in this SLI proceeding.

This is not a case in which the Board is asked to address whether an affected pilot group is entitled to be represented through one of the Merger Committees that are parties to this arbitration. The East Pilots were afforded that right and, after receipt of the decision of the Court of Appeals in *Addington*, the USAPA Merger Committee opted to withdraw permanently from this

proceeding. Nor is it a question of whether there is an advocate for the Nicolau Award in this proceeding – the West Committee obviously fills that role. The missing link caused by withdrawal of the USAPA Merger Committee is no advocate for those East pilots who are opposed to the Nicolau Award.

If necessary to avoid undue delay in finalizing the ISL, the Board is prepared to proceed in the event that a new Merger Committee to represent the East pilots is not created in sufficient time to participate in the arbitration process pursuant to the revised schedule set forth in connection with our answer to question 3. However, the Board is persuaded that it is desirable for a variety of reasons for the East pilots to have a designated Merger Committee representing them in the arbitration. Having representation and Counsel will, in our view, contribute to a process that is fair and equitable in design and also helps in achieving an integrated seniority list that is fair and equitable. Providing the East pilots with a voice increases the likelihood that their interests will be advocated to this Board and increases the likelihood that the final Award of this Board will be accepted by the pilots themselves as well as by any reviewing court.

Even if any newly appointed East Merger Committee is limited by the *Addington* Court in terms of the position that it can advocate with respect to the Nicolau Award and its application, there remain other areas in the position of an East Merger Committee that may vary from advocacy by the West Merger Committee, the AASPIC or the Company. To the extent that the restrictions on advocacy contained in *Addington* may be found inapplicable to any such newly created East Merger Committee, their participation is even more

important to ensure that advocacy and evidence in support of the interests of the East pilots are presented to the Board in the record upon which we will make our decision.

APA holds certification as exclusive representative of the several pilot groups which are the subjects of this proceeding, including East pilots. The Protocol Agreement, read as a whole, does not, in our judgment, bar APA from establishing or recognizing such a new East Merger Committee. USAPA has abandoned any continued role in the seniority integration process, regardless of whether the limitations contained in *Addington* are clarified, modified, or rescinded.

The Board has considered all arguments and authorities advanced by the Parties as to our jurisdiction and authority to pass on the question presented and as to the wisdom of doing so. The Board concludes that the cited provisions of the MOU, Protocol Agreement and Ground Rules, as well as the nature and purpose of the statutory mandate and court, CAB and arbitral precedent clearly establish our jurisdiction and authority to pass on Question No. 1.

The question whether, in the event that one of the designated Merger Committees withdraws from the proceedings, APA should exercise its authority to appoint a replacement Merger Committee is, in our view, a procedural question that we are authorized to address. Indeed, we hold not only that we are authorized to address and answer that question but obligated to answer it affirmatively under Protocol Agreement Section 7 and the McCaskill-Bond Act. Further, we have done so without running afoul of the provisions of Protocol Agreement Section 18.

The obligations to ensure representation of the interests of East pilots continue, notwithstanding the decision of the USAPA Merger Committee to irrevocably cease all participation in the proceeding and its apparent failure thusfar to participate in the appointment of a new or replacement Merger Committee. We are persuaded that APA enjoys the authority, consistent with the Protocol Agreement and its status as the certified bargaining representative for all of the pilots of the Company, to create or recognize such a new or replacement Merger Committee. For the reasons previously noted, we are further persuaded that APA should utilize best efforts to appoint such a Merger Committee.

Our recommendation in this regard, however, is conditional and must balance the interests of all affected Parties in light of the unique combination of circumstances with which we are confronted. The Company has a significant interest in ensuring that the seniority list integration proceed at an appropriate pace, so that the combined list may be promptly effected and the operating efficiencies associated with a single consolidated operation may be more fully achieved. One or more pilot groups may have similar interests in avoiding inordinate delays in the completion of this process. As noted in a number of the Civil Aeronautics Board decisions, there is also a public interest in having airline mergers completed in a timely fashion.

The Parties bargained for a particular schedule as part of the negotiations that led to adoption of the Protocol Agreement. That schedule is one that is deserving of being maintained to the maximum extent feasible, consistent with providing a fair and equitable process for the determination of

a fair and equitable integrated seniority list. The recommendation, therefore, that APA use best efforts to create a new East Merger Committee, is conditioned upon it being able to do so promptly so that the modified schedule outlined in our response to question 3 may proceed without further adjustment and so that any new East Merger Committee will have sufficient time to fairly develop and present its position(s) and participate in a meaningful fashion in the examination and cross- examination of witnesses.

The Board is not persuaded that the relatively minor schedule adjustments that may follow from ensuring presentation of the legitimate interests of East pilots outweigh the benefits of more meaningful representation for those pilots. That having been said, it is the Board's admonition that APA's best efforts be promptly undertaken and that the designation of a merger committee to represent the interest of East pilots and their participation in the process be accomplished without disruption of the schedule established in our answer to Question No. 3. To the extent that USAPA and its Merger Committee have exited the process and have decided not to return, that is not the responsibility of the Board or the remaining Parties and should not materially prejudice their legitimate rights and expectations with respect to the timing of the seniority list integration arbitration proceeding in this case.

It must be noted that the Board's answer to the Question presented does not include either a mandate or a result. The question is limited: whether APA should use its best efforts to establish a new merger committee. We are persuaded that such efforts can and should be made. But if APA is ultimately unsuccessful in its efforts, we are comfortable with the arbitration proceeding in

accordance with the Ground Rule modifications in our answer to Question No. 3. Any loss of direct representation for the East pilot group will be the result of the actions of USAPA and the USAPA Merger Committee and not any action on the part of the Board or any other Party to this process.

Question No. 2

Whether a new East Merger Committee, if any, should be deemed bound by the Ninth Circuit's decision in Addington?

The Board declines to address this inquiry to the extent that it asks the Board whether it will require that any new East Merger Committee be bound by the Ninth Circuit's decision in *Addington* in terms of limiting the position that it may advocate in this arbitration. The precise question whether, or to what extent, any injunction ultimately issued by the District Court on remand will limit advocacy in this proceeding by a newly formed East Merger Committee is a legal question for the court itself to resolve. The response to that question will depend upon the precise wording of the injunction, when issued. Given the recency of the ruling of the Court of Appeals for the Ninth Circuit, the ultimate verbiage contained in such an injunction is not now known.

The Board answers Question No. 2 in the negative to the extent that this question seeks to inquire whether, irrespective of the ultimate determination of the Court and as a matter of presiding over a fair and equitable proceeding, the Board will condition such Merger Committee participation upon advocacy for adoption of the Nicolau Award as a basis for integrating the seniority of the former East and former West pilots.

There are a number of reasons for this determination. We start with the premise that the ultimate determination of how the Nicolau Award will inform our judgment as to what constitutes a fair and equitable integration of the seniority of the various pilot groups that together constitute the pilot workforce of the New American Airlines is unknown. That determination will be made by the Board only after we have had the opportunity to carefully review all of the relevant record evidence. Regardless of the precise positions advocated by the Merger Committees, including whether or not any Merger Committee for the East Pilots advocates for a methodology based upon the Nicolau Award or were to advocate for a different methodology, we ultimately will accord the Nicolau Award the weight that we believe it is entitled to receive in the context of the particular seniority integration methodology that we utilize to develop a fair and equitable integrated list.[4]

Absent some restriction imposed by a Court of competent jurisdiction, the ability to advocate to this Board that a particular methodology ought to be utilized to help construct a fair and equitable integrated seniority list is not something that the Board would limit in any way. There may be any number of methodologies that, if adopted, may be of use in developing an integrated seniority list that overall is fair and equitable. This Board has not yet had the opportunity to review and study the record evidence that will be introduced and,

[4] While enjoining the USAPA Merger Committee from participating in the McCaskill-Bond seniority integration arbitration, except to the extent that it advocates the Nicolau Award, the Addington majority recognized that, given the requirement of a ratification vote by all pilots for any joint collective bargaining agreement, it was unclear whether the Nicolau Award would have been implemented fully but for USAPA's actions. Further, the court expressly declined to order that an unmodified Nicolau Award be used to order the seniority of the East and West pilots in the arbitration.

as a result, has not considered whether or to what extent weight appropriately ought to be given to the Nicolau Award in performing that function.

We recognize that the Addington Court imposed the injunction based upon its findings as to the historical behavior of USAPA and its adverse impact upon the West Pilots. It has been argued that there would be a certain ironic inequity in "rewarding" the actions of the USAPA Merger Committee by allowing their unilateral decision to withdraw from the arbitration to benefit those East pilots whose interests were advanced in some ways by the historical actions of USAPA. We do not believe, however, that limiting one or more Merger Committees in terms of the arguments that they may advance is a stricture that should be imposed by this Board.

Whether or not a Merger Committee is required to advocate in favor of adoption of the Nicolau Award, we are not only authorized but obligated, as a result of the provisions of McCaskill-Bond and the language of the Protocol Agreement, to consider and give appropriate weight to all relevant facts and history when determining both an appropriate methodology and when determining whether the resulting integrated seniority list is fair and equitable.

For all of these reasons, we decline to answer Question No. 2 to the extent that it seeks to have us opine on the applicability of a judicial restriction on advocacy by any newly appointed East Merger Committee. To the extent that it asks about whether there will be a Board-imposed limitation on advocacy by any newly appointed East Merger Committee, we answer the question in the negative.

Question No. 3

What shall be the revised schedule for the ISL hearing (including, without limitation, the schedule for establishing a new East Merger Committee, if any)?

The Board considered, evaluated, accommodated and balanced many legitimate but countervailing rights and equities in the exercise of our clear authority to modify Ground Rules Article III, Sections A and D.1. Indeed, such is precisely the nature of this Board's duty and responsibility under the "fair and equitable" standard which governs these proceedings. Whatever the desire of the Board and the Parties to adhere to existing schedules and deadlines, and however the Parties characterize the withdrawal of the USAPA Merger Committee, those considerations are overridden by a common interest in achieving a fair and equitable integrated seniority list through a fair and equitable process.

We recognize that this necessary modification of negotiated and established arrangements is painful, but our overriding imperatives must be the fairness of our process and the fairness and finality of the ISL which is the end product of that process. The Board is also mindful of the admonition in Ground Rules Article III, Section G: *"The Board shall administer the scheduling provisions above keeping in mind that nothing in the scheduling of these proceedings should jeopardize any Party's ability to make a full and careful presentation of the evidence and arguments necessary and appropriate for the important matters at issue and to permit a reasoned and orderly development of a fair and equitable integrated seniority list"*.

That said, the Board is acutely aware that the other Merger Committees and the pilots they represent, American Airlines and APA also have rights to

adherence, as much as possible and practicable, to the negotiated timelines laid down in the Protocol Agreement and the Ground Rules. Accordingly, we intrude upon those rights only to the extent we deem absolutely necessary to fulfill our obligations to properly preserve and protect the fairness of this arbitration proceeding and the finality of the awarded ISL.

Thus, we conclude that it is appropriate and necessary for the Board to modify the hearing timetable and order of appearances set forth in the Ground Rules to allow reasonable time: 1) For APA to seek, designate and empower a substitute representative in this ISL arbitration for those pilots effectively disenfranchised by the withdrawal of the USAPA Merger Committee and 2) For such representative, if appointed, to obtain legal counsel and perform the functions of a Merger Committee under the terms of the Procedural Ground Rules.

We believe that our limited modifications of the hearing calendar and order of appearances adequately provides for good faith accomplishment of all of those goals. The resulting schedule should afford more than sufficient opportunity for the full and informed participation of any newly appointed East Pilot Merger Committee in the proceedings, especially if its direct presentation is scheduled to occur after those of the other Pilot Merger Committees. All concerned are well advised to note that strict compliance will be required by the Board, unless otherwise agreed by the Parties and approved by the Board; or unless, in the sole judgment of the Board, compelling good cause is shown to justify any further modification.

PROCEDURAL AWARD OF THE BOARD

1) The Board answers Question No. 1 in the affirmative.

2) The Board declines to answer Question No. 2 to the extent that it seeks a legal opinion as to the scope of the judicial injunction on advocacy by any Merger Committee appointed to represent the East pilots. The Board declines to impose any restrictions on advocacy not imposed by a court of competent jurisdiction.

3) The Board's answer to Question No. 3 is (emphasis added):

By Order of the Board, Ground Rules Article III, Section A is modified to read as follows:

III. Arbitration Hearings.

A. Location and Timing of Arbitration Hearings.

This matter has been submitted to arbitration before the Board pursuant to Paragraph 6 of the Protocol Agreement; provided that the Merger Committees may engage in negotiations in accordance with Paragraph 5 of the Protocol Agreement.

Arbitration hearings (to the extent needed) are scheduled for the following periods: September 29, 30, October 1, 2, 12, 13, 14, 15 and 16, 2015; January 4, 5, 6, 7, 8, 11, 12, 13, 14,15, 2016, in Washington, D.C.

* * *

The Parties are directed to promptly meet and confer to make all other changes to the Ground Rules Agreement necessary to incorporate the change in schedule directed by the Board and to submit all agreed upon changes to the Board for review and adoption.

July 5, 2015

Dana Edward Eischen, Esq.

Ira F. Jaffe, Esq.

M. David Vaughn, Esq.

EXHIBIT 23

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Judith A. Scott
Kathy L. Krieger
David P. Dean
Darin M. Dalmat
Daniel M. Rosenthal
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August 3, 2015

VIA EMAIL

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Re: East Committee Recognition by APA

Dear Arbitrators Eischen, Jaffe and Vaughn:

This panel held in its July 5, 2015 decision involving a dispute about an interpretation and application of the McCaskill-Bond Act, the Protocol Agreement and the then existing Procedural Ground Rules arising from the June 29, 2015 withdrawal of the USAPA Merger Committee, that APA should "engage in best efforts to establish a new merger committee to represent legacy U.S. Airways East pilots" ("SLI Panel Decision of July 5, 2015").

APA President Keith Wilson constructed a process for the former East pilots to create a new merger committee, which would then select counsel, and the attached letter from Captain Kelly Ison is the final step in that process. This Committee has agreed to be bound by the Protocol Agreement and the Procedural Ground Rules, which are subject to final approval by counsel for the various merger committees, American and this panel. On July 21, 2015, this

Committee also signed a Seniority Integration Confidentiality Agreement with American to which the other merger committees and APA are already signatories.

Sincerely,

Edgar N. James
General Counsel
Allied Pilots Association

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Capt. Keith Wilson
President, Allied Pilots Association
14600 Trinity Blvd.
Suite 500
Fort Worth, TX 76155

Dear President Wilson:

I am writing to notify you that I am chairman of the premerger US Airways (East) Pilot Seniority Integration Committee. The members of the Committee are myself, Phil Osterhus, and Rick Brown. The East Pilot Committee has retained William Wilder of Baptiste & Wilder, P.C. as its counsel.

The East Pilot Committee agrees to be bound by the Seniority Integration Protocol Agreement between the Company and Unions and the Hearing Ground Rules entered by the Arbitration Panel. It may be necessary to revisit certain provisions of the Hearing Ground Rules in light of the formation of our committee and change of hearing schedule, but that is a matter that can be raised with the Panel at the appropriate time.

Please feel free to contact me if you have any questions. Thank you very much for your attention to this matter.

Sincerely,

Kelly Ison

cc: Edgar James, APA General Counsel
William Wilder
Paul Music
Paul Diorio
Bob Frear
Ron Nelson

EXHIBIT 24

ARBITRATION PROCEEDINGS BEFORE
DANA E. EISCHEN, IRA JAFFE AND M. DAVID VAUGHN

In the matter of the seniority integration involving the Pilots of	)
NEW AMERICAN AIRLINES	)

PRE-HEARING POSITION STATEMENT OF
AMERICAN AIRLINES PILOTS SENIORITY INTEGRATION COMMITTEE

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Seniority Integration Committee

September 19, 2015

TABLE OF CONTENTS

Page

ARBITRATION PROCEEDINGS BEFORE
DANA E. EISCHEN, IRA JAFFE AND M. DAVID VAUGHN

In the matter of the seniority integration involving the Pilots of	)
NEW AMERICAN AIRLINES	)

PRE-HEARING POSITION STATEMENT OF
AMERICAN AIRLINES PILOTS SENIORITY INTEGRATION COMMITTEE

Pursuant to the updated Procedural Ground Rules ("Ground Rules") agreed to by the parties (Jt.Exh. 1), the American Airlines Pilots Seniority Integration Committee (the "AAPSIC"), by its undersigned counsel, hereby submits this prehearing statement of position in anticipation of the hearing scheduled to commence on September 29, 2015.

Introduction and Summary

This is a proceeding to effect the fair and equitable integration of pilot seniority lists in connection with the merger of American Airlines, Inc. ("American") and US Airways, Inc. ("US Airways"), consummated on December 9, 2013. At the time of the merger, the "status quo" was that there were three seniority lists in effect – American, US Airways (East), and US Airways (West) – although there was a long-running, intractable dispute over the May 1, 2007 Award of Arbitrator George Nicolau integrating the East and West seniority lists (the "Nicolau Award"), which had never been implemented. In anticipation of the merger, on or about February 8, 2013, a Memorandum of Understanding ("MOU")(Jt.Exh. 9) was entered into by American, US Airways, and the respective pre-merger bargaining representatives of the pre-merger pilot groups – the Allied Pilots Association ("APA"), then the bargaining representative of the American Pilots; and the U.S. Airline Pilots Association ("USAPA"), then the bargaining representative of the US Airways (East

and West) Pilots. The MOU provided, *inter alia*, for "[a] seniority integration process consistent with [the] McCaskill-Bond [Act]." (Jt.Exh. 9, at 6.) Pursuant to paragraph 10.a. the MOU, as of 90 days after December 9, 2013, the seniority integration was submitted to arbitration. (Jt.Exh. 9, at 6.) The Arbitration Board was selected pursuant to the MOU.

On or about September 4, 2014, the carriers, APA and USAPA entered into a Seniority Integration Protocol Agreement ("Protocol")(Jt.Exh. 7), establishing the procedural framework for the seniority integration. Among other things, the Protocol anticipated that APA would be certified by the National Mediation Board ("NMB") as the single bargaining representative of the combined pilot craft and class; and provided for the continuation by APA of the Merger Committees (including the AAPSIC) established by APA and USAPA. However, the Protocol also provided for a Preliminary Arbitration, following the NMB's certification of APA as the single bargaining representative, to determine whether APA could and should designate a separate Merger Committee to represent the interests of the former America West Pilots (the "West Pilots") in the seniority integration process. The NMB certified APA as the single bargaining representative on September 16, 2014. The Preliminary Arbitration was conducted before a Preliminary Arbitration Board consisting of Joshua Javitz, Shaym Das, and Steven Crable. In an Award entered on January 9, 2015, the Preliminary Arbitration Board held that APA had the authority to designate a West Merger Committee, and that it was proper for APA to do so. Pursuant to the Preliminary Arbitration Board's order, APA designated a separate West Pilots Merger Committee.

The hearing before the Arbitration Board was scheduled to commence on June 29, 2015. However, on June 26, 2015, a three-judge panel of the U.S. Court of Appeals for the Ninth Circuit issued its decision in Addington v. U.S. Airline Pilots Ass'n, 791 F.3d 967 (9th Cir. 2015) (Jt.Exh.

56), holding that USAPA had breached its duty of fair representation to the West Pilots by entering into Paragraph 10.h. of the MOU, which permitted the continued operation of separate East and West seniority lists without implementation of the Nicolau Award; the Court vacated and reversed the District Court's order granting summary judgment for USAPA, and ordered that the case be remanded to the District Court with instructions to enter judgment enjoining USAPA from participating in the McCaskill–Bond seniority integration proceedings, except to the extent that USAPA advocates for the Nicolau Award.

In response to the Ninth Circuit panel decision, on June 29, 2015 the USAPA Merger Committee permanently withdrew from the arbitration process (Panel Exh. 1); USAPA initially disclaimed the Merger Committee's action (Panel Exh. 2), but reversed itself and confirmed USAPA's permanent withdrawal from the process. (Panel Exh. 3.)[1] The Arbitration Board received oral and written argument on questions raised by the USAPA Merger Committee's withdrawal. On July 5, 2015, the Arbitration Board issued an opinion and order directing that APA exercise its best efforts to designate a Merger Committee to represent the East Pilots; and rescheduled the hearing for dates commencing on September 29, 2015. (July 5, 2015 Award.) Pursuant to the Arbitration Board's decision, the US Airways (East) Pilots Seniority Integration Committee ("EPSIC") has been designated.

The parties to the arbitration have entered into a Supplement to the Protocol Agreement (Jt.Exh. 10a), and have established updated procedural Ground Rules, subject to approval by the Arbitration Board. (Jt.Exh. 1.) The parties have also entered into an updated set of Stipulations.

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[1] In addition, on July 10, 2015, USAPA petitioned for rehearing *en banc* in the Ninth Circuit. (Jt.Exh. 57.) That petition was denied on August 24, 2015. (Jt.Exh. 58.)

(Jt.Exh.11.)[2]

Pursuant to the updated Ground Rules, the arbitration hearing is scheduled to commence in metropolitan Washington, D.C. on September 29, 2015. The parties have agreed to submit, 10 days prior to the commencement of the hearing, prehearing statements of position. Pursuant to that understanding, the AAPSIC submits this prehearing statement.

As more fully discussed below, the proper starting point for the seniority integration is the three pre-merger seniority lists in effect as of December 9, 2013 (American, US Airways (East) and US Airways (West)); however, in light of the Ninth Circuit's June 26, 2015 decision, it is appropriate to base the East and West Pilots' placement on the Integrated Seniority List ("ISL") on the Nicolau Award. In integrating that Nicolau list with the pre-merger American seniority list, as of December 9, 2013 – the stipulated "Snapshot Date" and "Constructive Notice Date" – the American Pilots had superior pre-merger career expectations based, *inter alia*, on American's superior route network and hub structure; American's superior fleet on hand, and fleet growth and enhancement opportunities; American's superior competitive position; and the American Pilots' superior, industry-standard compensation and benefits. The East and West Pilots have benefitted disproportionately from the merger, as the economic improvements associated with merging the pilot groups' collective bargaining agreements have gone disproportionately to the East and West Pilots; and the post-merger "rationalization" of the combined fleet plan is largely at the expense of the American Pilots' growth expectations.

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[2] The updated Stipulations do not include the previous stipulation limiting credited service to "mainline" service at the pre-merger carriers and their predecessor carriers. The EPSIC has refused to agree to that stipulation. As discussed below, the EPSIC now asserts that at least some pre-merger East Pilots who previously worked at Mid-Atlantic Airlines ("MDA") should receive credit for that service. That contention has been rejected in multiple fora, and should be rejected again.

The AAPSIC proposes an ISL integrating the American Pilots with the US Airways Pilots (as integrated based on the Nicolau Award) based largely on "category and status"[3] ratios, adjusted to reflect the superior equities of pre-merger American jobs in the same category and status groupings. The AAPSIC further proposes that, immediately prior to the implementation of the ISL, a further adjustment be made to take into account pre-merger American Pilots returning to active status from "Letter T" status subsequent to December 9, 2013. The AAPSIC also proposes:

* Conditions and Restrictions including provisions required by paragraph 10.b. of the MOU;

* "fences" allocating Group IV Captain and First Officer positions until the amendable date of the Joint Collective Bargaining Agreement ("JCBA") (January 1, 2020); fences governing the East Pilots' exercise of "stand-in-stead" rights, and the West Pilots' exercise of stand-in -stead and displacement rights until the same date; and a proviso extending the term of those fences in the event that the current mandatory retirement age of 65 is raised during the term of those fences;

* a provision to clarify the protection of former TWA Pilots pursuant to Supplement C of the JCBA; and

* an implementation provision calling for the implementation of the ISL as soon as practicable, but in no event later than the third flying month following the issuance of the Arbitration Board's award.

The AAPSIC's proposal is fair and equitable. The proposal reflects the pilot groups' reasonable pre-merger career expectations, and will equitably distribute the anticipated future benefits of the merger, as well as post-merger downside risks. And, the proposal recognizes the Nicolau Award as the basis for placement of the East and West Pilots on the ISL; but also takes into account the pre-merger operation of three separate seniority lists and the East and West Pilots' distinct pre-merger equities; and will appropriately accomplish the "rationalization" of jobs held by

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[3] "Category" refers to aircraft type or grouping; "status" refers to a pilot's position (Captain, First Officer) on an aircraft.

the East and West Pilots based on the Nicolau Award among those pilots, without adversely affecting the American Pilots.

The Issue and the Arbitration Board's Authority

The Updated Ground Rules and Protocol. Section II of the updated Ground Rules provides: "The issues and the Board's authority shall be as set forth in Paragraph 7 of the Protocol Agreement." (Jt.Exh. 1, at 1.) Paragraph 7 of the Protocol, in turn, provides:

> The Arbitration Board shall have the authority to establish a fair and equitable integrated seniority list as required by the McCaskill Bond Act; provided, that any such integrated seniority list shall comply with the conditions set forth in paragraph 10.b. of the MOU. The Arbitration Board shall also have authority to resolve any dispute regarding the employment data exchanged pursuant to paragraphs 3 and 4 above; to resolve all procedural matters regarding the arbitration; and, subject to paragraph 8.b. below, to resolve any dispute regarding the interpretation and application of this Protocol Agreement arising prior to issuance of the final award under paragraph 13 below.

(Jt.Exh. 7, at 8.) Pursuant to Paragraph 7, the Arbitration Board's principal task is " to establish a fair and equitable integrated seniority list as required by the McCaskill Bond Act; provided, that any such integrated seniority list shall comply with the conditions set forth in paragraph 10.b of the MOU. " (Id.)

The McCaskill Bond Act. Section (a) of the McCaskill Bond Act provides, in pertinent part:

> With respect to any covered transaction involving two or more covered air carriers that results in the combination of crafts or classes that are subject to the Railway Labor Act (45 U.S.C. 151 et seq.), sections 3 and 13 of the labor protective provisions imposed by the Civil Aeronautics Board in the Allegheny-Mohawk merger (as published at 59 C.A.B. 45) shall apply to the integration of covered employees of the covered air carriers ...

42 U.S.C. § 42112 note.

The Allegheny/Mohawk LPPs. Section 3 of the Allegheny/Mohawk LPPs, incorporated

by the McCaskill Bond Act, provides:

> Insofar as the acquisition or merger affects the seniority rights of the carriers' employees, provisions shall be made for the integration of seniority lists in a fair and equitable manner, including, where applicable, agreement through collective bargaining between the carriers and the representatives of the employees affected. In the event of failure to agree, the dispute may be submitted by either party for adjustment in accordance with Section 13.

(Allegheny/Mohawk LPPs, Section 3.)[4]

The MOU. Section 10 of the MOU governs this seniority integration proceeding. Among other things, Sections 10.b. and c. of the MOU provide:

> b. The panel of arbitrators may not render an award unless it complies with all of the following criteria: (i) the list does not require any active pilot to displace any other active pilot from the latter's position; (ii) furloughed pilots may not bump/displace active pilots; (iii) except as set forth in Paragraphs 12 and 13 below, the list does not require that pilots be compensated for flying not performed (e.g., differential pay for a position not actually flown); (iv) the list allows pilots who, at the time of implementation of an integrated seniority list, are in the process of completing or who have completed initial qualification training for a new category (e.g., A320 Captain or 757 First Officer), or who have successfully bid such a position but have not been trained because of conditions beyond their control (such as a company freeze), to be assigned to the positions for which they have been trained or successfully bid, regardless of their relative standing on the integrated seniority list; and (v) it does not contain conditions and restrictions that materially increase costs associated with training or company paid move as specified in the JCBA.
>
> c. The integrated seniority list resulting from the McCaskill-Bond process shall be final and binding on APA and USAPA (and/or the certified bargaining representative of the combined pilot group), the company(ies) and its(their) successors (if any), and all of the pilots of American/New American Airlines and US Airways.

(Jt.Exh. 9, at 6-7.)

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[4] Pursuant to Section 13(b) of the Allegheny/Mohawk LPPs, the application of the arbitration provisions of Section 13(a) of the LPPs has been superceded by the seniority integration process established by paragraph 10 of the MOU, as elaborated in the Protocol Agreement and Ground Rules.

The "Fair and Equitable" Standard

As the members of the Arbitration Board well know, this proceeding arises against the backdrop of many years of arbitration awards and agreements, involving pilots and other employee crafts and classes, applying the "fair and equitable" standard.[5] In an oft-quoted observation in Federal Express/Flying Tiger, Arbitrator Nicolau stated, with respect to the standard:

> Both pilot groups cited a goodly number of prior pilot seniority integration proceedings; some the result of negotiations; others finally determined by arbitration. There are four basic lessons to be learned from those submissions: that each case turns on its own facts; that the objective is to make the integration fair and equitable; that the proposals advanced by those in contest rarely meet that standard; and that the end result, no matter how crafted, never commands universal acceptance.

Federal Express/Flying Tiger, at 27-28 (Nicolau 1990).[6] See, e.g., United/Continental, at 44 (Eischen/Nolan/Kaplan 2013); Delta/Northwest, at 14 n.7 (Bloch/Eischen/Horowitz 2009). At the same time, while Arbitrator Nicolau aptly noted that each case under the fair and equitable standard turns on its own facts, there are some truths which can be divined from the case law which are pertinent to this case.

The fair and equitable standard is based on an evaluation of pre-merger career expectations. The essence of the fair and equitable standard is an examination of the pilot groups' reasonable pre-merger career expectations – constructing the integrated seniority list to reflect those expectations; to share the future "upside" and "downside" in a manner consistent with those

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5 Much of that history has arisen under various historical permutations of the Merger Policy of the Air Line Pilots Association, International ("ALPA Merger Policy"). It bears noting that, while such precedents may be illuminating under the general "fair and equitable" standard, none of the three pilot groups involved here was represented by ALPA at the time of the merger. Accordingly, ALPA Merger Policy is not binding or applicable in this matter.

6 Copies of the prior arbitrations and agreements cited in this pre-hearing statement will be submitted to the Arbitration Board.

expectations; and to avoid undue windfalls to any pre-merger group. Arbitrator Richard Kasher succinctly summarized the essence of the standard in Chautauqua/Shuttle America:

> ... At bottom, the objective is to preserve, to the extent possible, what each group 'brings to the party' ... and to share equitably the growth opportunities created by the transaction, based on the groups' contributions to that growth.

Chautauqua/Shuttle America, at 12 (Kasher 2005). Similarly, in Delta/Northwest, Arbitrators Bloch, Eischen and Horowitz stated:

> On the one hand, dealing with the future prospects of anything in the airline industry is nothing short of reading tea leaves or, to cite a far more daunting venture, predicting fuel prices. On the other hand, those sorts of assessments are the stuff of which "career expectations" are made. Therefore, it is appropriate that one examine possibilities and potentials to whatever extent is reasonable, in the court of constructing a merged seniority list that is fair and equitable ... In constructing this list, we have inquired as to where the respective groups have been and we have made reasoned judgments as to where they were going. We have attempted, at all times, to recognize reasonable expectations of both parties while, in all instances, rejecting proposals that, however facially logical, resulted in untenable windfalls.

Delta/Northwest, at 15.

To the same effect, Arbitrator Thomas Roberts described his charge under the standard as follows:

> A study of the record made before the Arbitration Board, as well as a review of applicable arbitral precedent, confirms that to whatever extent possible the career expectations of the respective pilot groups, as those expectations existed prior to the merger, are to be maintained and protected. Any recognition of career expectations must include elements of individual pilot income, the nature of the flying assignments available, and pre-merger status advancement opportunities.

Northwest/Republic, at 4 (Roberts 1989).

Similarly, In Southwest/AirTran (Ramp, etc.) (Jaffe/Golick/Vaughn 2012), Arbitrator Jaffe stated, writing for the panel:

> The seniority integration arbitration decisions under the Allegheny-Mohawk LPPs and the McCaskill Bond Act ... focus upon the particular facts of the case when

> determining what constitutes a fair and equitable integration of seniority lists. A number of factors are traditionally given significant weight by arbitrators in the exercise of this responsibility. The preservation of previously earned job security, bidding rights, and wages and benefits is an important goal of a fair and equitable integration seniority list. Similarly, appropriately sharing in the potential rewards and risks of the newly merged carrier based upon the "contribution" made by the entry of the pre-merger carrier into the new combination has been viewed as significant. If one group is given more than its fair share of the reasonably expected gains associated with the new merged carrier, it is deemed to have received an undue windfall from the proposed integrated list. Seniority is not viewed in a vacuum, but rather as an integral part of the overall risks and benefits of future employment at the new merged carrier.

Id., at 32 (emphasis added).

Seniority for these purposes is significant, not as a date or number, but based on the bidding power it confers on the pilot relative to other pilots within a particular system. As Arbitrator David Feller observed in his "Expert Recommendation" regarding the integration of the "Domestic" and "Overseas" pilots of Air New Zealand, quoting other leading arbitrators:

> There is general agreement among those who have dealt with pilot seniority questions following airline mergers that, in the words of the late David A. Cole in the Easter-Mackey case, "The essential object of our exercise is to prevent impairment so far as possible of the job security and the earning and promotional opportunities which each of the pilot groups had on its own airline prior to the merger." Much earlier, in connection with the Braniff-Mid-Continent merger the principle was stated by the arbitrators in the following words: "It is our purpose to see that each man on the two lists would retain all they had prior to the merger, would accrue those things which they would have had without the merger, and at the same time be in a position on the integrated lists to permit them to share equitably in any promotional opportunities which will arise as a result of the merged operation."
>
> Seniority is, of course, highly relevant in the achievement of the objective stated, in various forms, by almost everyone who has dealt with this question. Seniority, however, is a relative factor. As Professor Benjamin Aaron has said, quoting David Cole in the Pan-American case, "A seniority list (is) not determined solely by time, ... it reflects the priority of job rights and opportunities of employees as among themselves which the employer agrees to respect." (Emphasis added.)

Report of the Expert Witness, Promotion and Seniority Rights of Pilots Employed by Air New

Zealand, at 10 (Feller 1980). See, e.g., Delta/Northwest, at 16 ("Date-of-hire versus a Status and Category/Ratio approach. Although there are advantages and disadvantages to each method, the facts of this case persuade this Board that the Status and Category approach is the more fair and equitable"); Federal Express/Flying Tiger, at 28 ("I cannot accept the Flying Tiger proposal because its emphasis on date of hire and positions brought to the merger fails to recognize the difference between the condition of the airlines as well as their prospects").[7]

A fair and equitable solution should follow the principle of simplicity, achieving a fair and equitable result to the extent possible through the operation of the integrated seniority list, with limited conditions and restrictions for the purpose of transitioning to the fair,

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[7] As such, metrics such as pre-merger date-of-hire and/or length-of-service do not measure the relative pre-merger career expectations between separate pre-merger pilot groups, *per se*. Measures of time alone, disconnected from the other equities reflecting the economic and work opportunities available to a pre-merger group relative to the other group(s) to be integrated, do not measure career expectations relative to the other group(s), unless the groups being integrated are effectively identical in demographics, pre-merger flying and work opportunities, and pre-merger compensation and benefits.

Nor do such measures of "sweat equity" constitute a group equity, in contrast (for example) to the flying opportunities represented by pre-merger fleets, domiciles and staffing. Equities such as fleets, domiciles and staffing are equities "brought to the party" by the pre-merger group as a whole; among other things, such equities retain the same value when they are passed from one pilot to another. In contrast, longevity is an individual equity belonging to the individual pilot. Its value is measured by the pilot's individual longevity, and placement on the seniority list relative to other pilots on that seniority list. The value of that equity would change if the individual's equity is transferred to another pilot with different placement on the seniority list. Moreover, as an individual equity, longevity has a specific duration – that is, until the individual pilot reaches retirement age or otherwise leaves the seniority list – and then expires, without transferring to another pilot. The weight of longevity as an equity would change if it is transferred to a different pilot, with a different expected "life span."

This is particularly so in this case, where the seniority lists being integrated are not date-based. As more fully discussed below, the pre-merger American seniority list is the product of multiple prior transactions in which seniority was not integrated on a date basis; the same is true of the pre-merger East seniority list. Moreover, whatever weight Arbitrator Nicolau may have purported to give to date-of-hire and length-of-service (Nicolau Award, at 26-27), his integration of the East and West Pilots bore little or no resemblance to a date-based list. Once the Nicolau Award is adopted as the basis for integrating the East and West Pilots, date-of-hire and length-of-service have no logical role in the construction of a fair and equitable ISL in this case.

unrestricted operation of the list. Thus, in Delta/Northwest, the panel observed:

> ... Because we are mindful that attenuated disputes too frequently have emanated from other seniority integration decisions, we have opted for a list that seeks to achieve relative simplicity in its construction and application.

Delta/Northwest, *supra*, at 18. Similarly, in United/Continental, the panel stated:

> ... Moreover arbitral attempts to ameliorate the inevitable career expectation distortions of an ISL based on one or the other method by means of elaborate and lengthy Conditions and Restrictions have proven counterproductive and only served to perpetuate the pre-merger disputes. See Northwest/Republic (Roberts, 1989) and 24 subsequent interpretation awards between 1989 and 2010.
>
> ...
>
> Our review of many prior ISL arbitration decisions teaches that elaborate conditions and restrictions unduly complicate implementation of an Integrated Seniority List. The interminable disputes they generate tend to breed animosity that corrodes flight crew relations. Our Award seeks to achieve its goals of fairness and equity primarily through the construction and creation of the ISL itself, while awarding only standard and necessary conditions and restrictions of limited reach and duration.

Id., at 34, 40.

Based on factors such as the foregoing, the trend has been away from date-based integrations. The last significant arbitrated integrated pilot seniority list to be constructed solely (or even predominantly) on a "date" basis was in 1989, in Northwest/Republic. Even then, Arbitrator Roberts found that the date-of-hire integrated list could operate fairly and equitably only based on lengthy conditions and restrictions that fenced off Captain and First Officer positions in the two pre-merger operations for 20 years.[8]

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[8] The Northwest/Republic experience – seared into the consciousness of arbitrators in ensuing pilot seniority integrations (see, e.g., Delta/Northwest, at 18; United/Continental, at 34, 40) – illustrates the proposition that date-of-hire and length-of-service do not equate with career expectations in integrating seniority lists. In the face of any material difference between the affected pre-merger groups in the nature (continued...)

Pre-merger jobs in different categories or statuses may be comparable in weighing pre-merger expectations and constructing a fair and equitable integrated seniority list. In multiple cases involving both agreed and arbitrated integrated seniority lists, jobs in different statuses and aircraft have been ranked together. For instance, in several cases wide-body First Officer positions have been treated as comparable to narrow-body Captain positions. See, e.g., Federal Express/Flying Tiger; Delta/Western (Agreement 1987); Texas International/Continental (Greenbaum 1983); Pan Am/National (Gill 1981). Similarly, in Republic/Frontier/Midwest/Lynx (Eischen 2011), Arbitrator Eischen recognized the different role that regional aircraft play in the typical pilot career path from mainline aircraft.

Differences in pre-merger compensation and benefits, and disproportionate economic gains from the merger, are appropriate equities to be taken into account in constructing a fair and equitable integrated seniority list. Conversely, jobs in the same category and status may differ in value, depending on the flying opportunities, compensation and benefits, and future opportunities they carry with them. Numerous cases – including cases in which each of the members of this Arbitration Board has served as an arbitrator – demonstrate that material differences in pre-merger compensation, and in the economic gains achieved by virtue of the merger, are equities to be weighed in measuring the affected pilot groups' pre-merger expectations, and in the

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[8](...continued)
or health of their pre-merger operations, equal increments of time do not equate to equal pre-merger career expectations.

It may be argued that longevity is a necessary component of a fair and equitable integration based, in part, on the recent United/Continental case. In that case, the arbitration board's reliance on longevity was, necessarily, based on the specific facts of that case. In addition, it was based on the recent change in ALPA Merger Policy adding a specific reference to "longevity" as a factor to be considered. As noted above, ALPA Merger Policy is not binding on the parties or the Arbitration Board in this matter.

gains and losses to be shared equitably in the seniority integration. Thus, in Federal Express/Flying Tiger, Arbitrator Nicolau found:

> Based on this record, it's evident enough that Tiger was not a "failing" carrier, as that term is commonly understood. It is equally evident, however, that it was not markedly robust, nor the beneficiary of a sustained period of well-being.
>
> Arbitrators in prior cases have generally not found the relative weakness of one pre-merger partner vis-a-vis the other of overwhelming significance. Nevertheless, they have taken into account the benefits, monetary and otherwise, that pilots of a weaker carrier attain by virtue of a merger with one more stable even when, as here, it cannot be said that the more stable actually rescued the other from an imminent demise.
>
> ...
>
> ... In my judgment, what should be compared are Tiger widebody jobs, either held or to be attained absent the merger, and narrowbody jobs at Federal Express, for it is the former that are lost or not attained and the latter that are after the merger has taken place. While it is unusual to compare the 747 and 727, this is hardly a usual case. As stated elsewhere in this Opinion, FEC 727 captain pay outstrips pre-merger FTL 747 captain pay ... Though the level of prestige associated with the two aircraft may differ as well as the flying factors arising from the 747's greater stage lengths, the plain fact is that the pilot receiving a FEC 727 captaincy in lieu of an FTL captaincy does not lose monetarily, but gains.

Federal Express/Flying Tiger, at 28-29, 62-63 (emphasis added).[9]

In Delta/Northwest, Arbitrator Bloch observed, writing for the panel:

> ... It is also appropriate to consider gains that flow from the merger. While it is true that both pilot forces are compensated relatively well, by comparison with the average U.S. airline, it is also the case that, on a stand-alone basis, Northwest Pilots were paid less than their counterparts at Delta.

Delta/Northwest, at 22 n.20 (emphasis added). Similarly, in Pinnacle/Colgan/Mesaba, Arbitrator Bloch observed:

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[9] As discussed below, Arbitrator Nicolau reached a similar conclusion in the Nicolau Award, with the support of the West Committee in that case. (Nicolau Award, at 25-26.)

> ... These numbers represent some obvious near-term bidding advantages for the Mesaba pilots at the topmost levels of the ISL. These results are, however, not anomalous when viewed in light of the various equities to be considered ...
>
> The Mesaba CBA meaningfully influenced, and dramatically benefitted, their merger colleagues.

Pinnacle/Colgan/Mesaba at 16 (Bloch 2011) (emphasis added).

To the same effect, in Chautaqua/Shuttle America, Arbitrator Kasher pointed to this factor as one reason to reject the Shuttle America Pilots' date-of-hire proposal:

> Simply stated, the rates of pay, rules and working conditions in the Chautauqua Pilots' collective bargaining agreement ... are far superior to those found in the Shuttle America Pilots' collective bargaining agreement ... As a result of the acquisition Shuttle America Pilots will be the beneficiaries of the superior rate of pay, rules and working conditions found in the Chautauqua Pilots collective bargaining agreement.

Chautauqua/Shuttle America, at 17 (emphasis added).

In integrating the US Airways and America West Flight Dispatchers, Arbitrator Bloch held (writing in the stead of the late Arbitrator Robert Harris, who had presided at the arbitration):

> ... If, on the one hand, Airways Dispatchers were the beneficiaries of new life in general, it is also true that the AWA inherited a labor agreement that treats them better; in many cases, substantially so ...
>
> ...
>
> Most meaningful are the gains realized by West Dispatchers when operating under the US Airways labor agreement. It is, by most measures, the more generous document of the two ...

US Airways/America West (Dispatchers), at 3, 7 (Harris/Bloch 2007) (emphasis added).

And, in integrating the Southwest and AirTran ground employees, Arbitrator Jaffe wrote (for the panel), in addition to the observations quoted above:

> The economic health of each pre-merger carrier is relevant to measuring the value of the previously earned benefits associated with pre-merger service and is

> relevant when determining whether the new integrated seniority list adequately protects the status quo ... The fact that AirTran employees will be receiving significant improvements in pay and benefits and working conditions immediately upon becoming Southwest employees also is an appropriate factor for consideration in determining the "fair share" of the new Southwest that is allocated to the former AirTran group. Viewed somewhat differently, these substantial gains in pay and benefits and working conditions are not a windfall to the AirTran employees, but rather are part of the overall measure as to whether the integrated seniority list treats them fairly and equitably when compared with their coworkers from Southwest.

Southwest/AirTran (Agents), at 32 (Jaffe/Golick/Vaughn 2012) (emphasis added).

Projected attrition is one equity to be weighed with other equities. One factor that can contribute to pre-merger expectations is anticipated attrition, which creates advancement opportunities for more junior pilots. In some cases, the argument is advanced that expected attrition for a particular group presents a unique equity commanding special attention. Even in such a case, however, anticipated attrition is only one equity to be weighed among others in arriving at a fair and equitable integration. For instance, in Delta/Northwest, the pre-merger Northwest Pilots sought a special "pull and plug" mechanism for older Northwest Pilots to assure the Northwest Pilots the full benefit of anticipated asymmetric attrition. Id., at 21-22. The Arbitration Board found that, while such a mechanism was justified, it was mitigated by the other economic gains the Northwest Pilots had achieved as a result of the merger:

> Equity demands that the Northwest pilots' expectations [based on attrition] not be fully foiled by the merger. Fairness, however, reflects some tempering of the potential impact power of the adjustment mechanism. It would be myopic for this Board to focus solely on the stand-alone attrition expectations of the NWA Pilot group. We accept they may constitute a legitimate career expectation, but one must also consider other elements reasonably regarded as potentially damaging those expectations ...

Delta/Northwest, at 22 (emphasis added).

A fair and equitable integration should continue in place pre-existing conditions and

restrictions governing the relationship among pilots in a pre-merger group. When the drafters of an integrated seniority list have been faced with existing conditions and restrictions governing the relationships among the pilots of one pre-merger group based on a prior seniority integration, those conditions and restrictions have been maintained to continue governing the relationships among the pilots within the affected pre-merger group. For instance, in Republic/Hughes Airwest (Bloch 1981), the Republic Pilots remained subject to conditions and restrictions imposed by Arbitrator Theodore Vass in the previous North Central/Southern integration. In integrating the Republic and Airwest seniority lists, Arbitrator Bloch continued the Vass conditions and restrictions in place as they applied to the former North Central and Southern Pilots:

> The restrictions imposed via the Vass Award are to be continued and applied via this instant Merger…it must be readily recognized that when one speaks in terms of expectations, the restrictions brought to the merger by the Republic pilots were clearly expected.

Republic/Hughes Airwest, at 37. See, e.g., Nicolau Award, at 34 ("The Conditions and Restrictions imposed by the Kagel Award, effective October 31, 1988, shall not be affected by the foregoing Conditions and Restrictions").

Demographic anomalies between the affected pre-merger lists can be a factor to consider in determining the appropriate integration methodology. The decision makers' ability to create an integrated seniority list based on "apples to apples" comparisons of pre-merger seniority and/or length of service may be impacted by differences in the metrics by which seniority was measured at the pre-merger carriers. Thus, for instance, in Pinnacle/Colgan/Mesaba, Arbitrator Bloch rejected a date-of-hire proposal based, in part, on such anomalies:

> The record in this case reflects at least one anomaly: The parties to this process have presented pre-merger seniority lists that reflect differing approaches to Date of Hire calculations. All lists reflect the hire date as the time the pilot first

> enters training. According to the record, however, Pinnacle pilots, at times, were not paid until completion of the training ...

Pinnacle/Colgan/Mesaba, at 15 n.10.

Factual Background

The Pre-Merger Carriers

As of December 9, 2013, both American and US Airways were carriers with long histories, and networks providing domestic and international service through multiple domiciles on narrow-body and wide body aircraft.[10] Each airline was also the product of previous mergers and other transactions. However, as discussed below, at the time of the merger American (although in Chapter 11 bankruptcy) had a superior route and hub network; superior fleet on hand, and prospects for fleet growth and enhancement; and superior pilot work opportunities and compensation and benefits.

American Airlines

American's history traces back at least to 1926, when Charles Lindbergh flew the U.S. Mail for Robertson Aircraft Corporation, which in 1930 was consolidated with other carriers into American Airways Corporation. In 1934, American Airways became American Airlines. Over the course of its history, American evolved into a "legacy" airline with an extensive domestic and international route structure, numerous hubs, and a varied fleet of narrow-body, small wide-body and large wide-body aircraft.

In addition to pilots hired directly by American, American's pre-merger seniority list was

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[10] Prior to the merger with US Airways, America West was a smaller domestic carrier focused on the Western United States, operating primarily narrow-body aircraft, with limited overseas operations such as service from Phoenix to Hawaii. As discussed below, due to the failure of USAPA and US Airways to conclude a single collective bargaining agreement including a single seniority list, that remained the West operation as of December 9, 2013.

the product of at least four prior mergers and acquisitions resulting in the addition of pilots to the list:

* American/TCA (1974);[11]
* American/AirCal (1987);
* American/Reno Air (1999); and
* American/TWA (2001).[12]

As a result, the pre-merger American seniority list is not arrayed in a linear fashion based on longevity. It is an amalgam of pilots placed on the list on a variety of bases. Longevity is distributed unevenly on the list in a manner often bearing little relationship to date-of-hire or adjusted length of service.

Like the entire airline industry, American experienced a period of retrenchment in the wake of 9/11. In 2003, American and APA entered into an out-of-bankruptcy Restructuring Agreement, under which the carrier's pilots provided hundreds of millions of dollars in economic relief. At the same time, the 2003 CBA provided for periodic compensation increases. Under the 2003 CBA, the American Pilots experienced smaller pay reductions than their network airline counterparts during the 2002-2006 restructuring period, and recouped more than half of their pay reductions with

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[11] All pilots subject to the American/TCA seniority integration have retired.

[12] Other pilots attained positions on the pre-merger American seniority list pursuant to the former Supplement W of the American/APA CBA, which for a period of time provided, *inter alia*, for "flow up" rights to pilots flying at American's regional affiliate American Eagle. Some or all of those pilots achieved placement on the seniority list (based on their "occupational seniority" dates per the American CBA) before they left American Eagle to fly at American. Accordingly, those "Supplement W" pilots' placement on the list does not correspond to the actual dates they commenced service at American. As of December 9, 2013, all identifiable American Eagle pilots with prior placement on the American seniority list had commenced service at American. Accordingly, they are to be treated like all other pre-merger American Pilots for purposes of this matter.

subsequent raises through 2008. The American Pilots further preserved their defined benefit pension plan, as well as other benefits and work rules. By 2011, the American Pilots compensation was again at industry standard levels.

That 2003 CBA remained in place as of November 29, 2011 when American's parent, AMR Corporation, filed for protection under Chapter 11 of the federal Bankruptcy Code. In re AMR Corp., No. 11-15463 (SHL) (S.D.N.Y.). Unlike prior "legacy" airline bankruptcies – such as United, Continental, Delta, Northwest, and US Airways' 2002 and 2004 bankruptcies – the AMR filing was not initiated out of immediate distress or risk of business failure, but as a strategy to accomplish the restructuring of American's finances. Thus, American entered bankruptcy with a strong network of routes and hubs; financial strengths; and other competitive advantages. American entered bankruptcy with more than $4 billion in cash, which obviated any need for debtor-in-possession (DIP) financing. The larger goal of the AMR bankruptcy was to make structural changes that competitors had achieved in the preceding decade which could not be accomplished outside of bankruptcy.[13]

As a result of the foregoing, at the time American entered bankruptcy and thereafter, the American Pilots worked under industry-standard wages, benefits and working conditions, operating a varied fleet based in multiple hubs, on an extensive domestic and international route network. For instance, at the time of the merger, American Pilots were assigned to the following domiciles and aircraft based therein:

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[13] Indeed, in July 2011 – just months before the bankruptcy filing – American placed orders and options for narrow- and wide-body aircraft which contemplated substantial growth and enhancement in American's fleet – fleet growth and enhancement opportunities which, as discussed below, became part of the American Pilots' pre-merger career expectations. Those orders were supported by backstop financing that was never at risk in the bankruptcy proceeding.

DCA	BOS	DFW	LAX[14]	LGA[15]
B-737	B-737 B-757/767	S-80 B-737 A-320 B-757/767 B-777	S-80 B-737 A-320 B-757/767 B-777	B-737 A-320 B-757/767 B-777

MIA[16]	ORD	SFO	SLT
B-737 B-757/767 B-777	S-80 B-737 B-757/767 B-777	B-737	S-80

The pertinent facts regarding the bankruptcy filing and ensuing proceedings are discussed below.

US Airways

US Airways also had a long history, and at the time of the merger was a network carrier providing domestic and international service through multiple hubs with a multi-aircraft fleet. The carrier that became US Airways had its origins in the 1930s and 1940s, with the founding of All-American Airlines and Piedmont Airlines.

In addition to pilots hired directly by the carrier, the US Airways (East) seniority list was the product of prior mergers and acquisitions, including the following:

* Allegheny/Lake Central (1968);

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[14] As of December 9, 2013, American had awarded positions on A-320 aircraft in LAX, effective January 1, 2014.

[15] As of December 9, 2013, American had awarded positions on A-320 aircraft in LGA, effective January 1, 2014.

[16] In addition, the A-320 was deployed in MIA commencing December 1, 2014.

* Allegheny/Mohawk (1972);[17]

* Piedmont/Empire (1985);

* USAir/PSA (1986);

* USAir/Piedmont (1987);[18] and

* USAirways/Trump Shuttle (1997).[19]

In consequence, like the American seniority list, the pre-merger US Airways (East) was not a linear, date-based list.

In 1998, the US Airways Pilots, then represented by ALPA, negotiated a collective bargaining agreement which, as modified in a series of concessionary agreements, remained in place until the merger with American. The 1998 US Airways/ALPA CBA was negotiated, in part, to secure a large aircraft order from Airbus, and included an airline growth commitment and improved productivity. The 1998 CBA, in lieu of identified pay raises, included a "mainline parity adjustment" to benchmark hourly pay and productivity at "parity plus 1%" of a composite competitor (AA, DL, NW, UA). US Airways pilots received a 17% raise on May 1, 2001; and a 16.1% raise on May 1, 2002, following the new CBAs at Delta (2000) and United (2001). The amendable date of the 1998 CBA was January

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17 In 1979, Allegheny changed its name to USAir.

18 USAir changed its name to US Airways in 1997.

19 In addition, certain pilots on the pre-merger US Airways (East) seniority list previously worked at MDA. MDA was a separate regional carrier operating regional jet aircraft, established by agreement between US Airways and ALPA in US Airways' 2002 bankruptcy proceeding. MDA employed furloughed US Airways pilots, and other pilots from a "Combined Eligibility List" ("CEL"). As discussed below, claims by those pilots for seniority credit at US Airways for their service at MDA have been repeatedly rejected in both judicial and arbitral fora, including in the Nicolau Award.

2, 2003.

However, in the industry recession following 9/11, and in the face of growing financial losses, negative cash flow and weak liquidity, US Airways filed for Chapter 11 bankruptcy on August 12, 2002. In re US Airways, Inc., No. 2:14-cv-00007-RCM (E.D.Va.). In the course of that proceeding, ALPA entered into a series of restructuring agreements with US Airways, granting $3.6 billion in aggregate contract concessions, including a 34.5% cumulative pilot pay cut; and $1.9 billion in lost accrued benefits from the termination of the pilot defined benefit plan. The pilots received 19.33% of common equity in US Airways with an approximate value of $85 million (based on a company valuation of $438 million upon exit, vesting over three years), and profit sharing. The amendable date of the 1998 CBA was extended to December 31, 2008. US Airways emerged from Chapter 11 bankruptcy on March 31, 2003.

Thereafter, with ongoing losses, acute liquidity issues, being at risk of default on loan covenants, and seeking to reduce labor and other costs to combat low fare competition, US Airways filed for Chapter 11 a second time on September 12, 2004. In re US Airways, Inc., No. 04-13819-SSM (E.D.Va.). Immediately following that filing, US Airways demanded emergency concessions under Section 1113(e) of the Bankruptcy Code to avoid liquidation. Facing a Section 1113(e) order granted to US Airways by the bankruptcy judge, ALPA agreed to a "Transformation Plan" in LOA 93, including:

* $1.5 billion in contract concessions, including pay cuts in excess of 18% and the elimination of all future pay raises;

* all defined contribution plan contributions reduced to 10%; and

* a cumulative pay cut of 45% from 2002, causing USAir hourly pay rates to be the lowest among major airlines from 2004 through 2012.

The amendable date of the 1998 CBA was extended to December 31, 2009.

As discussed below, USAirways emerged from the 2004 bankruptcy through its merger with America West.

America West

America West was founded in 1981 in Tempe, Arizona, and commenced operations in 1983 at Phoenix Sky Harbor airport. America West filed for Chapter 11 protection in 1991, and exited in July 1994.

ALPA became the America West Pilots' bargaining representative in 1993. The original America West/ALPA CBA was amendable in 2000, with pay rates significantly below industry standard. That CBA was replaced by a new CBA effective December 30, 2003. ALPA was able to secure modest improvements in compensation in the 2003 CBA, including:

* an 11% pay raise on 1/21/04 and a 3% pay raise on January 1, 2007;

* a 7% contribution to the defined contribution plan.

Prior to the merger with US Airways, America West was the second largest low-cost carrier in the United States. The amendable date of the 2003 American West CBA was December 30, 2006.

At the time US Airways entered its second bankruptcy in 2004, America West was operating out of hubs in Phoenix and Las Vegas, with a fleet of narrow-body and small wide-body aircraft providing domestic service, with additional service to Hawaii from Phoenix.

The US Airways/America West Merger

In 2005, US Airways and America West agreed to merge. The merger became the basis of US Airways' exit from its 2004 bankruptcy proceeding, at which time US Airways changed its designator to "LCC," signifying a low-cost business model. As the Arbitration Board well knows,

there was never closure on a joint pilot collective bargaining agreement including a single seniority list. At the time of the events leading to the present merger, the East and West Pilots continued to operate in their pre-merger systems, on their pre-merger seniority lists, under their separate pre-merger CBAs (the 1998 US Airways CBA, as modified in US Airways' two bankruptcies; and the 2003 America West CBA).

The US Airways/America West Transition Agreement

The September 23, 2005 US Airways/America West Transition Agreement (Letter of Agreement 96 to the 1998 US Airways CBA) provided, *inter alia*, for the continued separate operation of the East and West pilot groups until the implementation of a single collective bargaining agreement including an integrated seniority list. That Transition Agreement provided for the creation of an integrated seniority list pursuant to the then-current ALPA Merger Policy, through negotiation, mediation and arbitration between the pilot groups' merger representatives; to then be presented by ALPA to the merged carrier as the proposed seniority list, and accepted by the carrier. However, no integrated seniority list was to be implemented until the conclusion of a single joint collective bargaining agreement covering the combined pilot group.

The Nicolau Award

The US Airways and American West Merger Committees could not agree on an integrated seniority list, and the dispute was submitted to arbitration before Arbitrator Nicolau under the then-applicable ALPA Merger Policy. The East Pilots proposed an integrated seniority list based on date-of-hire and/or adjusted length-of-service. The West Pilots proposed a category and status integration. Arbitrator Nicolau issued the Nicolau Award on May 1, 2007, creating an integrated seniority list by placing the most senior 423 US Airways Pilots at the top of the list; ratioing the America West Pilots

with the remaining US Airways Pilots in active service as of May 19, 2005; and the placement of more than 1,400 US Airways Pilots on furlough as of that date at the bottom of the list.

Arbitrator Nicolau began[20] by weighing the pilot groups' pre-merger equities, including the America West Pilots' superior pre-merger collective bargaining agreement:

> Of considerable importance is the question of career expectations. As previously stated, America West argues that the career expectations of the US Airways pilots were nil; that if the airline was not a failing carrier saved from certain liquidation by its purchase by America West, it was so close as to make little difference. On the other hand, America West, in the view of its pilots, was robust and on its ways to sustained achievement. The US Airways pilots argue that neither description fits the facts. In their view, US Airways, though in bankruptcy for the

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20 The US Airways Pilots argued that pilots should be credited in the seniority integration for time worked at MDA. That contention was disputed by the West Pilots. Arbitrator Nicolau ruled as follows:

> Before turning to the building blocks of our decision and the reasons for those choices, a preliminary matter needs to be addressed. That is the question of the CEL pilots. Some 105 such pilots (4993-5098) appear on the US Airways May 19, 2005 Certified Seniority List. However, none had flown for the mainline; all were pilots at Mid-Atlantic Airways, a regional carrier designed to be a US Airways wholly-owned subsidirary, but actually flown at all times during its short existence on the mainline's operating certificate as a division of US Airways.
>
> It is the position of the America West pilots that these pilots do not belong on the list; that they have no right to be there because there were no flow-up provisions to which they can lay claim; that they were only put on the list in an effort to "beef up" the US Airways list, and that they should therefore be removed. The US Airways pilots disagree. Though they concede that there was some question of their status early on, they assert that the submitted evidence makes it clear that the CEL pilots belong on the list where they are.
>
> The Board has carefully studied the respective presentations. While the history is cloudy at best, in our considered opinion there is insufficient evidence to justify the America West request to remove them from the list. However, we agree with the America West alternative proposal; that they be treated in the same fashion as Constructive Notice pilots. Because there have been no new hires since the merger and inasmuch as we have decided on particular integration methodologies regarding active pilots, their placement at the bottom of the integrated list, a position they know occupy on the US Airways list, will not adversely affect America West pilots.

(Nicolau Award, at 20-21.)

> second time, had lowered its costs and secured additional investment capital ensuring its survival and prospects of emerging from bankruptcy. Beyond this, as shown by repeated post-merger statements by America West's CEO and by expert analysis, that airline was also in poor financial condition. Thus, both airlines needed each other and both have benefitted from the merger. The US Airways pilots assert that this, as well as cases it cites as precedent, argue for the proposition that the financial picture of the two airlines was relatively the same and, as such, should not even be considered.
>
> Our view is that neither picture is persuasive. The US Airways reliance on post-merger statements by America West's CEO, clearly made to assuage growing concerns of America West pilots who had seen a post-merger end to hiring, an increasing return of long-furloughed US Airways pilots and a flattening in their own advancement, is misplaced. Equally so is America West's insistence that US Airways was about to disappear. Yet, it cannot be disputed that there were differences in the financial condition of both carriers and that US Airways was the weaker. This necessarily means that career expectations differed and the US Airways pilots had more to gain from the merger than their new colleagues.
>
> Gains also came in other ways. Though the US Airway pilots argue that the collective bargaining agreements are comparable, that is not the case. In pay, the America West Contract is better for comparable aircraft except for the B757. Though A330 and B767 pay did not exist at America West, those 19 aircraft are only 5% of the combined fleet and the B757s only add another 13%. The bulk of the fleet (81%) is comprised of the 292 A320s and B737s, where America West's higher rates, even without increases that a combined contract may bring, will result in a collective benefit to US Airways pilots of $23 million a year. There are other benefits that will accrue to US Airways pilots in the form of increased vacations, higher caps and pay guarantees as well as salaries, that would have been unachievable until, at the earliest, the December 31, 2009 amendable date of the US Airways/ALPA Agreement. The same can be said for the post-merger relaxation of onerous work rules that US Airways pilots had agreed to in concessionary negotiations sought by the Company as a means of survival.

Nicolau Award, at 25-26 (emphasis added).

Based on those equities, Arbitrator Nicolau found that neither pre-merger group's proposal was fair and equitable:

> This, however, does not justify ratios beginning at the top of the list as America West proposes, for there are compensating factors such a methodology ignores. Though Date of Hire, whether adjusted for Length of Service or not, is no longer listed as a determinant or even stated as a integration criterion, there are occasions when consideration should be given to that factor. Here, US Airways is far

older than America West, a fact reflected in the average age difference between the two groups. Consideration must also be given to the different career expectations based on equipment flown. US Airways pilots fly wide-body international aircraft, while America West pilots do not. Those elements weigh in US Airways favor both in placement and interim restriction and thus argue against the America West proposal, as do the benefits US Airways pilots will achieve through their agreed upon receipt of stock options, increasing sums not factored into simple hourly rate comparisons. Equally worthy of consideration as an offsetting benefit to America West pilots is the US Airways attrition, whether swift or slower, that will accrue to the America West pilots in a measure that did not previously exist.

Though America West pilots can therefore expect some gain from factors US Airways brought to the merger, this by no means justifies the proposal on which US Airways insists. As previously stated, giving sole consideration to date of hire and length of service would put the senior America West pilot some 900 to 1100 numbers down the combined list. US Airways proposed restrictions, both as to aircraft and length, would unduly deprive too many senior America West pilots of upgrade opportunities for too long a time, and would also put a number of active America West pilots below long-furloughed US Airways pilots who, until the merger, had little prospect of an early return.

Id., at 26-27.

Arbitrator Nicolau explained the list he adopted as follows, in part:

In our view, these competing considerations result in a list that has the effect of reserving a certain number of positions in present wide-body international aircraft to US Airways pilots, thus giving consideration to both their longer service and the fact that America West pilots did not have an immediate expectation of such flying. However, the placement of a number of US Airways pilots on the top of the list as a means of accomplishing that is not the 900 to 1100 they seek, but 423, which is equal to number of Captains and First Officers flying the A330 and B767 International. This would give those senior US Airways pilots the opportunity to bid into such vacant positions if they so chose for an additional period of four years, making a total of six years since the merger unless, as we said before, Age 65 legislation or rule-making were to change the retirement age.

On balance, it is our judgment that this allocation is equitable and, since such protection has already existed for more than two years, that it is for a sufficient length so as to then allow the list to operate independently for such aircraft. Except for this restriction, all other present flying, as defined in the Conditions and Restrictions that follow, is to operate by the list. As set forth in those Conditions and Restrictions, new flying, as defined therein is to be equitably shared in the formula set forth.

> A majority of the Board has also decided that the totality of pre-merger career expectations weighs in favor of active pilots as of the date of the announcement. When one considers the number and length of furloughs on the US Airways side and the dim prospects the airline faced and compares it to the lack of furloughs on the America West side, which furloughs ceased to exist long before the merger took place, merging active pilots with furloughees, despite the length of service of some of the latter, is not at all fair or equitable under any of the stated criteria.

Id., at 27-28.

While Arbitrator Nicolau professed to have taken date-of-hire and length-of-service into account (Nicolau Award, at 26-27), the integrated seniority list he created could not be characterized in any real sense as a date-based list. The Nicolau Award gave the great majority of the West Pilots significantly higher placement on the integrated list than they would have received on any date basis – as much as 17 years out of seniority on a date-of-hire basis.

The East Pilots' Rejection of the Nicolau Award and the Creation of USAPA

The US Airways (East) Pilots never acceded to the Nicolau Award. Following the issuance of the Nicolau Award, the ALPA US Airways MEC petitioned the ALPA Executive Council to reject the award as contrary to ALPA Merger Policy; and filed suit in the Municipal Court of the District of Columbia to vacate the Award. US Airways MEC v. American West MEC, No. 0004358-07. The American West MEC petitioned for removal to Federal District Court. US Airways MEC v. American West MEC, No. 1:07-cv-01309 (D.D.C.).

Ultimately, in November 2007, ALPA submitted the Nicolau Award to US Airways as the proposed integrated seniority list; and the carrier accepted the Award as the seniority list to be included in a single collective bargaining agreement. However, in accordance with the Transition Agreement, the Nicolau Award could not be implemented, pending the conclusion of a single

collective bargaining agreement including an integrated seniority list.

A group of East Pilots formed USAPA for the express purpose of decertifying ALPA to prevent the implementation of the Nicolau Award. USAPA's Constitution and Bylaws enshrined the date-of-hire standard as the basis for any integrated seniority list – stating as one of USAPA's objectives, "to 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." (USAPA Constitution & Bylaws, Section 8.D.) In addition, the USAPA Constitution and Bylaws required that any CBA (including any integrated seniority list) be approved by the USAPA Board of Pilot Representatives ("BPR"), which at all times had a majority of East Pilots; and be ratified by the USAPA membership, the large majority of whom were East Pilots.

In April 2008, USAPA was certified by the NMB as the bargaining representative of the combined US Airways pilot group. US Airways, 35 NMB 135 (2008). Thereafter, USAPA refused to agree to the inclusion of the Nicolau Award in a combined collective bargaining agreement; instead, in September 2008 USAPA made a new seniority proposal based on a date-of-hire seniority list with 10-year conditions and restrictions. That was the last seniority proposal by either party in the negotiations.

The Litigation Between the West Pilots and USAPA

In response to the creation and certification of USAPA, the West Pilots created multiple organizations to oppose USAPA and pursue the implementation of the Nicolau Award. There ensued litigation between the West and East Pilots in multiple fora, which has continued to the present day.

For instance, in May 2008, USAPA unsuccessfully sued a number of individual West Pilots under the federal RICO statute, based on their participation in the America West Airlines Pilot

Protection Alliance (AWAPPA). See USAPA v. AWAPPA, LLC, No. 08-1858 (4th Cir. July 30, 2010).

Most significantly, the America West Pilots formed the organization Leonidas, LLC "to safeguard the legal rights of the former America West pilots, for the express purpose of enforcing the Nicolau Award without compromise." Leonidas' organic documents provided, in part, for the following objectives:

* "We fully demand all of our legal rights, in their entirety, within the new US Airways, or any successor airline."

* "We require full, good faith compliance with our existing contract, the Transition Agreement and ALPA merger policy from all parties."

* "We will not allow our rights to be trod upon by USAPA, the East MEC, ALPA National, or the Company."

* "We will aggressively seek any and all available legal remedies against any party which might seek to dilute our rights."

* "We will not tolerate discrimination against the pilots of America West in any form, including the dilution of the Nicolau Award by any means, contractual or otherwise."

* "We will not engage in fruitless debates over matters already settled."

* "We will remain perpetually poised to aggressively defend our rights until such time when we are no longer threatened."

"Leonidas, LLC Objectives," www.cactuspilot.com.

In September 2008, former America West Pilots supported by Leonidas initiated a class action against USAPA for breach of the duty of fair representation, based on USAPA's refusal to propose the Nicolau Award in the negotiation of a combined CBA. Addington v. USAPA, No. 2:08-cv-01633-NVW (D. Ariz.) ("Addington I"). The Addington I plaintiffs prevailed in a jury trial in May

2009.[21] However, on appeal the U.S. Court of Appeals for the Ninth Circuit reversed, finding that the plaintiffs' claims were not ripe until a single collective bargaining agreement was concluded which included a seniority list other than the Nicolau Award. Addington v. USAPA, 606 F.3d 1174 (9th Cir. 2010).

Following the Ninth Circuit decision, US Airways filed an action against USAPA and the class of West Pilots, seeking declaratory relief as to whether the carrier could agree with USAPA to a seniority list other than the Nicolau Award without incurring liability, including liability for colluding in a breach of duty by USAPA. US Airways, Inc. v, Addington, et al., 2:10-cv-01570 (D.Ariz.) ("Addington II"). On October 12, 2012, U.S. District Court Judge Roslyn Silver denied the requested relief, relying on the Ninth Circuit's holding that the issue was not ripe. Judge Silver summarized the parties' postures:

> US Airways contends it needs this guidance in order to determine the range of permissible proposals in the collective bargaining agreement negotiations. According to US Airways, if it accepts USAPA's seniority proposal, the West Pilots have said they will sue US Airways for facilitating or assisting USAPA's breach of the duty of fair representation. And, if US Airways insists on adopting the new collective bargaining agreement incorporating the Nicolau Award, USAPA has promised a work stoppage.
>
> USAPA now seeks summary judgment that its seniority proposal does not breach its duty of fair representation while the West Pilots seek summary judgment that USAPA's proposal does breach its duty of fair representation. US Airways has filed briefs stating it is neutral on these issues but offering some guidance on the applicable legal framework.

Slip. Op., at 5.

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[21] In its Findings of Fact and Conclusions of Law following the jury verdict, the Court emphasized: "USAPA claims that the East Pilots hold such strong objections to the Nicolau Award that they always will vote as a bloc against any new CBA with it, enjoying the self-denial of a single CBA with improved wages and working conditions into perpetuity." Findings of Fact and Conclusions of Law, at 32.

Judge Silver also summarized the limits of USAPA's obligation under the labor laws to refrain from negotiating a different seniority regime:

> But being "bound" by the Transition Agreement has very little meaning in the context of the present case. It is undisputed that the Transition Agreement can be modified at any time "by written agreement of [USAPA] and the [US Airways]." (Doc. 156-3 at 38). Moreover, USAPA and US Airways are now engaged in negotiations for an entirely new collective bargaining agreement and there is no obvious impediment to USAPA and US Airways negotiating and agreeing upon any seniority regime they wish. As explained by the Ninth Circuit, "seniority rights are creations of the collective bargaining agreement, and so may be revised or abrogated by later negotiated changes in this agreement." Hass v. Darigold Dairy Products Co., 751 F.2d 1096, 1099 (9th Cir. 1985). And a union "may renegotiate seniority provisions of a collective bargaining agreement, even though the resulting changes are essentially retroactive or affect different employees unequally." Id.
>
> Of course, in negotiating for a particular seniority regime, USAPA must not breach its duty of fair representation. Accordingly, if USAPA wishes to abandon the Nicolau Award and accept the consequences of this course of action, it is free to do so. By discarding the result of a valid arbitration and negotiating for a different seniority regime, USAPA is running the risk that it will be sued by the disadvantaged pilots when the new collective bargaining agreement is finalized. An impartial arbitrator's decision regarding an appropriate method of seniority integration is powerful evidence of a fair result. Discarding the Nicolau Award places USAPA on dangerous ground.

Id., at 7.

Judge Silver therefore denied US Airways' request for declaratory relief:

> In the end, the Court cannot provide as much guidance as it had hoped it could. Pursuant to the Ninth Circuit's decision, any claim for breach of the duty of fair representation will not be ripe until a collective bargaining agreement is finalized. Addington v. U.S. Airline Pilots Ass'n, 606 F.3d 1174, 1181-82 (9th Cir. 2010). In this case, that means even though an integrated seniority regime is an incredibly important issue, and USAPA appears totally committed to a particular seniority regime, it is not possible to determine the viability of any claim for breach of the duty of fair representation until a particular seniority regime is ratified. When the collective bargaining agreement is finalized, individuals will be able to determine whether USAPA's abandonment of the Nicolau Award was permissible, i.e. supported by a legitimate union purpose. Thus, the best "declaratory judgment" the Court can offer is that USAPA's seniority proposal does not automatically breach its duty of fair representation.

Id., at 7-8.

At the same time, in her Memorandum Opinion and Order, Judge Silver offered cautionary advice to all sides:

> This is a hard case. As set forth in the parties' summary judgment filings, the underlying facts are undisputed but the appropriate conclusions to be drawn from those facts differ greatly. Having reviewed all of the filings and considered the arguments made by counsel at the oral argument, the Court concludes Defendant US Airline Pilots Association ("USAPA") is free to pursue any seniority position it wishes during the collective bargaining negotiations. But with that freedom comes risk because the West Pilot Defendants may have viable legal claims in the future should the collective bargaining agreement contain a seniority provision harmful to a subsection of the union. As for US Airways, it must negotiate with USAPA and it need not insist on any particular seniority regime. But US Airways must evaluate any proposal by USAPA with some care to ensure that it is reasonable and supported by a legitimate union purpose.
>
> ...
>
> This conclusion places US Airways in a difficult position. At the present time, it is not possible to predict what will result from the collective bargaining negotiations. Thus, the Court cannot grant US Airways prospective immunity from any legal action by the West Pilots. But based on the representation at oral argument that the seniority list is unlike other matters addressed in collective bargaining, it is unlikely the West Pilots could successfully allege claims against US Airways merely for not insisting that USAPA continue to advocate for the Nicolau Award. See Davenport v. Int'l Broth. of Teamsters, AFL-CIO, 166 F.3d 356, 361-62 (D.C. Cir. 1999) (addressing, without deciding, "the proper standard for determining whether an employer can be implicated in a union's breach of duty").

Id., at 1, 8.[22]

The East and West Pilots could not even agree on the meaning of Judge Silver's ruling. Each side proclaimed "victory" – USAPA that it had been freed to negotiate a seniority list other than the Nicolau Award; and, the West Pilots that Judge Silver had made clear that USAPA would do so at

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[22] US Airways filed a notice of appeal to the Ninth Circuit from Judge Silver's October 12, 2012 ruling. That appeal was dismissed following the consummation of the merger with American.

its peril and face future duty of fair representation liability.[23]

At the time of the merger, Judge Silver's October 12, 2012 ruling in Addington II was the "last word" on the parties' respective rights and obligations with respect to the Nicolau Award and the negotiation of a single CBA.

The Failure of USAPA and US Airways to Conclude a Single Collective Bargaining Agreement

From 2007 to 2012, the intractable dispute over the Nicolau Award prevented the conclusion of a single collective bargaining agreement covering the East and West Pilots. As noted above, in September 2008, USAPA made a seniority proposal based on date-of-hire, which the carrier never agreed to – having accepted the Nicolau Award in November 2007, and being faced with the inalterable internal conflict within the combined pilot group over the legal status of the Nicolau Award. Indeed, in February 2012, the NMB "parked" the negotiations, where the negotiations remained until the merger with American.

As a result, until the consummation of the merger with American, the East and West Pilots continued to work under their separate pre-merger CBAs – the 1998 US Airways CBA, as amended in US Airways' two bankruptcies; and the 2003 America West CBA. As such, in contrast to the pre-merger American Pilots, who had achieved the 2012 CBA and were working under that industry-standard agreement for a year before the merger, the East and West Pilots continued until December

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[23] As will be clear from the evidence, the East-West conflict over the Nicolau Award remains as deep and intractable today as it has been since 2007. It remains one of the defining elements of this proceeding. The USAPA and West Merger Committees could not agree on who would represent the West Pilots in this proceeding. A third Addington case ensued after the conclusion of the February 8, 2013 MOU, leading to the Ninth Circuit's June 26, 2015 decision, the withdrawal of the USAPA Merger Committee, and the postponement of the hearing. Leonidas and USAPA remain locked in litigation over the use and disposition of the USAPA treasury.

9, 2013 to work under their substantially inferior standalone CBAs.

As noted above, at the time of the merger, the "last word" was Judge Silver's October 12, 2012 decision in Addington II, admonishing both the carrier and USAPA on their respective risks, but offering no clear guidance to the parties. As such, absent the merger there was no clear pathway to a single US Airways CBA, industry-standard or not; and no expectation that such an agreement could be concluded.

US Airways' Publicly-Stated Desire to Merge

Indeed, throughout the period following the US Airways/America West merger, US Airways had no real "standalone" strategy. US Airways management's publicly-stated goal was to consolidate with another carrier, particularly as the rest of the "legacy" segment of the industry consolidated. For instance, in 2006, US Airways openly courted and launched a hostile bid for Delta, before Delta merged with Northwest. In 2008, US Airways openly courted United and Continental, before those carriers chose to merge with each other.

Throughout, US Airways management made clear that its standalone business model was successful based only on its existing low-cost structure, including the existing CBAs covering the East and West Pilots. As US Airways Chairman Douglas Parker stated in a 2011 interview:

> "The reality is we are doing as well as United, Delta and JetBlue so what we are doing works," said Mr. Parker. But, he explained, US Airways has to do it differently by having a 16% cost advantage, especially since it has a 15% PRASM disadvantage to its legacy counterparts.
>
> "It means we cannot pay the same as United, American and Delta. It doesn't work and if it doesn't work it will all go away. That doesn't mean that there is no room for pay increases, but it does mean we can't take our cost structure to where they are."

Centre for Aviation, "How Consolidation Has Changed the Us Airline Industry; More to Come - US Airways' Doug Parker," April 12, 2011. As such, industry standard compensation and benefits would

be possible for the East and West Pilots only through another merger.

The Continued Separate East and West Operations as of December 9, 2013

In the absence of a single collective bargaining agreement, the East and West pilot groups continued to work in separate, fenced operations under their separate CBAs and seniority lists until the merger with American. During that period, management closed the Las Vegas domicile, leaving the West Pilots based only in Phoenix. In addition, the Phoenix operation stagnated or shrank, while the East operation was maintained or grew. As a result, and, together with attrition among the East Pilots, all of the East Pilots furloughed at the time of the America West merger were ultimately recalled, and more than 500 pilots were hired into the East operation. Almost no new pilots were hired into the West operation, and they and incumbent West pilots were subsequently furloughed.

As of December 9, 2013, the East and West domiciles, and the aircraft based in those domiciles, were as follows:

US Airways (East)			US Airways (West)
PHL	DCA	CLT	PHX
E-190	A-320	A-320	A-320
A-320		B-737	B-757
B-737		B-757/767	
B-757/767		A-330	
A-330			

Thus, among other things, there was no prospect for West Pilots to fly on any aircraft other than narrow-body and small wide-body aircraft in the Phoenix domicile, at the wage rates under the 2003 America West CBA, which paid a single First Officer pay rate and a single Captain pay rate.

As a result, among other things, the jobs held by the East and West pilots did not reflect the equities of the Nicolau Award, since West pilots were prevented by the failure to implement the

Nicolau Award from holding jobs they would have possessed the seniority to hold in a combined operation had the Nicolau Award been implemented. At such time as the Nicolau Award would have been implemented, there would necessarily have been a transitional period in which the jobs held by East and West pilots were "rationalized" based on the Nicolau seniority list.

Since there was no clear pathway to a single collective bargaining agreement as of December 9, 2013, there was also no prospect absent the merger for the operations to be combined.[24]

The Events Leading to the American/US Airways Merger

American's Standalone Business Plan

As noted above, AMR filed for protection under Chapter 11 of the Bankruptcy Code on November 29, 2011. American began the bankruptcy proceeding committed to its "Standalone" business plan, which contemplated that the carrier would emerge from bankruptcy as a separate standalone airline. As later summarized the Bankruptcy Court in ruling on American's Section 1113 motion, "[t]he fundamental principles behind the Business Plan include[d]:"

* Concentrating on the five key hub markets for American: Dallas-Fort Worth, Miami, Chicago, Los Angeles, and New York;

* Expanding American's international presence, particularly through the use of joint business agreements and code-sharing;

* Increasing passenger feed to American's hub and across its network through codesharing with domestic air carriers and increased use of regional jets;

* Implementing a long-term fleet plan sufficient for both replacement and growth;

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[24] As discussed below, while the Ninth Circuit panel has now held that USAPA breached its duty of fair representation by entering into Paragraph 10.h. of the MOU without implementing the Nicolau Award, those developments would not have taken place absent the American/US Airways merger. Indeed, the Ninth Circuit panel was careful to disclaim any assumption that the Nicolau Award would have actually been implemented, 791 F.3d at 991 – as the Arbitration Board recognized in its July 5, 2015 procedural Award. (July 5, 2015 Award, at 18 n.4.)

* Creating a capital structure that allow[ed] American to grow and compete, attract capital at favorable rates and withstand external shock to the business; and

* Setting up a sustainable cost structure.

Memorandum Opinion and Order, August 15, 2012, at 16.

The Section 1113 Process and the 2012 American/APA CBA

American's Initial Term Sheets and the Section 1113 Motion

On February 1, 2012, American presented APA and the other American unions with its Standalone Plan and term sheets proposing concessionary modifications to the applicable CBAs as part of that Standalone Plan. American initially sought an asserted $370 million in annual concessions over six years from APA, but sought no reductions in the wage rates in the CBA; in fact, from the outset, American proposed wage increases over the term of the proposal. Instead, American targeted non-wage terms of the 2003 agreement that other airlines had already modified in prior restructurings and bankruptcies, such as the defined benefit pension plan (initially proposing termination of the plan); work rules; and active and retiree medical benefits.

American and APA engaged in initial negotiations, in which American modified the term sheet on or about March 21, 2012. On March 27, 2012, American filed motions under Section 1113(c) of the Bankruptcy Code to reject the affected CBAs, including the CBA with APA. On April 19, 2012, American presented another modified term sheet to APA, which became the basis for the Section 1113 motion at trial in the Bankruptcy Court. The Bankruptcy Court conducted a trial on the Section 1113 motion from April 23 to May 25, 2012. The Section 1113 motion was thereafter submitted to the Court for decision.

"LBFO I"

American and APA continued to negotiate while the Section 1113 trial was ongoing. On June

15, 2012, American management presented its "last, best and final offer" ("LBFO I"). The APA Board of Directors ultimately presented LBFO I to the APA membership for ratification, commencing on June 27, 2012. The Court held its Section 1113 ruling in abeyance pending the ratification vote. However, in a ballot concluding on August 8, 2012, the APA membership rejected LBFO I.

The Court's Section 1113 Rulings

With the APA membership's rejection of LBFO I, American's Section 1113 motion was again ripe for decision. The Court issued its Memorandum Opinion and Order on August 15, 2012, substantially upholding American's rationale for the motion. In particular, the Court rejected APA's reliance on a potential merger with US Airways as a basis for possible reorganization, and upheld American's reliance on the Standalone Plan: "[W]hile the Court recognizes the possibility that American's future might involve a merger of some kind – a possibility conceded by American – the Court rejects the notion that this possibility bars the current application under Section 1113 for several reasons." August 15, 2012 Memorandum Opinion and Order, at 33.[25]

"First and foremost," the Court relied on

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[25] In a footnote, the Court elaborated:

> In arguing that the possibility of a US Airways merger bars rejection of these collective bargaining agreements, numerous provisions of Section 1113 are implicated. In addition to arguing that American's proposals are not necessary for reorganization, the APA argues that the proposal is not based on complete and reliable information, see Section 1113(b)(1)(A), that the proposed changes are not fair and equitable, see Section 1113(b)(1)(A), that it has good cause to reject American's Section 1113 proposals, see Section 1113(c)(2), and that the balance of the equities does not clearly favor rejection, see Section 1113(c)(3). All these arguments, of course, presuppose that it is proper for the Court to consider a possible merger with US Airways in this Section 1113 analysis. Based on the facts before the Court and for the reasons stated above, the Court rejects that notion.

August 15, 2012 Memorandum Opinion and Order, at 33 n.17.

> ... the evidence before the Court about the possibility of a US Airways and American merger. Put simply, there is no merger for the Court to consider. While the Unions have signed term sheets with US Airways, there is no evidence before the Court of a proposed merger between the two airlines. While American has begun the process of considering strategic alternatives to its Business Plan, that process has not yet been completed. [citation omitted]. Indeed, no merger transaction with any airline has been presented to the Court. Nor is there evidence that the two airlines have reached an agreement in principle ...[26]

Id., at 34 (emphasis added).

The Court also found that "[t]he APA's argument is also undercut by history, which demonstrates that proposed airline mergers do not always succeed," specifically noting the evidence that "US Airways itself has been a party to unsuccessful merger talks in the past." Id., at 35. See id. at 35 ("prior to merger with Continental in 2010, United had unsuccessful merger talks with Continental that fell apart in 2008 ... prior to merger with Northwest, Delta was approached by US Airways about a merger").

Finally, the Court emphasized that "the Section 1113 inquiry is tethered to the proposal made by a debtor, not some other party." Id., at 37 (emphasis added). The Court again emphasized:

> There was no strategic transaction in existence at the time of the Section 1113 proposal, nor is there one today. The only thing that was (and still is) in place is an initial agreement between the unions and US Airways as to what US Airways would offer the unions if a merger were eventually to be consummated. The agreement itself is tentative at best, and several key terms are still subject to further negotiation.

Id., at 38.

In addition to generally rejecting any reliance on a potential merger, the Court rejected APA's

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26 As discussed below, as of August 15, 2012, APA and US Airways had reached agreement on a "Contingent Labor Agreement," outlining the framework of a potential collective bargaining agreement in the event of a merger. However, neither American nor USAPA was party to that CLA. Indeed, as set forth below, AMR and US Airways did not even begin formal merger discussions until more than two weeks after the Court's August 15, 2012 decision.

objections to the motion. The Court reiterated that the proper reference point for the motion was the Standalone Plan:

> ... The APA's threshold objection to the Business Plan is simply to the fact that it exists at all. In its view, American's stand-alone plan is not the appropriate platform for this Section 1113 application because of a potential merger with US Airways. But for the reasons explained above, the Court concludes that the possibility of a merger is not a bar to Section 1113 relief. Moreover, the Court agrees with American that it is appropriate – and indeed necessary – for American to formulate a stand-alone business plan at this point in time ...

Id., at 40. The Court then found "that Debtors have established – by a preponderance of the evidence – that American's Business Plan is a reasonable stand-alone business strategy to serve as the basis for American's Section 113 Motion." Among other things, the Court found that AMR's focus on pre-merger "Cornerstone" plan was reasonable (id., at 44) based, *inter alia*, on its similarity to business plans in other "legacy" bankruptcies:

> ... [T]he new elements in the Business Plan – reduction in labor costs and the purchase of new aircraft – are also reasonable steps. The focus in American's Business Plan on cutting its labor costs is not much different from the business plans in Section 1113 proceedings in other airline bankruptcies. So while the Unions attack American's Business Plan as being without basis, the evidence shows that American has in fact followed an unfortunately well-worn path blazed by earlier airline bankruptcies ... In each prior airline bankruptcy the, the pattern appears the same: the airline enters bankruptcy with labor costs that are at or near the top of the industry and then emerges with costs at or near the low end of the group. [citations omitted]. American now seeks to follow in the same path ...
>
> This is also true for the purchase of new aircraft. The business plan discussed in Northwest's Section 1113 proceeding is remarkably similar to American's Business Plan here: both include reductions to labor costs, revisions to work rules and scope provisions, and feature sizable new aircraft acquisitions to replace an aging fleet. [citation omitted] ...

Id., at 44-46 (emphasis added).

However, the Court denied American's Section 1113 motion based on American's failure to prove the necessity of certain discrete elements of its proposal to the Standalone Plan. Id., at 74-75,

77. On August 17, 2012, American renewed its Section 1113 motion based on modifications to the discrete items found objectionable by the Court. In a ruling in open court on September 4, 2012, the Court granted the renewed Section 1113 motion. In granting the motion, the Court reiterated its conclusion that a potential US Airways merger was not an appropriate benchmark, even if AMR's consideration of a transaction had progressed since the Court's original ruling:[27]

> As to the second issue of consolidation, the Court has already acknowledged in its prior decision that there is no merger for the Court to consider. That has not changed today. "While American has begun the process of considering strategic alternatives to its business plan, that process has not yet been completed." *In re AMR Corp*., 2012 WL 3422541, at *18.
>
> While that process has continued since the issuance of the Court's decision, there is still no fixed outcome for the Court to take into consideration. Thus, as nothing has changed on this subject since the issuance of the Court's opinion on August 15th, the Court rejects the arguments on consolidation for the same reasons set forth in its prior decision.

September 12, 2012 Bench Ruling, at 15 (emphasis added).

The 2012 CBA

Following the Court's September 4, 2012 decision, American announced plans to begin the implementation of the terms approved by the Court. In the same time frame, the official Committee of Unsecured Creditors in the bankruptcy ("UCC") indicated that it would not support a plan of reorganization that did not include a consensual, ratified agreement between American and APA.

Thereafter, while American was proceeding with the implementation of its imposed terms of employment, American continued to negotiate with APA toward a consensual agreement. On November 6, 2012, American presented another "last, best final offer" ("LBFO II"), based on

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[27] As noted below, as of August 31, 2012, AMR and US Airways had commenced formal merger negotiations, subject to a Non-Disclosure Agreement.

revisions to LBFO I, which was submitted by the APA Board of Directors to membership ratification. The membership ratified LBFO II as of December 7, 2012, and the new CBA (the "2012 CBA") was formally approved by the Bankruptcy Court on December 19, 2012.

The 2012 CBA took effect on January 1, 2013. The 2012 CBA reflected a realignment to address issues competitors had tackled in their earlier bankruptcies and restructurings while maintaining industry standard terms, including pilot compensation. Pilots received meaningful value in exchange for the contract modifications. In fact, the American pilots accrued an unprecedented net gain in the 2012 CBA. Rather than losing value in Chapter 11, the American pilots gained an aggregate of $228 million over the six-year duration of the 2012 CBA. Such a net gain in a pilot bankruptcy contract was unprecedented. The 2012 CBA enabled the American pilots to continue to maintain industry standard compensation.

Thus, as of January 1, 2013, nearly a year before the merger, the American Pilots commenced working under a new pre-merger, standalone CBA which continued their compensation and working conditions at the industry standard – in contrast to the East and West Pilots, who continued to work under the 1998 US Airways CBA as modified in US Airways' two bankruptcies, and the 2003 America West CBA, respectively.

The CLA and the MOU

The "Contingent Labor Agreement"

Although never contending that American would be unable to exit bankruptcy or would fail as a result of the Standalone Plan, from the outset APA (along with the other American unions) did not believe that the Standalone Plan represented the best business strategy for the carrier. Instead, APA and the other unions took the position that consolidation with another carrier represented the

best platform for American to compete with the newly-merged Delta (Northwest) and United (Continental). To that end, while the Section 1113 motion was pending, APA entered into discussions with US Airways management – which, as noted above, had for a number of years publicly stated that its own competitive future lay in a merger rather than a standalone operation.

On April 13, 2012, APA and US Airways reached agreement on a "Contingent Labor Agreement" ("CLA"), representing a framework for the CBA which would govern in the event that US Airways merged with American. The CLA was negotiated based on modifications to the 2003 American CBA, rather than American's Section 1113 term sheet to APA.

The Initial MOU Discussions and the "NDA Blackout" Period

USAPA was not party to the CLA. In the wake of the CLA, USAPA negotiated a proposed "Memorandum of Understanding" with US Airways regarding issues related to a potential merger with American, on which tentative agreement was reached between USAPA and US Airways on or about August 20, 2012, subject to approval by the USAPA BPR and ratification by the USAPA membership.[28]

On August 31, 2012, American and US Airways announced that they had entered into a Non-Disclosure Agreement governing formal merger negotiations between the carriers. That "NDA blackout period" continued until the public announcement of the merger. After August 31, 2012, no

[28] In addition, by its terms the proposed MOU would have been applicable to APA and the American Pilots, which would have required further negotiations with APA and APA's agreement.

It is true that, following the CLA, there were communications between the APA and USAPA negotiating committees, including joint meetings with management. However, APA had no involvement in USAPA's negotiation of the August 20, 2012 tentative agreement between US Airways and USAPA. And, USAPA had no involvement in the negotiations between APA and American leading to the 2012 CBA; indeed, as discussed below, the critical negotiations between APA and American occurred during the effective period of the American-US Airways Non-Disclosure Agreement, in which USAPA was completely sidelined.

further negotiations took place regarding the August 20, 2012 USAPA-US Airways MOU, and the USAPA BPR determined not to submit the proposed MOU to membership ratification. There were no further discussions regarding the merger involving APA or USAPA until December 2012, after the conclusion of the 2012 American CBA.

The MOU

As just noted, commencing August 31, 2012 AMR and US Airways began formal discussions of a possible merger pursuant to an NDA. In December 2012 – after the standalone American 2012 CBA was concluded, subject to APA membership ratification and Bankruptcy Court approval – the carriers summoned representatives of APA and USAPA to Dallas, Texas for intensive negotiations to resolve pilot labor relations issues associated with a possible merger, which was necessary to UCC support for the merger and approval of a merger by the corporations. The negotiation of the MOU was concluded on or about December 28, 2012, subject to approval by the APA Board of Directors and the USAPA BPR, and ratification by the USAPA membership.[29] The MOU accomplished several significant things.

First, the MOU established the terms and conditions of employment to govern the

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[29] USAPA membership ratification was required because the MOU would represent a new US Airways CBA, to succeed the 1998 US Air CBA (as modified) and the 2003 America West CBA. Ratification by the American Pilots was not necessary because the American Pilots already had a CBA in the form of the 2012 CBA; for the American Pilots, the MOU was a letter of agreement modifying the 2012 CBA, which did not require membership ratification.

Thus, at the time the MOU was concluded, the American Pilots were going to enjoy virtually all of its economic benefits based on the pre-merger 2012 CBA – even though the MOU was concluded prior to USAPA's ratification of the MOU; corporate approvals of the merger; Bankruptcy Court approval of the proposed reorganization plan and approval of that plan by the AMR creditors; the initiation and settlement of the Justice Department antitrust suit; and final Bankruptcy Court approval of the merger. In contrast, the East and West Pilots, who were still working under their separate (and inferior) pre-merger contracts, would only achieve the benefits of the MOU after those contingencies were fulfilled.

American and US Airways Pilots, to be effective upon the consummation of a merger. The MOU provided for the establishment, upon the consummation of an American/US Airways merger, a "Merger Transition Agreement" ("MTA"). Paragraph 1 of the MOU clearly provided that the MTA was to be based on the 2012 American standalone CBA:

> US Airways and APA agreed to a Conditional Labor And Plan Of Reorganization Agreement executed April 13, 2012 and as amended from time-to-time (the "CLA"). Upon the Memorandum Approval Date (as defined in Paragraph 18), this Memorandum shall supersede and replace the CLA. This Memorandum provides a process for reaching:
>
> > (a) A Merger Transition Agreement (the "MTA") between APA and an entity ("New American Airlines") formed in connection with a plan of reorganization ("POR") for such of those AMR Corporation-related debtors required to effectuate a combination of American and US Airways (the "Merger"). The MTA shall consist of the collective bargaining agreement between American and APA approved on December 19, 2012 by the Bankruptcy Court in In Re AMR Corporation, et al., jointly administered Ch. 11 Cast No. 11-15463 (SHL) (the "2012 CBA"), as amended pursuant to the provisions of this Memorandum;
> >
> > (b) a Joint CBA (the "JCBA") to apply to a merged workforce composed of pilots employed by American and US Airways.

(Jt.Exh. 9, at 1.) In determining the transitional terms and conditions of employment, Paragraph 24 of the MOU provided that "APA is entitled to modifications to the 2012 CBA valued at an average of $87 million/year over six years." (Jt.Exh. 9, at 11.) The improvements were to be negotiated by American and APA; those terms would then become effective upon the consummation of the merger and, in accordance with Paragraph 1 of the MOU, become applicable at that time to the East and West Pilots as well.

That MTA would not take effect until the consummation of the merger; indeed, Paragraph 18.c. of the MOU expressly provided that "[t]his Memorandum shall be null and void in its entirety

and as to all Parties if the Merger is not consummated." (Jt.Exh. 9, at 10.)[30] Until then, the three pilot groups would continue to work under their existing, standalone CBAs – the industry-standard 2012 CBA for the American Pilots; the 1998 US Airways CBA, as modified in the two US Airways bankruptcies, for the East pilots; and the 2003 America West CBA for the West pilots.[31] Accordingly, by definition, upon consummation of the merger, the American pilots would receive a total of $87 million immediate contractual improvements by reason of the merger, while both the East and West pilots would immediately reap exponentially larger gains over their respective pre-merger CBAs.

Second, the MOU established fences and other transitional provisions to govern the separate American and US Airways operations, pending the conclusion of a Joint Collective Bargaining Agreement ("JCBA") and integrated seniority list. Paragraph 8 of the MOU generally provided for the continuation of the three separate operations – including the continuation of the separate fleets and fleet plans[32] – until "the earlier of eighteen (18) months after US Airways and the

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30 Similarly, Paragraph 18.d. of the MOU provided:

> This Memorandum will only apply to this Merger, and will apply to this Merger regardless of the corporate structure. This Memorandum shall not affect or have any applicability to American's stand-alone plan or any merger or transaction other than this Merger.

(Jt.Exh. 9, at 10.)

31 As the events leading to the MOU unfolded, USAPA continued to pursue negotiation of a separate single US Airways CBA. In October 2012, in the wake of Judge Silver's decision in Addington II, USAPA requested that the NMB "unpark" its negotiations with US Airways. US Airways opposed that request.

32 Those pre-merger fleets and fleet plans as they existed on the date on which the MOU was concluded, were attached as confidential Attachments to the MOU. (Jt.Exh. 9, at 3.) Those Attachments were subsequently updated as of December 31, 2013, the end of the month in which the merger was concluded, (continued...)

New American Airlines obtain a single operating certificate, or the date on which a JCBA and integrated seniority list are in effect." (Jt.Exh. 9, at 3.)

Third, the MOU established a process for the certification of APA as the representative of the combined craft or class, and thereafter the conclusion of a JCBA. Paragraph 26 of the MOU provided that "APA shall file a single carrier petition with the NMB as soon as practicable after the Effective Date ..., but in no event later than four months after the Effective Date." (Jt.Exh. 9, at 12.) Paragraph 27 of the MOU provided for a process of negotiation and expedited interest arbitration for the conclusion of a JCBA following NMB certification of a single bargaining representative, with an agreed deadline for the interest arbitration award, if needed. The interest arbitrator's authority was to be limited to "fashioning provisions which are consistent with the terms of the MTA or facilitate the integration of pilots under the terms of the MTA," including specifically the value of the 2012 CBA and the $87 million of annual improvements thereon contemplated by paragraph 24. (Jt.Exh. 9, at 12.)

Fourth, as noted above, the MOU established the seniority integration process leading ultimately to this proceeding. Paragraph 10 of the MOU provided for "[a] seniority integration process consistent with McCaskill Bond ..." (Jt.Exh. 9, at 6), including the submission of the seniority integration issue to the Arbitration Board in the absence of an agreement within 90 days after the consummation of the merger, as summarized above. Significantly, the MOU provided that "it is understood that, in no event, shall the seniority integration arbitration proceeding commence prior to final approval of the JCBA ..." (Jt.Exh. 9, at 6.) Thus, absent an agreed seniority list, the MOU

[32](...continued)
and the stipulated Snapshot Date and Constructive Notice Date fell.

assured (in contrast to US Airways/America West and other previous cases) that a JCBA would be in place before an arbitrated integrated seniority list was established to be implemented under that JCBA.[33]

Approvals and Ratification of the MOU

Paragraph 18.a. and b. of the MOU provided for the requisite approvals of the MOU, as follows:

> a. This Memorandum shall become effective (the "Memorandum Approval Date") upon the date when all of the following have occurred: (I) approval by APA's Board of Directors; (ii) approval by the US Airways' Board of Directors; and (iii) approval by AMR Corporation's Board of Directors. If all of these approvals do not occur, this Memorandum shall be null and void in its entirety and as to all parties.
>
> b. This Memorandum shall become applicable to USAPA upon the later of (i) the Memorandum Approval Date; and (ii) USAPA's Board of Pilot Representatives' recommending that USAPA's membership ratify this Memorandum and USAPA's memberships subsequent ratification of this Memorandum. USAPA will inform the Parties whether its Board of Pilot Representatives has agreed to recommend that its membership ratify the MTA on or before January 4, 2013. If recommended, the ratification vote of USAPA's membership shall be completed no earlier than approval of the Merger by AMR Corporation's Board of Directors and no later than 60 days after such approval (if any). If such recommendation and ratification do not timely occur, this Memorandum shall be of no force or effect as to USAPA but shall remain in full force and effect as to the other parties.

(Jt.Exh. 9, at 9-10.) The MOU was approved by the APA Board of Directors on or about December 29, 2012, and thereafter by the corporations' Boards of Directors. The USAPA BPR submitted the

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[33] Paragraph 10.h. of the MOU provided:

> US Airways agrees that neither this Memorandum nor the JCBA shall provide a basis for changing the seniority lists currently in effect at US Airways other than through the process set forth in this Paragraph 10.

(Jt.Exh. 9, at 7.) As discussed below, this provision became the subject to the Addington III litigation, including the Ninth Circuit's June 26, 2015 decision.

MOU to membership ratification by the USAPA membership pursuant to Paragraph 18.b. of the MOU. The USAPA membership ratified the MOU as of February 8, 2013.[34]

In negotiating the MOU and presenting the MOU to its membership for ratification, USAPA advised its membership that the estimated total economic increase for US Airways Pilots over the next six years was $1.6 billion – in contrast to the $87 million annually (or $522 million over six years) gained by the larger American pilot group in the MOU/MTA. USAPA's leadership and advisors repeatedly stated that the US Airways Pilots (East and West) could not achieve those economic gains absent the merger with American.

The Finalization of the MTA by American and APA

Pursuant to paragraph 24 of the MOU, American and APA negotiated regarding improvements to the 2012 CBA valued at $87 million per year, to become effective upon the consummation of the merger and the effectiveness of the MTA. American and APA reached agreement on the revised terms on March 20, 2013; those terms were incorporated into a formal letter of agreement, LOA 13-08. The 2013 MTA maintained the 2012 CBA's amendable date of January 1, 2019.

The Corporate Approvals of the Merger,
and the Bankruptcy Court's Approval of the Plan of Reorganization

Following the conclusion and ratification of the MOU, the AMR and US Airways Boards of Directors approved the merger on or about February 13, 2013. The Bankruptcy Court approved the merger on April 11, 2013. The Court approved the proposed Disclosure Statement to Creditors on

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[34] Under Section 18.b. of the MOU, had the MOU not been approved by USAPA, it would "be of no force or effect as to USAPA but shall remain in full force and effect as to the other parties." (Jt.Exh. 9, at 10.) The parties thus contemplated a scenario in which the merger would occur without USAPA's support, with the carriers and the American pilots continuing forward with the MOU – including the $87 million in annual improvements over the economic value of the 2012 CBA – with the East and West pilots continuing to work under their standalone CBAs until the conclusion of a JCBA.

June 7, 2013. The Plan was approved by US Airways' shareholders on July 12, 2013, and by AMR's creditors (and the UCC) on August 2, 2013. The Plan was scheduled for final approval by the Bankruptcy Court on August 15, 2013.

The Department of Justice Suit

The merger also remained subject to approval by the U.S. Department of Justice under the Hart Scott Rodino Act. On August 13, 2013 – two days before the scheduled final Bankruptcy Court hearing on the proposed Plan of Reorganization – the Justice Department (and several State governments) filed suit to enjoin the merger as a violation of antitrust law. U.S. v. US Airways Group, No. 1:13-cv-01236-CKK (D.D.C.). In light of the Justice Department suit, the Bankruptcy Court deferred its final ruling on the proposed Plan of Reorganization. The carriers answered the Amended Complaint, taking the position that the merger was actually pro-competitive – that, while each carrier could survive and compete on a standalone basis, the merged carrier would be a more effective competitor with the newly-merged Delta (Northwest) and United (Continental).

On or about November 12, 2013, the carriers and the Justice Department announced the proposed settlement of the Justice Department suit, based on terms including the sacrifice of certain gates, slots and other assets by the merged carrier. The District Court approved procedures allowing the merger to go forward pending the Tunney Act settlement approval process. The Bankruptcy Court approved the settlement on November 27, 2013.

Final Bankruptcy Court Approval and Consummation of the Merger

In the wake of the Justice Department settlement, the Bankruptcy Court resumed its consideration of the proposed Plan of Reorganization. On December 9, 2013, the Court gave final approval to the Plan. The merger was consummated on that date.

As set forth below, the Merger Committees have agreed that December 9, 2013 is the appropriate Snapshot Date and Constructive Notice Date for the seniority integration.

American's Performance Under the Standalone Plan and the 2012 CBA

Prior to final approval and consummation of the merger, American continued to operate as a standalone carrier for nearly one year after the effective date of the 2012 CBA. During that period, the American Pilots enjoyed the economic benefits of the 2012 CBA; American's financial performance continued to improve; and American's performance tracked with and/or exceeded the targets of the Standalone Plan.

Events Subsequent to the Merger

The NMB Single Carrier Finding and Certification of APA.

As noted above, paragraph 26 of the MOU required APA to file a "single carrier" representation petition with the NMB. (Jt.Exh. 9, at 12.) APA filed such a petition on January 10, 2014. On August 8, 2014, the NMB found that American and US Airways were operating as a single carrier. American Airlines, Inc., 41 NMB 174 (2014). On September 16, 2014, the NMB certified APA as the single bargaining representative of the combined craft and class, without an election. American Airlines, Inc., 41 NMB 289 (2014).

The JCBA

In accordance with the MOU, New American and APA concluded a JCBA, which was ratified by the APA membership on January 30, 2015, and took effect as of January 1, 2015. Among other things, the JCBA included compensation increases for all affected pilots from the rates established in the 2012 American CBA and the MOU/MTA, retroactive to December 1, 2014. The JCBA extended the amendable date of the agreement by one year, to January 1, 2020.

At the hearing, the AAPSIC will present detailed analyses of the impact of the MOU, MTA and JCBA on the pre-merger pilot groups.

The Negotiation of the Protocol Agreement and the Preliminary Arbitration

Paragraph 10.f. of the MOU contemplated the negotiation of a "seniority integration protocol agreement" within 30 days after December 9, 2013, while APA and USAPA continued to represent the separate crafts and classes. The carriers, APA and USAPA were unable to conclude a protocol agreement during that period, which was extended through February 18, 2014. The issues preventing agreement on a protocol included whether, once APA was certified as the single bargaining representative, USAPA would have any role in the seniority integration process, and/or APA would have the authority to designate a separate Merger Committee to represent the West Pilots.

On February 27, 2014, USAPA filed suit to compel arbitration under the McCaskill Bond Act and Section 13(a) of the Allegheny/Mohawk LPPs. USAPA v. US Airways, Inc., No. 1:14-cv-00328 (D.D.C.). In response, APA and the carriers contended, *inter alia*, that paragraph 10 of the MOU constituted an alternative process under Section 13(b) of the LPPs, and counterclaimed for arbitration of the matter as a minor dispute under the MOU.

In August 2015, the carriers, APA and USAPA engaged in mediated discussions regarding the outstanding issues for the seniority integration protocol. Ultimately, the parties agreed to the Protocol; and the USAPA Complaint and the carrier and APA counterclaims were voluntarily dismissed, with prejudice. (Jt.Exh. 7.)

As noted at the outset of this prehearing statement, paragraph 8.b. of the Protocol contemplated a Preliminary Arbitration over whether, once certified as the single bargaining representative, APA could and should designate a separate Merger Committee to represent the interests of the West Pilots.

(Jt.Exh. 7, at 9-10.) That proceeding was conducted by a Preliminary Arbitration Board consisting of arbitrators Joshua Javitz, Shaym Das, and Steven Crable. In an Order issued on January 9, 2015, the Preliminary Arbitration Board held that APA had the authority to designate a West Committee, and that APA should do so.

Continued Disputes Between the East and West Pilots

Neither the consummation of the merger, nor the NMB's finding of a single carrier and certification of APA as the single bargaining representative, has led to any abatement in the intractable conflict and litigation between the East and West Pilots.

Representation of the West Pilots in This Proceeding

As noted above, the possible separate participation of the West Pilots in this proceeding was one of the principal issues of contention in the negotiation of the Protocol. While that issue was ultimately resolved through the Preliminary Arbitration and APA designation of the West Committee, the issue was not put entirely to rest. The USAPA Committee professed to represent both the East and West Pilots, and "certified" both an East seniority list and a purported West seniority list under the Protocol.

Addington III

Trial Court Litigation. Following the conclusion of the MOU, West Pilots supported by Leonidas initiated a new class action alleging that USAPA had breached its duty of fair representation in entering into paragraph 10.h. of the MOU, which permitted the continued maintenance of separate East and West seniority lists, rather than implementing the Nicolau Award; and that US Airways had colluded in that breach. Addington v. USAPA, No. 2:13-cv-00471-RGR (D.Ariz.) ("Addington III"). The case ultimately led to a two-day hearing before Judge Silver on the West Pilots' motion for

preliminary injunction, on October 22-23, 2013. In an Order entered on January 10, 2014, Judge Silver denied the motion.

Among other things, Judge Silver found that, regardless of its obvious hostile motivation toward the West Pilots, USAPA had established a legitimate union purpose for entering into the MOU. Judge Silver articulated the "low standard" for satisfaction of the duty of fair representation:

> Any change in seniority "must rationally promote the aggregate welfare of employees in the bargaining unit." [Citation omitted.] This low standard means that so long as a Court can find some legitimate union purpose motivating a seniority change, the union has not breached its duty of fair representation.

January 10, 2014 Order, at 10. Judge Silver found that USAPA had met that standard, albeit just barely. Id., at 9-12.

At the same time, Judge Silver emphasized the "pyrrhic" nature of USAPA's victory:

> USAPA has succeeded here but it is a Pyrrhic victory. As contemplated by the MOU, in the very near future an election will take place and a new representative will be chosen by all of the post-merger pilots. It is almost certain USAPA will lose that election. Once that happens, USAPA will no longer be entitled to participate in the seniority integration proceedings. The Court has no doubt – as is USAPA's consistent practice – USAPA will change its position when it needs to do so to fit its hard and unyielding view on seniority. That is, having prevailed in convincing the Court that only certified representatives should participate in seniority discussions, once USAPA is no longer a certified representative, it will change its position and argue entities other than certified representatives should be allowed to participate. The Court's patience with USAPA has run out. USAPA avoided liability on the DFR claim by the slimmest of margins and the Court has serious doubts that USAPA will fairly and adequately represent all of its members while it remains a certified representative. But all the Court can do at this stage is implore USAPA to, in the words of CAB, "make every effort to see that [the West Pilots'] are given extensive consideration, and that their interests are fairly and fully represented" during seniority integration. National Airlines, Acquisition, 84 C.A.B. 408, 477 (1979). And when USAPA is no longer the certified representative, it must immediately stop participating in the seniority integration.

(Id., at 20-21 [footnotes omitted].)

The Ninth Circuit Decision. The parties appealed Judge Silver's ruling to the Ninth Circuit.

Addington v. USAPA, Nos. 14-15757, 14-15874, 14-15892 (9th Cir.). As noted at the outset of this prehearing statement, on June 26, 2015, a three-judge panel vacated and reversed Judge Silver's order. Addington v. U.S. Airline Pilots Ass'n, 791 F.3d 967 (9th Cir. 2015). Having found the West Pilots' claim ripe given USAPA's agreement to the MOU, 791 F.3d at 980-982,[35] the panel found that, on the merits of the West Pilots' duty of fair representation claim, "we do not think this is a difficult case." Id., at 985. The court explained:

> ... From its inception, USAPA has advocated for date-of-hire principles as a way of suppressing the minority, the West Pilots. In another context, a date-of-hire preference would be a perfectly rational means of ordering a seniority list, [citations omitted], but here it was a raw exercise of political power to undo the process to which the East and West Pilots had agreed. In effect, USAPA promised a date-of-hire regime as the quid pro quo for securing the East Pilots' vote on their new bargaining unit, and it treated the West Pilots as though they were non-union members.
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> ...
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> Yet, when all was said and done, the East Pilots repudiated their promise to be bound by the outcome of the agreed-upon process. When the East Pilots did not get the outcome they wanted, they simply dumped the rules and found a new rulemaker—USAPA—that they could control. By "constitutionally committ[ing USAPA] to pursuing date-of-hire principles," Addington I, 606 F.3d at 1177, the East Pilots fixed the game.
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> From the outset, USAPA was irreconcilably opposed to the negotiating position of the

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35 Among other things, the panel majority found:

> If the West Pilots are to have any relief, we must grant it before the SLI Award issues. The West Pilots have asked that the East and West Pilots be integrated in accordance with the Nicolau Award in the upcoming SLI proceedings. Their proposed injunction would effectively put the West Pilots in the position they would likely have occupied but for the breach: the US Airways pilots would enter the seniority integration process united behind a single seniority list integrated in accordance with the Nicolau Award ... Moreover, it is unclear whether the West Pilots will have any remedy available once the East, West, and American pilots have been integrated pursuant to the SLI Award. The impending SLI Board decision makes it even more critical that we adjudicate this dispute now.

791 F.3d at 981.

> West Pilots. Conceived in the minds of the East Pilots, elected and installed by the East Pilots, and constitutionally committed to a date-of-hire list that favored the East Pilots, USAPA could never fairly and impartially represent the West Pilots. The very reason for its existence was to undermine the Nicolau Award in every manner that ALPA had refused to do. USAPA was, for all intents and purposes, a representative for the East Pilots. This purpose is nowhere more evident than in the East Pilots' and USAPA's own words. In the East Pilots' consultations with counsel, they sought to develop a roadmap for creating "a new bargaining agent [that] can get around the award and make the Nicolau Award moot." And although counsel cautioned the East Pilots to take care not to advertise too broadly that the "sole reason for the new union" was to abrogate the Nicolau Award, the East Pilots paid little heed. Their new union's constitution spoke its founders' purpose loud and clear. USAPA's constitution committed it "to maintain[ing] uniform principles of seniority based on date of hire." This principle flatly contradicted the Nicolau Award, but it ensured that the East Pilots, whose voting strength overpowered the West Pilots by more than two-to-one, would vote to certify USAPA as the new collective bargaining representative. And upon its certification, USAPA's first act was to submit a new seniority list to US Airways, consistent with the date-of-hire principles it was constitutionally committed to proselytize.
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> Although in Addington I we were uncertain about how the East and West Pilots' "internal disputes" would eventually "work themselves out," 606 F.3d at 1181 n. 4, USAPA's subsequent actions have rendered the picture clear. Since USAPA's initial act of proposing a revised seniority list in 2008, it has continued to oppose any efforts to reach a "Single Agreement," the consummation of which would automatically trigger the implementation of the Nicolau Award under the terms of the Transition Agreement. Thus far, USAPA has been fully successful. Two years after we decided Addington I, when US Airways and American Airlines announced their merger, there was still no Single Agreement and no Nicolau Award. USAPA succeeded in keeping separate the seniority lists applicable to the East and West Pilots until it finally had the opportunity, in the US Airways–American Airlines merger, to dismantle the Nicolau Award for good. In short, USAPA's aim to benefit the East Pilots at the expense of the West Pilots is no longer in any doubt.

791 F.3d at 985-986.

The panel then addressed the supposed "legitimate union purposes" for USAPA's conduct identified by Judge Silver:

> First, the district court found, USAPA used Paragraph 10(h) to make the MOU "explicitly neutral" and "put[ ] off to another day the question of the appropriate seniority regime," while securing, in exchange, "the additional compensation contained in the MOU." Second, the court suggested that USAPA viewed Paragraph 10(h) as "necessary to prevent the drag-out fight that surely would have accompanied any

> non-neutral, seniority-related provision." And finally, the district court found that USAPA likely believed that Paragraph 10(h) was necessary to prevent completion of a "Single Agreement," triggering implementation of the Nicolau Award.

Id., at 987-988. The panel rejected Judge Silver's findings as to the legitimacy of each asserted purpose:

> In sum, the district court identified three possible reasons why USAPA included Paragraph 10(h) in the MOU: first, to obtain the benefits of the MOU while remaining neutral as to seniority; second, to avoid conflict; and third, to advantage the East Pilots by promoting date-of-hire seniority over the Nicolau Award. The first reason is unsupported by the evidence, and the district court clearly erred in concluding that this reason could have supported USAPA's actions. The second reason is not legitimate; USAPA may not rely upon an unjustified conflict of its own making as a legitimate union purpose. And the third reason is clearly discriminatory and impermissible. None of the purposes that the district court identified for USAPA's actions constitutes a "legitimate union purpose" for abandoning the Nicolau Award in the MOU. Nor do we see any other legitimate union purpose for Paragraph 10(h).

791 F.3d at 989. In particular, with respect to the third asserted union purpose, the panel stated:

> ... The district court found that USAPA likely included Paragraph 10(h) to ensure that the Nicolau Award never took effect. This conclusion finds ample support in the record. But we respectfully disagree with the district court and the dissent regarding the inference to be drawn from this fact. Far from demonstrating that the union had a legitimate purpose in negotiating Paragraph 10(h), the paragraph is further evidence of USAPA's intransigence and its continuous course of discriminatory conduct. USAPA's motive is nowhere more evident than in its behavior during the MOU roadshows where, as the district court found, USAPA's representatives told the East Pilots that Paragraph 10(h) rendered the Nicolau Award "dead," but also "played fast-and-loose" with the West Pilots, deceiving them about the purpose and effect of Paragraph 10(h). USAPA included Paragraph 10(h) solely to benefit the East Pilots over the West Pilots, to free them from the consequences of the arbitration to which they were bound. USAPA's conduct is blatantly discriminatory ...

791 F.3d at 989 (footnotes omitted).

> As a remedy, the panel concluded
>
> ... 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. Although there remains some ambiguity over whether the Nicolau Award would have been adopted in toto, to conclude, as does the dissent, that the West Pilots

> may not obtain any relief at all is to grant USAPA the benefit of doubt that USAPA itself created. We thus remand this case with instructions to the district court to enter an order enjoining USAPA from participating in the McCaskill–Bond seniority integration proceedings, including any seniority-related discussions leading up to those proceedings, except to the extent that USAPA advocates the Nicolau Award.

791 F.3d at 991. In directing that relief, however, the panel recognized

> ... that it is not certain whether the Nicolau Award would have been implemented fully but for USAPA's breach. Because a good faith attempt to implement the Nicolau Award would have ultimately required a ratification vote by all the pilots, and we cannot know what the results of such a vote would have been, we can never be certain whether efforts to implement the Nicolau Award through a collective bargaining agreement with US Airways would have succeeded. See Addington I, 606 F.3d at 1179.

791 F.3d at 991. The panel's instruction to the District Court thus took into account the "ambiguity over whether the Nicolau Award would have been adopted *in toto*," and allowed "for the possibility that the SLI arbitration panel might not ultimately use the Nicolau Award in its final integration of the US Airways and American Airlines Pilots." Id.

On July 10, 2015, USAPA filed a petition for rehearing *en banc*. (Jt.Exh. 57.) That petition was denied on August 24, 2015. (Jt.Exh. 58.) The mandate was issued by the Ninth Circuit on September 3, 2015. The plaintiffs have filed a motion to join APA as a defendant, and for the issuance of a permanent injunction; and a motion to expedite consideration of that motion. At this writing, a hearing on the motions is set for September 24, 2015.

Litigation Over the USAPA Treasury

In addition, the East and West Pilots each initiated litigation over the disposition of the USAPA treasury, once USAPA ceased to be the bargaining representative of any pilots. On September 16, 2014 – the day USAPA ceased to be the US Airways' pilots' bargaining representative – USAPA initiated a declaratory judgment action in North Carolina state court, seeking a declaration

that its retention of the USAPA treasury, *inter alia*, to support the USAPA Merger Committee, was proper. The defendant West Pilots petitioned to remove the action to federal court. USAPA v. Velez, No. 3:14-cv-577 (W.D.N.C.). Conversely, the West Pilots initiated a suit against the principals of USAPA under Section 501 of the Labor-Management Reporting and Disclosure Act, alleging breaches of fiduciary duty, including the continued use of monies collected as dues from the US Airways Pilots (East and West) to support a Merger Committee representing the interests of the East Pilots. Bollmeier v. Hummel, No.3:15-cv-00111-RJC-DCK (W.D.N.C.).

The two cases have been consolidated. The Bollmeier plaintiffs filed a motion for temporary restraining order and/or preliminary injunction, which was heard on June 29, 2015; the parties submitted supplemental briefs to the Court addressing, *inter alia*, the impact of the Ninth Circuit's decision in Addington III, the USAPA Merger Committee's withdrawal from the present proceeding, and APA's designation of the EPSIC. On August 27, 2015, the District Court issued a preliminary injunction.

Fleet Developments

Since the consummation of the merger, the merged carrier has continued to operate the American and US Airways systems separately, in accordance with Paragraph 8 of the MOU. During that period, the Company has modified the separate pre-merger fleet plans discussed above, to "rationalize" the fleet and fleet plan in connection with the consolidation of the carriers. For instance, in a Form 8-K filed with the Securities and Exchange Commission on June 15, 2015, the Company disclosed that it had delayed the scheduled deliveries of 35 A-321neo aircraft which American had on order prior to the merger; and, in a Form 8-K filed on July 10, 2015 and a Form 10-Q filed on July

23, 2015, the Company disclosed the accelerated retirement of 13 aircraft.[36] This fleet rationalization has significantly impacted the combined pre-merger fleet plans. Since the vast majority of the projected fleet growth immediately prior to the merger was in American's pre-merger operation, the effect of this post-merger rationalization has been to reduce the growth expectations of the AA pilots.

The Pre-Merger Seniority Lists

The Protocol references the three pre-merger lists in effect as of December 9, 2013 – the American seniority list, the US Airways (East) seniority list,[37] and the US Airways (West) seniority list. (Jt.Exh. 7, at 6.)[38]

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[36] American has provided fleet plan information to the Merger Committees, which is confidential. To simplify the submission of this prehearing statement, undersigned counsel has refrained from reciting non-public specific projected fleet information. The AAPSIC will present evidence regarding the projected fleet in its case-in-chief at the hearing.

[37] The prior USAPA Merger Committee certified a pre-merger East seniority list on April 9, 2015. On September 11, 2015 – eight days before the due date of the current pre-hearing submissions – the EPSIC produced an "updated" pre-merger East seniority list, which differs from the USAPA-certified East list in several respects. The AAPSIC's preparation of its proposal and case-in-chief was substantially complete when the EPSIC produced the "updated" list; and, the AAPSIC is still reviewing the new information produced on September 11, 2015, and seeking to reconcile the differences between the two East lists. As discussed below, the proposed exhibits being submitted by the AAPSIC are therefore based on the prior USAPA-certified East list. The AAPSIC reserves the right to update its presentation based on the EPSIC "updated" East list as appropriate.

[38] Under the US Airways/AWA Transition Agreement, until a single seniority list was implemented, US Airways was required to maintain a third "New Hire Seniority List," in addition to the East and West lists, for pilots hired by the merged US Airways following the US Airways/America West merger. For purposes of this proceeding, those "Third List" pilots have been included in the pre-merger seniority list for the operation to which they were assigned (East or West). The application of the Nicolau Award, discussed below, will necessarily place those pilots below the pre-Nicolau East and West Pilots, in the order in which they were hired.

In producing the pre-merger American seniority list, pursuant to the Protocol Agreement, the AAPSIC has not certified the information referenced in Paragraph 2.a.(2) of the Protocol regarding pilot absence data. As discussed below, the Protocol contemplated the production of the pre-merger seniority lists based on data provided by the Company; the Company has not produced data regarding the subjects

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The Demographics of the Pre-Merger Lists

There are a number of demographic characteristics which may be material to the issues before the Arbitration Board.

Active and Inactive Pilots

As of December 9, 2013, the American seniority list included a total of 9,845 pilots; the East list included a total of 3,566 pilots; and the West list included a total of 1,608 pilots. Those totals included, in addition to "active" pilots, pilots in inactive statuses. The breakdown between active and inactive pilots on the three lists was as follows:

	Active	Inactive
AA	8034	1811
US(E)	3025	541
US(W)	1403	205
Total	12,462	2557

In this regard, certain statuses were treated differently at the pre-merger carriers.[39] Of

[38](...continued)
referenced in Paragraph 2.a.(2) that are accurate, reliable or consistent.

[39] For instance:

* At American, pilots bid for assignments to the Tulsa maintenance base to ferry aircraft to and from maintenance and perform other flying assignments, and are therefore considered active pilots. This may not be the case at the other carriers.

* Similarly, check airmen at American hold active pilot positions. This may not be true to the same degree at East and West.

* The 2003American West CBA had a "short-term disability" status in addition to long-term disability; both were inactive statuses. The 2012 American CBA and 1998 US Airways CBAs had no short-term disability status; pilots assumed long-term disability status after exhausting contractual sick leave.

(continued...)

particular significance to the AAPSIC proposal, among the pre-merger American Pilots in inactive status as of December 9, 2013 were pilots protected by Section 17 and Letter T of the 2012 CBA and

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[39](...continued)

* Under the 2012 American CBA, pilots on long-term disability were removed from the seniority list after five years. Under the 2003 America West CBA, pilots were removed after eight years of long-term disability. Under the 1998 US Airways CBA, as amended, there was no provision for removal of pilots on long-term disability from the seniority list; East pilots on long-term disability thus remained on the seniority list until they reached mandatory retirement age.

The AAPSIC's proposed methodology gives each pre-merger group the benefit of its pre-merger expectations, by treating pilots as active or inactive in accordance with their treatment at the respective pre-merger carriers under the respective pre-merger CBAs. To that end, except where there are material discrepencies, the AAPSIC seeks to take the certified East and West seniority lists at face value, and does not contest the attribution of particular pilots. On the other hand, for instance:

* The West Committee has credited a number of pilots, whom it acknowledges were in short-term disability status (STDS) as of December 9, 2013, as holding active jobs at that time. The AAPSIC treats those pilots as inactive, inasmuch as they were contractually disqualified from active status as of December 9, 2013, and management was therefore assigning other pilots to cover the staffing need which the pilots in question otherwise would fill.

* The USAPA-certified East seniority list identified pilots in "SPV" status, including check airmen who are treated as active pilots. The USAPA Committee separately identified 17 of those "SPV" pilots who were management positions as of December 9, 2013. At least pending its review of the EPSIC "update" to the USAPA-certified list, the AAPSIC treats those 17 pilots as inactive management pilots.

* The EPSIC claims credit for at least some pilots for time worked at MDA. The predecessor USAPA Merger Committee made no such claim, and stipulated that service at MDA would be excluded from any calculation of credited service in this case. As discussed above, Arbitrator Nicolau rejected that contention in the Nicolau Award. In addition, the contention has been rejected in litigation brought by former MDA pilots, and by the US Airways/USAPA System Board. See Naugler v. ALPA,2008 WL 857057 (E.D.N.Y. 2008); Naugler v. ALPA, 193 L.R.R.M. (BNA) 3337 (E.D.N.Y. 2012), aff'd, Alen v. ALPA, 526 Fed.Appx. 89 (2d Cir. 2013).

* As noted above, the AAPSIC continues to review the EPSIC's September 11, 2015 "update" of the USAPA-certified list.

In addition, there are 28 pilots listed on both the pre-merger East and West seniority lists. Since the AAPSIC proposal integrates the East and West Pilots based on the Nicolau Award, those pilots' placement on the AAPSIC proposed ISL is dictated by the Nicolau Award. As of December 9, 2013, some of those junior West Pilots were flying in the East operation, pursuant to the US Airways/America West Transition Agreement; the AAPSIC credits those jobs to the West Pilots.

predecessor CBAs. Those pilots had originally been furloughed by American; under Section 17 and Letter T, when offered recall they exercised the right to defer their return to active status subject to various conditions; following deferral, those pilots were effectively in a voluntary leave of absence status under the CBA, from which they could return to active status only if American was otherwise adding pilots.

Section 17 and Letter T have continued to apply under the MTA and JCBA. As of December 9, 2013, 1,165 pre-merger American Pilots were in Letter T status. To date, 193 of those pilots have subsequently returned to active status in accordance with Letter T. As discussed below, the AAPSIC proposal contemplates a one-time adjustment to the ISL immediately before implementation to account for pilots returning to active status from Letter T status subsequent to December 9, 2013.

Impact of Prior Seniority Integrations

As discussed above, both the American seniority list and the US Airways seniority lists included, in addition to pilots hired directly by those airlines, many pilots who achieved placement on the pre-merger seniority list as a result of prior corporate transactions and seniority integrations. The breakdowns were as follows, as of December 9, 2013:

AA		US Airways	
Direct Hires	8066	Allegheny/USAir	1993
TWA	1541	Empire	110
Reno	195	Piedmont	1253
AirCal	43	PSA	143
		Trump Shuttle	67
		US (East) Total	3566
		America West	1608
TOTAL	9845		5174

As a result, neither the American nor the US Airways (East) seniority list is arranged on a date basis.

Each includes pilots whose placement on the pre-merger list was based on a metric other than date of hire, length of service, or other measures of longevity.

The application of the Nicolau Award underscores and exacerbates this divergence from a date-based list. As discussed above, while Arbitrator Nicolau gave a "nod" to date-of-hire, the integrated Nicolau list was in fact substantially a category-and-status list, and bore no real resemblance to date-of-hire or length-of-service. In fact, the Nicolau integrated seniority list elevated the seniority of virtually all West Pilot above their dates of hire, by as much as 17 years.

Hiring and Furlough Patterns

In addition, each pre-merger carrier had distinct historical patterns of hiring and furloughs. The patterns can be summarized as follows:

American	US Airways
Hiring 1973-1980	Hiring 1970-1982 (East)
	Hiring 1983-1991 (West)
Furloughs 1980-1984	Furloughs 1982-1984 (East)
Hiring 1984-1993 (+ Air Cal)	Hiring 1985-1990 (Piedmont, PSA) (East)
Furloughs 1993-1998	Furloughs 1991-1998 (Trump Shuttle) (East)
	Furloughs 1992-1996 (West)
	Hiring 1996-2001 (West)
Hiring 1998-2001 (+ Reno Air & TWA)	Hiring 1998-2001 (East)
Furloughs 2001-2008	Furloughs 2001- 2010 (East)
	Furloughs 2001-2002 (West)
	Hiring 2003-2008 (West)
	Furloughs 2008-Present (West)
Hiring 2013-Present	Hiring 2011-Present (East)

Projected Attrition

The pre-merger lists also had distinct patterns of anticipated attrition based on the mandatory pilot retirement age of 65. Those patterns can be summarized as follows:

ACTIVE PILOT AGE-65 RETIREMENTS
(Absolute; Per Cent of 12/9/13 Active Pilots)

YEARS	AA	US(E)	US(W)
2015-2019	1019 (12.68%)	887 (29.32%)	209 (14.90%)
2020-2024	2893 (36.01%)	888 (29.36%)	302 (21.53%)
2025-2029	2584 (32.16 %)	455 (15.04%)	376 (26.80%)
2029-2039	1452 (18.07%)	324 (10.71%)	448 (31.93%)
TOTAL:	7948 (98.93%)	2554 (84.43%)	1335 (95.15%)

As indicated by these figures, for a period – roughly corresponding to the term of the JCBA – the East Pilots expected greater attrition as a proportion of their pre-merger seniority list. However, thereafter, the American Pilots anticipated disproportionate attrition through 2029; only in 2029 and beyond does the West Pilots' attrition exceed that of the American Pilots on a proportional basis.

The Differing Measurements of Seniority at the Pre-Merger Carriers

In addition to the demographic issues just noted, the pre-merger carriers did not share the same metrics by which seniority was measured. Thus, at US Airways (East and West), a pilot began accruing seniority on the date he or she commenced initial qualification training – his or her "date of hire." At American, management keeps several separate dates, including "occupational date," on which the American seniority list is built; "classification date;" "company date;" and "date of hire," which does not correspond with the "date of hire" at East or West, and which has no significance to competitive seniority or any other purpose. A pilot was placed on the American seniority list on his or her "occupational date," which has been defined in various ways over time, but with exceptions corresponds roughly to the date the pilot completed training and commences revenue flying.

The Lack of Reliable Absence Data

Paragraph 2.a. of the Protocol called for the exchange of specified seniority data by the Merger

Committees, "to the extent such information is available and can be compiled/provided by American without undue burden or expense." (Jt.Exh. 7, at 2.) Such data was to include data regarding pilots' absences from active service – "For each pilot, the start and end date of any furlough, period of disability, or leave of absence, or any intervening period of service with the pre-merger carrier other than as a flight deck crew member; an explanation for the furlough, period of disability, leave of absence, or period of service other than as a flight deck crew member; and an explanation of the effect, if any, of the furlough, period of disability, leave of absence, or period of service other than as a flight deck crew member on the pilot's seniority, longevity, compensation and/or benefits." (Id., at 2.) It is undisputed that the Company has been unable to provide data regarding these subjects that are accurate, consistent, or reliable. As a result, it is not possible to calculate adjustments to length of service that are reliable.

Argument

I. THE APPLICABLE PRE-MERGER EQUITIES

As discussed above, the linchpin of the "fair and equitable" standard is the respective reasonable pre-merger career expectations of the American, East and West Pilots – to base the ISL on what the respective pilot groups "brought to the merger;" the equitable sharing of post-merger upsides and downsides consistent with those respective expectations; and the avoidance of undue windfalls. The parties have stipulated that December 9, 2013 (the date of final Bankruptcy Court approval and consummation of the merger) is the appropriate Snapshot Date – i.e., the equities of the pre-merger American and US Airways (East and West) pilot groups will be measured immediately prior to that date. The parties have also stipulated that December 9, 2013 is the Constructive Notice Date – i.e., the date after which any pilot hired by a pre-merger airline is deemed to know that he or she will be

working for a combined entity and that his or her career expectations will be a product of the success or failure of the combined airline, irrespective of which airline hired the pilot.

Although, as discussed below, the AAPSIC has concluded that the Nicolau Award is the appropriate basis on which to integrate the East and West Pilots as part of the ISL, it is indisputable that, as of the Snapshot Date and Constructive Notice Date, the pilots to be integrated in the ISL were working in three separate operations, on three separate seniority lists, with three sets of pre-merger equities – American, East and West. And, while the West Pilots plainly have equitable claims based on the Nicolau Award to be taken into account in the construction of the ISL, the West Pilots could not reasonably have expected, as of December 9, 2013, that the Nicolau Award would be implemented absent the merger on any particular date, or ever. Even the Ninth Circuit panel recognized as much in upholding the West Pilots' claims in Addington III. 791 F.3d at 991. This must be taken into account in weighing the three pilot groups' reasonable pre-merger career expectations.

As such, the first equitable question before the Arbitration Board is the determination of the respective groups' reasonable career expectations immediately prior to December 9, 2013. To put it in the form of a single set of questions: Immediately prior to the Snapshot Date, would a pilot reasonably have preferred to have the benefit going forward of the American, West, or East network; fleet and fleet plan; competitive position; and/or compensation and benefits?

The answer in every respect is the same and cannot be subject to serious dispute. Immediately prior to December 9, 2013, the American Pilots' expectations were superior on every significant metric – the carriers' pre-merger networks; the carriers' pre-merger fleets and fleet plans; the carriers' pre-merger, standalone competitive positions; and the pilots' pre-merger compensation and benefits. The East and West Pilots have already benefitted disproportionately from the merger, while the

carrier's post-merger "rationalization" of its combined fleet has come at the expense of the American Pilots' pre-merger growth expectations.

A. The Treatment Of The Nicolau Award

This case is about the integration of the three seniority lists in effect as of the Snapshot date – the American, East and West seniority lists – in the context of the American-US Airways merger, as of December 9, 2013. The applicable equities to weigh in this matter are the pre-merger expectations of those three distinct pilot groups, immediately prior to that Snapshot Date, as stipulated by the parties. In that context, the Nicolau Award does not reflect the equities of these groups, at that time, in the context of this transaction, for a variety of reasons, including the following:

* The Protocol Agreement expressly provided for the exchange of information based on "the status quo of the three seniority lists in effect at the carriers on December 9, 2013 (i.e., American, US Airways (East), US Airways (West))." (Jt.Exh. 7, at 5.)

* The Nicolau Award arose in the context of the 2005 merger of US Airways and America West. Arbitrator Nicolau weighed the equities at that time, given the transaction and parties before him, not the equities applicable to the present case.

* The Nicolau Award accordingly did not, and does not, take into account the equities of American Pilots, who were not parties before Arbitrator Nicolau.

* The Nicolau Award has never been implemented or governed seniority.

* As of December 9, 2013, there was no realistic prospect that the Nicolau Award would be implemented absent the merger.

* The equities underlying the Nicolau Award have been impeded by the continued maintenance of the separate East and West operations and seniority lists since 2007.

* The hypothetical implementation of the Nicolau Award with a single US Airways CBA would have impacted US Airways' performance, and led to a different set of realities as of December 9, 2013 than existed on that date.

Accordingly, the proper starting point for the integration is "the three seniority lists in effect at the carriers on December 9, 2013 (i.e., American, US Airways (East), US Airways (West))" identified in

the Protocol. (Jt.Exh. 7, at 5.)

Notwithstanding that proposition, the AAPSIC acknowledges that the Nicolau Award cannot be avoided. The West Pilots have always asserted that they are entitled to the benefits of the Nicolau Award. The Protocol Agreement and the Preliminary Arbitration Board's order acknowledge the East and West Pilots' competing interests. While the Nicolau Award is not binding on the Arbitration Board, the West Pilots' claim that it should be the basis for integrating the East and West seniority lists cannot be denied.

The Ninth Circuit's holding, that the denial of the Nicolau Award in Paragraph 10.h. of the MOU breached USAPA's duty of fair representation, is effectively the tie-breaker on this question. With the Ninth Circuit's affirmation of the West Pilots' reasonable expectation of the Nicolau Award, the AASPIC acknowledges it as the starting point for ranking the East and West Pilots on the ISL. As part of the ISL, the US Airways Pilots (East and West) should be ordered based on the Nicolau Award.

This has the effect of giving the great majority of West Pilots significantly better placement on the seniority list than they otherwise might have achieved. In addition, the jobs held by the West and East Pilots on and after December 9, 2013 do not reflect the equities of the Nicolau Award – many of the jobs in the "combined" pre-merger US Airways operation to which the West Pilots would have had access under the Nicolau Award, are in fact held by East Pilots. Entirely apart from the other transitional issues raised by the implementation of the ISL, the job allocations as between the West and East Pilots must be rationalized according to the Nicolau Award as those pilots compete for jobs with each other for the first time, so that West Pilots achieve their expectations *vis a vis* the East Pilots.

In that regard, it must be emphasized that the West Pilots' claim to the Nicolau Award is a claim against the East Pilots, not the American Pilots. The American Pilots are innocent bystanders in the "Hatfields-and-McCoys" feud between the East and West Pilots. As the West Pilots' jobs are rationalized *vis a vis* the East Pilots based on the Nicolau Award under the ISL, those West Pilot gains should come at the expense of the East Pilots, not the American Pilots.

B. The American Pilots Had Superior Pre-Merger Career Expectations

The evidence will demonstrate that, on every significant metric, the American Pilots' reasonable career expectations immediately prior to December 9, 2013 were superior to those of the East and West Pilots.

American had a superior network. As set forth above, immediately prior to the merger, the American Pilots worked in a network that provided superior work opportunities. American's domestic and international route networks were larger and superior in scope. American had more hubs, and those hubs and domiciles were stronger from a competitive standpoint.

In addition to making for a stronger carrier, American's route and hub network made for more varied and desirable work opportunities for its pilots. Thus, for instance, the American Pilots had nine domiciles from which to choose, compared with three East domiciles and one West domicile; and the American pilots had more long-haul international flying opportunities than the East and (especially) West pilots.

American had a superior fleet, and superior fleet growth and enhancement opportunities. As also discussed above, immediately prior to the merger, the American Pilots flew on a superior fleet, with superior opportunities for fleet growth and enhancement. American's fleet on hand as of December 9, 2013 was superior, in number, and in the type of aircraft in operation. American had a

far more extensive "book" of orders and options, providing opportunities for growth and enhancement, including new-generation, more efficient aircraft.

American's fleet similarly translated into more varied and desirable work opportunities for the American Pilots, and American's pre-merger fleet plan created greater opportunities for future job growth.

American was in a superior competitive position. As set forth above, as of December 9, 2013, American was in a competitive position superior to US Airways. This was fueled, in part, by American's superior route network, hubs, fleet on hand, and anticipated fleet growth, discussed above. American had been operating under its Standalone Plan – including one year's experience under the 2012 American/APA CBA. American's performance was profitable and improving on that basis. That performance was tracking well against the goals of American's Standalone Plan.

The American Pilots had superior compensation and benefits. Perhaps the largest – and most undeniable – difference in pre-merger expectations was in compensation and benefits. During the period following 9/11, each pilot group made economic sacrifices to support its carrier in the difficult environment during that period. However, as of December 9, 2013, it is indisputable that the AA Pilots had been and were at industry-standard compensation, as confirmed in the 2012 CBA, effective January 1, 2013. The American Pilots had, by strenuously resisting American's Section 1113 proposals to the point of abrogation of the 2003 CBA by the Court, achieved the 2012 CBA. That 2012 CBA was negotiated based on American's Standalone Plan, and was approved by the Bankruptcy Court based on American's Standalone Plan. As noted above, American operated successfully under that CBA, in accordance with the goals of its Standalone Plan for nearly one year prior to the merger. The American Pilots were going to continue to work under those industry-standard terms and

conditions of employment, regardless of whether the merger proceeded.

In contrast, the East and West Pilots were still operating under the less desirable terms of the 1998 US Airways CBA (as modified in US Air's two bankruptcy proceedings) and the 2003 America West CBA. Absent the merger, they had no prospect of achieving an industry-standard CBA, because US Airways' network and business model would not support an industry-standard contract, and the continuing impasse over the Nicolau Award prevented the conclusion of a single agreement.

At the hearing, the AAPSIC will present detailed analyses of the differing pre-merger compensation and benefits of the three pre-merger groups.

The anticipated attrition of US Airways (East and West) Pilots must be weighed against the anticipated attrition of American Pilots, and the disproportionate economic gains by the East and West Pilots as a result of the merger. The EPSIC is likely to point to the anticipated age-65 attrition of East Pilots as an equity which the Arbitration Board must take into account; and, the West Committee can be expected to claim the benefit of that East attrition as members of the combined US Airways pilot group. As set forth above, expected attrition is one equity, but must be weighed with the other equities relevant to the integration.

One such counterveiling equity is the American Pilots' own expected age-65 attrition. As set forth above, the American Pilots also have significant projected attrition. In fact, when viewed proportionally, the period in which the East Pilots have disproportionate projected attrition is occurring largely before the ISL will be implemented, when the East Pilots are already capturing 100 per cent of that attrition;[40] and ends in 2020 or 2021 (roughly coinciding with the amendable date of

[40] To the extent that this harms the West Pilots, based on the lack of a single pre-merger US Airways seniority list, that is an equity to be weighed between the East and West Pilots, not the American (continued...)

the JCBA), at which point projected American attrition will exceed East attrition on a proportional basis. In other words, the East Pilots are already receiving most of the benefit of this equity, regardless of the construction of the ISL.[41]

Moreover, the East (and West) Pilots' interest in the projected East attrition must be weighed against the unprecedented economic gains already derived by the East and West Pilots from the merger, regardless of the construction of the ISL. As in Delta/Northwest (discussed above), in which the consideration of Northwest attrition was offset by the Northwest Pilots' economic gains from the merger, so it is here – even if the East and/or West Pilots can claim an equity based on projected attrition, they are already reaping economic gains equivalent to multiple "virtual upgrades" in positions as a result of the MTA and JCBA, which they could never have expected absent the merger. Indeed, the Northwest Pilots' economic gains in Delta/Northwest, based on which the arbitration board in that case offset the Northwest attrition, pale in comparison to the unprecedented gains already achieved by the East and West Pilots as a result of this merger.[42]

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[40](...continued)
Pilots, for the reasons discussed above.

[41] Moreover, as discussed below, to the extent that this is a legitimate US Airways equity, the AAPSIC proposal protects it through a proposed Group IV Captain fence until the amendable date of the JCBA, after which the pre-merger American attrition will overtake the East attrition on a proportional basis.

[42] In United/Continental, the arbitration board declined to place material weight on pre-merger compensation or economic gains from the transaction, but that was based on a finding that, when taking all compensation and the pilot groups' relative size into account, the supposed disparity was not material. United/Continental, at 11-12.

Given the relative age of the pilots affected, and the circumstances of the industry in recent years, the importance of this economic equity is magnified in the present case. The last (lost) decade - plus has seen the earnings and retirements of the pilot groups negatively impacted by the economic challenges, exacerbated by the stagnation created as a result of the change from age-60 retirement to age-65. The limited horizon available to many pilots to recoup some of these losses – and especially the loss of the ability to capture the
(continued...)

C. The Economic Benefit Of The MOU, MTA And JCBA Have Gone Disproportionately To The East And West Pilots

As discussed above, the MOU and MTA (including the improvements negotiated by American and APA in LOA 13-08) set the terms and conditions of employment, effective on consummation of the merger on December 9, 2013. By the express terms of Paragraph 1 of the MOU, the economics of the MOU/MTA were negotiated from the foundation of the American Pilots' standalone, pre-merger 2012 CBA. Accordingly, for the American Pilots, the MOU and MTA represented relatively modest improvements over the pre-merger compensation they already enjoyed, and under which they were going to continue to work, merger or no merger. In contrast, through the MOU/MTA the East and West Pilots achieved an entirely new CBA, with wages and benefits far exceeding their pre-merger terms and conditions of employment, and far exceeding anything they had any prospect of achieving absent the merger. Consequently, the vast majority of the economic improvements in the MOU and MTA have gone to benefit the East and West Pilots. Indeed, simply by reason of the consummation of the merger and the implementation of the MOU effective on December 9, 2013, the East and West Pilots received the economic equivalent of "virtual upgrades" in position, without any change in their flying status. And, those gains were "front-loaded" – the East and West Pilots achieved them immediately, and they will continue to enjoy those improvements, regardless of the outcome of this proceeding.

The JCBA, effective January 1, 2015, produced further improvements for all of the affected pilots, across the board. However, those across-the-board benefits do not materially alter the vast disparity in the economic benefits to the pre-merger pilot groups from the merger. Regardless of how

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[42](...continued)
effects of compounding – makes compensation, and the need to get it sooner, that much more important.

the seniority lists are integrated, the East and West Pilots stand to gain, on average, hundreds of thousands of dollars per pilot in additional compensation during the term of the JCBA, simply by reason of the merger. In contrast, the American Pilots have to date received the relatively modest improvements in the MTA over the 2012 CBA, and the shared improvements over the MTA in the JCBA. And, unless these disparities in pre-merger compensation and post-merger economic gains are taken into account in constructing the integrated seniority list, in the event of a contraction in the expected size of the airline the American Pilots will be at risk of losing the benefit of even the modest gains they have enjoyed due to the merger, while the East and West pilots will continue to receive compensation far beyond what they had prior to the merger regardless of how the lists are integrated.

D. The Post-Merger Rationalization Of The Combined Fleet And Fleet Plan Is At The Expense Of The American Pilots' Growth Expectations

As discussed above, as of December 9, 2013, American had a significant "book" of aircraft orders and options, which supported the American Pilots' expectations for fleet growth and enhancement. In contrast, the East and West Pilots had significantly lesser expectations. Since the merger, as the merged carrier has begun to seek out the "synergies" of the merger, the merged fleet plan is being reduced in relation to the aggregate of the carriers' pre-merger fleet plans. The consequence is that less growth in the aggregate fleet is projected than before the merger. Because the American Pilots had the vast majority of the pre-merger growth expectations, the effect of these post-merger changes in the fleet plan has been to degrade the growth expectations brought to the merger by the American Pilots.

II. THE AAPSIC PROPOSAL

The AAPSIC has constructed a seniority integration proposal, a copy of which is Appendix A to this Prehearing Statement, which reflects the equities summarized in the immediately preceding

section. The AAPSIC proposes that the East and West Pilot seniority lists as of December 9, 2013 be integrated based on the Nicolau Award. The AAPSIC proposes that that combined US Airways seniority list then be integrated with the December 9, 2013 American seniority list on an adjusted category and status basis utilizing the active pilot jobs as of December 9, 2013, (with inactive pilots as of December 9, 2013 "pulled and plugged"), with the category and status rankings adjusted to reflect the superior equities of pre-merger American jobs in the same category and status groupings. That integrated list would then be subject to a one-time adjustment immediately prior to implementation of the ISL, to account for pre-merger American Pilots returning to active status from "Letter T" status between December 9, 2013 and the implementation date.

The AAPSIC also proposes:

* Conditions and Restrictions required under the MOU;

* "fences" allocating Group IV Captain and First Officer positions until the amendable date of the JCBA (January 1, 2020); fences governing the US Airways Pilots' exercise of "stand-in-stead" and displacement rights until the same date; and a proviso extending the term of those fences in the event that the current mandatory retirement age of 65 is raised during the term of those fences; and

* a clarifying provision to preserve Supplement C's protections for the former TWA Pilots.

The AAPSIC proposes that the ISL and Conditions and Restrictions be implemented as soon as practicable, and in no event later than the third flying month after the issuance of the Arbitration Board's award. Finally, the Merger Committees have agreed to defer the development of the post-award dispute resolution procedure, in the hope that an agreed procedure can be arrived at.

A. The Construction Of The Proposed Integrated List

1. The Pre-Merger Seniority Lists, Snapshot Date And Constructive Notice Date

Pursuant to the Protocol Agreement, seniority-related information has been exchanged for the

pre-merger American, East and West seniority lists as of December 9, 2013.[43] In addition, the Merger Committees have agreed that December 9, 2013 represents –

* the "Snapshot Date" – i.e., the equities of the pre-merger American and US Airways (East and West) pilot groups will be measured immediately prior to that date; and

* the "Constructive Notice Date" – i.e., the date after which any pilot hired by a pre-merger airline is deemed to know that he or she will be working for a combined entity and that his or her career expectations will be a product of the success or failure of the combined airline, irrespective of which airline hired the pilot.

Accordingly, the AAPSIC proposal begins with the three pre-merger seniority lists, as of December 9, 2013. For the reasons discussed above, the AAPSIC then integrates the East and West seniority lists based on the Nicolau Award, to create a combined US Airways seniority list, to be integrated with the pre-merger American seniority list as of December 9, 2013.

Pilots who achieved placement on one of the seniority lists after the Constructive Notice Date are to be placed on the integrated list following all pilots on the pre-merger lists as of December 9,

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[43] As discussed above, on September 11, 2015 the EPSIC produced an "update" of the East seniority list certified by the USAPA Merger Committee in April 2015. The AAPSIC's preparation of its proposal and case-in-chief was substantially complete when the EPSIC produced the "updated" list; the AAPSIC is still reviewing the new information produced on September 11, 2015, and seeking to reconcile the differences between the two East lists. Accordingly, the proposed exhibits being submitted by the AAPSIC are based on the prior USAPA-certified East list, including the job calculations utilized in constructing the ratios and adjusted ratios discussed below. The AAPSIC reserves the right to update its presentation as appropriate based on the EPSIC "updated" East list.

As of December 9, 2013, some former TWA Pilots who had been awarded jobs protected under Supplement C of the 2012 CBA, had not assumed those positions. As of December 9, 2013, the Company was implementing Supplement C to arrive at the required number of pilots fully trained and in places by May 1, 2014. By the terms of Supplement C, those position awards could not result in the displacement of an incumbent legacy American pilot. Accordingly, in its certified list, the AAPSIC has credited those pilots with the awarded positions.

As also discussed above, as of December 9, 2013, there were West Pilots who had been furloughed from the West operation and were holding positions in the East operation, pursuant to the US Airways/America West Transition Agreement. The AAPSIC treats those pilots as active West Pilots, holding positions attributable to West.

2013, in order based on their seniority as defined under the JCBA.

2. The Treatment Of Inactive Pilots

As noted above, each pre-merger seniority list included, in addition to pilots in active status, pilots in various inactive statuses as defined under the respective pre-merger CBAs. With certain exceptions,[44] the AAPSIC takes those pilots as it finds them on the December 9, 2013 certified seniority lists – a pilot's status is treated as active or inactive in accordance with his treatment on the pre-merger seniority list, under the applicable pre-merger CBA.

The AAPSIC treats inactive pilots in the "usual" manner, by "pulling and plugging" each inactive pilot – removing him or her before constructing the integrated list; and re-inserting him or her after construction of the integrated list, just below the pilot he or she was below on the pre-merger seniority list. See Delta/Western (Feller 1989)(reciting that Delta and Western negotiators had agreed to pull and plug, "in accordance with the usual practice with respect to such pilots"). There is ample precedent for this treatment of categories of inactive pilots in previous cases. See, e.g., Air Transport International/Capital Cargo International (Bloch 2013); Republic/Frontier/Midwest/Lynx; Delta/Northwest; Northwest/Republic (pull-and-plug used in determining staffing and constructing category and status quota); Texas International/Continental (Greenbaum 1983).

3. The Category And Status Job Rankings

The AAPSIC proposed methodology begins with a ranking of the pre-merger groups' jobs on

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[44] For instance, as noted above, the West Committee credits pilots with holding active pilot jobs as of December 9, 2013, who were in fact in short-term disability status (STDS) at that time. The AAPSIC treats those pilots in accordance with their contractual status as of the snapshot date – as being disabled and therefore inactive.

As also noted above, the AAPSIC treats 17 East Pilots identified as "SPV" as inactive, based on their management status.

a pure category and status basis. The AAPSIC relies on the "groups" of aircraft defined by the 2012 CBA, MOU/MTA, and JCBA – Group I; Group II; Group III; and Group IV:

> **Group I**: With the exception of aircraft identified in Groups II through V below, any aircraft configured (i.e. as operated by American Airlines) with greater than seventy-six (76) seats and less than one-hundred-eighteen (118) seats, including E190/195, CRJ-1000, MRJ- 100, and Bombardier CS100.
>
> **Group II**: Bombardier CS300, A319, A319neo, B737-700, B737-7MAX, MD80, B737-800, B737-8MAX, B737-900, B737-9MAX, A320, A320neo, A321, A321neo
>
> **Group III**: B757, B767-200, B767-300, A300
>
> **Group IV**: B767-400, B777-200, B777-200ER, B777-200LR, B777-300, B777-300ER, B787-8, B787-9, B787-10, A332, A333, A340, A350
>
> **Group V**: A380, B747 (all variants)

The AAPSIC ranks those jobs as follows, based on aircraft categories in service in the three pre-merger operations as of December 9, 2013:

AA	US Airways
Group IV CA	Group IV CA
Group III CA	Group III CA
Group II CA	Group II CA
Group IV FO	Group IV FO
Group III FO	Group III FO
Group II FO	Group II FO
	Group I CA
	Group I FO

Based on the pre-merger seniority lists, as of December 9, 2013 the two pre-merger groups held the following active pilot jobs in those categories and statuses:[45]

[45] This December 2013 "snapshot" of the carriers' staffing is the basis for the staffing assumptions utilized by the AAPSIC in its analysis of the impact of its proposed ISL.

	AA	US Airways
Group IV CA	454	180 (180 East)
Group III CA	1008	241 (172 East; 69 West)
Group II CA	2243	1570 (946 East; 624 West)
Group IV FO	826	332 (332 East)
Group III FO	1257	281 (208 East; 73 West)
Group II FO	2246	1577 (940 East; 637 West)
Group I CA		131 (131 East)
Group I FO		116 (116 East)

The evidence will demonstrate that a Group IV First Officer job is comparable to a Group II Captain job, based on the pay, working conditions and bidding patterns associated with those jobs. Similarly, the evidence will demonstrate that a Group I Captain job is comparable to a Group II First Officer job. The AAPSIC therefore combines those respective groups, resulting in the following category and status job rankings as of December 9, 2013:

	AA	US Airways
Group IV CA	454	180
Group III CA	1008	241
Group II CA/ Group IV FO	3069	1902
Group III FO	1257	281
Group II FO/ Group I CA	2246	1708
Group I FO		116

4. The Adjusted Category And Status Job Rankings

Those pure category and status rankings do not adequately reflect the pre-merger equities of the pre-merger pilot groups. As discussed above, across the board, jobs at American in a given category and status were more valuable than jobs in the same equipment category and status groupings in either the East or West operation, based on the pay, flying opportunities and other working conditions associated with those jobs. To take the additional value of the pre-merger American jobs into account, the AAPSIC adjusts the status and category rankings by moving the American Pilot jobs in each of the foregoing category and status groupings upward *vis a vis* 75 per cent of the US Airways Pilots in the same original category and status grouping.

The foregoing methodology results in the following series of ratios, on the basis of which the integrated list is constructed:[46]

	AA	US Airways
Ratio 1	454	45
Ratio 2	1008	196
Ratio 3	3069	656
Ratio 4	1257	1497
Ratio 5	2246	637
Ratio 6		1397

The 576 "Third List" US Airways Pilots hired since the Nicolau Award are then separated from the

[46] In addition to these numbers of active pilots as of December 9, 2013, the Company has added approximately 977 pilots to the three separate seniority lists since December 9, 2013. Based on the stipulated Constructive Notice Date, those pilots will be placed on the ISL after all pilots on the pre-merger lists as of December 9, 2013.

remaining pilots in Ratio 6, resulting in the ratios used to construct the ISL:

	AA	US
Ratio 1	454	45
Ratio 2	1008	196
Ratio 3	3069	656
Ratio 4	1257	1497
Ratio 5	2246	637
Ratio 6		821
Ratio 7		576

The AAPSIC's proposed ISL (subject to the pre-implementation adjustment described immediately below) is submitted contemporaneously with this Prehearing Statement, as AAPSIC Exhibit ISL-A.

5. The Pre-Implementation Adjustment For Returning Letter T Pilots

As discussed above, among the American Pilots in inactive status as of December 9, 2013 were pilots subject to Section 17 and Letter T of the 2012 CBA and predecessor CBAs. Those pilots had originally been furloughed by American; under Section 17 and Letter T, when offered recall they exercised the right to defer their return to active status subject to various conditions. Following deferral, those pilots were effectively in a voluntary leave of absence status under the CBA, from which they could return to active status only if American was otherwise adding pilots. Section 17 and Letter T have continued to apply under the MTA and JCBA. As of December 9, 2013, 1,165 pre-merger American Pilots were in Letter T status. To date, 193 of those pilots have subsequently returned to active status in accordance with Letter T.

The treatment of Letter T Pilots as inactive pilots to be pulled and plugged is likely to be

disputed by the West Pilots Committee and/or the EPSIC based, in part, on differing assumptions regarding the extent to which the remaining Letter T Pilots as of December 9, 2013 could be expected to actually return to active status. For the reasons summarized above, Letter T pilots are distinct from pilots on furlough, and are comparable to other inactive pilots subject to "pull and plug" treatment. However, in recognition of the likely dispute over the treatment of Letter T pilots, the AAPSIC proposes an adjustment to be applied immediately prior to implementation of the ISL, which will account for those Letter T Pilots who actually return to active status prior to the implementation of the ISL.[47] Specifically, AAPSIC proposes that, immediately prior to the awarding of positions for the bid period in which the ISL will be implemented, all pre-merger American Pilots in Letter T status as of December 9, 2013 whose right to return has been terminated will be removed from the ISL. The most junior pre-merger American Pilots (active and inactive), in a number equal to the number of pre-merger American Pilots returning to active status from Letter T status subsequent to December 9, 2013 and remaining in active status, will be pulled from "Ratio 5" above; those pilots will then be integrated with the 821 active US Airways Pilots in Ratio 6, based on a ratio of active American and US Airways pilots. The American Pilots' equities will thereby be allocated taking into account any returning Letter T pilots.[48]

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[47] At this point, it is fair to assume that the ISL will realistically be implemented in the last half of 2016 at the earliest. By that time, it is likely that all pilots remaining in Letter T status will have been required to return to American, or will have been removed from the seniority list in accordance with Letter T.

[48] AAPSIC Exhibit ISL-B is a specimen of an ISL illustrating the treatment of returned Letter T pilots at the time of implementation, assuming that the 193 pilots who have returned from Letter T status to date are the only pilots who return from such status prior to implementation. Other Letter T Pilots are "pulled and plugged" in Exhibit ISL-B.

(continued...)

B. Proposed Conditions And Restrictions

1. Conditions And Restrictions Required By The MOU

As set forth above, paragraph 10.b of the MOU requires that the integrated seniority list be consistent with the following:

> The panel of arbitrators may not render an award unless it complies with all of the following criteria: (i) the list does not require any active pilot to displace any other active pilot from the latter's position; (ii) furloughed pilots may not bump/displace active pilots; (iii) except as set forth in Paragraphs 12 and 13 below, the list does not require that pilots be compensated for flying not performed (e.g., differential pay for a position not actually flown); (iv) the list allows pilots who, at the time of implementation of an integrated seniority list, are in the process of completing or who have completed initial qualification training for a new category (e.g., A320 Captain or 757 First Officer), or who have successfully bid such a position but have not been trained because of conditions beyond their control (such as a company freeze), to be assigned to the positions for which they have been trained or successfully bid, regardless of their relative standing on the integrated seniority list; and (v) it does not contain conditions and restrictions that materially increase costs associated with training or company paid move as specified in the JCBA.

(Jt.Exh. 9, at 6.) As stipulated by the parties, the AAPSIC proposes Conditions and Restrictions reflecting these requirements.

2. Group IV Captain and First Officer Fences

The AAPSIC's proposed integrated seniority list is designed to be fair and equitable in the long run, based on the equities discussed above. However, in the near term (roughly corresponding with the term of the JCBA), age-65 attrition will disproportionately affect the US Airways Pilots – following which the American Pilots expect disproportionate attrition, until at least 2029. The AAPSIC recognizes that, during that near-term period, the construction of the proposed ISL may

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[48](...continued)
Under the AAPSIC proposal, immediately prior to implementation all Letter T pilots whose right to return has been terminated would be removed from the ISL.

impact the ability of US Airways Pilots to advance into Group IV Captain positions which they would have expected absent the merger.

In addition, the integration of the East and West Pilots based on the Nicolau Award results in the placement of West Pilots on the ISL in the Group IV First Officer range, who have never had the opportunity to hold such positions due to the failure to implement the Nicolau Award. Group IV First Officer jobs are an important component of the pre-merger American Pilots' career expectations. While the West Pilots are entitled to the opportunity to fulfill their pent-up demand for such positions based on the Nicolau Award, that transition should come at the expense of the East Pilots, not the American Pilots.

Accordingly, the AAPSIC proposes transitional fence provisions, effective until the amendable date of the JCBA, allocating Group IV Captain and First Officer positions until the amendable date of the JCBA (January 1, 2020) based on a the proportion of positions held by pre-merger American and US Airways (East and West combined) as of the date of implementation.

3. Fences Governing US Airways Pilots' Stand-In-Stead And Displacement Rights

With the exception of Group IV Captain and First Officer positions, discussed immediately above, the AAPSIC's proposed ISL is designed to equitably allocate the awarding of position vacancies immediately upon implementation, in part because the awarding of vacant positions does not involve the "bumping" of any other pilot. However, as the Arbitration Board well knows, there are scenarios – such as an overall reduction in flying; the reduction of flying on an aircraft type; or the movement of flying from domicile to domicile – which result in the displacement of pilots. Under the JCBA, a displaced pilot may displace to any position in which a more junior pilot holds a position, bumping that junior pilot; in addition, a more senior pilot in the same bid status will "stand in stead"

for the junior pilot exposed to displacement, if the senior pilot has a vacancy bid preference for a job that the otherwise-displaced pilot could hold based on seniority. Such displacement scenarios will become more likely after the implementation of the ISL (and the resultant expiration of the transitional fences in Paragraph 8 of the MOU), as the Company rationalizes its operation once it is free to do so.

As discussed above, the rationalization of the jobs held by West and East Pilots due to the delayed implementation of the Nicolau Award should be accomplished among those West and East pilots, without adverse impact on the pre-merger American Pilots. However, the AAPSIC's proposed ISL places US Airways pilots on the ISL in ranges in which their exercise of stand-in-stead rights could inequitably bump pre-merger American Pilots from positions the American Pilots brought to the merger. The same is true of the displacement rights of West Pilots. Accordingly, the AAPSIC proposes that, until the amendable date of the JCBA (January 1, 2020), the exercise of US Airways pilots' stand-in-stead rights, and the displacement rights of Phoenix-based US Airways Pilots, be limited to pre-merger US Airways bases.

4. Potential Increase In Mandatory Retirement Age

The AAPSIC's proposed fences assume attrition based on the current mandatory retirement age of 65. Based on that attrition, the proposed January 1, 2020 expiration of those fences is appropriate. However, should the mandatory retirement age be increased while those fences are in effect, it will affect the anticipated attrition on which that date was determined. Accordingly, the AAPSIC proposes that, in the event that the retirement age is increased during the term of the fences, the fences be extended by the number of years by which the retirement age is increased.

5. Supplement C

Supplement C of the 2012 CBA, now Supplement C of the JCBA, codifies protections for

former TWA Pilots, established in an interest arbitration conducted pursuant to LOA 12-05 of the 2012 CBA, to substitute for protections for TWA Pilots negotiated by American and APA in connection with American's acquisition of TWA's assets in 2001. Supplement C provides for the protection of specified numbers of former TWA Pilot Captain and First Officer positions on "Small Wide-Body" aircraft in domestic operations, and on "Narrow-Body" aircraft. Those protections continue until specified triggers are met, defined by the dates on which specified pilots can hold the affected positions based on their system seniority. In particular, the Narrow-Body protection continues until "the date that Magnus Alehult, DOH 7/17/97 (or, in the event that Magnus Alehult ceases to be on the System Seniority List, the remaining TWA Pilot immediately senior to Magnus Alehult) has sufficient seniority to hold a four part bid status as CA on any aircraft." (Supplement C, at 8.)

Paragraphs 10.i. and 28 of the MOU require that Supplement C be continued in effect without modification as part of the integrated seniority list. (Jt.Exh. 9, at 7, 12.) The AAPSIC proposes one respect in which the intended meaning of Supplement C should be confirmed by the Arbitration Board.

Supplement C was established prior to the merger, in the context of the pre-merger American standalone operation and the standalone 2012 American CBA. By its terms, Supplement C was drafted to apply within that pre-merger American operation. It is therefore undisputed that Supplement C will continue to govern the relationship among the American Pilots, including the legacy American Pilots and the former TWA Pilots.

American operated no Group I aircraft. In fact, according to the MOU, which was in place at the time that Supplement C was established, all E-190 aircraft (the only Group I aircraft in any of the affected operations) were to be allocated to US Airways until there were 31 E-190 aircraft on hand.

Thereafter, additional E-190 aircraft beginning with the 32nd aircraft were to be allocated by a ratio of two aircraft to American and one aircraft to US Airways – an allocation carried over in Supplement D of the JCBA. The fleet has never reached 30 E-190 aircraft. Accordingly, absent the merger no American Pilot would have been able to hold a Group I Captain position, and the Narrow-Body protections of Supplement C would have continued until an American Pilot junior to Alehult could hold a Group II Captain position.

Based on the foregoing, the AAPSIC proposes that the Arbitration Board confirm that the award of an E-190 Captain position does not cause the termination of the Supplement C Narrow-Body protection, until the merged carrier has at least 32 E-190 aircraft in operation.

6. Insufficient Bidders

Finally, the AAPSIC proposes that, in the event that there are insufficient bidders for any position reserved to a pilot group under the award, the position shall be filled in accordance with the JCBA.

C. Implementation Of The ISL

The AAPSIC proposes that, effective as soon as practicable, and in no event later than the first day of the third flying month following the issuance of the award, the Company shall apply the ISL issued by the Board, including any attendant conditions and restrictions (the "ISL") as the Pilot System Seniority List for all American Airlines Pilots (i.e. American Airlines and US Airways Pilots) provided for by Section 13.G. of the JCBA, and shall apply the ISL to all events as to which system seniority is applicable under the JCBA.

D. Dispute Resolution Procedure

The Protocol Agreement requires that the Arbitration Board "include in its Award a provision

retaining jurisdiction until all of the provisions of the Award have been satisfied for the limited purpose of resolving disputes which may arise regarding the interpretation, application and implementation of the Award," and establish a dispute resolution procedure for such disputes. (Jt.Exh. 7, at 13.) The Merger Committees have agreed to defer the specifics of the dispute resolution procedure until following the parties' cases-in-chief, in an effort to pursue an agreement among the affected parties on a procedure to be submitted to the Arbitration Board.

IV. THE AAPSIC PROPOSAL IS FAIR AND EQUITABLE

A. The Proposal Reflects The Pilot Groups' Pre-Merger Expectations And Will Equitably Distribute Post-Merger Benefits And Risks

As demonstrated above, the weighing of equities must take into account the superiority of pilot jobs at American over jobs at East or West in the same categories and statuses based on pay, domicile and flying opportunities, and other metrics. The AAPSIC proposal reflects the superior equities of those American jobs, by shifting those American jobs *vis a vis* East and West jobs in the same category and status groups in the ratio rankings on which the proposed integrated list is built. The evidence will demonstrate that the proposed integrated seniority list will, based on the Company's current fleet plan, preserve the American Pilots' pre-merger expectations, with modest economic improvements based on the MTA and JCBA; while providing the East and West Pilots with unprecedented economic gains, far beyond what they would have expected absent the merger, and exponentially larger than the American Pilots' gains. Under the AAPSIC proposal, the East and West pilots will continue to enjoy economic value far beyond what they could have expected absent the merger; and the American Pilots' pre-merger expectations will be preserved.

The AAPSIC proposal also deals with the distinct demographic challenges presented by the

integration of the three pre-merger seniority lists. Thus, for instance, while the list places post-Nicolau Award US Airways Pilots in the last tier of the ISL,[49] even in that placement those pilots will reap enormous economic gains from the merger. Moreover, those pilots – both East and West – are of an age that they can expect to occupy senior positions on the ISL for extended periods at the ends of their careers.

Similarly, to the extent that the US Airways Pilots have a particular pre-merger expectation based on disproportionate projected near-term age-65 attrition of East Pilots, the AAPSIC proposal addresses that equity, *inter alia*, by providing a fence to protect the US Airways (East and West) Pilots' access to Group IV Captain positions until the amendable date of the JCBA, roughly corresponding to the period in which their attrition exceeds American attrition on a proportional basis.

B. The Proposal Recognizes The Nicolau Award, And Properly Places The Burden Of Rationalizing The West Pilots' Expectations On The East Pilots

As discussed above, as of December 9, 2013, the East and West Pilots were working in separate operations under separate seniority lists, with distinct pre-merger equities and career expectations; and the Protocol Agreement contemplates that the ISL will be constructed from the three separate seniority lists in effect as of that date. However, the AAPSIC recognizes the West Pilots' claim to the Nicolau Award; and that, under the circumstances, the relative placement of the East and

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[49] To say that the junior pre-merger US Airways Pilots represent the "bottom" of the proposed ISL is very much a misnomer. As of this writing, approximately 977 pilots have been hired since December 9, 2013, all of whom will be junior to every pre-merger pilot. By the time the integrated seniority list is implemented, that number of junior "constructive notice" pilots is projected to be substantially larger.

Of the current post-Constructive Notice pilots, 624 were hired by American, and 351 were hired by US Airways. American's hiring was required, in part in part by attrition, and in part by growth associated with added aircraft. The East and West hiring was required almost entirely by attrition.

West Pilots on the ISL should be based on the Nicolau Award. At the same time, since the Nicolau Award has not been in place for the past nine years, implementation of an ISL utilizing the Nicolau Award will require the rationalization of jobs as between the West and East Pilots, because many West Pilots will be placed on the ISL in ranges giving them access to pre-merger US Airways jobs to which they had not had access because of the failure to implement the Nicolau Award. That rationalization of pre-merger US Airways jobs should occur as between the East and West Pilots, and should not adversely impact the pre-merger American Pilots, who are innocent bystanders in the long-running East/West standoff. The AAPSIC's proposed ISL and Conditions and Restrictions take all of these considerations into account.

Conclusion

For the foregoing reasons, the AAPSIC submits that its proposal is fair and equitable, and should be adopted by the Arbitration Board. The AAPSIC will present evidence in support of this proposal in its case-in-chief at the hearing.

Respectfully submitted,

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September 19, 2015

APPENDIX A - AAPSIC PROPOSAL

ARBITRATION PROCEEDINGS BEFORE
DANA E. EISCHEN, IRA JAFFE AND M. DAVID VAUGHN

In the matter of the seniority integration involving the Pilots of	)
NEW AMERICAN AIRLINES	)

PROPOSAL OF
AMERICAN AIRLINES PILOTS SENIORITY INTEGRATION COMMITTEE

I. PROPOSED INTEGRATED SENIORITY LIST

The Integrated Seniority List (ISL) shall be constructed as follows:

A. 1. Subject to subparagraph 2 below, pilots on the pre-merger AA and US Airways (East and West) seniority lists as of December 9, 2013 shall be placed on the ISL as set forth in AAPSIC Exhibit ISL, according to the following methodology:

a. The pre-merger US Airways (East and West) Pilots will be integrated in accordance with the May 1, 2007 Award of George Nicolau.

b. All pilots holding seniority on a respective list but who were inactive on the date of constructive notice/snapshot date (December 9, 2013) are to be removed from the respective purged and updated pre-merger lists, for purposes of constructing the ratios described in subparagraphs c through i below.[50]

c. The first 499 positions on the ISL are to be filled with the first 454 pre-merger American Airlines pilots and the first 45 pre-merger US Airways pilots in a ratio of 454 : 45, beginning with a pre-merger American Airlines pilot.

d. The next 1,204 positions on the list will be filled by the next 1,008 pre-merger American Airlines pilots, and the next 196 pre-merger US Airways pilots in a ratio of 1,008 : 196, beginning with a pre-merger American Airlines pilot.

e. The next 3,725 positions on the list will be filled by the next 3,069 pre-

[50] The ratios described in subparagraphs c through i reflect, *inter alia* on the number of pre-merger East jobs based on the pre-merger East seniority list certified by the USAPA Merger Committee on April 9, 2015. The AAPSIC reserves the right to update these ratios, pending its review of the "updated" East seniority list produced by EPSIC on September 11, 2015.

merger American Airlines pilots, and the next 656 pre-merger US Airways pilots in a ratio of 3,069 : 656, beginning with a pre-merger American Airlines pilot.

f. The next 2,754 positions on the list will be filled by the next 1,257 pre-merger American pilots and the next 1,497 pre-merger US Airways pilots, in a ratio of 1,257 : 1,497 beginning with a pre-merger US Airways Pilot.

g. The next 2,883 positions on the list will be filled by the next 2,246 pre-merger American Airlines pilots, and the next 637 pre-merger US Airways pilots in a ratio of 2,246 : 637, beginning with a pre-merger American Airlines pilot.

h. The next 821 positions on the list will be filled by the next 821 pre-merger US Airways pilots.

i. The next 576 positions on the list will be filled by the last 576 pre-merger US Airways Pilots.

j. Each pilot pulled pursuant to subparagraph b. above will be re-inserted into the ISL immediately below the pilot who appeared immediately above that pulled pilot on the pre-integration list.

2. Immediately prior to the awarding of positions for the bid period in which the ISL will be implemented pursuant to paragraph III below:

a. All pre-merger American Pilots in Letter T status as of December 9, 2013 whose right to return has been terminated will be removed from the ISL; and

b. The most junior pre-merger American Pilots, in a number equal to the number of pre-merger American Pilots returning to active status from Letter T status between December 9, 2013 and the date of such adjustment, and remaining in active status as of the date of the adjustment under this paragraph 2, shall be pulled from the ratio set forth in subparagraph 1.g. above; and integrated with the pre-merger US Airways pilots referred to in paragraph 1.h. above, based on a ratio of active pilots.

3. The relative position of each pilot on the pre-merger lists remains unchanged on the ISL.

B. Pilots added to the pre-merger AA, US Airways (East) and/or US Airways (West) seniority lists subsequent to December 9, 2013 shall be placed on the ISL following the pilots referred to in paragraph I.A. above, in order based on their seniority as defined in the American/APA Joint Collective Bargaining Agreement.

II. CONDITIONS AND RESTRICTIONS

A. No Bump/No Flush

Neither the implementation of the ISL nor the expiration of any Condition and Restriction shall require any active pilot to displace any other active pilot from the latter's position.

Neither the implementation of the ISL nor the expiration of any Condition and Restriction shall require that a furloughed pilot bump or displace an active pilot.

B. Compensation For Flying Not Performed

Neither the implementation of the ISL nor the expiration or any Condition and Restriction shall require that pilots be compensated for flying not performed (e.g., differential pay for a position not actually flown).

C. Pilots In Training

Pilots who, at the time of implementation of the integrated seniority list, are in the process of completing or who have completed initial qualification training for a new category (e.g., A320 Captain or 757 First Officer), or who have successfully bid such a position but have not been trained because of conditions beyond their control (such as a company freeze), may be assigned to the positions for which they have been trained or successfully bid, regardless of their relative standing on the integrated seniority list.

D. Group IV Captain and First Officers

Until January 1, 2020, Group IV Captain positions will be allocated between pre-merger American Pilots and pre-merger US Airways (East and West combined) Pilots, according to a ratio based on the proportions of Group IV Captain positions held as of the date on which the ISL is implemented.

Until January 1, 2020, Group IV First Officer positions will be allocated between pre-merger American Pilots and pre-merger US Airways (East and West combined) Pilots, according to a ratio based on the proportions of Group IV First Officer positions held as of the date on which the ISL is implemented.

E. Former US Airways (East and West) Displacements and Stand-in-Stead

Until January 1, 2020, former US Airways Pilots shall be restricted in the exercise of stand-in-stead rights to pre-merger US Airways domiciles (PHX, PHL, CLT, DCA).

Until January 1, 2020, former US Airways pilots displaced from the PHX domicile shall be restricted in the exercise of displacement and stand-in-stead rights to pre-merger US Airways domiciles (PHX, PHL, CLT, DCA).

F. Change in Mandatory Retirement Age

In the event that the mandatory age-65 pilot retirement age is increased while the Conditions and Restrictions set forth in paragraphs D. and E. above are in effect, those Conditions and Restrictions shall be extended by the number of years by which the mandatory retirement age is increased.

G. Supplement C

Nothing in this award shall modify the decision of the arbitration panel in Letter of Agreement 12-05 of the 2012 CBA, as implemented in Supplement C of the American/APA Joint Collective Bargaining Agreement, which shall continue to govern the relationship between the legacy AA and former TWA Pilots.

A bid award to an E-190 Captain position to Magnus Alehult or a pre-merger American Pilots junior to Magnus Alehult will not cause the termination of the Narrow-body protections of Supplement C until New American has at least 32 E-190 aircraft in service.

H. Insufficient Bidders

In the event that there are insufficient bidders for any position reserved to a pilot group under the award, the position shall be filled in accordance with the JCBA.

III. IMPLEMENTATION OF INTEGRATED SENIORITY LIST

Effective as soon as practicable, and in no event later than the first day of the third flying month following the issuance of the award, the Company shall apply the ISL issued by the Board, including any attendant conditions and restrictions (the "ISL") as the Pilot System Seniority List for all American Airlines Pilots (i.e. American Airlines and US Airways pilots) provided for by Section 13.G. of the Joint Collective Bargaining Agreement between American Airlines and the Pilots in the Service of American Airlines ("JCBA") and shall apply the ISL to all events as to which system seniority is applicable under the JCBA.

IV. Dispute Resolution Procedure

[T/B/D]

September 19, 2015

EXHIBIT 25

BEFORE THE MCCASKILL-BOND AMENDMENT SECTIONS 3 AND 13 ARBITRATION BOARD

DANA E. EISCHEN, IRA F. JAFFE, M. DAVID VAUGHN, Arbitrators

In the matter of the seniority list integration involving the Pilots of NEW AMERICAN AIRLINES	)))))

Prehearing Position Statement of the US Airways (East) Pilot Seniority Integration Committee

This seniority list integration proceeding is governed by the McCaskill-Bond Amendment, Section 3 of the Allegheny-Mohawk Labor Protective Provisions and the Section 13(b) protocol agreement established by the Allied Pilots Association, the Company and the US Airline Pilots Association, the former bargaining representative of US Airways pilots. McCaskill Bond, through its incorporation of Section 3, requires this Board to integrate the seniority lists of the covered employees in "a fair and equitable manner." That outcome -- creation of a fair and equitable integrated seniority list from the seniority lists covering the employees -- is the purpose of this process.

The American-US Airways merger resulted from the bargaining of the four parties, American, US Airways, the APA and USAPA under the four-party December 2012 Memorandum of Understanding. Each party to that agreement weighed its strategic alternatives and elected to pursue the

merger. Each had its reasons for doing so. The American pilots and US Airways chose first—entering a "Conditional Labor Agreement" in April 2012. USAPA evaluated the potential gains for its pilots in a merger and, after identifying shortcomings in the US Airways-APA agreement, presented to US Airways the concept for a four-party agreement to allow the merger. It negotiated the first MOU in August 2012 with improvements over the APA agreement. The APA and American then joined the MOU concept in December 2012 after the Unsecured Creditors Committee urged the airlines to obtain consensual agreements to facilitate reorganization of American. The MOU process culminated in December 2012 with the four-party agreement negotiated by APA and USAPA, which was then approved by the APA and the US Airways pilots. The airlines' formal merger agreement followed in February 2013; and it was ultimately approved by the bankruptcy court on December 9, 2013. As the economic results since December 2013 have shown, the merger of American Airlines and US Airways has exceeded all expectations. Indeed, as APA President Keith Wilson stated this month in his Labor Day message to the pilots of New American,

> Dissatisfied with our pilots' prospects under AMR's proposed stand-alone plan, the APA leadership decided that the combination of American Airlines and US Airways would create a potent marketplace force and result in a brighter professional future for our pilots. Given the enhancements to our contract we subsequently secured and the airline's post-merger financial performance, there's little doubt about the wisdom of that decision

East Pilot SIC Exhibit 001 ("East 001")

The merger of American and US Airways is truly a "merger of equals" with both airlines contributing their strengths to the transaction to create a single airline that is greater than the sum of its parts.

The merger restored American to its formerly preeminent position. Indeed, it was the only way American could achieve again its status as the largest airline in the world. And that merger has not simply allowed American to grow larger than Delta or United, it has dramatically reversed the downward spiral of American that saw the carrier descend from the largest airline in 2000 to a distant third behind Delta and United by 2011, and, far worse, incur over $10 billion in net losses during that period even as its major airline competitors returned to profitability.

For American's pilots, the merger allowed them to realize their ambition to once again be on par with the pilots of Delta and United in pay and work rules. And it has secured their careers that were at greater and greater risk due to American's deteriorating financial condition—a risk that was not materially reduced either by American's bankruptcy or its standalone plan, which neither the Allied Pilots Association nor outside observers believed could work. Through this merger, with the significant expansion of American's network through the highly-valued dominant East Coast operation of US Airways, American pilots can look far more securely to future careers culminating in widebody flying than they faced under American's standalone plan, which contemplated the further reduction of American pilot

jobs and the greater outsourcing of flying. Indeed, the American pilots have benefited already from the delivery post-merger of many wide-body Boeing aircraft. The American pilots have also secured their accrued pensions, which unlike the pilots of Delta, United and US Airways, they retained in bankruptcy when American froze rather than terminate the plan. Already, American has contributed more than $1 billion since the merger into its pension plans for the pilots and other American employees. Funding those pensions will continue to make multi-billion dollar cash demands on New American into the future. US Airways pilots will not share any benefit from those pension contributions.

US Airways pilots achieved through the merger their goal of returning to the level of their peers at Delta and United. While US Airways East pilots had no concern for the security of their careers given the robust premerger financial condition of US Airways, they recognized that the merger of American and US Airways would accelerate their return to parity with their peers in a way that could not be achieved without the merger.

The American and US Airways pilots have both gained significantly through this merger. The pilots will move forward under one contract as equals in the largest airline in the world. The opportunities in the merger operation must be shared fairly among them to reflect that fact.

The reality is that airlines choose to merge because it is in their rational economic interest to do so. Air carrier transactions since

deregulation demonstrate uniformly that each carrier brings strengths to a merger just as each had needs that were best addressed by a merger. If that were not the case, the airlines would not have chosen a merger as the best option available to advance their businesses.

The seniority list integration proposal by the East Pilot Committee is grounded in the reality that both airlines and both pilot groups chose the merger of American and US Airways as the best course to achieve their goals. As American CEO Doug Parker noted in advocating for a merger, the combination of US Airways' strong and lucrative East Coast business travel network with American's domestic and international network was the best and only way to restore American to its former preeminent position. This merger was also the only way for American pilots to avoid severe changes to their contract terms and the loss of even more jobs on top of those they lost in the prior decade. Instead of the prospect of further decline, the merger allows American pilots to advance their careers to the level of their peers at Delta and United. For US Airways and its pilots, the merger provided an unmistakable opportunity to achieve their ambitions of a larger international carrier than Delta or United and to return to parity with their mainline peers.

The East Pilot proposal also recognizes that the three pilot groups had differing premerger positions owing to the differing nature of their operations and the demographics of their groups. It seeks to balance the three principal seniority equities traditionally identified in pilot seniority proceedings (i.e.,

length of service, category and status (position) and premerger career expectations) by using the "hybrid weighting" length of service/category and status methodology adopted by the arbitration panel in the seniority list integration dispute between the pilots of Continental Airlines and United Airlines. That methodology, by its weighting of the length of service and category and status equities of each pilot, allows for proper recognition of the two objective seniority equities and permits a reasonable balancing of those equities in view of the pilots' premerger expectations. The two equities will at a point come into conflict given the inevitable differences within and between different pilot groups. Like the two positive ends of a magnet, length of service and status and category can push back against each other since they reflect different measures of a pilot's career. Seniority, though, ultimately reflects an employee's time in service for his employer. And for pilots, seniority is expressed in the position achieved through its exercise in competitive bidding. The East Committee agrees with the arbitration panel in Continental/United that both equities must be used in integrating pilot seniority lists.

The equity of premerger career expectation is the most challenging to fairly and accurately characterize given that it is not clearly quantifiable and is often characterized in subjective terms. And the competing pilot groups frequently make inaccurate and self-serving characterizations of the other pilots group's prospects while inflating their own. The East Committee tries

to avoid such mischaracterizations of the premerger situation of the airlines and pilot groups. At the same time, the Panel is integrating the three seniority lists into a single list for a merged operation. The evaluation of pilot equities cannot be made on the basis of what did not happen but in recognition that the merger did occur. The Panel will need to evaluate the contributions of the respective carriers and their pilot groups to the merged operation.

And it should also recognize that the difference among the pilot groups in age, length of service, attrition and positions mean that certain pilots, principally the East Pilots, will have shorter careers in the merged carrier than pilots from American and the West. Balancing the starting point in view of these different end points, which assure that American and West pilots will enjoy the benefits of the merged carrier longer, must occur to achieve a fair and equitable solution.

The East Pilot Committee believes that the hybrid weighted integrated seniority list should be constructed with greater weight given to length of service, under a formula of 55 percent to length of service and 45 percent to category and status, due to the crucial contribution of the East Pilots' premerger operation in securing American's return to preeminence, the positions they bring to this transaction and their large near-term attrition. More than 50 percent of East Pilots will retire by 2022, enjoying five years or less in the merged carrier. And those pilots will leave predominantly Group 4

Captain positions, both opening those jobs for other pilots, mainly American and West Pilots, and removing themselves as competitors for those jobs.

Even under the East Committee's proposed weighting toward length of service, East Pilots' share of Group 4 jobs in the merged carrier will quickly deteriorate under the ISL. Any less emphasis on length of service will only exacerbate that job loss among East Pilots and will grant inequitable gains to the other pilots groups. The East Committee therefore proposes a condition that will establish a priority for American and East Pilots in Group 4 positions, enabling them to maintain at a minimum the number of Group 4 Captain and First Officer positions they brought to the merger for five years, while leaving the remaining Group 4 positions in excess of these minimum numbers open to bidding according to ISL seniority. Currently, both group have Group 4 positions in excess of the minimum numbers proposed by the East Committee.

Affording greater weight to length of service will in turn benefit the American and West pilots in the lowest deciles of the integrated seniority list. The American pilots in this portion of the ISL have less length of service than expected for their seniority dates owing to furlough and that many of them arrived at American through the American Eagle flowthrough agreement or TWA merger. These pilots' premerger relative seniority has less bidding power than that of East pilots who may have less length of service. Similarly, West pilots at the lower point of their premerger seniority list also have less

bidding power, even as they have more length of service than either equivalent American or East Pilots, due to lack of growth in the West operation. Greater emphasis on length of service works to the benefit of American and West pilots in this portion of the ISL.

The East Committee proposal yields a list that strikes the complicated balance among the three pilot groups fairly. The quick exit of East Pilots from the merged operation, like the runner on the outer lane of a track, requires that they be advanced in relative seniority placement on the ISL or they will in fact be left behind. Even under the East Pilot proposal, most East Pilots begin to fall behind their premerger seniority progression due to sharing their significant near term attrition with American and West pilot. Most American and West Pilots will, by contrast, surpass their premerger seniority progression and enjoy more time in the merged carrier ahead of their anticipated premerger progression. It is not possible to avoid "winners" and "losers", of course, given that seniority integration ultimately becomes a zero sum gain among some pilots, but the East Pilot proposal reasonably distributes the gains and losses among the pilot groups. It thus achieves the Section 3 requirement for "the integration of seniority lists in a fair and equitable manner."

I.

Factual Background:
Restoring American Airlines to Preeminence Through the Merger With US Airways

The airlines, as well as their pilots, recognized that a merger of American Airlines and US Airways was the best strategic choice for their futures. The two carriers took different paths to reach that point. American had suffered a decade of decline that saw it fall further and further behind Delta and United as well as Southwest Airlines and other low cost carriers. It faced an increasingly uncompetitive position with the prospect of even greater competition from Southwest in its Dallas-Fort Worth fortress hub following the expiration of Wright Amendment restrictions on Dallas-Love Field. American could only restore itself to preeminence by solving its substantial network and revenue problems through a merger with US Airways. Linkage to its dominant and lucrative East Coast operation was essential to restore American's preeminence. US Airways, while highly profitable, recognized a merger with American as the path to achieve the size needed to compete with Delta and United. The following summary presents significant events leading up to the merger of American and US Airways.

1. American's path into bankruptcy

American filed for bankruptcy in November 2011 after suffering a decade of decline in which it shrank from being the largest airline in the world to a distant third behind Delta and United. It described the history that compelled its bankruptcy case in various filings submitted to the bankruptcy court.[1] American saw its unit costs rise relative to its competitors and its unit revenue fall relative to its competitors. East 002 (Goulet Decl.) at 4. Over that period, while other network carriers moved to profitability, American suffered losses of more than $10 billion in net losses. Id. at 5. Its negative competitive position was exacerbated by the Delta/Northwest and Continental/United mergers. Id. 5 (¶29, ¶36). As of 2011, American had the highest overall unit costs and could not invest and grow its airline to compete with its larger rivals. Id. at 5(¶8), 27 (¶34). And it had borrowed heavily to fund its obligations. Id. at 5 (¶7). In 2011 alone, American was the only major carrier to lose money, with net a loss exceeding $1 billion. Id., p. 6 (¶9).

In addition to falling behind Delta and United, American faced significant competition from low cost carriers, with 49 of its top 50 revenue routes penetrated by LCCs putting a substantial percentage of its revenue at

[1] See East 002 First Day Declaration of American Airlines Chief Financial Officer Isabella Goren, Section II and East 003, Updated Declaration of Beverly Goulet in Support of American Airlines Section 1113(c) motion to reject the collective bargaining agreement of the Allied Pilots Association, pp. 2-33.

risk. Id. at 10 (¶13). It also faced the prospect of Southwest Airlines competing even more in Dallas with the expiration of Wright Amendment restrictions at Dallas Love Field in 2014 and posing a severe threat to American's revenue. Id. at 13, n. 5. American filed for Chapter 11 after exhausting, without success, all efforts outside bankruptcy to restructure its business to permit investment and growth, including leveraging its assets to obtain necessary liquidity. Id. p. 6 (¶9), 31 (¶39), 33 (¶42).

2. American seeks to impose a concessionary agreement on its pilots that would gut the APA agreement and reduce the active American pilot group by 15 percent; the American pilots choose a merger of American and US Airways as their best strategic alternative

In April 2012, American filed a motion under Section 1113(c) of the Bankruptcy Code to reject collective bargaining agreements with its employees, including the pilots represented by APA, and impose the terms of a Section 1113 Term Sheet. East 004. American sought $1.2 billion in annual concessions from its employees, with $370 million of that amount sought from its pilots. East 003, p. 41 (¶54).

The American standalone business plan required substantial changes to the labor contracts of American's employees. American's restructuring advisor, David Resnick of Rothschild, Inc., stated in support of AMR's Section 1113(c) motion:

- Upon emergence from Chapter 11, AMR will require significant capital investment to support its restructuring strategy and business plan ("Plan for Success" or "Business Plan");

- AMR's decision to freeze rather than terminate it defined benefit pension plans will necessitate sizeable pension cash contribution and increase its long-term obligations post emergence;

- AMR will require and adequate liquidity cushion post-Chapter 11 and to thereafter sustain a successful reorganized operation;

- The labor cost reductions requested in the 1113 Motion are necessary to ensure AMR's successful reorganization without which AMR will be unable to attract the requisite capital investment and have insufficient liquidity and financial flexibility

East 005 (Resnick Declaration) at 4.

The APA viewed American's Section 1113 proposal as a gutting of the American pilots 2003 agreement, which would leave American pilots with the worst labor contract in the airline industry. East 007 (APA Public News, "AA-US Airways: Our Best Alternative"). It also viewed the standalone business plan presented by American in tandem with the Section 1113 proposal as inadequate and unable to fix American's revenue and network problems. Id. at 2. It concluded the plan did not make good business sense and carried too much risk, while also reducing pilot jobs at American. Id.

Instead, the APA concluded that the best alternative to secure the careers of American pilots was a merger between American and US Airways. US Airways management approached the American pilots to explore a merger with American. East 007 at 2. From those discussions, the APA and US Airways developed terms that would be included in a pilot agreement

after a merger. It presented to its pilots the conclusions of extensive analysis by APA's professional advisors, which stated both that the American standalone plan would not work and the merger with US Airways was the best outcome for American pilots. East 007 at 3 ("We're confident that a merger between American Airlines and US Airways would be best possible course of action for both our profession and for the future of our airline.") It concluded that a merger with the complementary US Airways network, which had a "formidable" East Coast presence of high-yield business travel, for example, would best address the revenue and network problems that were the primary challenge facing American and create a comprehensive network on a scale with Delta and United. Id. at 4-5. See also East 008 (Report of Thomas Bacon to Board of Directors of the Allied Pilots Association.) Throughout 2012 and 2013, the APA then pursued a strategy in AMR's bankruptcy case and in negotiations to bring about a merger of US Airways and American. East 009 (APA President D. Bate letter to pilots).

While pursuing a merger with US Airways, the APA also made responsive proposals to American's Section 1113(c) proposal. Even under the APA's proposal, the American pilot contract would be significantly diminished and American would be able to eliminate 1,100 active American pilot jobs – approximately 15 percent of total pilot jobs. East 010 (N. Roghair Declaration) at 11 ¶29. *See also* East 011 (AMR § 1113(c) Exh. 1817)

3. US Airways' pursuit of a merger with American

The least surprising player in pursuit of the American-US Airways merger was US Airways management. New American's CEO, Doug Parker, has long been the foremost industry advocate for consolidation, not simply his own airline, but among all major airlines. As early as May 2006, while in the midst of the US Airways-America West merger, Parker stated his desire for further consolidation. East 012. Later, Parker endorsed the merger of Delta and Northwest as beginning what he viewed as needed consolidation and rationalization among major carriers. East 013. Parker pursued a merger with United in 2009 for the same reason. East 014. And US Airways management began examining a merger with American when AMR filed bankruptcy. East 015, pp. 4-5. Parker's consistent advocacy for industry consolidation, under varying economic conditions, both at his own airline and in the industry as a whole, indicates that modern airline managers choose mergers as a matter of business strategy, not survival.

Parker explained in a National Press Club speech in July 2012 why the merger of American and US Airways made sense. East 015. Merger transactions had been effectively used by Delta, United and Southwest to strengthen their networks and market position. *Id.* at 4. Because American sat out the then recent round of major airline mergers, it had been surpassed by Delta and United, with their larger and much better developed route networks. *Id.* at 5. Parker asserted that American's revenue problem could

not be fixed by bankruptcy. *Id.* It could only cure its network weakness by a merger with US Airways. *Id.* American was the number four or five carrier in three major regions in the United States. *Id.* at 6. A merger with US Airways would make American the number one carrier in the lucrative East Coast travel market, number one also in the Midwest and expand it to the number three carrier on the West Coast. *Id.* A combined American-US Airways would have a stronger network and provide greater value to shareholders, employees and customers than either carrier standing alone. *Id.* at 6. US Airways' agreement with the APA and other unions of American employees was its first step in pursuit of the merger. *See also* East 016 (Senate testimony of D. Parker). It then entered formal discussions with American management beginning in August 2012, which led to the formal merger agreement.

4. USAPA initiates bargaining for a four-party memorandum of understanding

Shortly after the announcement of the conditional agreement between US Airways and APA in April 2012, the APA Board of Directors met with the USAPA Board of Pilot Representatives. USAPA itself evaluated the potential merger and pursued negotiations with US Airways, during the Summer of 2012, for a "Memorandum of Understanding" to facilitate the merger. *See* East 017, 018, 019. Also, during the same period, American

presented a final offer for an amended contract to APA which APA submitted for pilot ratification. The American pilots rejected the proposed agreement in August 2012. USAPA concluded a tentative agreement for a Memorandum of Understanding ("MOU 1"), on August 20, 2012, which provided merger protection for US Airways pilots and enhanced the economic provisions of APA's conditional labor agreement, which was submitted to the USAPA BPR for approval. East 020. The USAPA BPR voted to send the MOU 1 out for membership ratification with a recommendation to reject the agreement and instructed its negotiators to continue bargaining. At the end of August 2012, however, American and US Airways entered formal merger negotiations which resulted in the suspension of further labor negotiations with their respective pilot groups. East 021 (USAPA NC negotiations update 09/2/12)

5. American receives permission to reject the American pilot contract under Section 1113

In August 2012, American's initial attempt to reject the APA agreement was rejected by the Bankruptcy Court on the basis that the Section 1113 proposal was unnecessarily broad concerning expanded codesharing and its abolition of all furlough protection for American pilots. East 022 (AMR Renewed § 1113(c) Motion). In August 2012, American renewed its motion to reject the APA contract. *Id.* Under the renewed proposal, American offered narrower terms of codesharing and outsourcing of American flying

and dropped its demand to eliminate all furlough protection for American pilots. Also, 77 percent of American pilots would continue to have furlough protection—meaning of course that up to 23 percent of American pilots would be vulnerable to a potential future furlough under American's plan. The bankruptcy court granted the Debtor's renewed motion on September 12, 2012. East 023 (Bench ruling granting AMR Renewed § 1113(c) Motion).

6. Labor negotiations resume after the end of the merger blackout, leading to a ratified APA contract and then to the final four-party Memorandum of Understanding

Until November 2012, a "blackout" on labor negotiations was in place while the carriers pursued their merger negotiations. After the blackout ended, US Airways and USAPA agreed to resume negotiations over the Memorandum of Understanding. As explained by former American CEO Tom Horton in a *Fortune Magazine* interview, American pursued an agreement with the APA in an effort to gain bargaining leverage in the merger negotiations with US Airways for the benefit of its shareholders. East 024 (Fortune Magazine April 2014 interview with Tom Horton). The APA and American negotiated and reached agreement in November for an amended pilot contract that was then submitted for a pilot vote. The restarted labor negotiations were strongly supported and encouraged by the Official Committee of Unsecured Creditors of AMR, which believed consensual labor agreements between the airlines and their respective unions were crucial for a successful merger and reorganization of American. East 025 at 2-3

(Statement of UCC in Support of Approval of Memorandum of Understanding; "in November 2012, the Committee encouraged both airlines and their respective labor organizations to commence negotiations concerning employment terms that would prevail in the event of a merger…the MOUs are a critical component of the Merger")

In early December 2012, the American pilots approved the tentative agreement for a new American pilot contract. American, US Airways, APA and USAPA, with the active involvement of the Unsecured Creditors, then negotiated the four-party MOU from the baseline of the ratified American pilot contract. East 026 at 3 (Statement of AMR Unsecured Creditors Committee in Support of Approval of amended American pilot contract; "the standalone business plan [of American] serves as a baseline against which the Debtors and Committee…can evaluate strategic alternatives…the collaborative exploration is well underway, and the ratification of the new APA CBA will bolster these efforts.")

In mid-December, the four parties and representatives of the Creditors Committee met in Dallas-Fort Worth to negotiate terms for a MOU covering the pilots in the event of a merger. They agreed to use the recently ratified APA agreement as the baseline for their negotiations. The APA and USAPA negotiating committees worked closely throughout these negotiations and USAPA was a full participant in the bargaining. *See, e.g.,* East 027 (USAPA 12/5/12 MOU counterproposal). The negotiations resulted in a MOU signed

by all parties and supported by the Creditors Committee, which set the improved terms that would apply to American and US Airways pilots in the merger.

Building on MOU 1, the MOU provided for $522 million dollars in contractual improvements to the APA December 2012 agreement over six years. East 028 (APA Negotiating Committee summary of MOU). It also provided that on the effective date of the merger, US Airways pilots would enjoy the same terms and conditions as the American pilots. In particular, the MOU modified the December 2012 APA contract and made it effective as of the merger closing date as the Merger Transition Agreement. It provided for retroactive pay for US Airways pilots at the APA contract rates retroactive to the date they ratified the MOU in February 2013. The MOU enhanced the December 2012 APA agreement, and the earlier APA-US Airways Conditional Labor Agreement, by establishing a wage adjustment procedure that pegged rates for New American pilots to the average of Delta and United pilot pay rates after three years from the six-year period of the APA-US Airways agreement. East 029. The MOU further provided that following the merger New American and the pilot representatives would enter into negotiations for a Joint Collective Bargaining Agreement covering all pilots.

The APA Board of Directors approved the MOU on December 29, 2012. The USAPA Board of Pilot Representatives unanimously voted on January 4, 2013 to send the MOU out for pilot ratification with a

recommendation to approve the agreement. The USAPA negotiating committee provided extensive information on the value of the MOU to US Airways pilots during the ratification vote. East 030 (USAPA ratification document "What the Memorandum of Understanding Means to You"). USAPA valued the economic improvements to US Airways pilots over their current contracts at $1.6 billion for the six-year term. Id. at 9. The US Airways pilots approved the MOU in early February 2013.

6. American and US Airways announce and gain approval of their merger and later resolve a challenge to the merger by the United States

Following ratification of the MOU, the airlines officially announced their merger in February 2013. The MOU was later approved by the Bankruptcy Court in the AMR bankruptcy case. The MOU was a critical component of the airlines' merger. East 024 at 3. A final plan of reorganization of American providing for a merger with US Airways was approved by the Bankruptcy Court in early April 2013. East 031 (UCC Statement in Support of American-US Airways merger agreement). Both pilot unions submitted statements to the court supporting the merger. East 032 (APA statement in support of merger agreement). In August 2013, the United States Department of Justice filed suit against the American-US Airways merger asserting it failed to satisfy antitrust requirements. While expedited litigation of the DOJ challenge occurred, the airlines and government reached a settlement

in November 2013 to resolve the DOJ challenge and permit the merger to proceed. The merger closed on December 9, 2013 and the "Merger Transition Agreement," consisting of the MOU and the incorporated December 2012 APA Agreement that the MOU modified, became the collective bargaining agreement governing the employment of all pilots on "New American."

7. APA and USAPA engage in negotiations with American for a joint collective bargaining agreement; the APA, after its certification as the single pilot representative, establishes a negotiating committee that included former USAPA negotiators to conclude a JCBA

After the merger closed, the pilot unions began preparation and consultation under the JCBA process established by the MOU. Their negotiating committees coordinated positions for joint proposals to management. Over the second half of 2014 JCBA negotiations occurred including American and US Airways (East and West) pilot negotiators. In late December 2014, American presented a final offer to the APA, which was then the single representative after its NMB certification on September 16, 2014. The offer made substantial improvements even above those contained in the Merger Transition Agreement.

The APA Board of Directors voted in early January 2015 to submit the Company's final offer to the pilots for a ratification vote. Both American and US Airways pilots participated in the ratification vote. The APA negotiating committee provided a detailed summary of the final offer, including pay rate

increases over the MOU pay rates of approximately 23 percent which put American pilot pay rates an average of 7 percent higher than Delta Air Lines pilot pay rates, and improvements to retirement benefits, work rules and other terms. East 033 (APA negotiating committee briefing of JCBA). It also included a mid-term adjustment of pay rates to account for improvements at Delta and United Air Lines. The APA valued the proposed JCBA at a net increase in value of $1.73 billion over the contract established by the MOU for its five-year term. *Id.* at 58. The pilots voted in late January to approve the final offer and it became effective to cover the pilots of both American and US Airways on January 31, 2015.

II.

Seniority Is Fundamentally a Reflection of an Employee's Time in Service with His Employer; a Pilot's Length Of Service Must Be Used as a Basis for Integrating Seniority Lists to Satisfy the Fair and Equitable Requirement Of Section 3

At its most fundamental level, seniority equates to an employee's time in service for his employer. As the Supreme Court noted in *California Brewers v. Bryant,* 444 U.S. 598 (1980),

> In the area of labor relations, "seniority" is a term that connotes length of employment. A "seniority system" is a scheme that, alone or in tandem with non-"seniority" criteria, allots to employees ever improving employment rights and benefits as their relative lengths of pertinent employment increase. Unlike other methods of allocating employment

> benefits and opportunities, such as subjective evaluations or educational requirements the ***principal feature of any and every "seniority system" is that preferential treatment is dispensed on the basis of some measure of time served in employment."***

444 U.S. at 606-07 (Emphasis added).

Justice Brennan was even more pointed in his dissent in *California Brewers*,

> The concept of seniority is not a complicated one. The fundamental principle, as the Court recognizes, *ante,* at 606, is that employee rights and benefits increase with length of service. This principle is reflected in the very definition of the term, as found in dictionaries and treatises and articles in the field of industrial relations. To quote from a few of the sources on which the Court purports to rely today: "Seniority is a system of employment preference based on length of service; employees with the longest service are given the greatest job security and the best opportunities for advancement." Aaron, Reflections on the Legal Nature and Enforceability of Seniority Rights, 75 Harv. L. Rev. 1532, 1534 (1962). "The variations and combinations of seniority principles are very great, but in all cases the basic measure is length of service, with preference accorded to the senior worker." Cooper & Sobol, Seniority and Testing under Fair Employment Laws: A General Approach to Objective Criteria of Hiring and Promotion, 82 Harv. L. Rev. 1598, 1602 (1969). "Seniority grants certain preferential treatment to long-service employees almost at the expense of short-service employees. . . . [S]eniority is defined as length of service." E. Beal, E. Wickersham, & P. Kienast, The Practice of Collective Bargaining 430 (1972).
>
> ***It is hardly surprising that seniority has uniformly been defined in terms of cumulative length of service. No other definition could accord with the policies underlying the recognition of seniority rights.***

444 U.S. at 613-14 (Emphasis added).

Earlier, in *Humphrey v. Moore,* 375 U.S. 335 (1964), the Supreme Court affirmed the decision of a union to "dovetail" employees on the basis of their length of service with their predecessor employer, despite the fact that it prejudiced younger employees. On the employees' challenge to the union's decision, the Court held

> The power of the Joint Conference Committee over seniority gave it power over jobs. It was entitled under § 5 to integrate the seniority lists upon some rational basis, and its decision to integrate lists upon the basis of length of service at either company was neither unique nor arbitrary. On the contrary, it is a familiar and frequently equitable solution to the inevitably conflicting interests which arise in the wake of a merger or an absorption such as occurred here.

In concluding that the union's decision to integrate the employees' seniority based on length of service was "a familiar and frequently equitable solution" to integrating seniority lists, the Court cited first to *Kent v. Civil Aeronautics Board,* 204 F.2d 263 (2d Cir. 1953), in which the court of appeals upheld an order of the Civil Aeronautics Board directing that the seniority lists of the pilots and flight engineers of Pan American Airways and American Overseas Airlines be integrated on the basis of the employees' length of service. 204 F.2d at 266.

And in *Paperworkers Local 189 v. United States,* 416 F.2d 980 (5th Cir. 1969), a case involving a discrimination suit brought by the Government against certain employers and their employees' union, the court of appeals stated

> Seniority may be measured by total length of employment with the employer ("employment," "mill," or "plant" seniority), length of service in a department, ("departmental seniority"), length of service in a line of progression ("progression line" seniority), or length of service in a job ("job" seniority). Different measures of seniority sometimes are used in the same plant for different purposes. The variations and combinations of seniority principles are very great, but in all cases the basic measure is length of service, with preference accorded to the senior worker. Similarly, construction craft unions, which control the allocation of local work in their craft, have adopted referral rules based on length of service.

416 F.2d at 987, n. 7.

Length of service is therefore an essential component of seniority. Indeed, it underlies the two other equities commonly identified in pilot seniority proceedings, category and status and premerger career expectations. A pilot achieves the category and status credited to him in an integration with another pilot group only in his premerger operation and that is the result of the greater relative seniority achieved by increasing length of service in his premerger carrier. And the expectation for the pilot's continued advancement in his premerger system is similarly the product of his increasing length of service with his employer.

This recitation of federal authority is not to say that length of service must be the only criterion applied in determining the appropriate manner of integrating pilots under McCaskill-Bond. The East Pilot Committee proposal does not solely apply length of service as its basis for integrating the pilots. But it does mean that to establish a fair and equitable *seniority system* consistent with federal admonitions concerning what seniority rights are, this

proceeding under the federal law of McCaskill-Bond must consider and apply length of service in integrating the pilot groups. "No other definition could accord with the policies underlying the recognition of seniority rights." 444 U.S. at 613-14

And it is worth noting that ALPA Merger Policy was amended in 2009 to expressly establish length of service as a criteria an arbitration panel must apply in integrating pilot seniority lists. The origin of that change to ALPA Merger Policy in the tumultuous conflict between East and West pilots over the Nicolau Award is explained in the award of the arbitration panel in the Continental/United SLI proceeding. While this proceeding is not occurring under ALPA Merger Policy, the change in ALPA Merger Policy eliminated the only policy in the airline industry that arguably provided that an employee's length of service need not be applied in seniority integration. Section 3 of course covers all crafts or classes of employees in the airline industry, not only pilots, and for other employees seniority integration occurs predominantly on the basis of date of hire/length of service.[2] The policy of the Association of Flight Attendants, for example, expressly provides that seniority integration is to occur based on date of hire among their members. It should also be noted that the only form of ALPA Merger Policy determined

[2] In the America West-US Airways merger, for example, the seniority lists covering flight attendants, mechanics, dispatchers and ground service employees were all integrated on the basis of date of hire. *See, e.g.,* Award of Arbitrator Richard Bloch in seniority list integration proceeding among flight dispatchers.

by the Civil Aeronautics Board to satisfy the requirements of Sections 3 and 13 was the pre-1991 version of the Merger Policy that imposed obligations on the MECs for calculation and negotiation concerning length of service. *See, e.g., Allegheny-Mohawk Merger Case, William Kingston, et al. v. Allegheny Airlines, Inc. and Air Line Pilots Association*, 1979 CAB LEXIX 48, *27-28 (1979) and *Northeast Master Executive Council v. Civil Aeronautics Board,* 506 F.2d 97 (D.C. Cir. 1974)(setting forth ALPA Merger Policy in Appendix.)

III.

The East Committee Proposal

While the pilot groups worked closely together to bring about the American-US Airways merger and the successful JCBA, they obviously bring differing equities to this proceeding. American was the larger carrier, whose operation included a larger widebody operation; the American pilots therefore bring more pilots in widebody positions. American pilots also have a larger number of Group 3 B757/767 aircraft; however, the Company's fleet plan shows it will significantly reduce those aircraft to almost one-third of the number that were in place on the Merger Closing Date by 2019. East 035 (Review of Group 3 and IV aircraft). US Airways (East) has a predominantly domestic narrowbody and B-757/B-767 operation with a smaller international wide-body operation. The East Pilots bring positions in Groups 1, 2, 3 and 4. US Airways (West) is an exclusively A320 and B-757 operation limited to the

Phoenix domicile. The West Pilots have a smaller number of Group 3 aircraft than East Pilots and American, and have no Group 4 aircraft. East 036 (Fleet overview).

On average, US Airways (East) pilots are older than pilots at American and US Airways (West) and those in the top half of the US Airways (East) seniority list are even older. The US Airways (East) pilots will experience significant near-term attrition, with over 1,500 pilots leaving in the next five years, many from wide-body positions. As a result, on a stand-alone basis, East pilots will experience rapid upward movement over the next five years. The American and West pilot groups have far less near term attrition. East 037 (Pilot group attrition analysis).

The carriers had different hiring patterns. All three hired during the 1980s, with the former America West beginning in 1983. From 1991 to 1998, American and the former America West (US Airways (West)) hired while the former US Airways did not. From 2001 to 2005, the former America West hired while American and the former US Airways did not. And from 2007 to 2013, US Airways hired pilots into the East operation while furloughing pilots in the West. American had not hired since 2001. The pilot groups also experienced furloughs at different periods, with all three furloughing pilots in the 1990s. American and US Airways furloughed pilots after the events of September 11, 2001. US Airways (West) pilots experienced a furlough in 2008 to 2009. US Airways (East) pilots were

recalled beginning in 2007 and all US Airways (East) pilots who had been on furlough were recalled by 2008. Pilots on the American and US Airways (West) lists were furloughed up to the date of the merger announcement. These different hiring and furlough patterns necessarily create differences in length of service among the pilot groups at similar relative points on their premerger seniority lists.

A. Overview of East Committee Proposal

The East Pilot Committee proposal uses the "hybrid weighting" of a length of service based integrated list and a status and category integrated list adopted by the arbitration panel in the United/Continental proceeding to construct the final integrated list. East 038 (East Committee proposal methodology explanation). It constructs that integrated list according to the steps identified by the Panel in that proceeding with certain adjustments appropriate to this proceeding. One step of the methodology established by the Continental/United Panel, to update the base seniority lists used to construct the integrated lists to remove pilots who left carrier since the snapshot date, we did not implement in our proposal because the parties had not yet addressed that issue. The Panel may wish in the future to direct the parties to discuss a process for such updating of the base lists if it chooses to implement that step of the methodology.

1. The length of service integrated list

The base lists are then used to construct the separate integrated length of service and status and category lists. For the length of service list, each pilot's days of service are calculated to establish the pilots' length of service value. The inevitable anomalies among pilots on each premerger list, where pilots may have more or less time than a pilot below them on their premerger list, are resolved by reordering the length of service of each premerger list, so that the LOS values are listed in descending order from most number of days to least. The premerger relative order of pilots on each list is then placed alongside the numerically ordered length of service calculations so that the most length of service is assigned to the most senior pilot and then descends successively down the list until the lowest length of service value is assigned to the least senior pilot on the premerger list. This reassignment eliminates the "blocker/lifter" dynamic among the premerger lists, so that a pilot with an anomalous amount of service does not prevent the appropriate numerical ordering of pilots junior to him with pilots on the other premerger lists. The premerger lists are then integrated in accordance with the length of service calculations assigned to the pilots, with pilots with more time going ahead of pilots with less credited length of service. If pilots on the integrated list have the same longevity calculation, tiebreakers among pilots should occur by date of birth with the older pilot going ahead of the younger pilot..

2. The status and category integrated list

An integrated list is created according to status and category with the number of positions (aircraft category and "seat"/status) identified. The positions are assigned a hierarchy beginning with widebody Group 4 Captain and ending with the Furlough category. The number of jobs in each status and category are counted for each premerger group. An integrated list is then constructed by a ratio of the number of jobs in each position in each premerger group. The larger group is used as the numerator to determine the fraction for each group that is then counted to determine the score for each job that group holds in the category and status. The larger group will be divided by its own number and so its scores will be begin with 1 and then accumulate by ones until each position is assigned a value; the smaller group's number of positions is divided into the larger groups, yielding a higher number, which is then added consecutively until all positions for the smaller group receive a value. The values are then arranged in order on the ISL with the smaller group's scores inserted at the appropriate point between the scores of the larger group. The pilots are then slotted into the scores on the ISL for their respective groups based on relative premerger seniority order.

Once the two integrated lists are constructed, each pilot has a score corresponding to the relative seniority number assigned on the integrated list. The numbers for a given pilot will normally differ between the length of

service list and category and status list. A weighted percentage for the two lists (e.g., 50/50, 40/60, 60/40, etc.) is selected and each pilot's score on the separate integrated lists is multiplied by the respective numeric fraction and then the two resulting numbers are added together to produce a final score. The pilots are then ordered according to their total scores from highest to lowest.

B. Calculating Length of Service

Each pilot's length of service is calculated by counting the pilot's days in service for the covered air carriers beginning either with the pilot's either date of hire with the carrier or his effective seniority date with the carrier. The overwhelming numbers of pilots in the three groups have as their date of hire the date they first began training for the carrier and it corresponds with their competitive seniority date.[3] For these pilots, the East Committee calculated length of service beginning from this date of hire. Only time on furlough or furlough equivalent, when the pilot was not flying for the carrier, was deducted from a pilot's length of service.[4]

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[3] American pilots have a "four part" seniority date consisting of their date of hire, which for most American pilots is their first day of training, their classification date, which is used for pay purposes, their occupational date, which is the first date in revenue operation and is used for competitive seniority purposes, and Company date, which is the first date of hire at American, regardless of classification and is used for vacation and nonrevenue flying. The Occupational Date is assigned to a pilot by the Company generally using 47 days from the pilot's date of hire to reflect the completion of initial new-hire training.

[4] A number of West pilots who were furloughed from the PHX domicile flew in the East Operation following the 2008-09 PHX furloughs. The East

1. Effective seniority dates for pilots integrated into the premerger systems through earlier seniority list integration transactions

For pilots who were integrated into either the American system or US Airways system pursuant to a seniority integration, if the pilot's date of hire at his predecessor airline was not recognized in the seniority integration (as occurred for example with the pilots of Reno Air and Trans World Airlines at American and Trump Shuttle at US Airways), the East Committee assigned an effective seniority date based on the American or US Airways original pilot immediately senior to that integrated pilot. Unlike the Continental/United proceeding, where the numerous previous seniority integrations at Continental precluded this traditional method, the overwhelming demographic of pilots in this proceeding having an actual date of hire with either American or US Airways (East and West) allows its use for previously integrated pilots. No West Pilot was placed on the West seniority through prior seniority integration so this process was not necessary for West Pilots.

To the extent former TWA pilots flew for TWA, LLC after its acquisition by American Airlines, that time in service was counted toward the pilot's length of service since it was credited to him in the American seniority system. The TWA, LLC pilots were part of the American pilot craft or class following that carrier's acquisition by American Airlines. The East Committee did not include a pilot's time in service for a legacy airline (Reno, TWA,

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Committee credited that time flying in the East Operation to the length of service of those pilots.

Trump Shuttle, etc.) except to the extent that legacy time was credited to the pilot in the American or US Airways seniority system. Such flying was not performed for the air carriers involved in this transaction and is not appropriate to include, except to the extent it is effective in the premerger seniority system. Also, as noted above, calculating length of service among the pilots in this proceeding does not pose the problem faced in the Continental/United proceeding because outliers are overwhelmed by pilots with "original" dates of hire at American or US Airways who can be used as the basis for assigning effective seniority dates.

2. Mid-Atlantic Pilots

Certain US Airways pilots flew in service for US Airways from 2004-2006 under what US Airways called its "Mid-Atlantic Airways Division." *See* East 039 (MidAtlantic supporting documents). The operation was established by Letter of Agreement No. 84 to the US Airways/ALPA contract to permit US Airways to operate large cabin Embraer 170 aircraft in return for the flying position to be available for US Airways pilots subject to a reduction in force in their large jet position. The Embraer 170 aircraft is the same aircraft type as the Group 1 Embraer 190 aircraft under the American/APA Joint Collective Bargaining Agreement and was similar to the Fokker F28 aircraft previously operated by US Airways. The operation was referred to as the "small jet" operation under LOA No. 84. MidAtlantic was not a subsidiary of US Airways, however. All operations were conducted by US Airways on its

operating certificate. Pilots who were furloughed from their large jet pilot position could elect to go to MidAtlantic. A pilot not facing furlough could bid for the MidAtlantic position to eliminate the furlough of a more junior pilot. Also, pilots who were employed by one of US Airways' wholly-owned "regional airline" subsidiaries were included on a Combined Eligibility List, by their date of hire at the regional subsidiary, to be hired by US Airways to fly in the MidAtlantic division. US Airways performed all employment activity and training for "CEL" pilots hired to fly under MidAtlantic.

Pilots who were hired from the wholly-owned subsidiaries to fly in the MidAtlantic division received a US Airways date of hire that continues to be reflected on the current East Pilot system seniority list. They underwent full new-hire training by US Airways. US Airways conducted each part of the hiring process. For these pilots, the East Committee used their date of hire in the MidAtlantic Airways division, their first day of training at US Airways, for calculating length of service. This is the date of hire recognized by the Company. And those pilots are in relative seniority order to other East Pilots based on that date of hire.

For all pilots on the premerger East Pilot seniority list who flew in the MidAtlantic division, the East Committee counted that time toward the pilot's length of service. We did so because it was flying for US Airways, one of the "covered air carriers" in the covered transaction under McCaskill-Bond, US Airways. 49 U.S.C. § 42112, Note 117(b)(1). The pilots were part of the US

Airways pilot craft or class and were members of the same ALPA Master Executive Council as other US Airways pilots. When in service in MidAtlantic, these pilots would have qualified as "covered employees" under McCaskill-Bond. 49 U.S.C. § 42112(b)(1)(c). Accordingly, flying performed for the covered air carriers is appropriately included in the length of service calculation. However, the East Committee did not include in its calculation any time flown by a US Airways pilot who was furloughed and flew in a job at one of the wholly-owned subsidiaries of US Airways or code-share affiliate under the US Airways "Jets for Jobs" program since those were separate carriers and their pilots were not part of the US Airways pilot craft or class.

3. American Eagle Pilots

Certain American pilots were placed on the American seniority list under a flowthrough agreement between American, American Eagle, APA and the Air Line Pilots Association. And some of those pilots were the subject of contract disputes between the parties, alleging that American wrongfully denied the Eagle pilots the right to "flow up" to American. As with pilots from US Airways hired into US Airways' MidAtlantic operation, for any American Eagle pilot who flowed up to American, the East Committee used the pilot's first date of training at American as his effective seniority date. Also, as with pilots hired by US Airways from its regional subsidiaries or for US Airways pilots who flew at a regional affiliate while on furlough, the East Committee did not include any service time at American Eagle in the length

of service calculation for American pilots. Similarly, when an American pilot "flowed down" to Eagle during a furlough, the East Committee did not credit any of that time because American Eagle is a separate carrier, whose pilots were not part of the American Airlines pilot craft or class.

C. Ordering of the Category and Status groupings

The East Committee ordered category and status groups as follows:

1. Group 4 Captain
2. Group 3 Captain
3. Group 2 Captain
4. Group 4 First Officer
5. Group 3 First Officer
6. Group 1 Captain
7. Group 2 First Officer
8. Group 1 First Officer
9. Furlough

The East Pilot Committee ordered Group 1 Captain separately because it is a pilot-in-command position, with more pilot responsibility than First Officer positions, but its pay rate falls between Group 3 First Officer and Group 2 First Officer, on average $4 less than Group 3 First Officer pay rates and $6 more than Group 2 First Officer pay rates.

IV.

The East Proposed ISL Is Fair And Equitable To The Three Pilot Groups

It will of course fall to the Panel to evaluate the record and the parties' proposals and determine the fair and equitable manner for integration of the pilot seniority lists. But the East Committee will present analysis of its proposal that it believes shows the resulting ISL to be fair and equitable. A review of the list at various decile points shows the comparative length of service among the pilots at those points to be reasonably comparable, although in most instances an East pilot is integrated with more junior American and West pilots. East 043 (ISL length of service peer analysis). A sampling at the first eight decile points shows East pilots integrated with American and West pilots who are within two to four years length of service. The American and West pilots are closer to one another in comparable length of service. This reflects the trend of greater age and length of service among East pilots through most of the list.

In the bottom part of the list, around the bottom tenth decile, where the hiring and furlough patterns among the carriers changed, East pilots become more junior than West pilots and some American pilots, but the comparative difference remains in a similar range up to five years. In which group's favor the difference falls varies across the list, as would be expected, but we believe it follows an overall trend that is fair even if generally the East pilots

are more senior compared to the pilots integrated with them from the other groups. Reducing the weight given to length of service, however, would increase the variances in the length of service to the detriment of the affected pilots' "sweat equity" in their length of service.

In analyzing the pilots' seniority progression, Dr. Gall developed an analysis of pilot relative seniority progression on his premerger list and the ISL. East 040 (Premerger v. ISL relative seniority progression analysis.) Dr. Gall also identified the percentile points on the premerger lists and ISL where pilots would enter the various category and status positions. Dr. Gall used a "stovepipe" assumption for identifying at what relative seniority percentage point a pilot would enter the position (that is, number of jobs in the category/status position ÷ total employees on the list, not including pull/plug pilots.) He then selected a pilot from each group at the same decile point of the premerger seniority lists and developed a relative seniority progression for the pilot according to attrition in the pilot's premerger group and on the ISL using total attrition among the three groups (that is, removing pilots from the list when they reach age 65, causing pilots below that pilot to move up the list.)

His analysis showed that except for the most junior East pilots, East pilots left the merged carrier years earlier than the American or West pilot at the same premerger decile point. It also showed that while most East pilots were placed on the ISL above their premerger relative seniority point, due in

part to the presence of furloughees in the other two groups, most of the sample East pilots fell behind their premerger progression and left prior to their American and West comparators. By contrast, while the American and West pilots were at some points placed below their premerger relative seniority point, within a few years they exceeded their premerger seniority progression and enjoyed more years in the merged system above their seniority progression without the presence of the East comparator. Among the most junior pilots, American and especially West pilots exceeded their premerger seniority progression and enjoyed advancement over their premerger progression, while the junior East pilots were placed below their premerger relative seniority point and fell below their premerger seniority progression throughout the period measured. This dynamic of American and West pilots enjoying more years in the merged system than East pilots and generally exceeding their premerger seniority progression while East pilots fell below their premerger progression shows the significant impact on the ISL from the East pilots' far higher near term attrition and the effect on East pilots from sharing that attrition with American and West pilots.

V.

Proposed Conditions And Restrictions

A. Group 4 Position Condition

The East Pilot Committee proposes a Group 4 category condition to apply for the first five years under the integrated list. Even under a weighting of the length of service ISL at 55 percent and category and status ISL at 45 percent, East Pilots, due to their greater age and length of service, quickly lose a substantial share of Group 4 positions under the integrated list. The East Committee relative seniority distribution matrix analysis, East 041 (Relative seniority distribution matrix) showed that by 2018, East Pilots will have less than 70 percent of the Group 4 Captain positions they held on December 9, 2013 due to their much higher level of attrition compared to the other groups. They will hold fewer than 50 percent of Group 4 First Officer positions five years from the snapshot date. The benefit of that East Pilot attrition flows disproportionately to American and West pilots. For this reason, the East Committee proposes a narrow condition that will give priority rights to American and East Pilots to be first awarded Group 4 positions (Captain and First Officer) for the first five years from implementation of the ISL in order to maintain the number of positions held by the two groups on December 9, 2013.

To maintain the American and East pilot groups' premerger expectation concerning base assignments, these priority positions should

first be awarded to American and East pilots in their legacy pilot bases. Only if there is an insufficient number of Group 4 positions available in a group's legacy bases will the Group 4 position be awarded in a base of the other pilot group. Any Group 4 position in excess of the number required to maintain these minimum numbers among American and East Pilots will be governed by the ISL. This will give West Pilots access to bid these Group 4 positions. Because West Pilots do not bring any Group 4 positions to the merger, no minimum position number Group 4 positions, we believe this job priority condition is more appropriate than a conventional equipment "fence", which would make difficult providing access to these positions to West pilots without depleting the share of positions for the other pilot groups. And based on current Group 4 positions in the American and can be established for them. And since West Pilots are not contributing Group 4 positions, we believe this job priority condition is more appropriate than a conventional equipment which would make difficult providing access to these positions to West pilots without depleting the share of positions of the other pilot groups. And based on current Group 4 positions in the American and East pilot groups, we anticipate that at ISL implementation, both American and East Pilots will be above their December 9, 2013 Group 4 position level and so the priority rights may have only limited application in post-implementation bids for Group 4 positions.

The proposed condition language is as follows:

Group 4 Position Condition

A. For a period of five years beginning with the Bid Period in which the Integrated Seniority List is first implemented, Group 4 Captain positions shall be first awarded to Legacy American Airlines pilots and Legacy US Airways (East) Pilots in a ratio of 2.48:1 so as to maintain a minimum number of Group 4 Captain positions of 454 among Legacy American Airlines Pilots and a minimum number of 183 Group 4 Captain Positions among Legacy US Airways (East) Pilots. Any Group 4 Captain positions in excess of the number required to maintain these minimum numbers of positions will be governed by the ISL and any applicable bidding conditions under the JCBA. These minimum numbers of positions shall be maintained in the event of a system reduction of Group 4 Captains. In the event of a system reduction of Group 4 Captain positions below 637 positions, reduction of Group 4 Captain positions shall occur among Legacy American Airlines Pilots and Legacy US Airways (East) Pilots in a ratio of 2.48:1.

B. For a period of five years beginning with the Bid Period in which the Integrated Seniority List (ISL) is first implemented, Group 4 First Officer positions shall be first awarded to Legacy American Airlines Pilots and Legacy US Airways (East) Pilots in a ratio of 2.46:1 so as to maintain a minimum number of Group 4 First Officer positions of 826 among Legacy American Airlines Pilots and a minimum number of 336 Group 4 First Officer positions among Legacy US Airways (East) Pilots. Any Group 4 First Officer positions in excess of the number required to maintain these minimum numbers of positions will be governed by the ISL and any applicable bidding conditions under the JCBA. These minimum numbers of positions shall be maintained in the event of a system reduction of Group 4 First Officer positions. In the event of a system reduction of Group 4 First Officer positions below 1,162 positions, reduction of Group 4 First Officer positions shall occur among Legacy American Airlines Pilots and Legacy US Airways (East) Pilots in a ratio of 2.46:1.

Such protected positions will exist first in the respective legacy bases. If insufficient numbers of protected positions exist in the respective legacy bases, only then may pilots be awarded protected positions outside their respective legacy bases.

B. Agreed Conditions and Restrictions

The East Pilot Committee further proposes that the conditions and restrictions set forth in the parties' stipulations, which were agreed to by the MOU parties, be adopted by the Panel.

- No Bump/No Flush

Neither the implementation of the ISL nor the expiration of any Condition and Restriction shall require any active pilot to displace any other active pilot from the latter's position.

Neither the implementation of the ISL nor the expiration of any Condition and Restriction shall require a furloughed pilot to bump or displace an active pilot.

- Compensation for Flying Not Performed

Neither the implementation of the ISL nor the expiration of any Condition and Restriction shall require that pilots be compensated for flying not performed (e.g., differential pay for a position not actually flown).

- Pilots in Training

Pilots who, at the time of implementation of the integrated seniority list, are in the process of completing or who have completed initial qualification training for a new category (e.g., A320 Captain or 757 First Officer), or who have successfully bid such a position but have not been trained because of conditions beyond their control (such as a company freeze), may be assigned to the positions for which they have been trained or successfully bid, regardless of their relative standing on the integrated seniority list.

- Supplement C

Nothing in this award shall modify the decision of the arbitration panel in Letter of Agreement 12-05 of the 2012 CBA, as implemented in Supplement C of the American/APA Joint Collective Bargaining Agreement, which shall continue to govern the relationship between the legacy AA and former TWA Pilots.

C. Implementation Condition

The three pilot committees agreed to propose the following condition on implementation of the Board's Award:

> Effective as soon as practicable, and in no event later than the first day of the third flying month following the issuance of the award, the Company shall apply the ISL issued by the Board, including any attendant conditions and restrictions (the "ISL") as the Pilot System Seniority List for all American Airlines Pilots (i.e. American Airlines and US Airways pilots) provided for by Section 13.G. of the Joint Collective Bargaining Agreement between American Airlines and the Pilots in the Service of American Airlines ("JCBA") and shall apply the ISL to all events as to which system seniority is applicable under the JCBA.

VI.

The McCaskill-Bond Amendment Requires the Board to Integrate the Pilot Seniority Lists on the Basis of the Status Quo of Three Separate Seniority Lists in Effect on December 9, 2013; the Nicolau Award ISL Never Governed Seniority Among the Pilots of US Airways and Cannot Be Used as a Basis for the Fair and Equitable Integration of the Three Pilot Seniority Lists

The East Pilot Committee anticipates that the West Pilot Committee will assert that the pilots of US Airways should be integrated together on the basis of the arbitration award issued by Arbitrator George Nicolau in the ALPA Merger Policy proceeding initiated by the merger of US Airways and America West prior to their integration with American pilots. Respectfully, this Arbitration Board has no authority to integrate the pilots of US Airways and American on any basis other than the three separate seniority lists in

effect on December 9, 2013. And we believe that this proceeding will demonstrate the Nicolau Award to be an inequitable basis for the integration of the pilots.

The Section 3 and 13 process is a prospective one to establish an integrated seniority list for the merged carrier from the premerger seniority lists in effect at the separate carriers. It is not a retrospective process to remedy claims by the pilot groups for past injuries. The Board has no authority to reset the status quo under the Railway Labor Act existing on December 9, 2013 or grant pilots employment rights they did not have prior to that date. *Air Cargo, Inc. v. Teamsters Local 851,* 733 F.2d 241, 247 (2d Cir. 1984) (federal courts have exclusive jurisdiction to determine the status quo.) Rather, its charge under Section 3 is "the integration of seniority lists in a fair and equitable manner." The status quo among the pilots on the effective date of McCaskill-Bond, December 9, 2013, were the three separate pilot lists; a fact also recited in Paragraph 2(b) of the Section 13(b) agreement among APA, the Company and USAPA. The only seniority list that the Panel is authorized to create under Sections 3 and 13 is the single, integrated seniority list covering all employees from the "seniority lists" of the covered employees.

Under Section 3, the East Pilots are entitled to have their premerger seniority list integrated with the American pilot seniority list as well as the West pilot seniority list. Sections 3 and 13 do not permit the Panel to deny

East Pilots integration with American pilots on the basis of the premerger seniority lists since its express language requires "integration of the seniority lists." Nothing in Section 3 or McCaskill-Bond itself treats differently a case such as this where one of the carriers has multiple seniority lists covering its employees. Indeed, since the Railway Labor Act does not require that employees in a single craft or class be covered by a single contract, *Ass'n of Flight Attendants v. US Air, Inc.*, 24 F.3d 1432, 1437-38 (D.C. Cir. 1994)[5], it also does not require those employees to be covered by a single seniority list since seniority is established by contract. That the premerger US Airways pilot craft or class had two seniority lists covering the pilots does not change Section 3's requirement that the seniority lists covering the employees be integrated in a fair and equitable manner. The Panel may not therefore use a "two-step" process to first integrate US Airways pilots among themselves and only then integrate them with American pilots, whether by adopting the Nicolau Award or by some other method of integration among US Airway pilots only.

Notwithstanding the long history of litigation between West Pilots and USAPA concerning the Nicolau Award, the integrated list established under that award never governed the seniority of East and West pilots. The decision of the Ninth Circuit Court of Appeals did not alter that fact, as the

[5] "In other words, a single craft or class of employees on a particular carrier may not have more than one certified representative, but members of that class may be covered by different collective bargaining agreements." *Id.* at 1438.

court of appeals acknowledged, "Because a good faith attempt to implement the Nicolau Award would have ultimately required a ratification vote by all the pilots, and we cannot know what the results of such a vote would have been, we can never be certain whether efforts to implement the Nicolau Award through a collective bargaining agreement with US Airways would have succeeded." 791 F.3d at 991. The court of appeals had earlier noted that ALPA failed in its efforts to resolve the dispute over the Nicolau Award and so "it is, at best, speculative that a single CBA incorporating the Nicolau Award would be ratified if presented to the union's membership." 606 F.3d at 1180.[6]

In fact, when the US Airways and America West pilots were still represented by ALPA, the West Pilots, represented by Mr. Freund, sought to avoid judicial review of the Nicolau Award by asserting it was not an arbitration award subject to review and created no enforceable seniority rights. In an action brought by the US Airways ALPA Master Executive Council in the District of Columbia Superior Court against the America West ALPA MEC to review the Nicolau Award, the America West MEC removed the case to the United States District Court for the District of Columbia. In its removal notice, the America West MEC asserted that the petition to review

[6] The transition agreement negotiated by ALPA with America West and US Airways required that the ISL established under the ALPA Merger Process only be effective upon ratification of a single joint collective bargaining agreement.

the award in fact stated a claim against ALPA for breach of the duty of fair representation:

> the "arbitration award" Plaintiffs purportedly seek to "vacate" is in actuality the proposed pilot seniority list developed through ALPA's Merger Policy that ALPA will adopt as its bargaining position to be presented to the Company, but which (like a union bargaining position on any matter) the Company is not required to accept.
>
> …
>
> Plaintiffs' Application to "vacate" an "arbitration award" that ***does not establish any enforceable seniority rights*** in a collective bargaining agreement with the Company, but which merely sets out ALPA's bargaining position to be presented to the Company, is not a state law claim at all but rather an artfully pled federal claim for breach of the duty of fair representation.

East 044 (AWA MEC Notice of Removal, Doc. 1, Case No. 1:07-cv-01309-EGS at 3-4)(emphasis added).

It was only years later that West Pilots changed their position and asserted that the Nicolau Award was the product of "final and binding arbitration" that governed the seniority rights of US Airways pilots. But none of that litigation alters the fact that the list constructed by Arbitrator Nicolau created no enforceable seniority rights and never existed as part of the Railway Labor Act status quo for US Airways pilots.

Further, the McCaskill-Bond Amendment expressly states that it only applies to mergers that occurred after its December 2007 effective date. 49 U.S.C. § 42112, Note 117(c)("This section shall not apply to any covered transaction involving a covered air carrier that took place before the

date of enactment of this Act [Dec. 26, 2007].") This excludes the America West-US Airways merger from the Amendment's coverage. And the McCaskill-Bond Amendment is triggered by a "covered transaction" between air carriers to combine into a single air carrier. 49 U.S.C. § 42112, Note 117(b)(4). The covered transaction that invoked McCaskill-Bond's provisions for the American and US Airways pilots was the merger of American Airlines and US Airways. The US Airways (West) Pilots are "covered employees" under McCaskill-Bond only because they are "members" of the US Airways pilot craft or class established by the NMB in Case No. R-7147, 35 NMB 65 (2008). 49 U.S.C. § 42112, Note 117(b)(3)(B). The West Pilot Committee may not assert equities or rights in this proceeding on the basis of the America West-US Airways merger that is not covered by the statute. And the Arbitration Board may not retroactively apply the provisions of the statute to the America West-US Airways merger without violating the statute's exclusion of that merger from its coverage.

The agreement governing this proceeding acknowledges that the established status quo on the effective date under McCaskill-Bond consisted of three separate seniority lists. The Section 13(b) protocol agreement signed by American, APA and USAPA recites that the certified premerger seniority lists would reflect the status quo of three separate seniority lists on December 9, 2013. Section 13(b) agreement, ¶ 2(b). The Section 13(b) agreement does not authorize the Panel to establish the Nicolau list as the

seniority list for East and West pilots to integrate with the American pilot seniority list.

The use of the Nicolau Award would also give the Applicants a leg up over all other pilots in the SLI process by crediting them with relative seniority positions and length of service they do not have and category and status positions they do not hold. The Nicolau Award IMSL as a proposed binding list for US East and West pilots would treat US Airways East pilots in this American/US Airways merger as if it were still April 2005, rather than the agreed snapshot date of December 9, 2013 -- as though the actual condition of US Airways at the time of its merger with American Airlines did not exist except for West Pilots. The West Pilots would be artificially advanced and the East Pilots artificially suppressed in their seniority equities placed behind pilots with far less length of service and in lower category or status. And use of the Nicolau Award would create a fictional "third list" among US Airways pilots to the detriment of more than 500 East pilots hired in 2007 and later, although Arbitrator Richard Bloch resolved against West pilots a Transition Agreement grievance over the existence of a purported "third list"; he held that only two seniority lists existed among US Airways pilots and there was not a third seniority list. *See* East 046 (Arbitration Award of R. Bloch in Tentative Agreement Dispute No. 9).

Using the Nicolau Award ISL as a basis for combining US Airways pilots would make the seniority integration process between the American

and US Airways pilots a fiction using phantom positions for US Airways pilots they do not in fact hold. That would also undoubtedly prejudice American pilots by elevating the West Pilots' seniority position in comparison to American pilots. By the conclusion of this hearing, the East Committee will demonstrate the patent inequity of the Nicolau Award in its treatment of the East and West Pilot equities.

CONCLUSION

The East Pilot Committee respectfully requests that its proposal for integration of the three pilot seniority lists be adopted.

Dated: September 19, 2015. Respectfully submitted,

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Seniority Integration Committee

EXHIBIT 26

ARBITRATION PROCEEDINGS BEFORE
DANA E. EISCHEN, IRA JAFFE AND M. DAVID VAUGHN

In the matter of the seniority integration involving the Pilots of **NEW AMERICAN AIRLINES**	**PRE-HEARING BRIEF ON BEHALF OF THE WEST PILOT MERGER COMMITTEE SUBMITTED SEPTEMBER 19, 2015**

PRELIMINARY REMARKS

On June 19, 2015, the West Pilots' Merger Committee ("West Committee") filed its Prehearing Brief in this Seniority List Integration ("SLI") arbitration, expecting to begin hearings 10 days later. The West Committee's Proposal in that Brief called for the creation of a hybrid status and category/longevity integrated seniority list ("ISL") modeled in the same manner as the list created by the panel in the United/Continental SLI arbitration after first integrating the West and East seniority lists in the manner established by the Award of Arbitrator George Nicolau in the America West/US Airways SLI arbitration (the "Nicolau Award").

As the Board well knows, following the submission of that Brief, the Court of Appeals for the Ninth Circuit decided the appeal in *Addington v. US Airline Pilot Association*, No. 14-15757, No. 14-15874 (June 26, 2015) ("*Addington* Opinion") (Attachment 20 to the brief), holding that USAPA had breached the duty of fair representation it owed to the West pilots and directing the district court to enjoin USAPA from asserting any position in this case that did not embrace the Nicolau Award as the starting point.[1] Unable (really, unwilling) to accept the

[1] On August 24, 2015, the Court of Appeals denied USAPA's Petition for Rehearing and Suggestion for Rehearing En Banc.

consequences of its year-long attack on the West pilots, the USAPA Merger Committee irrevocably withdrew from these proceedings.

We are now on the eve of restarting the hearings. There is a new East Committee. It may advance the proposal USAPA intended to advance before it withdrew. It may advance a different proposal using an entirely different methodology which may (or may not) recognize the folly of abandoning the Nicolau Award as the basis for its proposal. It may be enjoined by the district court when it acts on the *Addington* case on remand (and if it is enjoined may withdraw as its predecessor did).[2] The AAPSIC may also have revisited its proposal and may (or may not) apply the methodology described in its prior Brief, but premised on the Nicolau Award as the starting point.[3] Time will tell on these questions.

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[2] On September 3, 2015, the mandate of the Court of Appeals was filed with the *Addington* district court. On September 9, 2015, the district court ordered the parties and APA to submit briefs on an expedited basis regarding the breadth of the injunction that is to be entered. The matter has been fully briefed and has been set for hearing on September 23, 2015. The West Committee anticipates that the district court will likely issue its injunction prior to the commencement of these proceedings on September 29, 2015. While the *Addington* plaintiffs seek an injunction prohibiting the new East Committee from arguing for any SLI solution that is not based on the Nicolau Award, the West Committee is indifferent on that point. We explain in Part I of our Brief why the Board should begin its list construction by integrating the East and West lists based on the Nicolau Award, and we invite and encourage the Board to address the issue head on (as the Board said it must do in any event (see July 5, 2015 Board Award on Procedural Questions at 18-19)) no matter who the other parties to this case may be or what those parties may argue after the district court rules.

[3] The AAPSIC has previously claimed that the legacy American pilots are "innocent bystanders in the 'Hatfield-and-McCoys' feud" and that "any credit [to the West pilots] based on the Nicolau Award . . . should come at the expense of the East Pilots, not the American Pilots." AAPSIC June 19, 2015 Pre-Hearing Statement 69. That "conclusion" came in support of an AAPSIC SLI proposal that was not based in the first instance on the Nicolau Award. We do not – as of this writing – know whether the AAPSIC will persist in advancing that, or a similar, proposal. What we do know, however, is this. First, while the American pilots may have been "innocent bystanders" between 2007 and 2013, they will have lost both their innocence and their bystander status if they argue that anything other than the Nicolau Award should form the basis for the this integration. Second, from a pure structural standpoint, their "credit . . . at the expense of . . . the American Pilots" argument is a non-sequitur. There will be approximately 5,000 US

The West Committee has not wavered from the substance of the proposal that it advanced in its June 19 Pre-Hearing Brief (save for withdrawing one proposed Condition and Restriction, and adding an additional proposed Condition and Restriction addressing a technical issue regarding the treatment of pilots on more than one pre-integration list, *see infra* at 40, 40 n. 31). Accordingly, the Brief that follows will look very much like the Brief the Board reviewed in advance of the June 29 start date, save for one important difference. Throughout Part I of the Brief, we discuss the Ninth Circuit's unequivocal endorsement of the principles the West Pilots have been advancing since 2007; namely, that the Nicolau Award was the product of a fair process agreed to by the America West and US Airways pilots, and USAPA's abandonment of the Award was nothing more than a naked power grab designed to advance an SLI position Arbitrator Nicolau rejected in breach of its duty of fair representation.[4] In other respects, this Brief – and the West Committee's proposal – is remarkably similar to the one we submitted three months ago. We nevertheless urge the Board to review it now.

With these preliminary remarks, we turn to the substance of our Brief.

Airways pilots integrated among approximately 10,000 American pilots. The order that those approximately 5,000 US Airways pilots are in as among themselves should be of no consequence to the American pilots.

[4] We wish to make clear that while we have always believed quite firmly that the starting point for this SLI case should be the integration of the East and West lists as prescribed in the Nicolau Award and that the Ninth Circuit's *Addington* Opinion only confirmed that belief, we are not asserting that this Board is bound to accept the Nicolau Award as a matter of law. This Board can impose any solution it believes is "fair and equitable" taking all circumstances into account. That said, for the reasons we set out in our initial Brief and that we reiterate here – with the added endorsement of the Ninth Circuit – we believe quite firmly that the Board should begin its list construction with that as the first step, no matter what methodology it ultimately chooses to integrate the legacy American pilot group with the legacy US Airways pilot group.

INTRODUCTION

In this Pre-Hearing Brief, the West Committee intends to focus its attention on what we believe the Board really cares about – how to go about building a fair and equitable ISL. We will not spend pages of text trying to build up the strength of a stand-alone US Airways and the weakness of a stand-alone American Airlines in a misguided effort to claim that one pilot group's stand-alone career expectations exceeded the other's. The plain truth is that after the Delta-Northwest and United-Continental mergers, neither US Airways nor American could continue to exist as stand-alone airlines in the long term.[5] That being the case, wasting the

[5] Despite this plain truth, we expect that the proposal of the legacy American pilots will likely rest – as had its withdrawn proposal – on the premise that American pilots had "superior" stand-alone career expectations. This premise is impossible to square with the many public statements that were made to the courts, the media and to Congress by the American pilots' certified bargaining representative, the Allied Pilots' Association ("APA"), during American's bankruptcy case and the run-up to the merger on behalf of American Pilots that American's stand-alone plan was untenable. For example, APA General Counsel Edward James made this exact point in court during American Airlines' bankruptcy:

> Finally, we think we have good cause to reject [American's proposals in the context of its stand-alone plan], and that's because the company stubbornly refuses to consider any other alternative in their stand-alone business plan, and again to underline that one, you're going to find very few people other than the people they're paying to get on the stand who say this business plan has a reasonable chance of success. It's a place holder.
>
> What people – everyone believes is going to occur is they're going to get out of this bankruptcy and they'll consolidate with another company, and there are very few choices out there. With U.S. Air they become number one. With the employees these mergers are painful to employees, Your Honor, we have to go through seniority mergers. They're not something this union has ever advocated or wanted to get involved in because they're incredibly painful, *but we see no other choice if this company is going to succeed*.
>
> We're not trying to rob the bank and get a short term keep our compensation in a short term and get a company that's limping along. *We've got to get a successful company and we believe the only way to do that is to take some pain and do a merger with another company and cut us to market*. We're willing to do that.

Board's time describing a future that is nothing more than a fantasy by arguing over which carrier needed the merger more would be a pointless exercise; both carriers badly needed the merger in order to remain competitive. Accordingly, our focus in this brief is squarely on how the West Committee believes the Board should integrate the legacy American Airlines pilots and the legacy US Airways pilots in light of the realistic career expectations of both pilot groups that follow inexorably from that reality. Simply put, this is not an SLI proceeding in which sharply divergent competitive circumstances call for a "thumb on the scale" to be applied in favor of either pilot group.

* * *

The West Committee's SLI proposal is for a hybrid longevity/status-and-category ISL constructed in the manner the panel in the *United/Continental* (Eischen, Kaplan, Nolan 2013) case structured that ISL. And it is, unsurprisingly, also premised on a fundamental truth: the only fair and equitable starting point for an ISL that involves the legacy US Airways pilots is the list created by Arbitrator George Nicolau in his 2007 SLI Award following the merger of US Airways and America West. That list is the product of a fair process, identical in every respect to the process employed in countless seniority list arbitrations preceding it, entirely consistent with the governing SLI jurisprudence and never characterized by any tribunal that has had occasion to review it as unsound in any way. Further, the process that produced that list is one to which the pilots at both airlines agreed and accepted as a fair process until the East pilots decided that they did not like the outcome. It is a list that US Airways accepted as the list that would control the seniority of all of its pilots once a joint collective bargaining agreement ("JCBA")

Attachment 3 (Trial Tr. at 73-74 (Apr. 23, 2012) (E. James), *In re: AMR Corporation*, Case No. 11-15463-shl (Bankr. S.D.N.Y.)) (emphasis added).

with the pilots' bargaining agent was achieved. To begin the seniority list integration process in this matter at any point other than the Nicolau Award would do violence to the successful regime of orderly seniority integration through arbitration under a fair and equitable standard that has been in place for more than sixty years.

But the fundamental truth that the Nicolau Award is the only fair and equitable starting point for this integration becomes an unassailable one when it is understood that it was through unjustified and unlawful acts that the East pilots (acting through USAPA) succeeded in preventing implementation of the Nicolau Award before now. Specifically, even though US Airways formally accepted the Nicolau list, Attachment 11 (12/19/07 Letter), USAPA – acting for the East pilots – nonetheless prevented the list from being implemented by refusing to reach a new US Airways JCBA prior to the US Airways-American merger – thereby exploiting the terms of the Transition Agreement that required the execution of a JCBA before the Company-accepted Nicolau list could be implemented. [6]

In this respect, the Ninth Circuit Court of Appeal's June 26, 2015 decision in *Addington* is significant because it removes any pretense that the dispute between East and West pilots since the Nicolau Award is simply a messy conflict between two groups regarding an issue about which reasonable minds could disagree. Rather, the truth, as the Court of Appeals conclusively found, is that the anti-Nicolau Award position espoused by the East pilots is and has always been baseless, and that the West pilots have been the victims of an eight-year campaign of illegal tyranny by the numerically-superior East pilots, carried out for most of that time under the auspices of USAPA. The Ninth Circuit did not mince words: "[T]he East Pilots repudiated their promise to be bound by the outcome of the agreed-upon process" that culminated in the Nicolau

[6] USAPA succeeded to ALPA's duties under the Transition Agreement. *See* Attachment 20 (*Addington* Opinion) 44.

Award, Attachment 20 (*Addington* Opinion) at 41, and "[w]hen the East Pilots did not get the outcome they wanted, they simply dumped the rules and found a new rulemaker – USAPA – that they could control." The Court elaborated: "USAPA's aim to benefit the East Pilots at the expense of the West Pilots is no longer in any doubt." *Id.* at 43. As the Court so graphically put it, USAPA's "genetic commitment to a date-of-hire principle violate[d] its duty of fair representation." *Id.* at 44.

USAPA's unlawful course of conduct has had significant consequences for the shape of this proceeding as well. At a time when the West pilots were beholden to USAPA as their certified representative, USAPA negotiated the Memorandum of Understanding ("MOU") (Attachment 21) and the Protocol Agreement (Attachment 1) that provide the framework for this proceeding. That framework included two false assumptions specifically bargained for by USAPA to advance the interests of the East pilots at the expense of the West pilots: first, that the MOU was not itself a JCBA that would trigger the implementation of the Nicolau Award under the Transition Agreement (a provision bargained for by USAPA in breach of its duty of fair representation, the Ninth Circuit specifically found, Attachment 20 (*Addington* Opinion) 49), and, second, the assumption that there were "three seniority lists in effect" at the two merging airlines as of December 9, 2013, and that those three lists are due to be merged in this proceeding. *See* Attachment 1 (Protocol Agreement) at ¶ 2.b.[7] As a result, the West pilots have been placed in a position where they "must endure the direct and immediate hardship of fighting

[7] In that regard, it is important to note that while the Protocol Agreement recites the canard that there are three lists to integrate, and while the Protocol Agreement by its terms made the West Committee a "party" to it once the Preliminary Arbitration Board directed that APA appoint a West Committee, *see* Attachment 1 (Protocol Agreement) ¶¶ 8.c and 18, the West Committee played no role in negotiating the Protocol Agreement and specifically has never agreed that the status quo is that there are three lists due to be integrated.

on two fronts," that is, they "not only must . . . advocate for the seniority interests of US Airways pilots generally in the SLI proceedings, but they must also advocate the Nicolau Award vis-à-vis the date-of-hire seniority scheme that the East Pilots will present." Attachment 20 (*Addington* Opinion) at 29-30.

The West Committee wants the SLI proceedings to be concluded as expeditiously as possible, and, to that end, we are prepared to begin our analysis, formally, with the fiction established under the MOU and Protocol Agreement that there are three lists to be integrated – an East list, a West list and a legacy American list. But in the wake of the *Addington* decision it is now manifest that any method of merging the East and West lists other than that contained in the Nicolau Award would extend and permanently codify the East pilot's eight-year illegal campaign to deny the West pilots their right to work under the ISL created by Arbitrator Nicolau. So our proposal begins, at step one, by integrating the East and West lists as provided for in the Nicolau Award.[8]

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[8] As further discussed *infra* at 24-25, even if it was not now manifest that the Nicolau Award must be the starting point of any ISL that results from this proceeding, there is no other acceptable way forward. On the one hand, the Board cannot, under core principles that animate each and every seniority integration, evaluate the equities of the East and West groups as of the snapshot date in *this* case, since the two groups have been part of a single airline for many years. Specifically, the US Airways pilots (East and West) come to American from an airline that, since 2007, has been run by a single management team, operating under a single operating certificate and a single name brand, that structures its unified route system and deploys its assets in a single coordinated manner, and employs an otherwise unified workforce (*i.e.*, flight attendants, ramp workers, mechanics, and all the rest). While the East and West pilots have maintained separate seniority bidding rights due to the unlawful intransigence of the East pilots, those separate systems reflect only the terms of the Transition Agreement (which have remained in place much longer than had ever been contemplated), and nothing more.

There simply is no credible argument that the East and West pilot groups had separate equities as of December 2013 when US Airways and American merged; that separation ended when US Airways merged with America West in 2005. Therefore, any reconsideration of the equities of the two groups would have to be accomplished by reviewing their positions as of the snapshot date in the original US Airways-America West merger (January 1, 2007). This is the precise exercise that Arbitrator Nicolau performed. To redo that process now, would require a

* * *

In light of the foregoing, the West Committee's proposal proceeds in four steps. First, as already noted, it integrates the East and West lists as provided for by the Nicolau Award. Second, the West proposal adds to that list, in date-of-hire order, pilots hired and placed on the East and West lists after May 19, 2005, the merger announcement date and constructive notice date under the Nicolau Award as that Award specifically provided. Third, the proposal "ages" that integrated list to reflect the disappearance of those US Airways pilots (East and West) who retired or were otherwise removed from the list as of December 9, 2013, the agreed-upon constructive notice date for the US Airways-American Airlines merger.

After completing this exercise, the West Committee's proposal integrates that list with the legacy American pilots (from the AAPSIC list) using a hybrid methodology that is built to account for two of the three primary and measurable pilot group equities that arbitrators have considered in past cases when determining what approach to take to ordering an ISL: status-and-category on the one hand, and longevity on the other. It does so by assigning proportionate values to longevity and status-and-category – here, the West Committee proposes 35% and 65%, respectively – and it builds a list based on those values.

The West Committee's proposal aims to create an ISL that is not only fair and equitable as of the agreed-to snapshot date for the American-US Airways merger (December 9, 2013), but that is fair and equitable over the course of pilots' careers, moving forward into the future. That is to say, although it is true that "merged lists . . . change career expectations," *Republic/Frontier/Midwest/Lynx* (Eischen 2011) 30 (quoting *US Airways/America West* 19

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complete re-litigation of that original case and then require this Board to substitute its judgment for that of Arbitrator Nicolau about the proper way to balance the equities as between East and West. That course is neither feasible nor sensible.

(Nicolau 2007)), it its nonetheless the goal of a fair and equitable SLI proceeding to create a list that will minimize the disruption to pilots' career expectations over time and prevent any pilot group from obtaining a windfall at the expense of any other, *see id.*

In this merger, counterintuitive though this fact may be, the West Committee's extensive analysis shows that the *American* pilot group on the whole stands to gain opportunities through this merger – especially opportunities to achieve narrow body captain flying positions that they would not have otherwise had on a stand-alone basis. As we will show, this is due to structural factors regarding the jobs that each group is "bringing" to the merger, chief among them the large number of wide body first officer positions currently held by the American pilot group whose occupants will "crowd out" US Airways pilots' advancement opportunities. The West Committee's proposal seeks to provide the least disruption to the settled, reasonable career expectations of the two pilot groups over time in light of these factors – but, as we will show – slightly favors the American pilots overall.

Having laid out in this Introduction, the shape of the West Committee's case, our Brief proceeds in three parts and is accompanied by two appendices[9] and various attachments. While normally an SLI brief would begin with a discussion of the stand-alone condition of the merging airlines and their respective competitive positions in the market and the stand-alone career expectations of the pilot groups, we do not include a discussion of that subject in text because, as

[9] The first Appendix is a compendium of direct quotes from APA, American Airlines, and US Airways, made in pleadings and testimony acknowledging – indeed urging – the conclusion that American's stand-alone plan could not be successful and that a merger with US Airways was a necessity for long term survival. *See supra* at 4 n.5. The source documents are available on the Sharepoint site and will be included on the flash drive that will be distributed to the Board. The second Appendix is a discussion of certain technical issues that the Board will have to come to grips with no matter what method it adopts to create an ISL. We place those in an Appendix because, while they require resolution and while some may be contentious, they are secondary to the more fundamental decisions the Board will have to make.

we explained, we are of the view that nothing turns on those facts. *See supra* at 4-5. Instead, we have simply attached the exhibits our expert witnesses will sponsor regarding the inevitability and necessity of this merger for both carriers and leave it to the Board either to review them in connection with this Brief or to wait until the experts testify to consider them. *See* Attachment 4 (M. Garfinkle Exhibits); Attachment 5 (D. Akins Exhibits).

Thus, the Brief is focused entirely on methodology. Part I explains why this Board should begin the process of integrating the US Airways pilots with the American pilots by utilizing the list produced by Arbitrator Nicolau as its starting point – or, to conform to the "three lists" fiction embodied in the MOU and Protocol Agreement, and why this Board should begin the list integration process by placing the East and West pilots together as directed by the Nicolau Award and aging that list to December 9, 2013, the constructive notice date for the American-US Airways merger. Part II describes for the Board the key building blocks for any ISL constructed under the "fair and equitable" standard, and the manner in which the West Committee's proposal has taken those building blocks into account. Finally, Part III of the Brief describes the heart of the West Committee's proposal – a hybrid Longevity and Status-and-Category ISL with minimal conditions and restrictions, as well as the rationale for the Board adopting it.

I. The Board Should Begin the SLI Process by Integrating the East and West Pilots Using the List Produced by the Nicolau Award, Aged to December 9, 2013

A. As discussed at the outset of the brief, the *Addington* Opinion has removed any reasonable doubt that the Nicolau Award should be the starting point for integrating the pilots of US Airways with those of American Airlines, notwithstanding the fiction set up through the MOU and Protocol Agreement – agreements to which the West Committee was not a party and that served as unlawful vehicles, as the Ninth Circuit found with respect to the MOU, for the

East pilots' long and unlawful campaign to prevent implementation of the Nicolau Award – that this is an SLI process involving three separate and independent lists on equal footing (a legacy "East" list, a legacy "West" list, and a legacy American Airlines list).

The Nicolau Award was the product of a fair and equitable SLI process that was binding on the East and West pilot groups, that has never been found to have been outside of the range of reasonable outcomes under the prevailing SLI standards governing that process, that was accepted by the Company as *the* seniority list that would govern US Airways pilots and that was not in effect at US Airways in advance of this merger only as a consequence of the East pilots' exploitation of USAPA's breach of it duty of fair representation. The only fair and equitable starting point for *this* SLI proceeding – and the only starting point consistent with the principle that the results of SLI proceedings agreed to in advance by all interested parties are to be respected—is the Nicolau Award.

B. As we said at the outset, the West Committee will *not*, either in this brief or at hearing, re-litigate the facts developed in the SLI proceeding that led to the Nicolau Award. Nonetheless, we include what follows to make a single, defining point: there was nothing in the SLI process that led to the Nicolau Award, nor in the Award itself, that can justify the *rejection* of the results of that Award as a starting basis for this integration.

1. The SLI proceeding that resulted in the Nicolau Award was conventional in every way. In May 2005, US Airways and America West Airlines merged. ALPA represented the pilots from both airlines. Pursuant to ALPA Merger Policy, the US Airways ("East") and America West ("West") MEC's – acting for their respective pilot groups – and the two airlines entered into a Transition Agreement that, together with ALPA Merger Policy, governed the process by which the two seniority lists were to be integrated. Taken together, those documents

provided that an arbitrator selected by the two separate merger committees would conduct an arbitration and issue a "fair and equitable" integrated seniority list if the parties were unable to negotiate their own solution, that "[t]he Award of the Arbitration Board shall be final and binding on all parties to the arbitration" and that the Company "will accept such integrated seniority list" so long as it complied with certain baseline criteria. However, they also provided that the resulting list, while accepted by the Company as the list governing the order of pilots at US Airways, would not be implemented by the merged airline until a JCBA was negotiated and in effect. *See* Attachment 6 (2006 ALPA Merger Policy) Part 1.H.5.b; Attachment 7 (US Airways-America West Transition Agreement) Articles IV.A-C and VI.A.

George Nicolau was the joint selection of the US Airways and America West Merger Committees.[10] Arbitrator Nicolau and two pilot neutrals held 18 days of hearings spread out over nearly three months; the record included thousands of transcript pages – recording the testimony of 20 witnesses – and 14 volumes of exhibits. *See* Attachment 2 (Nicolau Award, also referred to as *US Airways/America West*) 3. After the close of the evidentiary portion of the hearing, Arbitrator Nicolau told both Merger Committees that he would not award either the list each was seeking and offered them the opportunity to modify their proposals. The West pilots

[10] Arbitrator Nicolau was considerably better known to the East Committee and its lawyer than to the West Committee and its lawyer. Arbitrator Nicolau had served as the arbitrator in the *US Airways/Shuttle* seniority integration arbitration and had written an opinion in that case. Two pilots on the US Airways Merger Committee had participated in that case – one on the Shuttle Committee and one on the US Airways Committee. Counsel for the US Airways Committee – Dan Katz – also knew Arbitrator Nicolau in the context of the seniority integration process well. Mr. Katz was counsel to the US Airways Merger Committee in the Shuttle case and was also counsel for the Federal Express Merger Committee in the *Flying Tiger/Federal Express* seniority integration, another case in which Arbitrator Nicolau served as the arbitrator. In contrast, while the America West Merger Committee's counsel certainly knew Arbitrator Nicolau's reputation, neither he nor any members of the America West Committee had ever appeared before him. Despite their varying experiences (or perhaps because of them) both the US Airways and America West Committees selected Arbitrator Nicolau to serve as the arbitrator.

accepted his invitation and modified their proposal. The East pilots did not, telling Arbitrator Nicolau that "we are comfortable with our [date-of-hire] proposal as it is." Attachment 8 (Excerpt of US Airways-America West SLI Hearing) 2; Attachment 2 (Nicolau Award) 13. Following that session, the parties submitted comprehensive post-hearing briefs. At no point in those three months did the US Airways Committee raise a single objection to the process.

2. On May 1, 2007, Arbitrator Nicolau issued his Award. After summarizing the parties' respective proposals, Arbitrator Nicolau recited his oft-quoted set of observations, first made in *Federal Express/Flying Tiger* (Nicolau 1990), that:

> There are four basic lessons to be learned from those submissions; that each case turns on its own facts; that the objective [is] to make the integration fair and equitable; that the proposals advanced by those in context rarely meet that standard; and that the end result, no matter how crafted, never commands universal acceptance.

Attachment 2 (Nicolau Award) 19. In fashioning his award, Arbitrator Nicolau rejected both the America West Committee's proposal (a status-and-category proposal with all furloughed US Airways pilots plus several hundred working US Airways pilots at the bottom of the list) as well as the US Airways Committee's proposal (a "date-of-hire" proposal that would have pushed the most senior America West pilots nearly half-way down the list and would have placed hundreds of furloughed US Airways pilots ahead of working America West pilots). Instead, Arbitrator Nicolau constructed a list that was designed to take both status-and-category and longevity into account in an effort to most fairly preserve pilots' realistic career expectations: while his Award used status-and-category principles as a starting point, it took date-of-hire into account by putting hundreds of US Airways pilots at the very top of the ISL, well beyond their status-and-category

entitlement[11], and put many fewer US Airways pilots at the bottom of the list than the America West Committee proposed (and many fewer at the top and many more at the bottom than the US Airways Committee proposed). *Id.* at 29-33.

In his opinion, Arbitrator Nicolau expressly considered the primary equities that drive SLI decisions – status-and-category achieved by pilots, longevity, and career expectations, *id.* at 24-25 (describing the "weaker" financial condition of US Airways); 26 (explaining that "consideration" should be given to "Date of Hire" and "different career expectations based on equipment flown") – and constructed a list that took each of those equities into account. To be sure, Arbitrator Nicolau rejected the position, which he ascribed to the US Airways pilots, that "sole consideration" should be given to "date of hire and length of service." *Id.* at 27. However, contrary to the myth perpetuated by USAPA over the years following the issuance of the Award, he emphatically did not ignore longevity; rather, in rejecting the West pilots' position that longevity (in the form of Date of Hire) should not be considered, he held that:

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[11] Conventionally, wide-body captains and wide-body first officers are given separate "tiers" in a status-and-category integration and are integrated separately; *i.e.*, captains with captains in the first tiers and first officers with first officers in lower tiers after all the captain tiers are integrated. *See infra* at 29-30. In the US Airways-America West merger, there were 423 US Airways 767 and A330 captains and first officers. America West did not fly 767s or A330s and thus had no captains or first officers in that grouping. Thus, a conventional status-and-category integration would have placed around 200 US Airways 767 and A330 captains at the top of the list, followed by, first, an integrated group of US Airways and America West narrow-body captains; second, a group of roughly 223 US Airways 767 first officers; and third, an integrated group of US Airways and America West narrow-body first officers. Instead, Arbitrator Nicolau assigned positions equal to the total number of US Airways 767 and A330 captains *and* first officers at the top of the integrated list, pushing the entire America West list down by roughly 200 positions from where they would have been had he used conventional status-and-category tiers. As he put it: "[T]hese competing considerations result in a list that has the effect of reserving a certain number of positions in present wide-body international aircraft to US Airways pilots, *thus giving consideration to* both *their longer service* and the fact that America West pilots did not have an immediate expectation of such flying." Attachment 2 (Nicolau Award) 27 (emphasis added).

> Though Date of Hire, whether adjusted for Length of Service or not, is no longer listed as a determinant or even stated as an integration criterion, there are occasions when consideration should be given to that factor. Here, US Airways is far older than America West, a fact reflected in the average age difference between the two groups. Consideration must also be given to the different career expectations based on equipment flown. US Airways pilots fly wide-body international aircraft, while America West pilots do not. *Those elements weigh in US Airways[’] favor both in placement and interim restriction and thus argue against the America West proposal . . . .*

Id. at 26 (emphasis added).

3. Despite the consensual nature of the process, the Award’s thoughtful analysis, and the absence of even a hint of procedural irregularity, the East pilot group expressed its extreme displeasure with the result immediately after its issuance.[12] Within days of the Award, the East MEC filed a petition with ALPA’s Executive Council seeking to overturn the Award, despite the clear and unambiguous language in the ALPA Merger Policy providing that the Award “shall be final and binding on all parties to the arbitration.”[13] *Supra* at 13. That petition was ultimately denied, and, in December 2007, ALPA submitted the Award to the Company – which accepted it on December 19, 2007. Attachment 11 (12/19/07 Company Acceptance of Award).

Concurrently, the East pilot group, led by current USAPA President Steve Bradford, engaged in an effort to replace ALPA as the representative of the combined US Airways pilot

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[12] Views among the East line pilots ranged from merely irrational disapproval to the absurd; one pilot, who was later elected to a leadership position within USAPA, asserted in a missive that the Award was the product of an “obviously senile arbitrator.” Attachment 10 (5/16/07 R. Nelson Email). Time has not diminished that level of irrationality among East pilot leaders. USAPA’s co-founder and former officer Mark King recently posted online: “It [the Nicolau Award] was an obscene and flawed ruling by a senile arbitrator.” Attachment 13 (5/11/15 M. King Message Board Posting).

[13] In June 2007, the East MEC filed a lawsuit in District of Columbia Superior Court to set aside the Nicolau Award. *US Airways Master Executive Council, Air Line Pilots Association, Int’l, et al. v. America West Master Executive Council, Air Line Pilots Association, Int’l, et al.*, Civil Action No. 0004358-07 (D.C. Super. Ct.). That lawsuit was later dismissed as moot after USAPA displaced ALPA as the certified bargaining representative of the US Airways pilots.

group with a new union – USAPA – that was dedicated to preventing the implementation of the Nicolau Award.[14] On April 18, 2008, as a result of the East pilots' numerical superiority, USAPA was certified by the National Mediation Board ("NMB") as the bargaining agent for all US Airways pilots. USAPA began its status as bargaining representative with a constitutional provision that *a fortiori* abandoned the Nicolau Award; it requires seniority to be based strictly on date-of-hire:

> To maintain uniform principals 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.

Attachment 12 (USAPA Constitution) Article I, Sec. 8(D).

After its formation, USAPA used its leverage as the certified bargaining agent of the US Airways pilot group to prevent the implementation of the Nicolau Award.[15] To that end, it

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[14] In an email to a member of the ALPA Executive Council in May 2007, Bradford wrote:

> We must leave ALPA if this award stands because our great leader, Doug Parker, thinks the industry needs more consolidation. He has already made a very ill advised run on Delta and he will be looking for another partner soon. The pilots of US Airways cannot go into *another round of seniority negotiations with this award as the starting point in our negotiations*.

Attachment 9 (5/16/07 S. Bradford Email) (emphasis added).

[15] At this juncture, there is no need to recount in detail the efforts the East pilots undertook through USAPA to injure and silence the West pilot group prior to this proceeding, and prevent the implementation of the Nicolau Award—all at a time that USAPA had a statutory duty to represent the interests of the West pilot group. Nonetheless, it is useful to have an understanding of some of those efforts as they demonstrate the depths of the East pilots' hostile campaign against the West pilots. .

In September 2008, USAPA presented US Airways with its own seniority list based on each pilot's date-of-hire as required by USAPA's Constitution. US Airways never accepted that seniority list.

On May 30, 2008, USAPA filed a RICO action in federal district court in North Carolina against 19 West Pilots and an entity formed by some West pilots to protect the West pilots' interests, *USAPA v. AWAPPA LLC, et al.*, 3:08-cv-00246-MR-CH (W.D.N.C.). That lawsuit was

avoided entering into a JCBA concerning wages and working conditions for the US Airways pilots solely in order to avoid the requirement of the Transition Agreement that the Nicolau Award's ISL be implemented upon completion of such a new collective bargaining agreement. *See* Attachment 7 (Transition Agreement) II.A and VI.A. As a result of this unlawful conduct, East and West pilots have been working under the same wage rates and working conditions that have been in place since US Airways' second bankruptcy in 2004.[16] Indeed, in *Republic/Frontier/Midwest/Lynx*, Arbitrator Eischen alluded to the experience of pilots at US Airways as a basis for holding that the effective date of the ISL in that case should not be tied to the successful negotiation of a JCBA:

> Recent experience demonstrates that concerns over such a disastrously destructive epilogue are neither alarmist nor simply academic. *See*, [A]ddington v. US Airline Pilots Association, 606 F.3d 1174 (9th Cir. 2010). Delaying implementation of the IMSL for an undefined open-ended period of time would be more than intolerably corrosive of labor-management relations. Finally, it

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dismissed on July 11, 2008. Dismissal of the suit by the trial court did not stop USAPA; it filed an appeal and on July 30, 2010 the Court of Appeals for the 4th Circuit affirmed the dismissal.

USAPA has also vigorously opposed the *Addington* cases, which are described *infra* at 20, 20 n.17.

In all of the aforementioned lawsuits, USAPA used dues and agency fee revenue involuntarily collected from West Pilots either to sue the West Pilots or to defend against the West Pilots' efforts to protect the Nicolau Award. The West Pilots have been forced to fund all of their litigation efforts through voluntary contributions, which total to date over $3 million. Several West pilots have recently sued the USAPA officers under Title V of the Labor Management Reporting and Disclosure Act, 29 U.S.C. § 501 *et seq.*, to recover from them personally USAPA treasury funds they authorized the USAPA Merger Committee to spend even after USAPA lost its status as an exclusive representative for US Airways pilots. The case is *Bollmeier v. Hummmel et al.*, Case No. 14-577-RJC (W.D.N.C.).

[16] AAPSIC's claim (made in its pre-hearing statement filed on June 19, 2015) that the US Airways pilots career expectations should be permanently downgraded due to pre-merger wage disparities is without merit for several reasons: first, USAPA's unlawful campaign to prevent implementation of the Nicolau Award is the sole reason why US Airways pilots have depressed pay rates relative to the industry. Second, neither American Airlines or US Airways had long term prospects as stand-alone airlines. *See supra* at 4 n.5, Appendix I. Finally, in any event, disparate wage rates are temporary while decisions regarding placement on a seniority list are permanent.

> would be manifestly unfair and inequitable for the Award to require furloughed pilots, with integrated but indefinitely tolled seniority numbers on the awarded IMSL, to remain mired in unemployment as RAH hires new pilots off the street.

Republic/Frontier/Midwest/Lynx 45. That "manifestly unfair and inequitable" result is exactly what occurred as a result of the East pilots' efforts through USAPA.

4. In September 2014, APA was certified as the exclusive bargaining representative of all of the pilots at American Airlines, and, as a result, USAPA lost its statutory authority to represent pilots of US Airways. Nonetheless, USAPA played a role in establishing the framework for this SLI proceeding prior to its loss of certification, and it preserved a role for itself in the proceeding even after its loss of certification.

In January 2013, APA, USAPA, American Airlines, and US Airways entered into a MOU that covered many labor relations topics, and which helped facilitate the merger of American and US Airways during the course of American's bankruptcy. Attachment 21 (MOU). Among other things, the MOU provided that "a seniority integration process consistent with McCaskill-Bond shall begin as soon as possible after the Effective Date" of the Agreement, and it sets outs conventional parameters for such a process. *Id.* at Section 10(a). In addition, USAPA specifically sought and obtained a provision in the MOU stating that:

> US Airways agrees that neither this Memorandum nor the JCBA shall provide a basis for changing the seniority lists currently in effect at US Airways other than through the [McCaskill Bond arbitration] process set forth in this Paragraph 10.

Id. at Section 10(h). This provision had the effect of preventing the Nicolau Award from being implemented following the execution of the MOU, even though the MOU in actuality was a "Single Agreement" that would trigger USAPA and the Company's obligation to implement the Nicolau Award under the Transition Agreement. Attachment 7 (Transition Agreement) VI.A.

Subsequently, in September 2014, at a time when USAPA was still the certified bargaining representative of the West pilots and to settle litigation that had been brought by USAPA, the same parties to the MOU entered into a Seniority Integration Protocol Agreement that set out in greater detail the framework for this proceeding. In the Protocol Agreement, the parties agreed that the USAPA Merger Committee would continue to participate in the SLI process even after APA became the certified representative of the US Airways pilots (and that the West pilots could seek separate representation in the SLI proceedings). Attachment 1 (Protocol Agreement) ¶¶ 8.a and 8.b. In addition, the Protocol Agreement (to which the West Committee was not a party) also contained the assumption that the integration would involve "the three seniority lists in effect at the carriers on December 9, 2013," *Id.* at ¶ 2.b – not the Nicolau Award list.

After the MOU was entered into, a class of West pilots brought suit against USAPA, asserting, among other claims, that USAPA had breached its duty of fair representation to the West pilots by seeking that Section 10.h (quoted above) be included in the MOU. *Addington v. U.S. Airline Pilots Association, et al.,* 2:13-cv-00471-ROS (D. Ariz.) (Silver, J.).[17] Although the district court originally ruled in USAPA's favor following a bench trial, *see* Joint Exhibit 53 (*Addington* Bench Trial Decision), on June 26, 2015, the Court of Appeals for the Ninth Circuit reversed, and held that USAPA had breached its duty of fair representation to the West pilots.

[17] The duty-of-fair-representation suit regarding the MOU was the third in a series of suits against USAPA. The first, *Addington, et al. v. USAPA, et al.*, 2:08-cv-01633-NVW (Wake, J.) (D. Ariz.) ("*Addington I*"), was a duty-of-fair-representation suit by West pilots against USAPA for failing to implement the Nicolau Award; a unanimous jury verdict in favor of West pilots in that case was subsequently reversed by Ninth Circuit solely on ripeness grounds. *See* Joint Exhibit 52 (Ninth Circuit Decision in *Addington* I). The second, *US Airways, Inc. v. Addington, et al.*, 2:10-cv-01570-ROS (D. Ariz.) ("*Addington II*"), was a declaratory judgment action filed by US Airways to resolve the risk that it might face if it accepted a seniority list other than the Nicolau Award. That suit was also dismissed on ripeness grounds. *See* Joint Exhibit 53 (Order dismissing suit in *Addington* II).

Attachment 20 (*Addington* Opinion, also Joint Exhibit 56). After describing the matter as not "a difficult case," *id.* at 40, the Court held that USAPA (who the Court described as "the stalking horse for the East Pilots' exclusive interests," *id.* at 56) had engaged in a wholesale breach of its duty of fair representation to the West pilots, going so far as to treat them as "non-union members." *Id.* at 41.

In so finding, the Court remarked that the East pilots' hostility toward the Nicolau Award was a repudiation of the SLI process and their agreement to be bound by it:

> Under the Transition Agreement's seniority-integration process, the two groups of pilots were committed to working out a single, integrated seniority list through ALPA's Merger Policy. That Merger Policy provided a familiar, neutral set of rules for resolving such explosive issues. Even though neither side knew what the outcome of the game would be, both sides knew what the rules were. Both East and West Pilots had a full and fair opportunity to advocate for the advantages of their favored seniority regime. Negotiation, mediation, arbitration—all well-established dispute-resolution mechanisms—were brought to bear in the East and West Pilots' seniority dispute. In the end, neither side could agree on a method for integrating the two lists, and the matter went to arbitration. The result was the Nicolau Award, which did not embrace in full the position of either side. ALPA was obligated to defend that Award in its collective bargaining negotiations with US Airways.
>
> Yet, when all was said and done, the East Pilots repudiated their promise to be bound by the outcome of the agreed-upon process.

Id. at 41. The Court's analysis continues with the finding that, from its inception, "USAPA's aim [was] to benefit the East Pilots at the expense of the West Pilots," *Id.* at 43, and it makes clear that USAPA's breach of its duty of fair representation, which it found stemmed from USAPA's "genetic commitment to a date-of-hire principle," *Id.* at 44, was not limited to the negotiation of the MOU but extended to its entire course of treatment of the West pilots:

> When the East Pilots did not get the outcome they wanted, they simply dumped the rules and found a new rulemaker – USAPA – that they could control. By "constitutionally committ[ing USAPA] to pursuing date-of-hire principles," *Addington I*, 606 F.3d at 1177, the East Pilots fixed the game.

> From the outset, USAPA was irreconcilably opposed to the negotiating position of the West Pilots. Conceived in the minds of the East Pilots, elected and installed by the East Pilots, and constitutionally committed to a date-of-hire list that favored the East Pilots, USAPA could never fairly and impartially represent the West Pilots. The very reason for its existence was to undermine the Nicolau Award in every manner that ALPA had refused to do. USAPA was, for all intents and purposes, a representative for the East Pilots. This purpose is nowhere more evident than in the East Pilots' and USAPA's own words. . . .
>
> Although in *Addington I* we were uncertain about how the East and West Pilots' "internal disputes" would eventually "work themselves out," 606 F.3d at 1181 n.4, USAPA's subsequent actions have rendered the picture clear. Since USAPA's initial act of proposing a revised seniority list in 2008, it has continued to oppose any efforts to reach a "Single Agreement," the consummation of which would automatically trigger the implementation of the Nicolau Award under the terms of the Transition Agreement. Thus far, USAPA has been fully successful.
>
> Two years after we decided *Addington I*, when US Airways and American Airlines announced their merger, there was still no Single Agreement and no Nicolau Award. USAPA succeeded in keeping separate the seniority lists applicable to the East and West Pilots until it finally had the opportunity, in the US Airways–American Airlines merger, to dismantle the Nicolau Award for good. In short, USAPA's aim to benefit the East Pilots at the expense of the West Pilots is no longer in any doubt.

Id. at 41-44. As a result of USAPA's breach, the Court observed that the West pilots have unfairly been placed in a position in this SLI proceeding where "they must endure the direct and immediate hardship of fighting on two fronts," that is, they "not only must . . . advocate for the seniority interests of US Airways pilots generally in the SLI proceedings, but they must also advocate the Nicolau Award vis-à-vis the date-of-hire seniority scheme that the East Pilots will present." *Id.* at 29-30. As a remedy designed to "prevent the East Pilots from continuing to enjoy the benefits of USAPA's breach at the expense of the West Pilots," the Court of Appeals directed the district court "to enter an order enjoining USAPA from participating in the McCaskill-Bond seniority integration proceedings . . . except to the extent that USAPA advocates the Nicolau Award." *Id.* at 54.

As the Board is well aware, USAPA subsequently chose to withdraw from the SLI proceedings entirely. The East pilots are currently represented by a new East Committee that has chosen Mr. Wilder, the USAPA Merger Committee's counsel, to serve as its counsel in these proceedings. We expect that the East Committee will continue to advance USAPA's unlawful ambitions.

C. What the foregoing shows is that there exists an integrated list of East and West pilots that (1) was adjudicated under ALPA merger policy, in a proceeding in which both parties agreed in advance that the result would be "final and binding"; (2) was the product of a proceeding in which representatives of the East and West pilot groups, who were selected by the former America West and US Airways democratically elected MECs, each had a full and fair opportunity to present their positions and best evidence as to what the competing equities of the pilots groups were and what the resulting list should look like; (3) was accepted by US Airways as the ISL that would govern its pilots; and (4) has never been held by any court or forum to be unfair or inequitable with respect to either the process used to obtain it or its result. Furthermore, the East pilots have avoided the implementation of the list solely by fiat (carried out through USAPA, which bound the West pilots as their exclusive representative while utterly breaching its duty to represent them fairly), motivated either by the belief, false as it may be, that the Nicolau Award did not take longevity into account or by the opinion that it did not take longevity into account as much as they would have preferred.

In light of these circumstances, and particularly in light of the Court of Appeals' holding in *Addington*, there is no principled basis on which anything other than the Nicolau Award could be used to integrate the East and West pilots. To hold otherwise would deal a serious blow to the integrity of the long-established "fair and equitable" SLI process, and, worse, permanently

reward the sour-grapes, by-any-means-necessary – and unlawful – exercise of brute power that the East pilots have engaged in to avoid the implementation of an award that is not to their liking.

The East pilots had a full and fair opportunity to litigate the equities regarding the merger of US Airways and America West in 2007 and from that case a final and binding award was issued. Although the East pilots, through USAPA, succeeded in creating a "three list" framework for this SLI proceeding in which the adoption of the Nicolau Award is, as a formal matter, an open issue, it should not be treated as one: there is no possible justification for any other committee (whether comprised of East or American pilots) to assume the role of a "new George Nicolau" and propose a new, alternative basis on which the East and West lists can be integrated as if the previous proceeding had not occurred.[18]

Moreover, any attempt by a different committee to treat the West and East pilots as having separate group equities as of the snapshot date of *the American-US Airways merger* would be completely artificial and unjustifiable under long-standing SLI practice.[19] Since

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[18] As far as we are aware, setting aside the Nicolau Award as the starting point for the integration of East and West pilots in this proceeding would leave the Nicolau Award the only SLI award that has never been implemented. Indeed, there is an SLI case that was proceeding to decision at the same time the Nicolau arbitration occurred that puts an exclamation point to this observation. *See Atlas/Polar* (Harris 2006). The pilots of Atlas Airlines and Polar Airlines – both ALPA carriers and both owned by the same holding company – commenced an SLI process before Arbitrator Robert Harris. On November 21, 2006, Arbitrator Harris issued his Award. Many of the Atlas pilots, who outnumbered the Polar pilots, were unhappy with the Award (and were unhappy with ALPA for a variety of reasons). In December 2008, they replaced ALPA with the International Brotherhood of Teamsters. Notwithstanding that the pilot group was no longer "bound" by ALPA Merger Policy (and therefore could have made the same argument that USAPA has made for the past eight years), the Teamsters-Atlas Air-Polar Air collective bargaining agreement adopted the Harris Award and its ISL controls to this day.

[19] In SLI proceedings under the fair and equitable standard, pilot group equities are assessed at the time of the merger of the pilot groups' *separate* airlines, *see* Appendix II at AII-3 to AII-5 (discussing the concept of a snapshot date). Putting to one side the fact that George Nicolau did

shortly after the merger was consummated in 2005, US Airways has operated as a single airline with a single management team and marketing department that deploys its assets in a single coordinated manner under a single brand name (US Airways), and with a single, integrated route structure. The airline has operated under a single operating certificate since September 2007, and the NMB first determined that the airline comprised a single transportation system in January 2006.[20] Although, the Transition Agreement compelled the airline to maintain separate bidding systems for East and West pilots, the flying between the East and West pilots was allocated based on the terms of the Transition Agreement – which have been in place as long as they have solely due to the unlawful conduct of the East pilots. *See* Attachment 7 (Transition Agreement) ¶ II.B. It would be nonsensical to suggest that the East and West pilot groups are to be judged as having separate equities *now* because the East pilots have succeeded in preventing the implementation of the Nicolau list until now.

D. The foregoing discussion is all in service of the West Committee's proposal that the first step in this SLI proceeding is to adopt the Nicolau Award list as the method for integrating the East and West pilot lists. The second step in our proposal is to "age" the list to

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just that in 2007, it would be a practical nightmare with respect to the East and West pilots now since this Board would have to reconsider the equities of those two pilot groups as of the time of *the US Airways-America West* merger, which was announced more than ten years ago – including fleets and stand-alone prospects for two airlines that no longer exist, as well as the longevity and status-and-category for pilots who are no longer flying.

[20] The NMB issued its first single carrier determination relating to US Airways on January 30, 2006 in connection with a petition filed by the International Association of Machinists and Aerospace Workers relating to the mechanics, fleet service employees, and maintenance training specialists crafts. The NMB concluded in that determination that "East and West constitute a single transportation system." Attachment 22 (1/30/06 NMB Determination) 49. On January 23, 2008, in connection with a petition filed by USAPA and under the same legal standard, the NMB also concluded that US Airways constituted a single transportation system with respect to the pilot craft. Attachment 23 (1/23/08 NMB Determination) 78.

December 9, 2013, which is the agreed upon "snapshot" and "constructive notice" date for the American-US Airways merger.[21] *See* Appendix II at AII-1 to AII-5. To "age" the list, the West pilots propose removing from the Nicolau Award list all pilots who have retired or have otherwise been removed from the East or West pilot lists between the Nicolau Award's issuance date and December 9, 2013. The third step is to append to the list, in date-of-hire order, all pilots who have commenced employment at US Airways since May 19, 2005, the constructive notice date of the Nicolau Award, and who were still employed there in December 2013 – so called "Third Listers."[22] The resulting list will have all current US Airways pilots integrated according to the Nicolau Award and updated to the relevant date for this SLI proceeding.

II. The Building Blocks for the Construction of an ISL

Before turning to the details of the remainder of the West Committee's proposal and the rationale supporting them in Part III, it is important to discuss some of the critical building blocks of an ISL, especially as they relate to the objective of developing a "fair and equitable" ISL.

The Board is tasked with developing an ISL according to the same "fair and equitable" standard that has historically been applied by arbitrators in SLI proceedings.[23] As Arbitrator

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[21] While the Committees have agreed on December 9, 2013 as the snapshot and constructive notice dates for this merger, we describe both of them in the Technical Appendix to this Brief along with the West Committee's rationale for agreeing on those dates.

[22] While we call this the third step, it is really nothing more than the further application of the Nicolau Award, which by its terms placed all "constructive notice pilots" below the last of the US Airways and America West pilots hired prior to May 19, 2005.

[23] Here, the "fair and equitable" standard applies by operation of the McCaskill-Bond Amendment to the Federal Arbitration Act. 49 U.S.C. § 42112 note § 117(a). Specifically, the McCaskill-Bond Amendment provides in relevant part that with the respect to a covered airline merger, "sections 3 and 13 of the labor protective provisions ["LPPs"] imposed by the Civil Aeronautics Board in the *Allegheny-Mohawk* merger (as published at 59 C.A.B. 45) shall apply

Eischen observed in *Republic/Frontier/Midwest/Lynx*, that standard is "satisfied if the integration preserves the job expectations and relative bidding positions that employees held prior to merger." *Republic/Frontier/Midwest/Lynx* 29. "At bottom, the objective is to preserve, to the extent possible . . . the pilots' career expectations at the time they learned of the transaction and to share equitably the growth opportunities created by the transaction, based on the groups' contribution to that growth." *Id.* at 30 (quoting *Chautauqua/Shuttle America* (Kasher 2005)). *See also Delta/Northwest* (Bloch, Eischen, Horowitz 2008) 15 ("The resulting list neither realizes nor maintains each and every career expectation, nor could it do so. No recitation of career expectations ever includes a merger, and no merger can leave all hopes and plans unaffected"). It has also been observed that the benchmark under this standard is the "'*reasonable*' career expectations" of the affected pilot groups. *Chautauqua/Shuttle America* 13 (emphasis added). This is so because, "no matter the effort in minimizing unfavorable changes to career expectations, merged lists do change career expectations; it is in their nature that they do." *Republic/Frontier/Midwest/Lynx* 30 (quoting *US Airways/America West* 19). Consistent with this standard, an important part of the Board's task is also to ensure that no pilot group obtains any "windfalls . . . at the expense of [any] other(s)." *Id.* at 29 (quoting *Delta/Northwest* (Bloch, Eischen, Horowitz 2008) 13).

Arbitrator Eischen further observed that a large body of arbitral precedent has been developed under the "fair and equitable" standard, both in ALPA and non-ALPA cases. *Id.* at 29 ("In fleshing out that *Allegheny-Mohawk* standard in the construction of an integrated seniority

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to the integration of the covered air carriers." 49 U.S.C. § 42112 note § 117(a). In turn, *Allegheny-Mohawk* LPP Section 3 provides that "provisions shall be made for the integration of seniority lists in a fair and equitable manner," and that if the "employees affected" by a merger cannot agree on how to merge their seniority lists, "the dispute may be submitted by either party for adjustment in accordance with section 13." 59 C.A.B. at 45.

list for pilots, most informed practitioners acknowledge the appropriateness of considering goals established in ALPA's experience-based Merger Policy."). In constructing lists under the fair and equitable standard, arbitrators routinely take into account certain primary equities – longevity, status-and-category and reasonable career expectations – that inform how a list should be structured in the aggregate. We discuss each of these concepts in turn before turning to the West Committee proposal.

A. Longevity

Pilots' longevity – that is, their time spent at their pre-merger airline available for or engaged in revenue flying – has long been considered a baseline equity to be considered in the construction of a fair and equitable ISL. The rationale underlying this equity is simple: a pilot groups' longevity is a measure of the sweat equity that the group has given in service to its airline over the pilots' collective careers. This type of sweat equity is ordinarily thought of as a defining characteristic of seniority; indeed, it is rare that an ISL can be constructed without taking this component of seniority into account in some manner. *See, e.g., United/Continental* 22 ("A proposal that completely ignores sweat equity longevity cannot be a plank in our ISL platform."); *US Airways/America West* 26 (giving consideration to date-of-hire despite the fact that it was "no longer listed as a determinant or even stated as an integration criterion" in ALPA merger policy).

Given the vagaries of the available data and the different methods of accounting for a pilot's time in revenue service and their absences from revenue service in this case, there are a number of technical issues that have to be resolved to be comfortable that calculations of longevity are based on substantially similar measures. The West Committee's proposal is based on a number of assumptions and decisions – some agreed between some or all of the Committees

and some not – designed to maximize the reliability and evenhandedness of these calculations. Rather than burden this Brief with a discussion of them in text, we have attached a Technical Issues Appendix ("Appendix II") that describes these assumptions and decisions, and we will offer a witness at the hearing who will explain them.

B. Status-and-Category

Simply put, status-and-category accounts for the jobs each pilot group "brings to the party [*i.e.*, merger]." *Chautauqua/Shuttle America* 12. *See also Northwest/Delta* 25; *Continental/Frontier* (Nicolau 1987) 46. This equity recognizes that pilot groups comprised of pilots with different "status" (captain versus first officer, or, in past times, flight engineer) who bring to the merger flying in fundamentally different aircraft types, or "categories," have career expectations that vary based on the mix of status and categories and the type of flying opportunities available to them at their airlines.

Taking status-and-category into account requires first, deciding which aircraft ought to be grouped together for comparison purposes, and second, how many captains and first officers each airline used to operate each aircraft or aircraft grouping. This second step is performed by counting the number of pilots assigned to the status-and-category grouping on each airline's certified seniority list. Third, the staffing numbers at the respective airlines are compared to each other to create ratios. *See Delta/Northwest* 17 ("The Status and Category/Ratio method . . . proceeds by establishing a series of aircraft-based categories, the staffing of which generates discrete ratios within each of those categories."). Finally, in a pure status-and-category integration, the legacy airline lists are integrated according to the ratios for each grouping.

There are three subsidiary issues to resolve in establishing the ratios necessary to construct a status-and-category list. First, because merging airlines often operate different

equipment types, status-and-category integrations require making decisions about which aircraft types within and between the airlines ought to be grouped together. If one airline operates A-319s, A-320s and A-321s, should they be treated as three separate categories or a single category for job counting purposes and, assuming the other airline doesn't operate Airbus aircraft but rather Boeing aircraft, should B-737s be treated as the same category as the A-319, A-320 and A-321 aircraft at the other airline? Should an A-330 be placed in the same category as a B-777? And, at a more refined level, should all B-737s be considered the same or is there a rationale for distinguishing between B-737 models based on size or mission?

The West Committee's proposal identifies eight separate status-and-category tiers, seven of which generally mirror the aircraft groupings for wage scale purposes in the New American JCBA .[24] *See* Attachment 14 (New American JCBA Wage Scale Excerpt). The last tier is reserved for furloughees, who bring no jobs with them to the merger and are conventionally assigned to the last status-and-category tier (or its equivalent) in SLI integrations. *See, e.g.*, *United/Continental* 15, 35; *US Airways/America West* 28 ("[M]erging active pilots with furloughees [in the circumstances of the case], despite the length of service of some of the latter, is not at all fair or equitable under any of the stated criteria."). In decreasing order of desirability, the tiers are:

[24] Embraer 190 captains are grouped with narrow body first officers because their wage rates are comparable and Embraer 190 first officers are in a group of their own as their wage rates are too far below the lowest first officer rate in the next aircraft grouping to be included in that tier.

Tier	Description	JCBA Grouping	Aircraft Types on Property
1	Large Wide Body Captains	Group IV	All B-777s, All A-330s
2	Small Wide Body Captains	Group III	B-757, All B-767s
3	Narrow Body Captains	Group II	All B-737s, A-319, A-320, A-321, MD-80
4	Large Wide Body First Officers	Group IV	All B-777s, All A-330s
5	Small Wide Body First Officers	Group III	B-757, All B-767s
6	Narrow Body First Officers and Embraer 190 Captains	Group II (and Group I CAs)	All B-737s, A-319, A-320, A-321, MD-80 EMB-190 (CA)
7	Embraer 190 First Officers	Group I	EMB-190 (FO)
8	Furloughees		

The second issue is deciding how many pilot jobs there are in each status-and-category tier and the third is deciding how to distribute within each tier (and therefore ultimately within the ISL) the positions for pilots who were not engaged in revenue flying and who are thus not associated with a "job" brought to the merged airline, recognizing that in the final ISL, the pilots' order in relation to their colleagues on their pre-merger lists cannot be changed. These are also technical issues and are often subject to debate. The West Committee believes that in the end, nothing much in terms of the overall equities turns on how these two issues are resolved, and like the technical issues related to longevity calculations, we discuss the decisions on these issues embodied in our proposal in the Technical Appendix.

C. Reasonable Career Expectations

Career expectations recognizes that when pilots of two carriers had markedly different pre-merger stand-alone expectations for their working future due to, among other things, the

economic forecast for their respective carriers on a stand-alone basis, or the type or magnitude of different flying opportunities at the respective carriers, these divergent expectations should be taken into account in creating an ISL. Essentially, while longevity and status-and-category are "backward-looking" and account for pilots' past and present circumstances, career expectations is "forward-looking" and attempts to account for what pilots could reasonably expect the future to bring.

For reasons described in the Introduction to this Brief (and in Appendix I and the Garfinkle and Akins Exhibits), the comparative economic positions in the industry for the two merging airlines should play a very minor role in this case.[25] By reason of the competitive state of the airline industry following the Delta-Northwest and United-Continental mergers, neither American pilots nor US Airways pilots could legitimately assert that they had realistic distinct or superior stand-alone career expectations based on the economic health and competitive position of their carrier. *See supra* at 4 n.5; Appendix I; Attachment 4 (M. Garfinkle Exhibits); Attachment 5 (D. Akins Exhibits). Therefore, there is no reason why the Board should place a "thumb on the scale" in favor of either pilot group in weighing the groups' respective status-and-category or longevity equities based on this factor.

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[25] We anticipate that the American pilots will seek in their proposal to put a "thumb on the scale" in their favor due to the differentials in wage compensation between legacy American pilots and legacy US Airways pilots (who worked under pre-2007 CBAs until this merger due to the refusal of the East pilots to enter into a JCBA because it would have required the adoption of the Nicolau Award). In reality, both pilot groups reaped great economic benefit from the merger, and not at the expense of each other; the merger enabled American Airlines to pay wages that were pegged to pilots' wage rates at Delta and United, something that American pilots did not have in their stand-alone CBA negotiated in bankruptcy. Furthermore, any comparison between a stand-alone American Airlines and a stand-alone US Airways would be premised on a fantasy, since – as APA repeatedly emphasized on behalf of the American pilots with respect to American – neither airline had any realistic long term, stand-alone prospects.

As we discuss further *infra* at 38, however, this merger poses a particular challenge in light of the type and magnitude of flying opportunities that each pilot group is bringing with them. On the whole, the US Airways pilot group brings with them a disproportionate amount of narrow body flying opportunities, in addition to international and domestic wide body flying opportunities. American pilots bring with them more wide body flying – and, as a result, there is an overwhelming class of current American wide body first officers that stand to accede, under almost any conceivable proposal, to the disproportionate narrow-body captain positions that the US Airways pilots bring to the merger. US Airways first officers in the lower half of the list, therefore, are likely to suffer delays in becoming narrow body captains and experience losses in career expectations for time spent as captains. The West Committee's proposal is one that we believe entails the least amount of disruption to the expectations of the US Airways pilots who expected to achieve a narrow-body captain position at a certain point in their careers while, at the same time, does not unsettle the American pilots' reasonable expectations.

III. The West Committee's Proposal – A Hybrid Longevity/Status-and-Category ISL Weighting Longevity at 35% and Status-and-Category at 65% with Minimal Conditions and Restrictions

A discussion of the three components of a fair and equitable ISL would not be complete if we did not point out the obvious: the three primary equities identified *supra* at Part II "pull in different directions," *United/Continental* 33, and two of them – longevity and status-and-category – are objective, while the third – career expectations – is considerably more subjective. A simple hypothetical makes the point. Assume a merger of Airlines A and B. Airline A is a pure domestic carrier operating almost exclusively narrow body aircraft (*e.g.*, B-737s or A-320s) with a few B-777s, but has been in business for a long time and has pilots with considerable longevity. Airline B is a carrier operating largely, but not exclusively, wide body aircraft (*e.g.*,

B-747s or B-777s) internationally but has been in operation for only a short time and therefore its pilots have considerably less longevity. If the seniority lists were to be integrated purely by ratios based on status-and-category, Airline B's pilots would dominate the top of the list and would have access to the most desirable flying even though their longevity is inferior to the longevity of Airline A's pilots. If the lists are integrated purely based on longevity, Airline A's pilots would dominate the top of the list and have access to the most desirable flying even though they had limited opportunities to enjoy that flying in those statuses and categories at their pre-merger carrier. And if the economic outlook for the airlines were quite different, the career expectations of the pilots at the two airlines may be enhanced or impeded to one degree or another by either of the two solutions.

Despite these tensions, historically, arbitrators have had to choose whether to use status-and-category or longevity as the starting point for ordering a list. As a result, in past arbitrations, perhaps the most significant decision that arbitrators were required to make was an either/or choice as to whether status-and-category or longevity would be the prevailing equity by which the ISL would be generally ordered, and, predictably, parties to those arbitrations often advocated for one approach while their counterparties advocated for the other. *See, e.g.*, *Northwest/Delta* 16 ("We turn first to the competing proposals concerning the underlying integration method: Date-of-Hire versus a Status and Category/Ratio approach. Although there are advantages and disadvantages to each method, the facts of this case persuade this Board that the Status and Category approach is the more fair and equitable."); *Chautauqua/Shuttle America* 6-7, 11, 18; *Re: Seniority Integration at Air Canada* (Mitchnik 2001) 33-36; *Federal Express/Flying Tiger* 35-36; *Continental/New York Air* (Bloch 1987) 3-4, 7-9. Typically, after choosing longevity or status-and-category as a starting point, arbitrators would employ various

list-building exceptions, or impose sometimes lengthy conditions or restrictions, to ameliorate the consequences of choosing one approach over the other—even though such conditions and restrictions often led to additional disputes. *See Northwest/Republic* 14-20 (after integrating two lists based on dates-of-hire, imposing a fence so that each group effectively operated its own aircraft for 20 years); *United/Continental* 34 ("Conditions under which either traditional method, standing alone, produces an equally fair and equitable merged list are indeed rare."); *Delta/Northwest* 21-26 (after first selecting status-and-category as the starting point for the integration, panel adopted a "pull and plug" methodology to account for greater longevity and retirement rates at Northwest); *America West/US Airways* 27-28 (after first selecting status-and-category as the starting point for the integration, moving the entire US Airways list up the combined list by some 517 numbers to account for the greater longevity of the US Airways pilots).

The hybrid approach Arbitrators Eischen, Kaplan and Nolan adopted in the very recent *United/Continental* case constitutes an important innovation in that it removes entirely the need to base the list on only one primary equity and offset it with conditions and restrictions to take into account the other. Instead, it permits an arbitration panel to take longevity and status-and-category into account to the exact degree that a panel believes is appropriate. By doing so, the hybrid approach enables an arbitration panel to design an elegant and fair allocation of work opportunities with the most minimal set of conditions and restrictions included only if necessary to avoid giving either pilot group a "windfall" as a result of the merger due to a discreet pre-merger difference or quirk in the pre-merger lists.

The hybrid methodology has other virtues that commend its use. Before the airline consolidations following the events of the post-9/11 era, mergers were between airlines of

relatively modest size. In this latest round of consolidation, Delta-Northwest produced an ISL with over 11,000 names, United-Continental produced a list with 12,000 names, and this case will produce a list with nearly 15,000 names. No previous SLI cases required arbitrators to manage anything close to these numbers of pilots. And while it has always been true that, as the panel noted in *Delta/Northwest,* seniority integration was about the interests and equities of *groups* of pilots, not *individual* pilots,[26] it is even more the case when the list contains thousands of names. The hybrid methodology is uniquely designed to manage large seniority lists from two airlines, each of which has its own unique quirks,[27] and assign and reward the equities of the pilots on each list to that group of pilots collectively. *See United/Continental* 34 ("It is also clear to us that using a hybrid methodology that combines elements of both the Date-of-Hire and Status/Category ratio models can reduce aggregate equity distortion. The fairly straightforward combination of those two most commonly used methods in the UAL model was a good conceptual base for building our ISL.").

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[26] "As in all such exercises, the focus here is necessarily on groups, not on any individual pilot. Inevitably, and unavoidably, there will be perceived disparities and mismatches on individual levels, on both sides, under the merged list." *Delta/Northwest* 15 n.8.

[27] By "quirks," we mean simply the following: pilot seniority lists now contain pilots in numerical seniority order whose individual circumstances do not fit neatly into what one would have found years ago, largely as a consequence of previous mergers. On any seniority list, less senior pilots often have dates-of-hire earlier than more senior pilots, greater longevity than more senior pilots (demonstrated graphically on page 27 of the Rich Harwood Exhibits from the United-Continental case, which are attached as Attachment 15 here) and fly higher-paid equipment than more senior pilots as a result of prior seniority integrations, personal decisions or both. Those circumstances differ in both magnitude and placement in the list from one list to another. The American list, for example, contains Air Cal, Reno and TWA pilots who are not on the list in date-of-hire or longevity order nor are they holding the most senior positions their seniority number would permit them to hold. The US Airways list (the Nicolau list) has America West pilots in the same circumstances and the East list standing alone is comprised of pilots from Trump Shuttle, Allegheny, Mohawk, Piedmont and Empire with similar anomalies. Trying to parse the lists and make decisions on an individual pilot basis has nothing to commend it, as it would require an infinite number of subjective decisions that really have nothing at all to do with the broad principles at stake and that would inevitably result in "apples to oranges" comparisons.

A. The Mechanics of, and the Rationale for, the West Committee's Hybrid Longevity/Status-and-Category Proposal

The *United/Continental* panel adopted a multi-step hybrid methodology proposed by the United pilots, *United/Continental* 35, that "creat[es] separate seniority lists using longevity for one and status & category for the other, [and] then merg[es] the two to produce a hybrid list," *United/Continental* 21. The steps in the hybrid methodology approach adopted by that panel are as follows:

First	An integrated seniority list is created based purely to longevity according to a "snapshot" date. *See id.* at 15.
Second	An integrated seniority list is created based purely on status-and category tiers and ratios. *See id.* [28]
Third	The two separate lists are merged with each other according to a weighted proportion. In *United/Continental*, the United pilots proposed a 50%/50% weighting, and the panel concluded that, in the circumstances of that case, a 35%/65% weighting in favor of status-and-category was appropriate. *See id.* at 35-36. The result is an integrated list with blank slots for pilots from each respective airline.
Fourth	Pilots are assigned to the blank slots on the new ISL in the order in which they appeared on the pre-merger lists for each airline.

See generally id. at 15-16, 21, 33-36.[29] Finally, where appropriate, conditions and restrictions can be used to ensure that pilots' pre-merger career expectations are sufficiently protected. *See*

[28] Both out of design and out of necessity, the intermediate status-and-category and longevity lists that are created in the first two steps of this process are ordered on a "stovepipe" basis. A "stovepiped" list accounts for the fact (among other "quirks" described *supra* at 36 n. 27) that not all pilots exercise their maximum bidding rights according to their seniority. A stovepiped status-and-category list re-orders the pilots' positions (but not the pilots themselves) as if all pilots sought to achieve the highest status-and-category before integrating the separate lists. In accordance with the "no bump, no flush" principle and the obvious proposition that no pilots can have their order changed with respect to their pre-merger group, once the integrated list is constructed, the pilots are placed on the ISL in the same order, and in the same status-and-category, that they had prior to the integration. A stovepiped longevity list is constructed in the same manner according to pilots' respective longevity for the same reason; despite differing longevity periods, no pilot's order can be changed vis-à-vis the pilot's pre-merger colleagues.

id. at 16. The result is a list that incorporates "longevity, status & category and career expectations." *Id.* at 21.

The West Committee's proposal adopts the same hybrid methodology that panel adopted. The West Committee also proposes that the same weighting that the *United/Continental* panel found appropriate be applied here as well: 35% for longevity and 65% for status-and-category. In choosing that weighting, it is important to remember that it is not the *integration methodology* that is measured against the fair and equitable standard, it is the *list* any methodology produces. To that end, the West Committee will demonstrate at the hearing that the ISL the hybrid methodology produces is fair and equitable – not only as of the stipulated-to snapshot date, but also over the length of the careers of the two pilots groups. Our analysis will show that pilots from both pilot groups, and from all places on the ISL, will only experience modest changes to their stand-alone career expectations. Furthermore, not only are the changes modest for pilots overall (and fall well within the type of "reasonable" changes to career expectations that occur as a result of a merger, *see supra* at 27), but on the whole, due to the stand-alone structural factors discussed *supra* at 33, the West Committee's analysis actually suggests that it will be *American* pilots who will experience gains in narrow-body captain opportunities on average as a result of this merger. The West's proposed ISL is attached to this Brief as Attachment 17.

B. Proposed Conditions and Restrictions

Other than the conditions and restrictions contained in the MOU between the airlines, APA, and USAPA that governs this case, and those additional conditions and restrictions separately agreed to by the Committees and the Company in the Parties' Stipulation, the West

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[29] The technical aspects of the hybrid methodology used in the *United/Continental* case to building a hybrid ISL are explained in detail in Attachment 15 to this Pre-hearing Brief, which is the technical exhibit offered by the United pilots in that case.

Committee's proposal contains only a limited number of conditions and restrictions, which are in Attachment 18 to this Brief. Experience has taught that extensive conditions and restrictions of long duration are nothing more than a recipe for disputes.[30] The environment created by these disputes is not a healthy one for the pilot group as a whole, which will have to work cohesively following the integration of the lists.

1. Under the West Committee's proposal, the proposed ISL "does the work"; that is, in light of the minimal disruption to pilots' career expectations under the West Committee's proposal, *see supra* at 38, equipment fences should not be necessary, especially since they have the potential to be sources of continued dispute among legacy pilot groups after an otherwise successful integration. We urge the Board not to impose equipment fences. However, we recognize that both carriers had wide body aircraft on order but not yet on property as of the snapshot date – B-787s at American and A-350s at US Airways. Accordingly, out of fairness and a concern for parity, if AAPSIC proposes that a fence be imposed on B-787s that were on order for American Airlines, and if the Board is inclined to impose that fence, the West Committee proposes that a fence be imposed on the A-350s that were on order for US Airways for the same duration as any fence on the B-787 but commencing on the date that the Company issues the first vacancy bid for the A-350. Attachment 18 (Proposed Conditions and Restrictions) at ¶ 2.

2. In order to avoid future potential disputes with the Company regarding the implementation of the ISL, the West Committee proposes that the Board include in its award a

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30 "[A]rbitral attempts to ameliorate the inevitable career expectation distortions of an ISL based solely on one or the other method by means of elaborate and lengthy Conditions and Restrictions have proven counterproductive and only served to perpetuate the pre-merger disputes. *See Northwest/Republic* (Roberts 1989) and 24 subsequent interpretation awards between 1989 and 2010." *United/Continental* 34.

condition and restriction specifying both that the award shall be effective "as soon as practicable, and in no event later than the first day of the third flying month following the issuance of the award," and that the Company apply the ISL "to all events as to which system seniority is applicable under the JCBA." *Id.* at ¶ 5.

3. Recent ISL awards have included dispute resolution procedures regarding disputes that may arise regarding the interpretation or application of the ISL after it has been issued (and the Protocol Agreement contemplates one here, *see* Attachment 1 (Protocol Agreement) ¶ 14) . Rather than take up hearing time debating the details of such a procedure, the committees have agreed to formulate such a procedure together with APA and the Company, and the West Committee has a proposal memorializing that agreement. *Id.* at ¶ 6.

4. Finally, for the reasons addressed in the Technical Appendix at AII-13 to AII-14, the West Committee proposes a condition and restriction to resolve the technical issue of the treatment of pilots on more than one pre-merger seniority list. Specifically, the West Committee proposes that any pilot who had recall rights at both American Airlines and US Airways as of the commencement of these proceedings on September 29, 2015 should be placed on the ISL in both positions that he will hold and should be allowed to maintain the ability to choose between his two positions on the ISL for thirty days following the issuance of an ISL or until his recall rights expire, whichever period is longer. Upon choosing a position on the ISL, the pilot will forfeit his other position. [31] *Id.* at ¶ 4.

[31] In the proposal submitted prior to the scheduled commencement of the hearings on June 29, the West Committee proposed a condition and restriction seeking allocation of certain A-330 positions as between the East and West pilots contemplated by the TPA and an agreement between the former ALPA US Airways and America West MECs. During the hiatus period, we have reviewed the facts surrounding the expansion and contraction of the US Airways fleet between 2007 and 2013 and have concluded that, while the West pilots would have benefited from the prior agreement had the Nicolau Award been timely implemented (i.e. there are a large

CONCLUSION

For the reasons presented herein and for the reasons that will be presented at the hearing in this matter, the Board should adopt the proposal of the West Committee.

Respectfully submitted,

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group of East pilots currently occupying seats in A 330s that would have gone to the West pilots had the Award been implemented), the "IOU" nature of that agreement, the contraction of the entire US Airways fleet between 2007 and 2013 and the agreed upon "no bump/no flush" condition and restriction in this case make advancing the proposed condition and restriction inappropriate. Accordingly, the West Committee has not included that proposed condition.

APPENDIX I

STATEMENTS BY APA, AMERICAN AIRLINES, AND US AIRWAYS REGARDING THE NON-FEASIBILITY OF A STAND ALONE FUTURE

After the Delta-Northwest and United-Continental mergers, neither US Airways nor American Airlines would have been able compete successfully in the restructured airline industry. This appendix sets out quotes from representatives and professional advisors of the Allied Pilots Association ("APA"), US Airways, and American Airlines which illustrate the widespread acceptance of this plain fact. The source documents are available on the Sharepoint site and can be made available in paper as well.

1. Statements by Representatives of the APA

"[H]ere we have a business plan, [and] other than the company's paid witnesses you're going to find few [who] will say this business plan makes sense and is going to succeed. Every analyst says consolidation is what has to occur. [Opposing counsel] says this airline needs heft, it needs to grow . . . U.S. Air has talked to American Airlines. Were U.S. Air and American to combine it'd be the biggest airline in the world. It'd be the biggest on the east coast, the biggest in the Midwest, probably third on the west [coast]. This stand-alone plan no one has confidence in."

–*In re: AMR Corporation*, Case No. 11-15463-shl (Bankr. S.D.N.Y.) (Trial Tr. at 69:22–70:12 (Apr. 23, 2012)) (Edgar James, General Counsel of APA).

"[W]e believe in a combination, it's going to occur, the only question is when it occurs."

–*In re: AMR Corporation*, Case No. 11-15463-shl (Bankr. S.D.N.Y.) (Trial Tr. at 72:8–10 (Apr. 23, 2012)) (E. James).

"Finally, we think we have good cause to reject [American's proposals in the context of its stand-alone plan], and that's because the company stubbornly refuses to consider any other alternative in their stand-alone business plan, and again to underline that one, you're going to find very few people other than the people they're paying to get on the stand who say this business plan has a reasonable chance of success. It's a place holder.

"What people – everyone believes is going to occur is they're going to get out of this bankruptcy and they'll consolidate with another company, and there are very few choices out there. With U.S. Air they become number one. With the employees these mergers are painful to employees, Your Honor, we have to go through seniority mergers. They're not something this union has ever advocated or wanted to get involved in because they're incredibly painful, but we see no other choice if this company is going to succeed.

"We're not trying to rob the bank and get a short term keep our compensation in a short term and get a company that's limping along. We've got to get a successful company and we believe the only way to do that is to take some pain and do a merger with another company and cut us to market. We're willing to do that."

–*In re: AMR Corporation*, Case No. 11-15463-shl (Bankr. S.D.N.Y.) (Trial Tr. at 73:4–20; 73:24–74:4 (Apr. 23, 2012)) (E. James).

"One is we believe and the – virtually every analyst believes that this company, in order to succeed, is going to have to consolidate. There's going to be a merger in this industry. There aren't a lot of merger partners out there. Indeed, there's probably one major merger partner out there.

"[W]e have historically been opposed to mergers. Employees get hurt in mergers. They – there are efficiencies that will occur. There are dislocations. But, frankly, as I said before and I'll say again, the pilots are going to be around this company for an average of thirty-two years. They have a deep vested interest in a successful company, so they're willing to go where they have not been willing to go before and say, we'll look at a merger; we'll consider a merger."

–*In re: AMR Corporation*, Case No. 11-1546-shl 3 (Bankr. S.D.N.Y.) (Trial Tr. at 11:18-23; 12:6-14 (May 14, 2012) (E. James).

"[Y]ou'll hear from our representative of Lazard that the company's stand-alone plan models extraordinary profit levels, levels that no major network career has achieved in the last decade."

–*In re: AMR Corporation*, Case No. 11-15463-shl (Bankr. S.D.N.Y.) (Trial Tr. at 14:6–9 (May 14, 2012)) (E. James).

"[T]he five cornerstone business plan, which has been the business plan for a number of years . . . is stumbling along and we don't think is going to ultimately cause this company to [emerge] as a successful stand-alone, but it is the business plan."

–*In re: AMR Corporation*, Case No. 11-15463-shl (Bankr. S.D.N.Y.) (Trial Tr. at 17:2–7 (May 14, 2012)) (E. James).

"Every major competitor has consolidated. You have America West and U.S. Air, United and Continental, and Delta and Northwest. The industry has changed significantly as a result of [these] consolidation[s]. American used to be number one a couple of years ago and now it has fallen to the number three place.

–*In re: AMR Corporation*, Case No. 11-15463-shl (Bankr. S.D.N.Y.) (Trial Tr. at 15:12–17 (May 14, 2012)) (E. James).

"We have two alternative proposals: A painful, but necessary consolidation proposal, we believe, and a stand-alone proposal. Ours are based on market-based terms, not a hole in the business plan. And we believe they are market-tested."

–*In re: AMR Corporation*, Case No. 11-15463-shl (Bankr. S.D.N.Y.) (Trial Tr. at 22:9–13 (May 14, 2012)) (E. James).

"[W]e've historically been opposed to mergers because they have not a pretty history at American Airlines, but we've gone into thinking that consolidation is the way . . . [W]hat's

happened in this industry is [that] the effect of Northwest and Delta, United, Continental and U.S. Airways and America West has fundamentally altered the landscape of this industry."

–*In re: AMR Corporation*, Case No. 11-15463-shl (Bankr. S.D.N.Y.) (Trial Tr. at 95:7–14 (May 25, 2012)) (E. James).

"The piece that interests us about a U.S. Airways merger . . . historically pilots resist mergers because of the difficult seniority issues. Usually, there's contraction rather than growth. So we put a lot of thought and analysis into the business plan and I think the business plan is what appeals to us the most strongly. We look at the American stand-alone business plan that we had put in front of us prepetition, the five cornerstones. We know we're struggling in New York. We know we're struggling in Chicago.

"And the U.S. Airways business plan, when merged with our business plan, we see that as creating an entity that puts us on a scale of Delta . . . or United and that puts us [i]n a position to compete for corporate accounts because what's really been, you know, driving the decline I'll say of American Airlines the last couple of years has been the migration of corporate accounts over to Delta and United. And it's very real and it's hit us . . . on the revenue side.

"And we look at the business plan for American Airlines and we want to hitch our careers to a successful and thriving business plan, but it's not just for us. We think this entire process is about maximizing value for all the stakeholders and we – for us, it was very clear after seeing these – you know, doing the initial due diligence and expiration of the business plan that it presented a more viable exit from this process that we would support and – and pursu[e]."

–*In re: AMR Corporation*, Case No. 11-15463-shl (Bankr. S.D.N.Y.) (Trial Tr. at 66:2–67:4 (May 14, 2012)) (Neil Roghair, pilot and chairman of the APA's Military Affairs and Negotiating Committees).

"[I]t seems unreasonably high and unprecedented frankly relative to its peers over this time period . . . My personal opinion is that the analysts would be shocked at this range of profitability as a future projection."

–*In re: AMR Corporation*, Case No. 11-15463-shl (Bankr. S.D.N.Y.) (Trial Tr. at 172:8–16 (May 14, 2012)) (Andrew Yearley, APA's financial expert, discussing American's target EBITDAR under its stand-alone plan).

"Look, at the end of the day this is . . . probably not the forum to necessarily, you know, weigh the benefits and challenges of a US Air consolidation, but having said, that I think we all have to have our eyes open that American admittedly has a network problem. It's seeking to solve it through a cornerstone strategy and some other initiatives, but it's always been our view that it's not a matter of if, but when American would transact given the challenges it faces and we believe can't necessarily easily overcome without some sort of strategic transaction.

"So in that context, you know, we took the meeting with US Air, we heard what they had to say about their view of the world in terms of the opportunities and the benefits of a merger, and we provided our advice to both the APA and the board relative to, you know, the pros and cons and the like."

–*In re: AMR Corporation*, Case No. 11-15463-shl (Bankr. S.D.N.Y.) (Trial Tr. at 183:12–184:3) (May 14, 2012) (A. Yearley).

"AMR's court pleading and Business Plan materials acknowledge its strategy challenges including a network whose size and reach put it at a competitive disadvantage relative to its largest major network carrier competitors – United and Delta. As a result, AMR's share in most regions of the U.S. market, including its so-called 'cornerstone' cities, has significantly eroded over the last decade as its key network carrier competitors have consolidated and extended their network and scale advantages. Equally troubling has been the steady defection of AMR's share of high-yield corporate customers and elite travelers to the superior networks of United and Delta – a development that has caused AMR, which once enjoyed a 'premium' in relative RASM to the rest of the industry, to now suffer from a RASM 'discount.' AMR's most recent strategy to arrest this decline – the so-called 'Cornerstone Strategy' – has not, to date, shown obvious signs of success.

"AMR's Business Plan largely reflects the same (generally speaking, unsuccessful) 'Cornerstone Strategy,' paired with a historically unprecedented and costly aircraft purchase whose size and timing (as discussed below) has not been justified by any disclosed business case or other supporting financial analysis. AMR also proposes a package of take-it-or-leave-it labor concessions designed to "patch" AMR's lagging network using a mix of upgauged regional jets and hypothetical future domestic codeshare agreements and to impose unnecessarily extensive modifications to the pilot contract – modifications that were determined on a "top down" basis with no relation to the market."

–*In re: AMR Corporation*, Case No. 11-15463-shl (Bankr. S.D.N.Y.) (Decl. of A. Yearley at ¶¶ 10, 11 (May 11, 2012)).

"The profitability level that American seeks in its Restructuring Business Plan not only exceeds what it needs to be competitive but also targets a profitability level that ***no network carrier*** has achieved since September 11, 2001. Indeed, in the last eleven years, domestic network airlines have achieved an EBITDAR margin above 15% only 6.7% of the time and have ***never*** achieved an EBITDAR margin above 16.5% .

–*Allied Pilots Association Memorandum in Opposition to Debtors' Motion to Reject Collective Bargaining Agreements Pursuant to 11 U.S.C. § 1113* (May 11, 2012) ("APA Memo") 18 (emphasis in original).

American's earnings target is completely outside the norms of the airline industry . . . American's own paid consultants have refused to validate the Company's earnings target as appropriate or necessary . . . Instead, the Company developed its earning target at its own discretion."

–APA Memo 46.

"[T]he consolidation contemplated by the Plan Support Agreement between American and US Airways would enable American to emerge from Chapter 11 with the network and synergies it needs to compete successfully against the other network carriers.

"If American merged with US Airways, it would become the largest carrier in the world, fix many of the network structure issues which plague its East Coast operation, and most importantly offer the services that would attract high value customers back to AMR. Annual synergy benefits from this merger have already been estimated by US Airways at $1.5 billion, which would allow the carrier to achieve its targeted EBIDTAR margins without having to rely on unrealistic growth and the uncertain assumptions which underlie its stand-alone plan."

–APA Memo 19–20 (quoting declaration of Dan Akins, who has been designated as an expert by the West Committee in these SLI proceedings).

"American's current Restructuring Business Plan, however, does not contemplate consolidation with another airline. Instead, it is based on a strategy in which American continues to operate as a standalone network airline, whose operations would be heavily invested in five "cornerstone" cities: Dallas/Fort Worth, Miami, Chicago, Los Angeles, and New York. American has followed this "cornerstone" strategy since at least 2009, when it invested 98% of its assets in those five cities. That strategy, however, failed American because it was unable to keep up with its competitors who were able rapidly and dramatically to expand their networks through consolidation."

–APA Memo 21 (quoting and referencing declaration of Dan Akins, who has been designated as an expert by the West Committee in these SLI proceedings).

"The APA has 'good cause' to reject American's demands because the Union reasonably believes that consolidation with US Airways offers a better path forward for all stakeholders at less cost to employees . . . All three unions agree that consolidation with US Airways is the best path forward for American, and all three unions are willing to sacrifice to make consolidation a reality. American's management admits that consolidation is inevitable . . . Thus, there can be no serious dispute that the Company's current business plan is a temporary placeholder while the Company develops its real long-term strategy."

–APA Memo 74.

"The evidence is undisputed that American is at a severe competitive disadvantage because its network is significantly smaller than that of its two main competitors, Delta and United. Delta combined with Northwest in 2008. United combined with Continental in 2010. As a direct result of those mergers, American went from having the largest network in the world to a distant third. Consequently, American has struggled in recent years while Delta and United thrived. Nearly every analyst who has considered the issue has concluded that American's best path forward is to consolidate with another airline, most likely US Airways . . . Consolidation with US Airways would substantially mitigate American's draconian labor demands, thereby returning fair and productive labor relations to the airline. It would also be in the best interest of nearly all stakeholders, excluding current Company management. Consolidation would make 'new American' the largest airline in the world, allowing it to compete effectively with Delta and United. Among the many benefits of consolidation articulated by the Company's own experts, new American's larger network would make it more attractive to business passengers and thereby allow it to achieve a higher fare premium and more revenue."

–APA Memo 76–77.

"Labor unions, creditors, and equity holders will all be better served by pursuit of a viable consolidation prospect without delay and on terms that do not disproportionately enrich current executives."

–APA Memo 78.

"Until the DOJ action was resolved, American had to operate without a long-term strategy. American did not know if it should market and work to implement the anticipated combination – as it had before August 15 – or emphasize a stand-alone posture. And American has had to compete from this uncomfortable posture against Delta Airlines and United Airlines – hub and spoke network carriers, each with domestic networks currently about 30% larger than American's – and large low cost carriers such as Southwest Airlines and Jet Blue with the cost advantages implicit in their point to point structures."

–*Statements in Support of Debtors' Motion for Order Approving Settlement* 3 (Nov. 21, 2013) ("Statements in Support").

"The Employees of American have sacrificed much to permit this reorganization and should not have to wait longer before their airline can compete with a network equal to others. Following years of losses in a market increasingly dominated by United, Delta, and booming LCCs, on November 29, 2011, AMR Corporation, American Airlines, Inc. and affiliates filed these Chapter 11 reorganization proceedings. After over a year of these proceedings, all of the estates' constituencies agreed that the best way to make American a durable and successful competitor was to follow the same approach as practiced by the other network airlines – building American's domestic network to equal its competitors through a merger."

–Statements in Support 8.

"American's union-represented employees were hopeful that the combination of American and U.S. Airways would quickly enhance American's ability to compete in the very tough airline industry. Increased American flying means more competitive routes, higher airline capacity, and more jobs for APA's pilots and APFA's flight attendants."

–Statements in Support 9.

"APA . . . believe[s] that Settlement of the DOJ Action to allow the consummation of the Plan and Merger promptly will result in a more competitive American Airlines and a brighter future for APA pilots . . . A stronger airline will create a large network carrier choice for consumers and an employer where the Employees can spend the rest of their careers."

–Statements in Support 10.

"APA strongly supports the proposed merger. Well before American Airlines declared Chapter 11 Bankruptcy on Nov. 29, 2011, we understood that our airline needed to make significant changes to become more competitive . . . With the mergers of Delta-Northwest and United-Continental, American Airlines has been relegated to a distant third in terms of revenue generation and the breadth of our network. One of the adverse consequences of this marginalization has been the defection of high-value corporate customers from American Airlines to our larger network-carrier competitors. For those consumers and companies needing an array of travel options, their choices have effectively been narrowed to Delta and United.

"The most expedient way to address American Airlines' revenue and network shortfalls is to merge with another carrier, and US Airways is the most logical merger partner . . . By combining the two carriers, the new American Airlines would serve 336 destinations in 56 countries, giving the traveling public access to a third comprehensive global network comparable to what Delta and United already operate.

"The past 10-plus years have been extremely challenging for our industry . . . We now face the prospect of relative stability thanks to consolidation."

– Written statement of Capt. Robert Coffman, Chairman, APA Government Affairs Committee, Competition and Bankruptcy in the Airline Industry: The Proposed Merger of American Airlines and US Airways: Hearing before the Committee on the Judiciary, Subcommittee on Regulatory Reform, Commercial and Antitrust Law, House of Representatives, 113th Cong. (February 26, 2013) ("Competition and Bankruptcy") 12-13.

2. Statements by Executives of American Airlines

"Our customers support the merger. They have told us, loudly and clearly, that both the American and US Airways networks need to be improved in ways we cannot accomplish on our own. By combining our complementary systems, we will create the network our customers want, one that can compete with the larger networks of Delta and United and with the cost advantage of Southwest Airlines and a host of fast growing low cost airlines.

"Bankruptcy, however, did not address the fundamental network issue that was enabling competitors to win away important business. Thus, it was not long, before American was approached by US Airways with a proposal that would enable the two airlines together to build a better network through a merger. While American Airlines initially had intended to emerge from bankruptcy first, and then examine potential partners, it quickly became clear that the potential cost savings and improved network offered by the unsolicited proposal from US Airways warranted careful examination.

"More than ever, consumers want the ability to reach a broad range of destinations, whenever they want, on one airline system. Because of the limited size and scope of our respective networks, neither American nor US Airways is able to respond fully to that demand and both operate at a competitive disadvantage to the larger networks of Delta and United. The merger will join two highly complementary networks across the globe, filling critical competitive service gaps for each airline, and create a better and more competitive alternative for consumers."

– Joint statement of Doug Parker, CEO of US Airways, and Tom Horton, CEO of American Airlines, The American Airlines/US Airways Merger: Consolidation, Competition, and Consumers: Hearing before Judiciary Committee, Subcommittee on Antitrust, Competition Policy, and Consumer Rights, Senate (Mar. 19, 2013) 1, 3-4.

"As we worked hard to avoid a bankruptcy filing, our largest competitors were embarked on a different course and new entrants were poised to take advantage of the turmoil being experienced by the legacy carriers. In 2001, American was the largest airline in the world. With the mergers

of Delta and Northwest, United and Continental, and Southwest and AirTran, American became the fourth largest carrier domestically and dropped to the third largest carrier globally. At the same time, low cost carriers, old and new, continued to grow and enter more markets. Today, the vast majority of our passengers are flying on routes with competition from one or more low cost carriers, and that number is expected to increase.

"In addition to the changes occurring on the domestic front, the configuration of international global airline alliances was also changing. Although the joint business venture among British Airways, Iberia, and American was finally approved after 13 years, we had fallen far behind our US competitors, all of which enjoyed the benefit of a much earlier approval of their joint ventures. In short, on a competitive and financial basis we continued to lag far behind the rest of the industry.

"American did not stand idly by during these years. . . . Despite our efforts and the substantial progress we made to succeed in the long term, our losses continued to mount, reaching $12 billion over the previous 10 years. And, there was no end in sight.

"It was clear from the outset of our review that a merger with US Airways could create significant value for our stakeholders and bring substantial benefits to the traveling public. We have conservatively estimated that by 2015 revenue and cost synergies will outweigh cost dis-synergies by over $1 billion. The majority of these revenue synergies are derived by combining two complementary networks that will offer consumers more service at more times to more places. . . .The combination will make our company a much stronger competitor against the other large airlines.

"The new American will have the financial strength to invest the resources needed to improve the customer experience, including new aircraft, cutting edge products and services, and the technology and tools designed to help our employees deliver superior service to our customers . . . This transaction will give us the opportunity to become a stronger competitor, one with a degree of financial stability that we have not experienced in many years. We will be a company that is better positioned to deliver for customers and its people."

– Prepared statement of Gary F. Kennedy, Senior Vice President, General Counsel and Chief Compliance Officer, American Airlines, Competition and Bankruptcy 25–27.

"[T]he competitive landscape and the macroeconomic environment continued to change around us in ways that further eroded our competitive position and our financial strength. In 2001, American was the largest airline in the world. However, the mergers of Delta and Northwest, United and Continental, and Southwest and AirTran, moved American from the largest to the fourth largest airline in terms of U.S. domestic passengers. And, despite our best efforts, our losses continued to mount, reaching $12 billion over the previous 10 years.

"The combination puts together two highly complementary networks, with minimal loss of competition, and creates a network that consumers, of all types, will find substantially more attractive than the network American, standing alone, could produce. The combined network will be comparable in size to the networks of United and Delta, which have both used bankruptcies and mergers of their own to leapfrog American."

– Prepared statement of Gary F. Kennedy, Senior Vice President, General Counsel and Chief Compliance Officer, American Airlines, Airline Industry Consolidation: Hearing before the Committee on Commerce, Science, and Transportation, Subcommittee on Aviation Operations, Safety, and Security, Senate, 113th Cong. 28–29 (June 19, 2013) ("Airline Industry Consolidation") 28-29.

3. Statements by Executives of US Airways

See supra at AI-7 (quoting joint statement by CEOs of American Airlines and US Airways)

"Delta merged with Northwest, United merged with Continental, and Southwest merged with AirTran. We at US Airways were cognizant of that trend, but while we worked to meet our customers' demands for broader networks, we were unable to participate in the series of merger . . . . Earlier this year, we announced a merger agreement with American Airlines. We are very excited about what that means for our customers, our employees, our investors, and the communities we each serve. The combination of American and US Airways will create a new, more competitive global airline. We will be roughly the same size as United and Delta, and better able to compete with each of those airlines.

– Prepared statement of Doug Parker, Chairman and Chief Executive Officer, US Airways, Airline Industry Consolidation (June 19, 2013) 25.

APPENDIX II

TECHNICAL ISSUES

There are a number of technical issues that the Board will have to consider in constructing any ISL that is premised on longevity or status-and-category or some combination of the two. The resolution of most of these issues is unlikely to have any material effect on the list as a whole. Nevertheless, it is possible that the Committees will have different positions on some or all of them, and the Board will have to deal with and reconcile those differing positions when it begins the process of list construction by asking the Committees' Technical Advisors to produce lists for the Board's consideration if the Committees' separate approaches are based on different assumptions. This Appendix describes those issues and the West Committee's position on how they should be resolved.

A. The Constructive Notice and Snapshot Dates

The parties have reached agreement on the constructive notice date and snapshot date for the merger between US Airways and American Airlines. Nonetheless, a brief discussion of these concepts and the basis for the West Committees' agreement on them is instructive.

1. Because there is almost always a lag time from the date an airline merger is announced and the date an ISL is constructed, arbitrators have adopted the notion of a "constructive notice date." The concept of a constructive notice date is straightforward; it is the date after which any pilot hired by either pre-merger airline is deemed to know that he or she will be working for a combined entity and that his or her career expectations will be a product of the success or failure of the combined airline, irrespective of which airline hired the pilot. The date is important because it sets the demarcation line between pilots whose seniority position will be determined by the arbitration board and those whose placement will not be affected. *See, e.g.*, *Atlas-Polar* (Harris 2006) 9 ("The concept of 'Constructive Notice' is that when newly-hired

pilots know, or should know, that their flying careers, and specifically their seniority status, may be determined in reference to an additional group of pilots, such pilots cannot be considered to be part of the pre-merger group and must be treated in a manner consistent with what should have been their realistic expectations at the time they were hired."). Pursuant to this doctrine, arbitrators place "constructive notice pilots" on an ISL after all pilots on the seniority list of either pre-merger airline with dates-of-hire prior to the constructive notice date. *See id.* ("Accordingly, . . . November 2, 2001, must be considered the constructive notice date, and all pilots hired after that date should be placed on the combined list in date-of-hire order below the last pilot of either carrier integrated by this award."); *see also Alaska/Jet America* (Bloch 1989) 7.

While it is often the case that the merger announcement date is set as the constructive notice date, the three Committees have agreed that this case warrants a modest departure from the norm and have stipulated that December 9, 2013, the date of the approval of the merger of American Airlines and US Airways, is the appropriate constructive notice date for the US Airways-American Airlines merger.

This date is warranted here because the US Airways-American Airlines merger was the product of a hostile takeover during bankruptcy – an unprecedented transaction – and there were significant hoops to jump through before anyone could be certain that the merger would actually close. In particular, although US Airways began its public quest to force the merger in January 2012, it was only after American's principle unions (APA, APFA and TWU) announced their support for a merger in April 2012, and after the Creditors Committee weighed in, that a merger agreement was reached. Even at that point, the merger agreement could not be effectuated until after the bankruptcy court approved American Airline's plan of reorganization, and until after the

antitrust action brought by the United States to stop the merger was resolved – a resolution that was by no means a certainty before it occurred. Thus, while it is surely the case that many constituencies hoped and expected as early as February 2013, when the merger was announced, that the merger would be consummated, it was not until December 9, 2013 that one could fairly say that the merger was a "done deal." It was only after that date that pilots newly hired by either airline could know with reasonable certainty that they were going to work for a merged airline.

2. The snapshot date is the date on which the equities of the two pre-merger pilot groups, and the makeup and staffing of their respective fleets, are to be measured. The vast amount of arbitral precedent establishes that the correct date to use as the snapshot date is on or shortly after the date of the merger announcement, since the goal of the proceeding is to evaluate the pilots' longevity, status-and-category, reasonable career expectations, and other equities at their pre-merger airline at that time. *See, e.g., Delta/Northwest* (Bloch, Eischen, Horowitz 2008) 18-19 (rejecting Northwest proposal for use of a snapshot date before the merger agreement was reached); *Alaska/Jet America* 18 (Bloch 1987) ("[T]he purposes of these proceedings is to effect a merged list as of the date of the merger."); *United/Continental* (Eischen, Kaplan, Nolan 2013) 22 (rejecting Continental Committee proposal for using April 2013 as the snapshot date in favor of October, 2010 – when the merger was consummated).

There is typically a logical, business-driven reason for taking the "snapshot" of the equities on the day the merger is announced. Decisions made by either of the airlines from that date forward are invariably influenced by the fact that the airlines are to be merged. Accordingly, events affecting one pilot group or the other – following the snapshot date – cannot be said to fairly reflect the base on which their stand-alone career expectations can be measured.

To be sure, while an arbitration board may properly consider post-merger facts and projections of what will take place in the future in determining how any particular ISL will affect pilots, choosing a snapshot date that varies significantly from the date of the merger itself loses sight of the fact that the purpose of an SLI proceeding is to produce a fair and equitable list as of the date of the merger. *Alaska/Jet America* 18.

In this case, the Merger Committees have agreed that December 9, 2013 – the same date as the constructive notice date – should be used as the snapshot date for the US Airways-American Airline merger. The West Committee agreed to select that date for the same reasons that it selected that date as the constructive notice date. *See supra* at AII-1 to 3. Before December 9, 2013, the uncertainties surrounding the merger required each airline to manage itself separately. Once the merger was approved, however, decisions regarding the fleet, the markets that would be served, and the future direction of the Company were made by a single management team deploying a single set of assets in a manner designed to maximize the profitability of a single entity. Accordingly, any assessment of the "equities" either the US Airways or the American pilot group brought to the merged airline must be frozen as of that date.[1]

[1] While we believe it is obvious, we pause briefly to observe that the snapshot date is the date on which the equities of *these two pilot groups* – the American Airlines pilots and the US Airways pilots – are to be measured. The relative equities of the West and East pilots (and the snapshot date pertaining to their equities) were determined in the SLI arbitration arising from their merger in 2005. *See* Brief at 12-16. Once that merger was effective, decisions regarding the fleet, the markets that would be served and the future direction of US Airways were made and carried out by a single management team deploying a single set of assets in a manner designed to maximize the profitability of a single entity. There is no occasion to revisit those comparative equities now (or as of December 9, 2013) on some fictional notion that the East and West pilots at the merged US Airways had differing career expectations at a hypothetical stand-alone US Airways as of that date or any other date following the US Airways-America West merger.

Setting the snapshot date at December 9, 2013 means that for purposes of the formulas utilized to create an ISL based on longevity or status-and-category or both:

- Each pilot's longevity calculation runs from the pilot's date-of-hire to December 9, 2013 (less any reductions in longevity credit, discussed more fully *infra* at AII-7 to 10).
- The number of each aircraft type ("category") operating in each of the two fleets for purpose of category calculations is determined as of December 9, 2013.
- The number of pilots operating in revenue service in each seat ("status") in each category is determined as of December 9, 2013.

Finally, while not applicable to any formulas used to construct either a status-and-category-based ISL, a longevity-based ISL or a hybrid ISL, a December 9, 2013 snapshot date sets the date we submit the Board should select to determine the fleet plan for both US Airways and American based on firm orders and replacement schedules then in place, solely for the purpose of assessing whether and for how long any aircraft fences the Board decides may be appropriate. [2]

B. Longevity-Related Issues

As a theoretical matter, calculation of a pilot's longevity should be no more complicated than determining the number of days between the pilot's date-of-hire and the snapshot date and then subtracting the number of days during that period the pilot engaged in activities other than in support of revenue flying.[3] Unfortunately, it is rarely that uncomplicated. There are two

[2] As explained in our Brief at 39, the West Committee does not believe fences are appropriate, and request one only if the Board acts favorably on an AAPSIC fence proposal.

[3] *See, e.g., Continental/Texas International* (Greenbaum, Blaz, Hale 1983) 30-31 (applying four-step process of then-operative ALPA Merger Policy).

technical issues that have to be resolved in any SLI case regarding longevity: first, what flying counts toward longevity and, second, what non-flying periods of absence serve to reduce a pilot's total longevity.

1. As to what flying counts toward a pilot's longevity, the West Committee's proposal is premised on the proposition that only flying for a "main line" carrier counts. In our view, this approach is the only one that comports with the basic concept of longevity, which rewards the sweat equity a pilot has contributed to the merging carrier, not to a regional carrier before "starting over" at the mainline. *Republic/Midwest/Frontier/Lynx* (Eischen 2011) 33; *see also United/Continental* 28-29.

This approach has two consequences for the list construction methodology employed by the West Committee (and, presumably, the other Committees). First, any time spent by American pilots at an Eagle carrier, American's wholly-owned regional partner, does not count toward their longevity, in the same manner and for the same reason time flying at Continental Express was not credited to the Continental pilots in *United-Continental*. *See United/Continental* 28-29. Second, the time East pilots spent flying for Mid-Atlantic Airlines, a low-cost subsidiary of US Airways created during US Airways second bankruptcy, also does not count toward those pilots' longevity.

While the AAPSIC agrees with this approach, the West Committee expects that the East Committee will take a different one, and that, for 63 pilots on the pre-merger East list, it will use as dates-of-hire the dates that those pilots first started flying for MidAtlantic Airways ("MDA"), not US Airways.[4] Although an increase to the longevity of the US Airways group would inure to

[4] We do not know how it will treat the Eagle pilots, but one would expect that they would credit Eagle time as well as a matter of consistency, notwithstanding that the former Eagle' pilots representative in this process disagrees.

the benefit of the West pilots as well, the West Committee nonetheless believes that using anything other than the Company-supplied dates-of-hire for these pilots' employment at mainline US Airways would be inappropriate. In the US Airways-America West SLI proceeding, the West pilots urged that the MDA pilots not be treated as covered by the eventual Award at all, notwithstanding that they were on the East pilot's certified seniority list. Arbitrator Nicolau rejected that position but treated the MDA pilots as Constructive Notice pilots and integrated them behind the most junior East pilot in their date-of-hire order. *See* Attachment 2 (Nicolau Award) 20-21. ("None [of the MDA pilots] had flown at the mainline; all were pilots at Mid-Atlantic Airways, a regional carrier designed to be a US Airways wholly-owned subsidiary . . ."). Since the issuance of the Nicolau Award, the Company, arbitrators and courts have continued to recognize that MDA pilots are appropriately treated as different in all respects from mainline East pilots. These decisions treating MDA service as distinct from mainline service include an award by Arbitrator Gerald E. Wallin in an arbitration concerning the appropriate longevity credit for MDA pilots who eventually migrated to main line US Airways, a decision by the United States District Court for the Eastern District of New York in *Naugler v. ALPA*, 05 CV 4751 (NG) (VVP) (April 10, 2012) in a case in which the MDA pilots claimed that ALPA breached its duty of fair representation by acknowledging in the Nicolau arbitration that the MDA pilots were not engaged in flying for US Airways (East), and a decision by American Airlines following this merger to give the former MDA pilots no longevity credit for their time at MDA.

2. As to the question of what periods of absence from mainline revenue flying ought to be deducted from a pilot's service between his hire date and the snapshot date, the West Committee's proposal is simple: the only periods of absence that should be deducted from pilots'

longevity is furlough time. In other words, the West Committee proposal does not attempt to ascertain other types of leaves-of-absence (such as disability leave or military leave) and reduce pilots' longevity by the length of those leaves. We believe that this is the appropriate approach for two reasons. First, our level of confidence in the accuracy of the available information about other types of leaves-of-absence is quite low. Despite having sought information from the Company, the three Committees have been unable to verify that the information is either accurate in the aggregate or that it was maintained in similar ways across the many airlines that the pilots of these two airlines originally came from. Second, as a matter of both intuition and experience, we expect that while there may be differences between the patterns at the airlines for types of absences other than furloughs, there is a certain randomness to it that likely makes those absences immaterial when looking at groups of roughly 10,000 and 5,000 pilots respectively.

There are, however, some complications that arise even using the simple concept of deducting from a pilot's longevity only "furlough time" during the period between the pilot's date-of-hire and the snapshot date. First, the coding of when a particular pilot was "hired" at American or US Airways, or at either airline's previous respective mainline airline merger partners (*e.g.* for American: TWA, Reno, AirCal; for US Airways: America West, Trump Shuttle, Allegheny, Mohawk, Piedmont and Empire to name just a few), is not consistent. And as to the AAPSIC list, each pilot is shown as having the following dates: "HireDte," "CompDte," "OccDte," and "ClassDte." The HireDte – what appears to be the pilot's date-of-hire as a mainline pilot – is the earliest of the reported dates for each pilot. Accordingly, the West Committee's proposal uses that date for the commencement of American pilots' longevity. As best we can ascertain from the reported information, this reflects *either* the date the American pilot began class at his or her respective mainline or the date of the pilot's initial operating

experience (which could be as much as seven weeks after beginning class). It does not appear to reflect any pilot's hire date at a non-mainline carrier, such as an Eagle carrier. As for the US Airways lists, the West Committee uses the more clearly described date-of-hire shown on the East and West lists as the starting point for calculating their longevity

The second issue related to calculating how much furlough time to deduct from a pilot's employment from his date-of-hire to December 9, 2013 relates to ascertaining the correct furlough time for American pilots. There are two sub-issues on this point. First, for some American pilots, the furlough periods are unknowable (*e.g.*, there is no furlough information for former TWA pilots during their service at TWA). Second, some American pilots' time on furlough is recorded in the AAPSIC's certified seniority list as "Letter T" or later "DEFER"[5] rather than "furlough."

As regards the absence of TWA furlough information, there is simply nothing to be done, and the West Committee has deducted no furlough time from them between their date-of-hire at TWA and their appearance on the American seniority list. We recognize that this artificially increases the amount of credited longevity on the American list, but there is no other solution that we can divine, and, in any event, this solution advantages the American pilot group over the US Airways pilot group.

The Letter T/DEFER issues, however, can be accommodated. Letter T is a reference to a Letter of Agreement between APA and American that allows a pilot on furlough to bypass recall for a period of time and thereby remain off the rolls as a revenue flying pilot with a bid position.

[5] The first list AAPSIC provided the other Committees included specific reference to Letter T. In AAPSIC's second, updated list, all Letter T references were changed to DEFER.

Attachment 19 (Letter T). If a furloughed pilot exercises his rights under Letter T, the Company simply hires another pilot who appears on the seniority list as a new hire.

Recall bypass rights are common in the airline industry, and the West Committee does not contest either Letter T's legitimacy or the rights of the pilots who take advantage of Letter T's provisions.[6] But it does not follow from that that pilots who have exercised their rights under Letter T should be treated as accruing longevity *for SLI purposes*. If a pilot is accorded longevity for his time while on recall bypass, two pilots will receive SLI longevity credit for the revenue flying accomplished by only one of them and neither will be reflected as on furlough when – in fact – one is flying and the other is not because he simply has not returned to work after having been furloughed. Crediting the Letter T/DEFER time to the American list's total pilot longevity would add 5111 years of longevity that is simply a fiction. So far as the West Committee knows, there have been no prior SLI cases in which pilots who have bypassed return from furlough have been treated as anything other than furloughed pilots for purposes of determining both the number of furloughed pilots at the carrier and the longevity of the pilots who have exercised bypass rights, and the West Committee's proposal for calculating these pilots' longevity treats them as on furlough for that period.[7]

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[6] The Letter T pilot may be accruing longevity for purposes of calculating benefits under his collective bargaining agreement. But that should have no implications for trying to construct an "apples-to-apples" longevity comparison between two pilot groups, each of which had furloughed pilots at one time or another and each of which had provisions allowing pilots to bypass recall without losing their position on the seniority list.

[7] There is one "footnote" to this treatment. 186 American pilots who were furloughed and bypassed under the provisions of Letter T ultimately came off of furlough but went directly on to military leave. While those pilots were no more engaged in revenue flying than were the Letter T pilots who did not go on military leave and while treating their military leave as creditable service for SLI longevity calculations effectively understates the cumulative furlough time of American pilots, in the interest of maintaining a uniform position that only furlough time will be

C. Status-and-Category Related Issues

As we explained in our Brief at 29, the first and most fundamental issue that must be decided in building a status-and-category list is what aircraft should be grouped together for the purpose of determining categories. Our Brief sets out the West Committee's proposal on that point. Once that is decided, there are two technical issues that must be resolved: first, how to determine how many pilots are within each status-and-category tier, and, second, how to account for pilots who are not assigned to a particular piece of equipment or status as of the snapshot date.

1. With respect to determining the number of pilots in each category, one could simply count the number of pilots on each certified seniority list who are shown as holding a particular bid position as of the snapshot date. But that would likely both overstate the number of pilots the airline actually requires for operation of that equipment (*i.e.*, the true number of jobs) and would likely treat the legacy pilot groups differently. In particular, here, the problem is the disparate treatment of short term disability by the airlines.

As of the snapshot date, all three pilot groups operated under collective bargaining agreements ("CBAs") that contained long-term disability programs. However, American pilots and East pilots operated under CBAs that did not provide any short-term disability program, and thus pilots on those lists who were unable to fly as a result of a short term disability were required to bid and then use up their sick leave and vacation leave until they qualified for long term disability. At American and for US Airways pilots flying under the East CBA, pilots on long-term disability are shown without any bid positions, while pilots on the functional equivalent of short-term disability are shown on the seniority lists as having bid and held active

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charged against longevity, our longevity calculation formula does not reduce these pilots' longevity.

positions even though they were not actually engaged in revenue flying. On the West list, all pilots – whether on short or long-term disability – are shown in bid positions.

The West list contains 139 pilots who were on either short or long term disability on December 9, 2013. The West Committee has concluded that 104 of those pilots were on long-term disability and 35 on short-term disability. To do a correct "apples-to-apples" comparison of the lists, the West Committee has stripped the bid positions from the 104 West pilots on long term disability but has included the bid positions for the 35 West pilots on short term disability. A list of these 139 pilots is attached as Attachment 16. The West Committee believes that is the correct method to perform an "apples-to-apples" accounting for these pilots and the West Committee's proposal uses this accounting decision as part of its determination of the number of jobs at American and US Airways as of December 9, 2013.

2. As to the second issue, every pilot position on the seniority list has to be accounted for by being placed in some status-and-category tier to build a status-and-category list; even pilots who are not actually assigned a status and aircraft position. These pilots are typically not in assigned positions for a variety of non-seniority based reasons; they are on long term disability (as described above), or union or company business leave, for example – and thus any assignment of a position to them for the purpose of counting jobs in various positions to build a status-and-category list will be arbitrary, despite being necessary.

There are two ways to "account" for these pilots. The first is to simply "remove" them from the separate seniority lists, count the number of remaining pilot slots in each tier, integrate the two separate lists of pilot slots based on the calculated ratios, put the "active" pilots from each airline in those slots and reinsert the removed pilots one number senior to the pilot they were one number senior to on their unmerged seniority lists. The second accounting method is

identical to the first, except that it distributes the removed slots on a pro-rata basis into the integrated slots based on the separate ratios for each status-and-category and then fills in all the slots with the pilots' names from each pre-merger list.[8] In each case the pilots remain in relative seniority order. The first method is simpler while the second method arguably produces an ISL that from an "aesthetic" standpoint more accurately portrays the "true" distribution of working pilots from the two respective airlines across the ISL. The West Committee proposes using the first of the two methodologies simply as a matter of ease but is fully prepared to use the second methodology if the other Committees or the Board prefer it.

D. Pilots on Multiple Legacy Lists

There is one final technical issue, unique to this SLI proceeding, that requires discussion. There are a small number of pilots – 38 in total – who are listed on both the American and US Airways list. Generally speaking, these are pilots who obtained flying positions at one airline after being furloughed at the other. In preparing the West Committee proposed ISL, the West Committee has preserved the pilots' place on all lists in which they appear, which has resulted in the pilots' names appearing on the proposed ISL twice.

Due to the postponement of the commencement of these proceedings, many of these pilots have recall rights that are set to expire prior to the issuance of an ISL. As a result, the West Committee proposes that any pilot who had recall rights at both American Airlines and US Airways as of the commencement of these proceedings on September 29, 2015 should be placed on the ISL in both positions that he will hold and should be allowed to maintain the ability to

[8] By way of example only, if Airline A has 1000 pilots, 750 of whom are active in revenue flying, and 200 of the 750 (27%) are wide body captains, Airline A would be treated as having 267 wide body captain positions: (200 active wide body captains) + (27% x 250 non-active pilots) = 267 pilot positions. The same methodology would be used to spread the remaining 183 pilot positions among the other status and categories and would, of course, be used in determining the pilot counts in each status-and-category tier at Airline B.

choose between his two positions on the ISL for thirty days following the issuance of an ISL or until his recall rights expire, whichever period is longer. Upon choosing a position on the ISL, the pilot will forfeit his other position. This solution would permit the pilots to continue to preserve their current positions and preserve their legacy contractual recall rights during this period of uncertainty regarding the ISL, and it only requires that their seniority be reduced to a single place on the list when they make a choice between where on the list they would like to be by exercising or abandoning recall rights at one of the airlines.

EXHIBIT 27

ARBITRATION PROCEEDINGS BEFORE
DANA E. EISCHEN, IRA JAFFE AND M. DAVID VAUGHN

In the matter of the seniority integration involving the Pilots of	)
NEW AMERICAN AIRLINES	)

STIPULATIONS

The parties hereby stipulate to the following for purposes of this proceeding:

1. The following color scheme shall be utilized by the parties in their presentations to the Arbitration Board:

Pre-Merger American Airlines Pilots	Grey
Pre-Merger US Airways (East) Pilots	Blue
Pre-Merger US Airways (West) Pilots	Orange

2. The "Constructive Notice" date (i.e., the date after which any pilot hired by a pre-merger airline is deemed to know that he or she will be working for a combined entity and that his or her career expectations will be a product of the success or failure of the combined airline, irrespective of which airline hired the pilot) will be December 9, 2013. All pilots added to one of the pre-merger seniority lists after that date shall be placed on the integrated seniority list following all pilots on the pre-merger seniority lists, in order of their seniority as defined in the American/APA Joint Collective Bargaining Agreement.

3. The "Snapshot" date (i.e., the equities of the pre-merger American and US Airways (East and West) pilot groups will be measured immediately prior to that date) will be December 9, 2013.

4. A pilot's credited length of service will exclude service at regional affiliates (e.g., American Eagle, Mid-Atlantic).

5. For the avoidance of doubt, the parties agree that nothing in Stipulations 3 and 4 shall be interpreted as an agreement on the issue of whether US Airways East and West pilots did or did not have separately identifiable equities as of December 9, 2013.

6. The carriers' pre-merger fleets and fleet plans will be in accordance with Attachments A and B to the Memorandum of Understanding, as updated by New American through December 2013 in its information production to the Merger Committees on June 5, 2014;

provided, that the parties may present additional specific detail not included in those Attachments (e.g., aircraft delivery/retirement dates) consistent with the contents of the Attachments.

7. For purposes of analysis of future pilot bidding patterns, "stovepipe" bidding will be assumed (i.e., that a pilot will move to the highest-rated position the pilot can hold based on the pilot's seniority position at the earliest opportunity, and in a reduction will displace in reverse "stovepipe" order to the highest-rated position the pilot can hold based on the pilot's seniority position).

8. In accordance with paragraph 10.b. of the MOU, the Arbitration Board's award will include the following conditions and restrictions:

> No Bump/No Flush
>
> Neither the implementation of the ISL nor the expiration of any Condition and Restriction shall require any active pilot to displace any other active pilot from the latter's position.
>
> Neither the implementation of the ISL nor the expiration of any Condition and Restriction shall require that a furloughed pilots to bump or displace an active pilot.
>
> Compensation for Flying Not Performed
>
> Neither the implementation of the ISL nor the expiration or any Condition and Restriction shall require that pilots be compensated for flying not performed (e.g., differential pay for a position not actually flown).
>
> Pilots in Training
>
> Pilots who, at the time of implementation of the integrated seniority list, are in the process of completing or who have completed initial qualification training for a new category (e.g., A320 Captain or 757 First Officer), or who have successfully bid such a position but have not been trained because of conditions beyond their control (such as a company freeze), may be assigned to the positions for which they have been trained or successfully bid, regardless of their relative standing on the integrated seniority list.

9. In accordance with paragraphs 10.i and 28 of the MOU, the Arbitration Board's award will include the following condition and restriction:

> Supplement C

Nothing in this award shall modify the decision of the arbitration panel in Letter of Agreement 12-05 of the 2012 CBA, as implemented in Supplement C of the American/APA Joint Collective Bargaining Agreement, which shall continue to govern the relationship between the legacy AA and former TWA Pilots.

Dated: June __, 2015

AMERICAN AIRLINES PILOTS SENIORITY INTEGRATION COMMITTEE

By: /S/ Wesley Kennedy

USAPA MERGER COMMITTEE

By: /S/ William Wilder

WEST PILOTS MERGER COMMITTEE

By: /S/ Jeffrey Freund

NEW AMERICAN AIRLINES

By: /S/ Robert Siegel

EXHIBIT 28

ARBITRATION PROCEEDINGS BEFORE
DANA E. EISCHEN, IRA JAFFE AND M. DAVID VAUGHN

In the matter of the seniority integration involving the Pilots of	)
NEW AMERICAN AIRLINES	)

STIPULATIONS

The parties hereby stipulate to the following for purposes of this proceeding:

1. The following color scheme shall be utilized by the parties in their presentations to the Arbitration Board:

Pre-Merger American Airlines Pilots	Grey
Pre-Merger US Airways (East) Pilots	Blue
Pre-Merger US Airways (West) Pilots	Orange

2. The "Constructive Notice" date (i.e., the date after which any pilot hired by a pre-merger airline is deemed to know that he or she will be working for a combined entity and that his or her career expectations will be a product of the success or failure of the combined airline, irrespective of which airline hired the pilot) will be December 9, 2013. All pilots added to one of the pre-merger seniority lists after that date shall be placed on the integrated seniority list following all pilots on the pre-merger seniority lists, in order of their seniority as defined in the American/APA Joint Collective Bargaining Agreement.

3. The "Snapshot" date (i.e., the equities of the pre-merger American and US Airways (East and West) pilot groups will be measured immediately prior to that date) will be December 9, 2013.

4. For the avoidance of doubt, the parties agree that nothing in Stipulation 3 shall be interpreted as an agreement on the issue of whether US Airways East and West pilots did or did not have separately identifiable equities as of December 9, 2013.

5. The carriers' pre-merger fleets and fleet plans will be in accordance with Attachments A and B to the Memorandum of Understanding, as updated by New American through December 2013 in its information production to the Merger Committees on June 5, 2014; provided, that the parties may present additional specific detail not included in those Attachments (e.g., aircraft delivery/retirement dates) consistent with the contents of the Attachments.

6. For purposes of analysis of future pilot bidding patterns, "stovepipe" bidding will be assumed (i.e., that a pilot will move to the highest-rated position the pilot can hold based on the pilot's seniority position at the earliest opportunity, and in a reduction will displace in reverse "stovepipe" order to the highest-rated position the pilot can hold based on the pilot's seniority position).

7. In accordance with paragraph 10.b. of the MOU, the Arbitration Board's award will include the following conditions and restrictions:

> No Bump/No Flush
>
> Neither the implementation of the ISL nor the expiration of any Condition and Restriction shall require any active pilot to displace any other active pilot from the latter's position.
>
> Neither the implementation of the ISL nor the expiration of any Condition and Restriction shall require that a furloughed pilots to bump or displace an active pilot.
>
> Compensation for Flying Not Performed
>
> Neither the implementation of the ISL nor the expiration or any Condition and Restriction shall require that pilots be compensated for flying not performed (e.g., differential pay for a position not actually flown).
>
> Pilots in Training
>
> Pilots who, at the time of implementation of the integrated seniority list, are in the process of completing or who have completed initial qualification training for a new category (e.g., A320 Captain or 757 First Officer), or who have successfully bid such a position but have not been trained because of conditions beyond their control (such as a company freeze), may be assigned to the positions for which they have been trained or successfully bid, regardless of their relative standing on the integrated seniority list.

8. In accordance with paragraphs 10.i and 28 of the MOU, the Arbitration Board's award will include the following condition and restriction:

> Supplement C
>
> Nothing in this award shall modify the decision of the arbitration panel in Letter of Agreement 12-05 of the 2012 CBA, as implemented in

Supplement C of the American/APA Joint Collective Bargaining Agreement, which shall continue to govern the relationship between the legacy AA and former TWA Pilots.

Dated: September __, 2015

AMERICAN AIRLINES PILOTS SENIORITY INTEGRATION COMMITTEE

By:_____

EAST PILOTS SENIORITY INTEGRATION COMMITTEE

By: _____

WEST PILOTS MERGER COMMITTEE

By:_____

NEW AMERICAN AIRLINES

By: _____

EXHIBIT 29

ARBITRATION PROCEEDINGS BEFORE
DANA E. EISCHEN, IRA JAFFE AND M. DAVID VAUGHN

In the matter of the seniority integration involving the Pilots of	)
NEW AMERICAN AIRLINES	)

STIPULATIONS

The parties hereby stipulate to the following for purposes of this proceeding:

1. The following color scheme shall be utilized by the parties in their presentations to the Arbitration Board:

Pre-Merger American Airlines Pilots	Grey
Pre-Merger US Airways (East) Pilots	Blue
Pre-Merger US Airways (West) Pilots	Orange

2. The "Constructive Notice" date (i.e., the date after which any pilot hired by a pre-merger airline is deemed to know that he or she will be working for a combined entity and that his or her career expectations will be a product of the success or failure of the combined airline, irrespective of which airline hired the pilot) will be December 9, 2013. All pilots added to one of the pre-merger seniority lists after that date shall be placed on the integrated seniority list following all pilots on the pre-merger seniority lists, in order of their seniority as defined in the American/APA Joint Collective Bargaining Agreement.

3. The "Snapshot" date (i.e., the equities of the pre-merger American and US Airways (East and West) pilot groups will be measured immediately prior to that date) will be December 9, 2013.

4. For the avoidance of doubt, the parties agree that nothing in Stipulation 3 shall be interpreted as an agreement on the issue of whether US Airways East and West pilots did or did not have separately identifiable equities as of December 9, 2013.

5. The carriers' pre-merger fleets and fleet plans will be in accordance with Attachments A and B to the Memorandum of Understanding, as updated by New American through December 2013 in its information production to the Merger Committees on June 5, 2014; provided, that the parties may present additional specific detail not included in those Attachments (e.g., aircraft delivery/retirement dates) consistent with the contents of the Attachments.

6. For purposes of analysis of future pilot bidding patterns, "stovepipe" bidding will be assumed (i.e., that a pilot will move to the highest-rated position the pilot can hold based on the pilot's seniority position at the earliest opportunity, and in a reduction will displace in reverse "stovepipe" order to the highest-rated position the pilot can hold based on the pilot's seniority position).

7. The Arbitration Board's award is governed by Paragraph 10.b of the MOU:

> "The panel of arbitrators may not render an award unless it complies with all of the following criteria: (i) the list does not require any active pilot to displace any other active pilot from the latter's position; (ii) furloughed pilots may not bump/displace active pilots; (iii) except as set forth in Paragraphs 12 and 13 below, the list does not require that pilots be compensated for flying not performed (e.g. differential pay for a position not actually flown); (iv) the list allows pilots who, at the time of implementation of an integrated seniority list, are in the process of completing or who have completed initial qualification training for a new category (e.g. A320 Captain or 757 First Officer), or who have successfully bid such a position but have not been trained because of conditions beyond their control (such as a company freeze), to be assigned to the positions for which they have been trained or successfully bid, regardless of their relative standing on the integrated seniority list; and (v) it does not contain conditions and restrictions that materially increase costs associated with training or company paid move as specified in the JCBA."

8. In accordance with paragraphs 10.i and 28 of the MOU, the Arbitration Board's award will include the following condition and restriction:

> Supplement C
>
> Nothing in this award shall modify the decision of the arbitration panel in Letter of Agreement 12-05 of the 2012 CBA, as implemented in Supplement C of the American/APA Joint Collective Bargaining Agreement, which shall continue to govern the relationship between the Legacy AA Pilots and former TWA Pilots.

Dated: January 15, 2016.

AMERICAN AIRLINES PILOTS SENIORITY INTEGRATION COMMITTEE

By: /s/ Wesley Kennedy

EAST PILOTS SENIORITY INTEGRATION COMMITTEE

By: /s/ William Wilder

WEST PILOTS MERGER COMMITTEE

By: /s/ Jeffrey Freund

NEW AMERICAN AIRLINES

By: /s/ Robert Siegel

EXHIBIT 30

Danny M. Rosenthal

From: William R. Wilder <wwilder@bapwild.com>
Sent: Thursday, August 27, 2015 4:10 PM
To: Wes Kennedy
Cc: Jeff Freund; Chris Hollinger; Edgar James; Danny M. Rosenthal; Roger Pollak; Robert Siegel; Marty Harper (Marty.Harper@asualumnilawgroup.org); Joshua Shiffrin; Mark Myers
Subject: Length of Service stipulation

All,

After review, the East Pilot SIC cannot agree to the length of service stipulation as written. It believes deleting that stipulation is the appropriate course rather than attempting to recast it. As I noted last Friday, the remaining stipulations are acceptable.

Best,
Bill

On Aug 24, 2015, at 3:14 PM, kennedy@ask-attorneys.com wrote:

Bill:

I did see your email on Friday, and that was what I was responding to -- that you have not stated your Committee's position regarding certain of the stipulations to which you previously agreed on behalf of the USAPA Committee.

As requested, please let us know ASAP what your Committee's position will be on the remaining stipulation.

Wes

EXHIBIT 31

The ALPA Arbitration Board

In the Matter of the Seniority Integration of The Pilots of US Airways, Inc. and The Pilots of America West Airlines, Inc.	**OPINION AND AWARD**

The ALPA Arbitration Board
George Nicolau, Chairman
Captain Stephen Gillen, Pilot Neutral
Captain James P. Brucia, Pilot Neutral

APPEARANCES

For the US Airways Pilots:
Katz & Ranzman, P.C.
By: Daniel M. Katz, Esq.
Jason M. Whiteman. Esq.

For the America West Pilots:
Bredhoff & Kaiser, P.L.L.C.
By: Jeffrey R. Freund, Esq.
Roger Pollack, Esq.
Lisa Powell, Esq.

On May 19, 2005, US Airways and America West Airlines announced that they would merge, taking the name US Airways. Both pilot groups were represented by the Air Line Pilots Association, which has a Merger Policy governing the integration of pilot seniority lists. Pursuant to that Policy, each group chooses a Merger Committee, whose representatives are charged with exchanging employment data and seeking to determine a fair and equitable integration of their respective lists.

The Policy, in pertinent part, provides as follows:

> The merger representatives shall carefully weigh all the equities inherent in their merger situation. In joint session, the merger representatives should attempt to match equities to various methods of integration until a fair and equitable agreement is reached, keeping in mind the following goals, in no particular order:
>
> a. Preserve jobs.
>
> b. Avoid windfalls to either group at the expense of the other.
>
> c. Maintain or improve pre-merger pay and standard of living.
>
> d. Maintain or improve pre-merger pilot status.
>
> e. Minimize detrimental changes to career expectations.

If the Merger Representatives are unable to agree on an integrated list, the matter may be referred to Mediation-Arbitration or directly to arbitration if the Representatives choose that path. In this instance, despite a year of negotiating efforts, there was no agreement on a list. Subsequently, the Representatives choose the Undersigned as Board Chairman and opted for the Med-Arb process. Those mediation efforts, held over the course of five days in October 2006, were similarly unsuccessful. Thereafter, the Parties agreed on the arbitration ground rules, and, pursuant to the Policy, each chose a Pilot Neutral from ALPA's Pilot Neutral Master List as a nonvoting member of the Arbitration Board.

After receiving pre-hearing statements of position, the Arbitration Board held a hearing over eighteen days in Washington, D.C. in the months of December, 2006 and January and February, 2007, during which both Parties were afforded full opportunity to offer evidence and argument and to present, examine and cross-examine witnesses. A transcript, consisting of 3102 pages, was taken. There were 20 witnesses and 14 volumes of exhibits. Subsequent to the hearing, the Parties filed comprehensive post-hearing briefs, with the Record closed on March 23, 2007, the day of their receipt. Thereafter, the Board met in a number of executive sessions to weigh the arguments and reach its conclusions. In doing so and in the process of fashioning the Award, it called upon and received, with the express permission of the Parties, the assistance and comments of their technical experts, with no objection raised as to the fairness or regularity of the proceedings.

The Background

As in many other mergers, the airlines differ in size, with US Airways substantially larger than America West. The former, a product of previous mergers over the course of a number of years, is also much older, which consequently reflects a wide disparity in pilot dates of hire as between the two airlines. Additionally, US Airways has a substantial

international presence in which planes not in America West's fleet are flown. However, in most categories, America West's pay scales are higher. Beyond this, at the time of the merger announcement, US Airways had a significant number of pilots on furlough while America West had none. Moreover, the financial future of US Airways was not comparable to or as bright as that of America West.

These factors, as could be predicted, led to great differences in the Parties' concepts of a fair and equitable merger. In basic outline, US Airways argued for a Date of Hire list, adjusted for Length of Service, subject to certain seven-year conditions and restrictions, a model that placed the most senior America West pilot far down the seniority list and merged a number of furloughed US Airways pilots above active pilots at America West. In contrast, America West, relying heavily on its view of the pre-merger financial picture at US Airways, urged a series of ratios that gave little weight to the longer service of pilots at US Air. Despite indications by the Board that both approaches created difficulties if the goal was a fair and equitable integration, those positions were not fundamentally changed.

Before discussing the aforesaid approaches in greater detail, some uncontroverted facts and then some recent history. US Airways is the product of a series of mergers stretching back to 1968. At the time

of the US Air/America West merger, US Airways had a grand total of 5098 pilots on its seniority list, 1691 of which (33%) were on furlough.[1] Their dates of hire (DOH) ranged from 4/20/66 to 6/19/00, with the most senior furloughed pilot (Colello) having been hired in 1988. When furloughed in 2003, Colello (3303) had 16.4 years of service.[2]

In contrast to the US Airways genesis of 1968, America West did not begin service until 1983. As of the merger, it had 1894 pilots on its list. All, however, were active and less than 200 had spent time on furlough and then for relatively short periods during the early and mid-90s, at which point hiring resumed with 1131 additional pilots added to the list.[3] The most senior America West pilot was hired on 6/1/83, 17 years after the most senior pilot on the other airline, and America West's least senior pilot (Odell) was hired on 4/4/05, close to 5 years after the hiring date of US Airways' least senior furloughee and only a month before the merger. Another disparate factor was the difference in the age of both groups, leading US Airways to argue, with its higher

[1]The 1691 include 105 so-called CEL (Combined Eligibility List) pilots who never flew on the mainline, to be discussed below, and 212 other Mid-Atlantic Division (MDA) pilots. Though listed as active in a US Airways summary sheet, they are carried as furloughed on the US Airways Certified 5/1/05 List.

[2] The number 3303 is Colello's Pilot Position Number on the US Airways May 19, 2005 Certified Seniority List. His Seniority Number at that time was 3538.

[3] There were also some 165 America West pilots furloughed following 9/11/01, but those furloughs were somewhat short-lived. A very few were about 11 1/2 months, the bulk were much shorter.

average age and consequent attrition, that America West pilots would soon inherit the list, which the America West pilots countered with the argument that what they would inherit under the US Airways proposal would be First Officer positions, not Captaincies.

There were also differences in the financial condition of the two carriers. For a short time, America West had been in bankruptcy but emerged in 1994 as a low cost carrier (LCC) operating out of hubs in Phoenix and Las Vegas. US Airways had also declared bankruptcy, not once but twice. And it was still in bankruptcy at the time of the merger and was unprepared to present a reorganization plan for its emergence. Despite these differences, to be detailed later, it is clear from the evidence that the more financially able needed the other and that both have benefited financially from the acquisition.

The fleets also differed. As of May 19, 2005, US Airways operated 270 jets, including 9 A330s and 10 B767s. There were firm orders for 19 A320's and 10 A330-200s, but none had been delivered. As of January 1, 2007, however, the US Airways fleet was down to 226 aircraft; 9 A330s, 10 B767s, 34 B757s, 102 A320s, 69 B737s and 2 Embraer190s. Then, by July 1, 2007, 3 B757s had been retired and 3 Embraers were added, leaving the total number at 226. As of May 19, 2005, America West had 144 jet aircraft; 13 B757s, 39 B737s and 92 A320s, with firm

orders for 19 A320s. As of January 1, 2007, the number of America West aircraft was down to 133; 12 B757s, 26 B737s and 94 A320s. As of July 1, 2007, with the elimination of 1 B737, the total had dropped to 132.

As of the merger date, there were also differences in staffing, differences that remain. As of January 1, 2007, the aircraft and staffing figures were:

US Airways			America West		
Equip.	**A/C**	**Staffing**	**Equip.**	**A/C**	**Staffing**
A330	9	23.11	NA	NA	NA
B767	10	21.50	NA	NA	NA
B757	34	10.09	B757	12	14.75
A320	102	10.70	A320	94	12.32
B737	69	9.01	B737	27	12.07
EMB	2	19.50			

In addition to changes in the number of aircraft since the merger date, there have also been changes in the number of personnel. At America West, the total number of pilots including those in non-flying jobs on January 1, 2007, is 1829, down from the merger date figure of 1894. In contrast, the total active US Airways pilots as of January 1, 2007, including those who have returned from furlough, is 3005.

The Proposals

As must be evident from the number of witnesses, the too-numerous to count exhibits, and the exhaustive briefs filed by counsel, both groups presented detailed testimony and evidence in support of their respective positions. I will not attempt to reprise each and every argument in the same detail in which it was advanced. To do so would only lengthen this Opinion beyond reason. I will do no more than summarize and then discuss the salient points. The Representatives can be assured, however, that this Board has thoroughly considered all of the testimony and exhibits, including the expert opinions and statistical analyses, that have been presented and have carefully weighed each in reaching its determination.

The US Airways Proposal

The US Airways initial proposal was grounded on a pilot's Date of Hire adjusted for Length of Service. That proposal placed the most senior America West pilot below some 900 US Airways pilots and integrated a number of furloughed US Airways pilots with active America West pilots. This was justified, according to the US Airways representatives, by the much greater length of service (LOS) of US Airways pilots; prior cases in which DOH or LOS was used as the

primary means of integration irrespective of active or furloughed status; the claimed approximate equivalency of the two collective bargaining agreements, and, contrary to the assertion of the America West pilots, the absence of an alleged financial disparity between the pre-merger carriers. In this regard, the US Airways pilots argue that even if US Airways' financial condition was not as sturdy as that of America West, the evidence shows that America West's position was not particularly stable and that the merger strengthened both carriers. Beyond this, any ratio system would, in US Airways' words, "improperly produce unacceptable inequities and windfall gains for the America West pilots at the expense of the US Airways pilots" and create unfairness throughout the list.

The US Airways pilots also imposed a number of seven-year conditions and restrictions on its adjusted DOH list and a series of quotas and ratios designed to do the work of the list for that period of time, all of which, except for domicile protection for America West pilots, favored US Airways pilots on both replacement and new aircraft as well as existing aircraft. For example, the quotas reserve all A330, B767 and B757 international Captain and First Officer positions for US Airways pilots while allocating flying on new aircraft on a ratio based on the total number of pilots rather than active-to-active pilots.

In support of their proposal, the US Airways Representatives emphasize the benefits America West pilots will achieve based on the

fact that in the coming years US Airways age-60 attrition is roughly four times that of America West. This "contribution" that the pilots of US Airways bring to the merger can only mean, as their analysis shows, greatly accelerated advancement for America West pilots, advancement more certain than projected pre-merger aircraft growth since firm orders, unlike age, can be renegotiated, cancelled or matched by aircraft returns. The power of this attrition is not diminished because some of it occurs, to the dismay of the America West pilots, in the first officer, non-flying or furloughed ranks. Furloughs, the US Airways pilots say, are not an issue because, at the present pace of recalls, all who wish to return will do so and be active pilots. As to those pilots who are now active, their retirements, regardless of their positions, create vacancies that must be filled. It is also pointless, in the US Airways' view, to suggest that consideration must be given to the possibility of a change in the retirement age to 65. That possibility is remote and, if it occurs, is well into the future. Besides, against the "magnitude of US attrition," any change in the rule, would be "insignificant." With respect to this point, US Airways also argues that attrition for reasons other than age, much of which is age-related, will also be proportionally greater in the US Airways ranks. It also asserts, in arguing that senior furloughed US Airways pilots should precede junior active America West pilots, that this would not have as much of an effect as America

West fears. This is so because analysis shows that some 37%-45% of furloughees, though invited to return, will not.

On this point, US Airways references a few prior cases in which furloughees were integrated with active pilots and insists that this must be done here in order to "recognize [US Airways] length of service and pre-merger promotional prospects arising from attrition."

As to the fleet, US Airways proposal is premised on the fleets as they existed on July 1, 2006. (The US Airway figures are as set forth in the above table; the America West total is 135, rather than 133, the latter representing a reduction of 2 B737s.) US Airways contends that the 19 extra aircraft America West supposes because they were on firm order is just that, a supposition, more accurately, a fiction. This is so, according to US Airways, because they would never have appeared on the property. The reason, as CEO Parker said in February 2006 and on other post-May 19, 2005 occasions, is that, without a merger, America West would have filed for bankruptcy, and cut aircraft and jobs rather than the reverse. If the Board considers those aircraft, it must similarly add the 29 aircraft US Airways had on firm order. But instead of relying on speculative ruminations about the future, a period of uncertainty for any airline in these times, it is better to concentrate on the actual aircraft on hand.

In support of its proposal, US Airways also argues that the Collective Bargaining Agreements (CBAs) are "economically equivalent

[when] viewed as a whole." While some rates are higher or lower in one contract or another, the issue, to quote counsel, is "a wash." In addition, the US Airways scope, successorship and labor protection language, a matter of great importance to pilots, is superior to that of America West. While some, but by no means all, US Airways pilots may gain economically when and if a combined CBA is signed, that will not come at the expense of those at America West; both sides will benefit. Furthermore, in prior cases where such differences in pay were larger than here, those differences had no real effect on the composition of the list. In any event, when one considers the profit sharing, stock options and other economic benefits promised to its pilots by US Airways in exchange for concessionary agreements, some of which benefits are now to be shared with America West, the picture of total compensation disparity that America West seeks to paint simply does not exist.

The US Airways pilots also argue that they made "substantial investments" in their carrier. Those "sweat equity" investments, in the form of pay cuts, the termination of the defined benefit pension plan and furloughs, need to be recognized and the fair way to do that is to adopt their adjusted DOH proposal.

Finally, the US Airways pilots assert, at considerable length (US Airways brief, pp. 66-88), that US Airways was not a failing carrier. Though its position was not robust, neither was the position of

America West. As US Airways was in bankruptcy, it was reaching financial arrangements that would allow it to recover, while America West, as CEO Parker admitted, was approaching bankruptcy and, without a merger, had no realistic way of avoiding it. Thus, both were in poor financial condition; neither saved the other, and both gained. Even if there were some differences, US Airways argues that applicable precedent gives little weight to such distinctions and that this should be the case here.[4]

Near the end of the proceeding there was some discussion of some elements of the US Airways proposal, but its nature never changed.

The America West Proposal

America West's initial proposal differed dramatically from that of US Airways. As previously indicated, its position, when first presented in detail, was a series of ratios accompanied with a two year condition and restriction reserving to US Airways pilots all Captain positions on the 9 A330 aircraft flying international routes as of May 19, 2005. The first proposed ratio was not Captain to Captain. Instead, America West added to its 855 Captains an additional 114 First Officers, who, America West claimed, expected captaincies based on the 19 A320s on firm order as of May 2005. That combined figure (969) was to be

[4] The financial condition arguments and the role those conditions properly play are discussed below.

integrated on a straight ratio basis with 1121 US Airways Captains, a number derived from staffing assumptions based on what were 221 US Airways aircraft as of February 2006. This ratio would be followed by an integration of the remaining America West First Officers (925) with 1051 US Airways First Officers, also on a straight ratio basis. After the reinsertion of those on extended medical leaves and those in non-flying positions, this would put 2431 US Airways pilots on the bottom of the list, 959 of whom were active pilots as of May 19, 2005 with the remaining 1472 furloughees.

Like that of US Airways, America West's position was not substantially modified during the proceedings. It conceded that the term of its proposed fence might be lengthened, but it continued to insist that it apply only to Captains sufficient to staff 9 A330s, saying that B767 international flying was highly seasonal; that B767s and B757s are both Group I aircraft for pilot pay purposes, and that bidding experience shows that B767 flying is not highly prized. It also insisted that any list must ratio active pilots with active pilots; that, based on what was scheduled to happen at America West absent the merger and because its pilots have been denied promotional opportunities as a result of the merger while US Airway pilots who were on the verge of losing their jobs have since been upgraded, a substantial number of America West First Officers, set above at 114, should be treated as Captains for ratio purposes, and, above all, that there be a substantial

number of active US Airways pilots placed below the least senior America West pilot (Odell) so that they are exposed to the risk of furlough before he is faced with that prospect. The reason this must be done, according to the America West representatives, is that US Airways pilots have been far more exposed to the risk of furlough over the course of their careers; that prospects of recovery at US Airways were slim, while Odell, absent the merger, would have been increasingly protected from furlough through the arrival of additional aircraft on firm order combined with normal attrition at the carrier.

America West's argument precedes from the premise that present ALPA Merger Policy does not speak of date of hire or length of service or age. Though the policy was changed in 1952 to specifically list length of service as "the governing factor" in list construction, with consideration to be given to other factors, such as loss of earnings, employment or advancement opportunities, all references to date of hire or length of service were eliminated in 1991 leaving the Policy as it is today. From this history, America West argues that date of hire is no longer an "equity in itself" and that the sole focus must be on maintaining pilot "pre-merger expectations regarding jobs, status, pay and future career path."

From this premise, America West contends that its pilots' career expectations were dramatically better that those at US Airways. In the

America West view, US Airways was a failed carrier at the time of the merger, an airline nearing liquidation. Its history shows a steady decline in its fortunes, with no hiring at all between 1990 and 1998, an unsuccessful Metrojet "airline within an airline" venture, an inability because of government disapproval to merge with a then stronger United Airlines, continuing furloughs after September 11, 2001, a concessionary Restructuring Agreement in July 2002, an August 2002 bankruptcy filing, a failed reorganization following its emergence from bankruptcy because of its inability to resolve its structural problems, and a consequent second bankruptcy in September 2004, after which its pilots had to make additional concessions of both pay and protection if the carrier was to have a chance to survive. When all this is coupled with the fact that as of the time of the merger there had not even been the presentation of a stand-alone reorganization plan to its creditors' committee it is plain that the career expectations of the US Airways pilots were bleak indeed, with no prospect of growth or significant advancement even through attrition, and the clear possibility of no jobs at all.

The America West pilots maintain that the picture at their airline was not at all similar; that the airline was strong and growing with a "solid business model and LCC structure." In addition to the evidence of its financial performance, the fact is that 360 pilots, close to 20% of the work force, had been hired between 11/4/02 and the date of the

merger. This, in contrast to the picture at US Airways, where there were no new hires after 4/7/00 and, as of the date of merger, no returning furloughees. In addition, at the time of the merger, America West had already taken delivery of 3 A320's and had firm orders for 19 others, all of which were to be delivered by January 2007, and which, along with attrition, would have produced 300 new America West pilots.

The America West Representatives concede that the scheduled repayments of the Company's ATSB loan created potential liquidity problems for the airline. They assert, however, that the evidence of Company performance and the availability of financing as well as the distinct possibility of principal payment postponement minimized such concerns to the point where they do not merit serious consideration. However one views the financial position of the carriers, and even if the position of US Airways is viewed in the most of favorable lights, the fact is that the career expectations of the America West pilots on May 19, 2005 were far superior to those of the US Airways pilots.

America West also asserts that consideration must be given to what has happened since the merger and the negative effect those events have had on America West pilots while benefiting those who came from US Airways. Though US Airways was to return 25 aircraft as of the merger date, only 15 were removed from its fleet, the remaining

10 taken from America West. US Airways also expanded its international flying, acquired three more B757s and was taking on more Embraers. These factors, together with a relaxation of concessionary work rules, have brought the first US Airways recalls since 2001, with 300 having returned and more to follow. When a combined contract, now in negotiation, is finally achieved, those returnees, as well as those presently flying A320s and B737s, the bulk of the combined fleet, will receive substantial wage increases even if that contract does no more than continue the present America West rates for those aircraft. Without the merger, their lower rates would have remained until at least the December 31, 2009 amendable date of the US Airways Agreement.

In contrast to these benefits, the America West pilots contend that their careers, on the rise before the merger, have stood still. Pilot hiring has stopped, with no new pilots hired in the last two years. Beyond this, Odell, who expected, based on what went before, a reasonable career progression, is still on the bottom of America West's list. while Colello, the junior active US Airways pilot at the time of the merger, now has 300 working pilots behind him.

In America West's view, all of these factors, when examined objectively, fully justify its proposal.

Discussion and Analysis

During the course of this proceeding, both sides referred to my words in the Federal Express/Flying Tiger merger following my receipt of the extensive exhibits, citations to other cases and final proposals from those parties. There I said and, based on subsequent experience, say once again:

> There are four basic lessons to be learned from those submissions; that each case turns on its own facts; that the objective it to make the integration fair and equitable; that the proposals advanced by those in contest rarely meet that standard; and that the end result, no matter how crafted, never commands universal acceptance.

It is understandable that universal acceptance is never achieved. The merged list cannot be a copy of any list that previously attained; other names now appear. Moreover, no matter the effort in minimizing unfavorable changes to career expectations, merged lists do change career expectations; it is in their nature that they do. It is equally understandable that merger committees find it difficult to reach agreement, choosing instead to turn to Boards such as this. Unlike advocates who go on to represent others in proceedings of a different nature, tomorrow and for many days thereafter merger committee members continue to fly side-by-side with those they represent.

Before turning to the building blocks of our decision and the reasons for those choices, a preliminary matter needs to be addressed. That is the question of the CEL pilots. Some 105 such pilots (4993-5098) appear on the US Airways May 19, 2005 Certified Seniority List. However, none had flown for the mainline; all were pilots at Mid-Atlantic Airways, a regional carrier designed to be a US Airways wholly-owned subsidiary, but actually flown at all times during its short existence on the mainline's operating certificate as a division of US Airways.

It is the position of the America West pilots that these pilots do not belong on the list; that they have no right to be there because there were no flow-up provisions to which they can lay claim; that they were only put on the list in an effort to "beef up" the US Airways list, and that they should therefore be removed. The US Airways pilots disagree. Though they concede that there was some question of their status early on, they assert that the submitted evidence makes it clear that the CEL pilots belong on the list where they are.

The Board has carefully studied the respective presentations. While the history is cloudy at best, in our considered opinion there is insufficient evidence to justify the America West request to remove them from the list. However, we agree with the America West alternative proposal; that they be treated in the same fashion as

Constructive Notice pilots. Because there have been no new hires since the merger and inasmuch as we have decided on particular integration methodologies regarding active pilots, their placement at the bottom of the integrated list, a position they know occupy on the US Airways list, will not adversely affect America West pilots.

As to the construction of the integrated list, we have made certain assumptions. The first is that the list should be constructed based on a continuation of the Age-60 Rule. The Board is aware that the FAA has undertaken a formal study of the desirability of increasing the retirement age to 65; that legislation to that effect is being considered; that the US Airways MEC has asked the Company to support individual waivers of the rule, and that the Company has indicated its willingness to do so. However, previous efforts to modify the rule have not succeeded and the likelihood of near-term modification is by no means assured. Moreover, the Company's assent is contingent on conditions the FAA might impose, such as requiring a below age-60 pilot to accompany an above age-60 pilot, and ALPA's agreement on the manner in which to treat inevitable seniority conflicts in the event a split cockpit is ultimately adopted. In the Board's view, all of this uncertainty requires caution, rather than risk. As a consequence, the list is not constructed on the assumption that pilots will be able to fly until age 65. We may, of course, be wrong on

that score, in which event the attrition the US Airways pilots speak of as America West's inheritance will be substantially slower in coming, further justifying our placement of America West pilots on the combined list.

Though we have not constructed the list based on Age 65 retirement, closing statements and ongoing events have persuaded us that we should consider the possibility of that change occurring. With that in mind, we have set forth a change in the condition and restriction we intend to impose on bidding for the A330 and B767 positions, finding it prudent to incorporate the likelihood of such a change into our view of the post-integration world. The FAA's announcement of a Notice for Proposed Rule Making (NPRM), the pending legislation in both houses of Congress, and the drive to harmonize with the ICAO age standards have all created a momentum for change that has not been present to date. In so far as we have imposed conditions & restrictions that affect a pilot's ability to bid into a particular type of equipment and status for a set period of time, we recognize that the measure of attrition is a component in determining the length of such a restriction. Were the Age 60 Rule to change within the period such conditions and restrictions are in place, such a change would have a negative impact on the attrition component which we relied on in our original thinking. If the FAA Age 60 Rule were to change

within the period of the restriction on pilots bidding into the existing international wide-body aircraft (A330 and B767), any restrictions with respect to the bidding for positions in those aircraft would be made null and void on the date of implementation of the change. US Airways pilots entitled to bid those positions have already been protected for two years. A further fence of four years from the date of this Award is based on attrition projected on Age 60 retirement. If the age limit were raised to 65 and becomes effective prior to the expiration of the condition and restriction in 2011, there seems little fairness in its continuance.

In the exercise of caution, we have also constructed the list on a no-growth basis, using the fleet as it existed on January 1, 2007, and giving no weight to pre-merger orders except to the extent that any such additions were in place as of January 1, 2007. Our judgment as to the fleet is based, not on asserted expectations as both sides urged, but on reality. Particularly in this day and age, with airline instability a way of life, it makes little sense to rely on pre-merger projections. This is especially the case here when the financial picture of both airlines was less than optimum. A January 1, 2007 list also is a closer reflection of reality on the merged airline.

As to staffing, we have, for a variety of reasons, used the jobs each group brought to the merger as amended by the shifts that occurred as of January 1, 2007.

While the Board has repeatedly expressed misgivings as to the fairness of each group's full proposal, in our judgment certain aspects of both meet the fair and equitable standard. That standard, it must be recalled, does not rank its stated criteria in any particular order. Rather they are goals to be kept in mind as equities are matched to various integration methods until a fair and equitable result is reached.

Of considerable importance is the question of career expectations. As previously stated, America West argues that the career expectations of the US Airways pilots were nil; that if the airline was not a failing carrier saved from certain liquidation by its purchase by America West, it was so close as to make little difference. On the other hand, America West, in the view of its pilots, was robust and on its way to sustained achievement. The US Airways pilots argue that neither description fits the facts. In their view, US Airways, though in bankruptcy for the second time, had lowered its costs and secured additional investment capital ensuring its survival and prospects of emerging from bankruptcy. Beyond this, as shown by repeated post-merger statements by America West's CEO and by expert analysis, that airline was also in poor financial condition. Thus, both airlines needed each other and both have benefited from the merger. The US Airways pilots assert that this, as well as cases it cites as precedent, argue for the proposition that the financial picture

of the two airlines was relatively the same and, as such, should not even be considered.

Our view is that neither picture is persuasive. The US Airways reliance on post-merger statements by America West's CEO, clearly made to assuage growing concerns of America West pilots who had seen a post-merger end to hiring, an increasing return of long-furloughed US Airways pilots and a flattening in their own advancement, is misplaced. Equally so is America West's insistence that US Airways was about to disappear. Yet, it cannot be disputed that there were differences in the financial condition of both carriers and that US Airways was the weaker. This necessarily means that career expectations differed and that US Airways pilots had more to gain from the merger than their new colleagues.

Gains also came in other ways. Though the US Airway pilots argue that the collective bargaining agreements are comparable, that is not the case. In pay, the America West Contract is better for comparable aircraft except for the B757. Though A330 and B767 pay did not exist at America West, those 19 aircraft are only 5% of the combined fleet and the B757s only add another 13%. The bulk of the fleet (81%) is comprised of the 292 A320s and B737s, where America West's higher rates, even without increases that a combined contract may bring, will result in a collective benefit to US Airways pilots of

$23 million a year. There are other benefits that will accrue to US Airways pilots in the form of increased vacations, higher caps and pay guarantees as well as salaries, that would have been unachievable until, at the earliest, the December 31, 2009 amendable date of the US Airways/ALPA Agreement. The same can be said for the post-merger relaxation of onerous work rules that US Airways pilots had agreed to in concessionary negotiations sought by the Company as a means of survival.

This, however, does not justify ratios beginning at the top of the list as America West proposes, for there are compensating factors such a methodology ignores. Though Date of Hire, whether adjusted for Length of Service or not, is no longer listed as a determinant or even stated as a integration criterion, there are occasions when consideration should be given to that factor. Here, US Airways is far older than America West, a fact reflected in the average age difference between the two groups. Consideration must also be given to the different career expectations based on equipment flown. US Airways pilots fly wide-body international aircraft, while America West pilots do not. Those elements weigh in US Airways favor both in placement and interim restriction and thus argue against the America West proposal, as do the benefits US Airways pilots will achieve through their agreed upon receipt of stock options, increasing sums not factored into simple hourly rate comparisons. Equally worthy of

consideration as an offsetting benefit to America West pilots is the US Airways attrition, whether swift or slower, that will accrue to the America West pilots in a measure that did not previously exist.

Though America West pilots can therefore expect some gain from factors US Airways brought to the merger, this by no means justifies the proposal on which US Airways insists. As previously stated, giving sole consideration to date of hire and length of service would put the senior America West pilot some 900 to 1100 numbers down the combined list. US Airways proposed restrictions, both as to aircraft and length, would unduly deprive too many senior America West pilots of upgrade opportunities for too long a time, and would also put a number of active America West pilots below long-furloughed US Airways pilots who, until the merger, had little prospect of an early return.

In our view, these competing considerations result in a list that has the effect of reserving a certain number of positions in present wide-body international aircraft to US Airways pilots, thus giving consideration to both their longer service and the fact that America West pilots did not have an immediate expectation of such flying. However, the placement of a number of US Airways pilots on the top of the list as a means of accomplishing that is not the 900 to 1100 they seek, but 423, which is equal to number of Captains and First Officers flying the A330 and B767 International. This would give those senior

US Airways pilots the opportunity to bid into such vacant positions if they so chose for an additional period of four years, making a total of six years since the merger unless, as we said before, Age 65 legislation or rule-making were to change the retirement age.

On balance, it is our judgment that this allocation is equitable and, since such protection has already existed for more than two years, that it is for a sufficient length so as to then allow the list to operate independently for such aircraft. Except for this restriction, all other present flying, as defined in the Conditions and Restrictions that follow, is to operate by the list. As set forth in those Conditions and Restrictions, new flying, as defined therein is to be equitably shared in the formula set forth.

A majority of the Board has also decided that the totality of pre-merger career expectations weighs in favor of active pilots as of the date of the announcement. When one considers the number and length of furloughs on the US Airways side and the dim prospects the airline faced and compares it to the lack of furloughs on the America West side, which furloughs ceased to exist long before the merger took place, merging active pilots with furloughees, despite the length of service of some of the latter, is not at all fair or equitable under any of the stated criteria.

The America West pilots insist that the Board should go further than the merger of active pilots with active pilots; that instead of placing America West's most junior pilot (Odell) just above Colello, the senior pre-merger US Airways' furloughee, that Odell should be placed some 750 numbers above Colello. Otherwise, Odell, who was not at risk of furlough because of the stability of America West as of May 19, 2005, would be placed at risk of furlough before some 750 active US Airways pilots, who, because of their airline's continuing instability, were at constant risk of that fate.

That approach simply reaches too far. Today, Colello, who was US Airways most senior furloughee on May 19, 2005, is now a B757 First Officer with some 300 active US Airways pilots beneath him. If Odell is placed on the list above Colello next to and just below Monda, who was the junior US Airways active pilot, that will insure that active pilots are integrated with active pilots and also give Odell a measure of protection the America West pilots justifiably seek. In making this judgment, we agree with America West's argument that in this case active pilots should be merged with active pilots, but do not agree that the equities are so persuasive as to disadvantage US Airways pilots such as Monda and those above him, who, like Odell, brought jobs to the merger. Hence, our adherence to the merger date as the point at which the pairing should be made. We also understand that our choices will place pilots with disparate lengths of service next to each

other. That, however, is a result of the balancing of the equities inherent in ALPA merger policy, a balance that neither a top to bottom active pilot ratio as advanced by America West or a top to bottom length of service integration as proposed by US Airways achieves. We further understand that those pilots on furlough are not there through choice or fault and that, as a result of their placement, they will not advance as quickly as they would like. But when one looks at the length of many of those furloughs as well as the end of new hirings occasioned by the continuing difficulties US Airways had in resolving its structural problems and finding its way out of bankruptcy, their expectations of advancement could not have been intense, the opposite had to be true.

As evidenced by Captain Brucia's Concurring and Dissenting Opinion, attached hereto, he disagrees with this aspect of the Award. His view is that at a minimum consideration should be given to those US Airways pilots already recalled; that treatment of them as active pilots consistent with their present status would serve to recognize the substantial time they had already invested in their airline. In the majority's view, this gives weight to post-merger expectations rather than pre-merger expectations, contrary to what ALPA policy foresees. In so doing it fails to recognize the prospects the US Airways pilots faced before the merger; including the reduction of the active pilot work force from 5500 to close to 3000, the sharp reduction in the size

of the fleet since the 1990's; the absence of recalls though many active pilots were retiring; the successive bankruptcies and the inability to successfully emerge from that condition. When all that is considered, in the majority's view, it is far more appropriate to combine those who brought jobs to the merger, particularly when the protection of career expectations is of such overriding concern. This is not to say, of course, that this merger is designed or should be thought of as a model for others that may follow. As stated at the beginning, each case does turn on its own facts. As a consequence, different facts may produce different results. Here, a majority is of the opinion that the facts of this case justify our conclusion.

What remains is the balance of the list. Here, we have decided on ratios by category and status based on the aircraft in the fleets as of January 1, 2007.

The first step in creating the Integrated List is to temporarily extract from the January 1, 2007 lists those non-flying pilots and those on leaves of absence (MGT, LOA and MED). The Integrated List will begin with a top-tier consisting of the first 423 US Airways pilots on the extracted US Airways list. Once the 423 senior active flying pilots are properly placed on the top of the list and Monda and Odell are placed immediately before Colello, the portion of the list between

424 and Monda/Odell is to be integrated as follows, an America West pilot first and ties broken by crediting the older of the two pilots:

A ratio based on 167 and 90 B757 Captains
A ratio based on 873 and 767 A320/B737 Captains
A ratio based on 176 and 87 B757 First Officers
A ratio based on 840 and 718 A320/B737 First Officers.

Following this, all pilots extracted from the lists are to be reinserted into the Integrated List immediately ahead of the next most junior pilot from the extracted pilot's List of January 1, 2007.[5]

Expect for the position noted by Captain Brucia on one point, our view, taking into account the attrition rate of both groups and all the factors that must be considered and balanced in any merger, leads us to the conclusion, despite that difference, as well as others that have since been resolved, that the List achieves, as well as any list can, the objectives of ALPA Merger Policy in this case.

In recognition of their efforts it was not been an easy task, I could not conclude this Opinion without thanking Captain Brucia and Captain Gillen for their immeasurable guidance and assistance.

[5] Reinserting the pilots extracted from the top of the list brings the total number to 517 rather than 423. However, more than 70% of that difference is made up of pilots on long-term medical leave and of those most have been on such leaves for more than two years.

The Undersigned, acting as the Chairman of the Board of Arbitration pursuant to ALPA Merger Policy, and with the Board having duly heard and considered the proofs and allegations of the Parties, therefore renders the following

AWARD

A. The Integrated US Airways Pilot Seniority List shall be the List attached to this Award as Exhibit A.

B. **Conditions and Restrictions**

1. Neither the implementation of the Integrated System Seniority List nor the implementation or expiration of any of the accompanying Conditions or Restrictions shall cause, in and of itself, the displacement of any pilot from his or her current position.

2. No pilot on furlough on the effective date of the Integrated Seniority List may bump/displace an active pilot as a result, in and of itself, of the implementation of the Integrated Seniority List. Once recalled from furlough, the pilot may exercise his or her seniority without restrictions, except as otherwise provided in the merged Collective Bargaining Agreement (e.g., training restrictions) or in these Conditions and Restrictions.

3. Any pilot who, at the time of implementation of the Integrated Seniority List, is in the process of completing or who has completed initial qualification for a new category (e.g., A320 Captain or B757 First Officer) will be assigned to the position for which he or she has been trained, regardless of that pilot's relative standing on the List.

4. The first 161 positions as Captain and the first 262 positions as First Officers on the A330 and B767, or replacement aircraft as herein defined, shall be reserved for the top tier pre-merger US Airways pilots for a period of four years from the date of this Award.

However, if the Age 60 limit is changed to Age 65 during the existence of this condition and restriction, said condition and restriction shall cease to exist upon the effective date of the age limit change. As long as the condition and restriction does exist positions in excess of the aforesaid quota as well as positions within the quota if there are insufficient bidders for said vacancies from the US Airways top tier group shall be allocated pursuant to the Seniority List as shall positions within this quota upon the expiration of this restriction.

5. A330, B767 or similar aircraft that replace the existing A330 and B767 aircraft set forth in Condition 4 that no longer remain in the fleet are "replacement" aircraft within the meaning of Condition 4. All other aircraft, of whatever type, are "new" aircraft, positions on which are to be allocated to the pre-merger US Airways and America West pilot groups, respectively, 2:1 on wide-bodies and 1:1 on narrow-bodies for a period of four years from the date of this Award. Thereafter, positions are to be allocated pursuant to the Seniority List.

6. The allocation of Captain and First Officer positions on the EMB-190 shall be in accordance with the Eischen Award dated September 5, 2006. Any dispute as to the applicability or interpretation of that Award shall be referred, at the request of either party, to Chairman Eischen.

7. The Conditions and Restrictions imposed by the Kagel Award, effective October 31, 1988, shall not be affected by the foregoing Conditions and Restrictions.

8. The Board shall retain jurisdiction in accordance with Section H. 5 .b. of the ALPA Merger Policy to resolve any disputes over the meaning or interpretation of this Award. This retention of jurisdiction shall terminate when all provisions of the Award have been satisfied. In the event the Chairman becomes unavailable or unwilling to serve to resolve such disputes, the Merger Committees will agree on a replacement Chairman or will select one by the alternate strike method from the most recent ALPA list of seniority integrations

arbitrators. In the event one of the Pilot Neutrals becomes unable or unwilling to serve on the Arbitration Board to resolve such disputes, the Chairman, after consultation with the Parties, shall decide how to proceed. In any such arbitration, if there is a dispute between the methodology contained in the Award and the accompanying Integrated Seniority List or any other list purportedly using such methodology, the Seniority List prevails.

Dated: May 1, 2007

George Nicolau, Chair

EXHIBIT 32

ARBITRATION PROCEEDINGS
AIR LINE PILOTS' ASSOCIATION MERGER POLICY

* *

In the Matter of the Seniority Integration Arbitration Between

THE PILOTS OF CONTINENTAL AIRLINES

- And -

THE PILOTS OF UNITED AIR LINES

* *

ARBITRATION BOARD

Dana Edward Eischen
Roger P. Kaplan
Dennis R. Nolan

Appearances

For the Continental Pilot Merger Committee: KATZ & RANZMAN, PLLC
By Daniel M. Katz
Gregory R. Shoemaker
Grant E. Mulkey

For the United Pilot Merger Committee: BREDHOFF & KAISER, PLLC
By: Jeffrey R. Freund
Roger Pollack
Ozvaldo Vazquez

Also Present

CAL Pilot Merger Committee

Captain Jim Brucia, Chair
Captain Scott Butcher
Captain Tony Montalto
First Officer Neal Schwartz

UAL Pilot Merger Committee

First Officer Jeffrey Ruark , Chair
Captain William Bales
Captain Stephen Gillen
First Officer Dan Madruga

I. PRELIMINARY STATEMENT

These proceedings arise out of the May 3, 2010 announcement that Continental Airlines Inc. ("Continental" or "CAL") and United Air Lines Inc. ("United" or UAL") agreed to merge. At all times pertinent to this case, pilots employed by each constituent carrier and by the merged carrier have been and are represented by the Air Line Pilots Association, International ("ALPA" or "Association"), under terms and conditions of employment set forth in various collective bargaining agreements between ALPA and the respective carriers. This arbitration was conducted in accordance with the currently controlling ALPA Merger Policy and several related agreements by and between the CAL Master Executive Committee ("CAL MEC") and the UAL Master Executive Committee ("UAL MEC"), accepted and approved by ALPA. (*See* Appendix 1, attached).

Evidentiary hearings were held in Washington, D.C. during April, May and June, at which the respective Committees were represented by Counsel and offered full opportunity to submit oral and documentary evidence, including direct testimony and expert opinions, all subject to cross-examination and rebuttal. The evidentiary record was closed following receipt of the stenographic transcript and post-hearing briefs dated July 19, 2013. Thereafter, the Arbitration Board convened in Executive Session and, after careful consideration of the record and extensive consultation, we render this Opinion and Award. The Technical Assistance Team created jointly by the Committees provided this Board with expert technological help by running numerous calculations at our direction and verifying the mathematical accuracy of the output. We express our sincere gratitude for that invaluable assistance but emphasize that the role of TAT was limited only to those described calculations.

II. CONTINENTAL AND UNITED AIR LINES PRE-MERGER SITUATION

A. ECONOMIC BACKGROUND

1. Continental Airlines

Continental Airlines dates its beginning to 1934, when Walter Varney began operating Varney Speed Lines. (Coincidentally, in 1926 Varney began the airline that would eventually become United Air Lines.) It adopted the Continental name two years later. In 1953, Continental began merging with other airlines, on the way to becoming the large enterprise it was at the time of the merger. By the middle of the 20th Century, Continental was one of the more innovative airlines in the country. In 1959, it began America's first commercial jet transport. In the 1960s, it created a subsidiary in Southeast Asia that morphed into Air Micronesia, from which Continental services the mid-Pacific from its base in Guam.

Deregulation in 1978 forced Continental, like all other airlines, to adjust its business strategy. The newly competitive industry and other factors forced Continental into Chapter 9 bankruptcy in 1983, and that in turn spawned a strike. The strike ended in 1985, but Continental remained in bankruptcy for another year. Even during that rocky period, however, it continued to grow.

In April of 1985, it began nonstop service to Europe from Newark and Houston. After emerging from bankruptcy in 1986, Continental was able to make significant acquisitions. Its parent company bought People Express and the assets of what was then Frontier Airlines. Those airlines, plus New York Air, Rocky Mountain, and Britt

began operating under the Continental and Continental Express names, thus establishing a larger and more widespread brand. In 1988, Continental began serving Tokyo from Seattle and later formed the first Global Alliance with Scandinavian Airline Systems. Acquisitions continued in the 1990s, with Continental gaining majority shares in Bar Harbor Airways and Texas Air.

Size did not guarantee profitability. In December 1990, Continental again filed for bankruptcy, this time under Chapter 11, from which it did not emerge until April 1993.

The events of September 11, 2001 upended the entire domestic airline industry. Like others, CAL furloughed pilots for several years. Compared to some other airlines, Continental did relatively well financially, enough so that it was able to contribute $372 million to its defined benefit pension plan at the end of 2003. It also continued to expand its international alliances, notably by joining Sky Team in 2004. Nevertheless, CAL's economic situation deteriorated as the decade went on. While some other airlines went into bankruptcy, CAL took other important steps in 2004 and 2005 to maximize revenue and minimize costs.

The beginning of the Great Recession in 2008 hurt the entire airline industry. Unlike many other airlines, though, Continental managed to avoid the necessity of another bankruptcy. It did have to furlough 148 pilots in September 2008 but they were back at work just over two years later. More importantly, from 1Q2009 to 3Q2010, it lost $1.468 billion while its competitors, including United, were making money.

After considering but ultimately rejecting earlier merger possibilities, Continental realized that long-term survival required that it join with another airline. That business

plan brought it to the merger that is the subject of this case.

2. United Air Lines

United Airlines began operation early in the 20th Century, also founded by Walter Varney. In 1959, United started flying DC-8 jets and initiated international jet service from Seattle to Tokyo in 1983, after succeeding to Pan American's "Fifth Freedom Rights."

In 1989, United's pilots started efforts to purchase UAL. In 1994, the pilots swapped 15-25% of their salaries for ownership in United, which resulted in 55% of the company's stock. In the 2002 round of bargaining, United unsuccessfully tried to avert bankruptcy by obtaining $2.2 billion in employee concessions over a number of years. With the resulting bankruptcy, the pilots' stock became worthless. United filed for bankruptcy under Chapter 11 on December 9, 2002, from which it emerged on February 1, 2006; thereby ending the longest bankruptcy in airline history.

The September 11, 2001 attacks had a devastating impact upon all airlines, including United. UAL furloughed 2,172 pilots and many remained on furlough for years-- some to the present day. For most of the rest of the "decade of the aughts", the airline struggled to make money. A tentative recovery in the middle of the decade, when it made profits of about $1.4 billion in 2006 and 2007, was squashed by the recession of 2008. In 2008 and 2009, United again furloughed pilots, including some who had been recalled after the 2001 furloughs. UAL recovered swiftly, however, and earned about a billion and a half dollars from 1Q2009 to 3Q2010.

Earlier than many airlines, United realized that consolidation and reduction of capacity were essential to the airline industry's stability and profitability, a conclusion

undoubtedly prompted by United's experiences after 9/11 and in 2008. United therefore began early to prepare the airline for an anticipated merger primarily by strengthening its financial reserves and postponing major fleet augmentations until it knew what a merged airline would require. United made a conscious business decision to shrink in order to make money, shrinking its fleet size dramatically from 2000 to October 1, 2010. United had approximately 610 aircraft in operation in 2000 and only 359 in 2010, a reduction of over 40%. It aggressively sought merger opportunities and finally found a satisfactory partner in Continental.

3. Global Alliances and Hubs

After deregulation, the need for international relationships became apparent to both airlines. Both therefore joined global alliances; United was the founder of the Star Alliance and Continental partnered with SKY Team in 2004.

Both airlines had numerous hubs, each serving separate regions with distinct missions. Continental's hubs were Cleveland, Newark, Houston, and Guam; with Newark (ECW) the central point for its European service. The Houston hub served the same function for its Caribbean, Mexico, and Latin America service. Guam's main role was as a hub for Air Micronesia's operations throughout the Pacific Rim and into Asia. United provided international service from hubs in San Francisco, Los Angeles, Denver, Washington, and Chicago but Chicago was by far United's main hub.

4. The Decisions to Merge

As these historical sketches show, both airlines survived rocky patches but each concluded, for somewhat different but good reasons, that they needed merge to grow and survive. While each party to this case argued for tactical reasons that it had a

decent future as a stand-alone airline and thus did not *need* the other, the evidence shows otherwise. Indeed, their respective CEOs viewed their companies' situations realistically and stated frankly that each needed the other to ensure their long-term profitability and even survival.

The relative value of the airlines is difficult to calculate with precision. According to investment banks like Goldman Sachs and JP Morgan Chase, the airlines' joint proxy statement credited United shareholders with 55% of the merged value and Continental shareholders with 45%. Unlike some airline mergers and many airline acquisitions, this was not a case of one strong entity swallowing a much weaker one. It was, rather, a case of two solid but troubled entities combining for mutual advantage.

B. ECONOMIC STATUS AND PROSPECTS AT MERGER CLOSING DATE

A full evaluation of an airline's economic status involves consideration of many components, among them its strength and profitability in its various markets, the number of block hours and the related need for pilots, fleet composition, route and hub structure, and more. The crudest but perhaps most revealing measure, though, is profitability.

1. Financial Status

Looking first at that broad standard, the airlines were on markedly different courses. By most measures, Continental did better than United during the decade leading up to the 2010 merger, during which it made about $1 billion while United lost $7.8 billion. That decade was a period of upheaval and recalibration for the industry. Most legacy carriers, nibbled by domestic competition from low-cost airlines, realized

that they had to put more of their resources to work in higher-yield international flying. CAL was well positioned to do so because of its existing routes and its aircraft fleet. CAL accordingly decreased its domestic capacity, although by less than the industry as a whole and substantially less than UAL.

Continental's uniquely structured short haul international operations made substantial profits during that period, more than UAL's. That was true for most of this period in every Continental international division, Atlantic, Latin America, and Pacific, although not in domestic service. Continental's performance in the year or two immediately before the merger, however, was much weaker. From 1Q2009 through 3Q2010, it made an operating profit of just $513 million, far less than United. In short, its long-term prospects as a stand-alone airline were clouded at best.

United's pattern during the first ten years of the 21st century was almost the reverse of Continental's. While it lost $7.8 billion during the entire decade, most of that loss was in the early part. United's fortunes started to turn around in 2006 and 2007, when its profits totaled approximately $1.4 billion. Like the rest of the industry, it suffered with the recession in 2008, losing $1.746 billion that year. In the seven quarters immediately before the merger, however, it again turned profitable, making a profit of approximately $1.5 billion, almost three times the size of Continental's profit during he same period.

2. Fleet Composition

On the Merger Announcement Date ("MAD"), Continental had a total of 335 aircraft, of which just 20 were wide-body B777-200ERs. The rest included 26 B767s, 62 B757s, and 227 in the B737 family. In addition, Continental had firm orders for three

more B777s, two to be delivered in 2010, one in 2012 or later, and options for four more to be delivered in 2012 or later.

On Merger Closing Date ("MCD"), the fleet composition data was different. According to Captain Spence Kershaw's Exhibit D1, p. 2, Continental had 349 aircraft on that date, including 22 B777s, 26 B767s, 62 B757s, and 239 B737s. It had firm orders for 75 planes (49 B737NGs, one B777, and 25 B787s) and options for another 98 (59 B737NGs, four B777s, and 35 B787s. Again, some of those orders and options were replacement aircraft, particularly the 737NGs.

United's 359 aircraft fleet at the MCD included 24 B747s, 52 B777s, 35 B767s, 96 B757s, 97 A320s and 55 A319s. Two-thirds of United's fleet were domestic-only aircraft. Thus, it had 136 wide-body planes, which included 76 jumbo aircraft, compared to Continental's 22. United believed with much of the rest of the industry in 2010 that wide-body aircraft are essential for the long haul international routes to maintain a global presence.

While Continental had purchased additional planes and ordered even more prior to MCD, United had not. (After the merger, United ordered 25 B787s and 25 A350s for delivery in 2016. However, these planes were considered replacement aircraft rather than new planes.) Once it became apparent that the industry was reducing capacity and that mergers were likely, UAL made a tactical decision to conserve cash and not purchase new planes until it knew whether and with whom it would merge.

CAL placed a different bet to make itself more attractive to potential suitors. It decided to modernize and expand its fleet. Among other things, it added winglets to its 757-200s to extend their long-haul range, and fitted them to obtain the ETOPS

certification that made trans-Atlantic flying possible. Thus, by the time of the merger, CAL's fleet was several years younger than UAL's, more fuel efficient, and technologically more advanced. That was a result of different but equally defensible strategic choices, not because of one airline's weakness.

3. Pilot Staffing

Block hours drive pilot numbers: the more hours an airline's planes fly, the more pilots it will need. Starting at the beginning of the decade in year 2000, United pilots flew considerably more block hours than Continental pilots. In 2000, United pilots flew 62% of the block hours. That figure gradually decreased and at the time of the merger, United flew 52% of the block hours compared to 48% for Continental with fewer pilots. As of the MCD, United captains averaged 49.4 block hours per month, while Continental pilots averaged 54 hours of block time per month.

On October 1, 2010, United had 7,699 pilots, of which 6,254 (81%) were active and 1,445 (19%) were furloughed. Of the active pilots, 2,575 were captains and 3,679 were first officers. On the same date, Continental had 2,067 captains and 2,571 first officers, a total active pilot count of 4,638. (Continental had a smaller percentage of first officers than United because United's loner international flying required more augmentation. UAL's first officers on average were older and more senior.) About 148 Continental pilots were on furlough at the MCD, although they were recalled within a few months.

It is also appropriate to consider mutual gains that flow from the merger. On a stand-alone basis, United Pilot hourly wage earnings were less than their counterparts at Continental. By contrast, the work rules and various elements of non-wage

compensation of United Pilots were superior to those at Continental. On balance, the compensation and working conditions of both groups were elevated by the rising tide of the of the new Joint Collective Bargaining Agreement ("United Pilot Agreement" or "JCBA"), signed December 18, 2012 and amendable January 31, 2017 (Joint Exhibit 7).

4. Conclusions

The parties' documentary and testimonial evidence conclusively demonstrated that each airline had major strengths and serious limitations. Overall, neither was clearly superior to the other. After trying various strategies through the decade, each independently realized that its long-term profitability, if not its very survival, required merging with a partner whose strengths balanced its weaknesses. After feints in other directions, they concluded that this merger was the best available option. It became a marriage, if not quite of equals, at least of well-balanced partners who filled each other's gaps to form a new and stronger entity.

III. THE PARTIES' PROPOSALS

A. ALPA POLICY

Following Arbitrator Nicolau's decision in *US Airways and America West Airlines,* ALPA revised its merger policy. The current policy, dated April 9, 2009, in Part III, Section C.4.e., provides:

> *Factors to be considered in constructing a fair and equitable integrated seniority list, in no particular order and with no particular weight, shall include but not be limited to the following:*
>
> *Career expectations*
> *Longevity*
> *Status and category*

The most significant change in the policy, particularly in light of the decision that prompted the revision, was the express addition of "longevity." We need not get into questions of what the committee members said during their deliberations. The words of the revised Merger Policy, when read in light of the context that gave rise to the change, plainly speak for themselves.

B. CONTINENTAL

The CAL proposal groups captains with captains and first officers with first officers. It omits category, treating all captains as fungible with all other captains, and all first officers as fungible with all other first officers, irrespective of which classification of aircraft they fly. It also excludes longevity (Tr. 1219-20), except indirectly in the sense that longevity has some bearing on a pilot's rank on the unmerged seniority lists.

CAL's proposal assumes that we will use the April 1, 2013 pilot lists. In constructing its first tranche of captains for the proposed ISL, for example, it uses the number 2,299. That number appears only on Continental Exhibit C-5, p. 1, the total of all Continental captains as of April 1, 2013. *See* Tr. 1153-54. Captain James Brucia, the Chairman of the CAL Merger Committee, explained the rationale for the CAL Committee's proposed ISL build model as premised upon two primary foundations: an April 1, 2013 "snapshot date" and Continental System Bid 14-02, cross-referenced to the United Category Staffing Requirements for Vacancies, effective 5-31-2013, June bid month. *See* Tr. 1129-1196.

Captain Brucia described the CAL-proposed integration methodology as "Captains with Captains and First Officers with First Officers". He then described in detail the complex assumptions that drove the numbers of Captains integrated and the

different ratios applied in two status-ranked tiers; below which the UAL furloughees were stapled at the bottom of the ISL, just above the constructive notice pilots. United obviously had many more pilots than CAL. To reach the proposed integer for a 1:1 ratio, CAL applies certain adjustments. First, CAL discounts *all* furloughed United pilots and focuses only on "active pilots". The apparent reason for that adjustment is its belief that the none of the furloughed United pilots brought any meaningful "sweat equity" to he merger. That major discount brings the pilot count closer to CAL's preferred 2, 299. Next, CAL argues that United was "horrendously overstaffed," meaning that it was carrying many more pilots than it really needed.

The overstaffing is shown, CAL argues, in the min/max parameters on bid 14-02, the April 2013 bid for February 2014 flying. LOA 26 of the JCBA requires posting of those parameters. In short, United did not "need" the allegedly excess active captains, so they should all be treated less favorably than captains from both airlines who are not "excess". Captain Brucia's calculations concluded that United had 609 more "bodies" than it needed (Tr. 1140, 1145, 1149). While his calculations are a bit difficult to follow and his numbers changed from time to time (Tr. 1140-53), he seems to have found that 291 of those bodies were captains (Tr. 1149-50). By deduction, that must mean that 318 were first officers.

Dropping those 291 "unneeded" captains further reduced the number of United captains to be considered for equal merger with all CAL captains, and thereby brought the respective captain counts closer to the 2,299 level for the 1:1 ratio. The CAL Committee used a different ratio to place the "excess" United captains with all of the respective first officers. Because United's long-range international flying required more

augmentation than did Continental's, the CAL Committee's calculation of that differential augmented flying produced a ratio of 1000:944, United to Continental for the first officer tier of their proposed ISL (Tr. 1156-59, 1173). Rather than attempt further paraphrasing of Captain Bruscia's detailed and complex technical explanation of the CAL Committee's calculations, we will let his testimony speak for itself.[1] (*See* Appendix 2, attached)

According to CAL, the airlines are comparable as well in terms of fleet counts and block hours. Finally, CAL considers the earnings for the respective pilot groups, without consideration of aircraft size or type or whether the flying is long haul international or short haul domestic. On that basis, the CAL Committee argues that UAL pilots have already received "an earnings windfall" under the JCBA. It urges that CAL pilots deserve preference in constructing the 1:1 captain ratio and using the same differential means "[t]here is no need to subdivide the fleet into categories". CAL's post-hearing brief succinctly summarizes its list-building position:

> The United pilots are clearly overstaffed. As Captains Butcher, Brucia and Torrance explained, United brings more pilots to the merger than jobs. Attributing the same number of Captaincies to United as to Continental comports with the equivalent number of airplanes and block hours brought to the merger by the two sides. The merged carrier will allocate pilot positions through the joint contract, which will even out any pre-existing differences in staffing deriving from the pre-merger carriers' practices. Because each side brings the same number of aircraft and block hours to the merger, the merged list should allocate an equal number of Captaincy entitlement positions to each side.

Finally, the CAL proposal seeks to account for career expectations primarily by means of integral Conditions and Restrictions rather than in the list build model itself.

[1] *See* Tr. 1129, Ln. 15-21; Tr. 1130, Ln. 13-22; Tr. 1131, Ln. 1-2, 20-22; Tr. 1133, Ln. 1-15; Tr. 1134, Ln. 1-5, 20-22; 1135, Ln. 1-14; Tr. 1150, Ln 3-14; Tr. 1154, Ln 3-14, 20-22; Tr. 1156. Ln. 3-5; Tr. 1156, Ln. 10-17; Tr. 1157, Ln 5-21; Tr. 1158, Ln. 1-22; Tr. 1159, Ln. 17-22; *See also* CAL Exhibits. G-1 thru G-8.

C. UNITED

UAL proposes a hybrid ISL build methodology that would combine two ALPA Merger Policy factors, Longevity and Status & Category, while protecting the third, Career Expectations, primarily through Conditions and Restrictions. The United team's proposal uses October 1, 2010, the MCD, as the "Snapshot Date" and the October 1, 2010 pre-merger seniority lists as the "Base Seniority Lists" for building its proposed ISL. It argues that the merger closing date best indicates the equities, jobs and fleet of each side at the beginning of the merger and avoids later changes introduced because of the merger. Additionally, United points out that the use of a snapshot date at or near the date of the merger is consistent with previous airline pilot integrations. Furthermore, it maintains that after October 1, 2010, all decisions were made by a single management entity. Therefore, it asserted that the snapshot date should not be April 1, 2013, two and a half years after a single management made decisions affecting all pilots.

Beginning with the October 1, 2010 snapshot date for purposes of assessing status and category and similarly using October 1, 2010 premerger seniority lists as "Base Seniority Lists", the UAL Committee model next drafts two separate integrated seniority lists:

> 1) A Longevity List, as of October 1, 2010 and
>
> 2) A Status & Category List, using seven groupings [The 7 groupings are: (1) 321/320/319FO, 737FO; (2) 767,757FO; (3) 747FO, 777FO, 787FO, 350FO; (4) 321/320/319CA/737CA; (5) 767/757CA; (6) 747CA, 777CA, 787CA, 350CA; (7) furloughees].[2]

The next steps combine the two lists, feathering the individual pilots by attributing

[2] The categories are formulated to match the aircraft and status groupings set forth in the "training freeze" provisions of Section 8-D-1-d of the JCBA, JX F.7, at 93, and an additional category for furloughees

equal weight to each factor (50% Status & Category/50% Longevity), thus producing the UAL Committee's proposed hybrid ISL. Finally, the UAL Committee proposes Conditions and Restrictions, which it maintains fairly and equitably protects for a reasonably limited period of time vested premerger career expectations of access to the most desirable flying by pilots from each airline.

Running the UAL Committee's longevity list required judgments about the proper longevity of several hundred CAL pilots, based upon circumstantial evidence from a number of premerger Continental databases rather than a single certified database. In contrast to the CAL team, which credits all of those pilots with regional subsidiary carrier flying they performed before and after their training dates for CAL mainline flying, the UAL team calculated presumed dates of hire/training at Continental mainline extrapolated from several Continental Management sources. The UAL Committee's stated objective was compliance with ALPA policy, which, it argues, provides that longevity must be determined by an employee's date of indoctrination training for the mainline airline, not before/after flying for a business partner regional airline. Thus, pilots who came to Continental mainline from a regional airline, apart from those whose seniority was merged by an ISL arbitration, were credited with longevity from the date they began training to fly mainline aircraft for the Continental mainline.

Crediting pilots only for time at Continental mainline and subtracting from their longevity time spent prior to commencement of mainline flying or under "flow-back" arrangements at subsidiary carriers required adjustments by the UAL Committee to the CAL Committee list. Continental Airlines advised the Committees that it did not possess

available records containing complete information of that sort in a single database. Therefore, the UAL team used an amalgam of data from the Zeus database for beginning training dates and data from the Continental defined benefit plan ("DBP") to calculate longevity and furlough time for those pilots.

The UAL Committee concedes the CAL team's point that Zeus and the other sources are not perfect. Nevertheless, they maintain that cross-referencing the Zeus data with contemporary data points in the DBP and INDOC sources shows they generally agree and effectively corroborate conclusions drawn from the Zeus data. More importantly, contends UAL, these data plainly support the longevity distinctions it drew between flying for Continental mainline, *per se*, and flying in regional carrier subsidiary service.

Regarding the UAL pilots who are on furlough, United's approach integrates these pilots with both the CAL pilots who were furloughed as of the Merger Closing Date and with active CAL pilots. The United proposal does not eliminate the longevity aspect of the ALPA merger policy as the CAL proposal does. It places UAL pilots with considerably more longevity along side of Cal pilots with less longevity. This is accomplished because United's proposal incorporates status & category into their methodology. United claimed that to staple the 1445 furloughed UAL pilots at the bottom of the ISL is unfair and not in keeping with the mandates of the ALPA merger policy.

The UAL Committee's post-hearing brief concludes with these admonitions:

> Airline mergers and the attendant pilot seniority integrations have proven to be the most stressful periods in an airline's evolution. That stress manifests itself in a variety of ways that pose serious problems for the respective pilot groups and for ALPA as an institution. The expectations that competing integration proposals create in the minds of the merging pilot groups – and the hostility

> engendered by these competing proposals – leave scars that do not heal well, if at all. . . . While there are surely many explanations for the tumult created by the SLI process, the leading culprit is the unrealistic expectations of many of the pilot groups. In our experience, those unrealistic expectations translate into extreme SLI proposals, and those extreme proposals are what allows the rhetoric and the animosity that flows from the fight over a scarce resource – a position on a combined seniority list – to spiral out of control. . . When an Award fails to call out the fact that one side has made an entirely unreasonable proposal . . . that encourages, or fails to discourage, continuing unreasonable proposals; it also encourages the very conduct that inflames the SLI process and leads to the bitter recrimination that haunts the merged pilot group and ALPA for decades after. . . [W]e urge in the strongest terms that [this Board] say so in its opinion, so that future merger committees will take this Board's admonitions to heart and the damaging consequences of unreasonable posturing will be eliminated or at least minimized in future mergers.

IV. ANALYSIS

A. THE APRIL 2009 REVISED ALPA MERGER POLICY

The "legal" framework in which the Board must carry out its responsibility is, of course, the April 2009 ALPA Merger Policy which, like its predecessors, requires the Board to construct a "fair and equitable" ISL. The evolution of ALPA Merger Policy including, most importantly, the modifications following George Nicolau's Award in the *America West-US Airways* case, is central to the resolution of this case.

That Award, by an experienced impartial arbitrator, was plainly based on the facts in that case record and the terms of the Merger Policy then in effect (but now changed). However, the pushback and uproar created an environment that was ultimately highly detrimental to ALPA and, unhappily, for the America West and US Airways pilots. *See generally* Jeff Bailey, *Pilots' Battles Over Seniority Play Havoc With Airline Mergers*, N.Y. TIMES, Feb. 27, 2008. Even as they discuss merging with American Airlines, pilots from US Airways' "East" and "West" groups are still suffering the toxic effects of the seniority integration dispute resulting from the 2005 merger of

US Airways and America West. *See also*, *Addington v. U.S. Airline Pilots Ass'n*, 606 F.3d 1174 (9th Cir. 2010) (ordering dismissal of DFR suit on ripeness grounds); *U.S. Airline Pilots Assn. v. AWAPPA,* LLC, 615 F.3d 312 (4th Cir. 2010) (affirming dismissal of RICO litigation).

After that experience, ALPA convened a blue ribbon internal panel, whose study, findings and recommendations resulted in significant amendments of ALPA Merger Policy in 2009. The most important amendment to Merger Policy that emerged from this process replaced the list of five goals that negotiators, mediators, and arbitrators were required to weigh in integrating seniority lists with three quite specific factors – longevity status and category, and career expectations – which arbitrators are now required to consider. It is that revised April 2009 Merger Policy which governs the Award in this case.

Of particular significance, the revised Merger Policy expressly restores longevity as a factor that must be considered in an SLI proceeding. *Cf., Delta-Northwest at 13*, and *America West-US Airways* at 2, with Merger Policy (JX A), Part 3.C.4.e. "Longevity," as used in revised ALPA Merger Policy, codifies the prior practice of considering as equity the time a pilot has spent in-seat. *See generally* M. Arcamuzi, *The New ALPA Merger Policy*, AIR LINE PILOT, at 31-32 (Oct. 2009). Such length of service is the period from date of hire to the snapshot date, adjusted by a pilot's furlough time and certain other non-flying time.

The revised Policy directs this Arbitration Board to construct the UAL/CAL ISL fairly and equitably, by taking into account, and weighting appropriately, any factors we deem appropriate. The revised ALPA Merger Policy gives the Board a great deal of

flexibility. However, the revised Merger Policy mandates that we consider three specific factors – status and category, longevity and career expectations. Those three expressly listed factors must be considered, but "in no particular order and with no particular weight."

The revised 2009 Merger Policy is clear that we must at least consider all of the listed factors. Based upon the language and context of the revision, we interpret that instruction as guidance to ***use*** all three factors, not just look at them, unless we find some good reason for not using one or more of them. After carefully reviewing the Merger Policy and the evidence, we find no good reason to omit any of the listed factors in constructing our awarded ISL in this case.

We hold that all three listed factors are relevant, important and necessary to produce a fair and equitable ISL in this case. In fact, it is clear from the parties' proposals that using all three factors produces a much fairer and more equitable list than not doing so. That conclusion drives our determinations concerning the competing proposals of the Committees and underpins the crafting of the ISL (Exhibit A) and integral Conditions and Restrictions (Exhibit B) of our Award.

B. THE COMPETING ISL BUILD MODELS

The CAL Committee's list build model employed neither longevity nor category. It relied exclusively on a single factor—status—for a one-to-one ratio of some of the UAL Captains with an inflated bloc of 2,299 CAL Captains premised upon CAL System Bid 14-02, which occurred during post-merger combined operations under a single management. Even status consideration was dropped for 291 UAL Captains, deemed by

the CAL Committee model "unneeded" or "overstaffed". Instead, they were lumped together with UAL and CAL first officers in a second ratioed category ostensibly based upon the different "augmentation rates" of the respective Carriers. The CAL proposal then posited career expectation protection by several conditions and restrictions.

The UAL Committee's list build model addressed and incorporated all three factors specified by ALPA merger policy: longevity, status & category and career expectations. It did so by creating separate seniority lists using longevity for one and status & category for the other, then merging the two to produce a hybrid list. In combining the separate longevity and status & category lists to form the ISL, the UAL team proposed weighting each factor at 50%, so that longevity "counted" exactly as much as status & category. The UAL proposal then protected career expectations through conditions and restrictions.

C. CONCLUSIONS ABOUT THE BUILD MODELS

The primary failing of the CAL proposal's use of only status, to the virtual exclusion of all other Merger Policy factors, is that it unfairly, inequitably and disproportionately benefits one pilot group to the consequent detriment of the other. If either group proposed using any other single Merger Policy factor alone, like longevity, the resulting list would also be distorted, but in a different direction. Another defect of the CAL Committee's proposed ISL is that it unjustifiably creates extremely large tiers of pilots from a single airline. Some such distortions are inevitable in any merger of seniority lists. But the career-long blocking effect of those spawned by the CAL proposal could harm morale and employee relations for decades to come.

The CAL Committee's use of an April 1, 2013 base list date is manifestly intended to embrace the windfall of potential Captain upgrades in February 2014, generated by premerger CAL System Bid 14-02. Memorializing that windfall by treating captains (or at least some captains) as fungible equals irrespective of aircraft, while treating others as "unneeded", is not a bone fide status & category ratio. And simply disregarding longevity as an equity factor seems engineered to justify the unfair stapling to the bottom of the list all United pilots in furlough status on May 3, 2010.

On the May 3, 2010 MAD, United had many more pilots on furlough than Continental. However, United's furloughees, in the main, had significantly greater longevity than the Continental furloughees. Those UAL furloughees brought substantial longevity to the merger, compared to the CAL pilots at the bottom of the CAL list.[3] Further, as a consequence of their respective hiring patterns, United's First Officers as a whole had greater longevity than, but also were older than, similarly situated Continental First Officers. A proposal that completely ignores sweat equity longevity cannot be a plank in our ISL platform.

In our considered judgment, both the methodology of the CAL Committee and its resultant proposed ISL are incompatible with the revised ALPA Merger Policy. Aside from the windfall inequities generated by using an April 1, 2013 snapshot date, total disregard of the longevity factor cannot possibly be justified in the factual circumstances of this case. Not surprisingly, the ISL produced by the CAL Committee's fatally defective methodology is neither fair nor equitable.

[3] Six hundred twenty-one of the most junior 1445 United pilots had greater longevity than all 1512 Continental pilots hired after 2005 (i.e., the bottom third of the CAL list). Tr. 2481-83 (Ruark); UX-5 (Ruark), at 18. The next, more junior group of 633 UAL furloughees had longevity similar to the CAL pilots hired between 2005 and 2007. The final, most junior group of 192 UAL furloughees had longevity similar to the 148 CAL pilots on furlough at the time of the merger.

At the end of the day, despite our best efforts, we were unable to find a way to adjust or modify the CAL Committee's list build model to produce an acceptably fair and equitable ISL. Even with a different snapshot date, contrived differentials premised on post-merger changes inflating premerger career expectations still drive that ersatz ratioed model. A gerrymandered approximation of a status-only model that uses assumptions at odds with Merger Policy cannot be used to build our Award.

D. INTERPRETING ALPA MERGER POLICY

1. Jurisdiction and Authority

Part 3C2d of the applicable ALPA Merger Policy states, in relevant part: *"The date of hire shall be the date upon which a pilot* ***first appears upon the Company's payroll*** *as a pilot* ***and also begins initial operational training*** *required to perform such duties in airline operations."* (Emphasis added). Some "date of hire" definition words, *viz*., "on the Company's payroll" were in contention between the pilot groups in the first ISL arbitration under the revised 2009 Merger Policy. *Pinnacle-Colgan-Mesaba*, (Bloch, 2012). In deciding that the facts of that case allowed creation of a fair and equitable ISL without the necessity of interpreting the contested phrase, Arbitrator Richard Bloch made these observations:

> For several reasons, the Arbitrator need not, therefore does not, resolve the interpretive issue presented. To the extent an ambiguity exists as to the intended meaning of the above-cited provision, it is an issue that ought be resolved by the parties themselves, or by the drafters. It is at least unclear that this type of interpretive exercise is properly within the scope of this Arbitrator in this case and, in any event, there is no evidence whatsoever as to either the drafting history or, for that matter, the precise manner in which the policy has been applied. Most importantly, resolution of that issue is not required for purposes of implementing the methodologies set forth below.

In this case, the interpretation and proper application of all of the above-emphasized words are in sharp contention between the Committees. Moreover, none of the considerations that caused Arbitrator Bloch's judicious abstention are present in our record. To the contrary, interpretation and application of the "date of hire" definition in Part 3C2d of the revised ALPA Merger Policy is unavoidably at the heart of the present dispute over the longevity of hundreds of pilots.

All concerned obviously anticipated the likelihood that we must, of necessity, address and resolve those contentions in this case. Thus, they took appropriate steps to confirm clearly our jurisdiction and authority to do. *See* the February 6, 2013 letter from ALPA President Donald Lee Moak, jointly addressed to Counsel for the Merger Committees, and the Memorandum of Agreement entered into by Counsel, effective February 22, 2013. *(*UAL Opening Statement Exhibits U-1 and U-2).

President Moak's joint letter reads, in parts most pertinent:

* * *

> This responds to your letters of February 4th and 5th, respectively, concerning the CAL-UAL SLI and the definitions of date of hire, furlough time and longevity as applied to this SLI under Merger Policy. Contrary to both of your requests, I see no reason for intervention by the president's office.
>
> These issues have arisen in the exchange and review of certified seniority lists between the Merger Representatives of the two pilot groups. Part 3, Section 3-C-4-b of ALPA Merger Policy provides:
>
> The merger representatives shall resolve any and all disputes and inconsistencies with regard to the employment data exchanged. The representatives shall be empowered to compromise their differences to the extent necessary to reach agreement except that the relative position of the flight deck crewmembers on their respective seniority lists shall be maintained. Areas remaining in disagreement shall be reduced to writing, stating the contentions of the parties, and shall be resolved, if necessary, by utilizing the mediation and arbitration procedures set forth in Part 3C 5 below.

> It appears from your correspondence that the Merger Representatives of both pilot groups agree that the issues under discussion can be resolved (to the extent necessary) by the mediation and arbitration procedure under the SLI Protocol. Accordingly, and presuming that you will both so inform the neutrals involved in your process, there should be no concern as to their acceptance of that responsibility.
>
> * * *

After receiving that letter, Counsel for the Committees agreed as follows:

> Specifically, if and to the extent that the Arbitration Board deems it necessary and appropriate in achieving a "fair and equitable integration of the Continental and United pilot seniority lists," the Board has the authority to interpret and apply to the particular circumstances of this case the phrases "grandfather or similar special seniority rights," "fair and equitable integrated seniority list," "career expectations," "longevity," "date of hire," "furlough and "status and category," the other language quoted from ALPA Merger Policy hereinabove, and related provisions of ALPA Merger Policy.

Proper date of hire calculation, as defined in Merger Policy, is an essential component of the Board-modified hybrid model used to construct our awarded ISL. It is therefore incumbent upon us to resolve the various contentions about the meaning and intent of the Merger Policy.

In one sense, resolving that imbroglio has no impact on the CAL Committee's proposed ISL, because its status-ratioed list build model treats date of hire as irrelevant in the facts of this case. But the Board already rejected that approach and concluded that the list build model based on that assumption produced an ISL inconsistent with Merger Policy.

The CAL Committee posits, alternatively, that its interpretations of "date of hire" and "furlough" for the CAL Express pilots not only are consistent with the plain language and manifest intent of ALPA Merger Policy but also result in fair and equitable placement of the affected pilots on its proposed ISL. *Arguendo*, CAL urges that

Continental Airlines management records contain no reliable data for appropriate calculation of either the date of hire of those pilots at CAL mainline or the dates when such a pilot "flowed" up or down from CAL mainline operations to fly for Continental Express ("COEX") or its constituent regional carriers. In our considered judgment, those contentions are not tenable or sustainable.

2. The Longevity Dispute

Reduced to essentials, the "date of hire" dispute centers on the Continental Merger Committee's contention that the date of hire for hundreds of CAL pilots in the middle tier of the premerger Continental list, and by extension the fair and equitable placement of those pilots on the awarded ISL, is the date they began flying as pilots of companies that were later combined with Continental through corporate mergers or acquisitions as wholly-owned subsidiaries *i.e.,* Continental Express ("COEX"). [For purposes of this discussion, Continental Express includes Britt Airways ("Britt"), Rocky Mountain Airways ("Rocky Mountain") and Bar Harbor Airways ("Bar Harbor")].

At one point, COEX was a wholly owned subsidiary of CAL. Later, CAL sold its majority stake and is no longer an owner. Even though COEX was at that point an independent company, the CAL team would still count toward CAL mainline longevity all COEX flying before or after that sale and before and after flying in CAL mainline operations. In addition, the Continental Merger Committee would have us not "count" as "furlough time" any periods when CAL pilots faced with a RIF from Continental mainline flying, flew contractually available pilot positions at COEX before returning to CAL mainline. The United Merger Committee maintains that "counting" toward ISL longevity time spent flying for regional airlines under regional terms and conditions of

employment, whether before or after flying as a pilot for CAL mainline, contradicts the plain language and intent of Merger Policy.

Before proceeding further, it is important to emphasize what is and is not in contention. The CAL pilots whose longevity calculations are at issue comprise less than a quarter of the CAL premerger list, namely those pilots whose positions on the list were assigned under the terms of: 1) the Continental Express pilot seniority program appearing in Chapter 9 of the Continental Pilot Employment Policy ("PEP Chapter 9"); or 2) the Employment Opportunities and Furlough Protection Agreement, Letter of Agreement #7 of the IACP-Continental 1997 Collective Bargaining Agreement ("EOFPA").

The premerger Continental seniority list also includes pilots whose placement on the list was awarded in one of four previous seniority list integration arbitrations: (1) *Continental-Texas International* (1983) (Greenbaum, Arb.); (2) *Continental-New York Air* (1986) (Bloch, Arb.); (3) *Continental-Frontier* (1987) (Nicolau, Arb.); or (4) *People Express-Continental-Frontier* (1991) (Ross, Arb.). The UAL Committee did not dispute and our hybrid ISL does not adjust the dates of hire and related longevity of the CAL pilots who were integrated by the four arbitration proceedings ending with the 1991 Ross Award (ranging from 1-1641 on the CAL Certified Seniority List, Jt. Ex. E.1). Similarly unchallenged and unaffected are the dates of hire of off-the-street CAL hires from the 1988–2003 period (including the Eastern Airlines hires in 1997) or the dates of hire and related longevity of any of CAL's post-2004 hires (in the range from 3294-4807).

The UAL Committee did persuasively challenge the reported dates of hire for approximately 780 pilots, in the range between Thomas L. Hull and Christopher M. Green (listed with seniority Numbers 1642 and 3293). Those pilots are the regional (Britt, RMA, Bar Harbor and COEX) pilots hired by CAL in the years 1988 to 2003. The UAL Committee also persuasively challenged the CAL Committee's failure to report furlough periods for nearly 400 pilots (spread in the range from 2727 to 3293), who "flowed back" to COEX for certain periods during which their immediate peers were furloughed, including reductions in force arising from the 1995-96 demise of "CAL Lite". The available evidence demonstrates persuasively that such periods must be considered as "furloughs" under Merger Policy.

3. The "Company"

ALPA Merger Policy Part 3.C.2.d defines date of hire by reference to the time a pilot first begins training for service as a pilot on behalf of "the Company". Similarly, Merger Policy requires discounting periods of "furlough", as well as "intervening periods of service other than as a flight deck crew member with this Company", when creating a pilot group's seniority list for SLI purposes. The CAL Committee argues that former COEX pilots should be credited with dates of hire beginning at a regional carrier. It also maintains that periods of time when pilots "flowed down" to COEX while pilots senior to them were being furloughed, should not be counted as furlough time. Those claims assume that CAL and COEX constituted one "Company" for purposes of Merger Policy. The available evidence does not support that assumption.

The corporate relationship between CAL mainline and the various COEX carriers was complex and constantly changing. Texas International, headed by Frank Lorenzo,

acquired both Continental and People Express in the 1980s. At the time of the acquisition, People Express owned Britt Airways. Continental later acquired an interest in Bar Harbor and Texas International acquired RMA. Upon CAL's exit from bankruptcy, the assets of the regional carriers were transferred to COEX.

COEX was a wholly owned subsidiary of CAL between 1993 and 2001, though CAL and COEX were never merged. In 2002, CAL's ownership of COEX dropped when the latter company's shares, under the name ExpressJet, were sold in an initial public offering. See CAL 10-K, 2003. CAL sold additional shares in 2003, dropping its ownership below 50%, and sold the rest in 2004. *See*, CAL 10-K, 2004.

Under these morphing corporate structures, the two companies operated under different sets of FAA regulations and separate operating certificates. Their pilots had separate employment policies (during the years when there was no pilot union) or CBAs with different terms and conditions of employment – "regional terms and conditions of employment" for COEX pilots and "mainline terms and conditions of employment" for CAL pilots. The separate CBAs for the CAL and COEX pilots defined "the Company" as either CAL or COEX respectively. The pilots flew different equipment, stayed at different layover hotels, dealt with different managements and were paid through separate payrolls by separate companies with different IRS Employer Identification Numbers.

Whatever the corporate ownership structure may have been at various times, Continental and COEX never were a single "Company" as we understand the meaning of that term in ALPA Merger Policy.

4. PEP and EOFPA

The CAL Committee also bases its date of hire position on several documents that outline "flow-through" arrangements that applied to COEX pilots in the 1988-2003 period, identifying six iterations of personnel policies that covered the pilots whose longevity is at issue:

Policy		Number of Pilots Covered	Percentage of Challenged DOH Group
Pilot Employment Policy ("PEP) Ch. 9	February 1, 1988 Group	145	18.6%
	Feb. 1 to Aug. 8, 1988 Group	23	3.0%
	4:1 Ratio Group	39	5.0%
	Compression Group	262	33.6%
Employment Opportunities and Furlough Protection Agreement ("EOFPA")	Original EOFPA	189	24.2%
	Supplemental EOFPA	122	15.6%

The facts of the relationship between CAL and COEX establish that they were not a single "Company" during the period in which the PEP, the EOFPA, and the Supplemental EOFPA were in place. Indeed, the language of the policies themselves demonstrates that CAL and COEX were never a single "Company."[4] They carefully and

[4] For example, the PEP refers to the *"[t]ransition of CAL- Express [p]ilots to CAL,"* PEP Ch. 9, § A (emphasis added), notes that future new hire positions *"at CAL"* would first be offered to certain eligible COEX pilots in the Feb. 1 to Aug. 1, 1988 block, *id.* § A.3.a, and provides that *"[a] CAL-Express pilot will become a CAL employee as of the date he begins training to staff a position at CAL," id.* §B.2.a (emphases added). *See also* PEP Side letter § 1.b ("*At such time as [CAL] requires additional pilots . . ., offers of employment shall first be made in [CAL] seniority order to those [COEX] pilots holding reserve seniority numbers at [CAL].")* (emphasis added); § 1.d ("[COEX] pilots as of September 1, 1993 holding a reserved seniority number at [CAL] senior to current [CAL] pilots may not exercise their seniority to bid for vacancies at [CAL] *until such time as the [COEX] pilot has been offered and has accepted employment as a pilot at [CAL].*")

consistently emphasize the distinctions between CAL and its Express operations.

Even taking these arrangements on their terms, they did not provide that COEX pilots would keep for all purposes their COEX date of hire upon transitioning to CAL. Nothing in those arrangements provides that the date of hire at a COEX carrier should be counted as the CAL date of hire or that time on furlough from CAL mainline should not count because some of those pilots flew at COEX during a mainline RIF period. Rather, the various arrangements simply set up a preferential hiring program using pre-existing regional carrier dates of hire.

Finally, the CAL Committee position is independently problematic because, based on the terms of the PEP Chapter 9, over 60% of the pilots in question "flowed up" from COEX to CAL under a policy that was unilaterally maintained and controlled by management during a period when there was no pilots' union on the property. Neither contrary management personnel practices nor negotiated policies can prevail over the Merger Policy's definitions.

5. The Zeus, Defined Benefit Plan, and INDOC

Merger Policy, Part 3.C.2.d. defines date of hire as the "date upon which a pilot first appears upon **the Company's** payroll as a pilot **and** also begins initial operational training" (emphasis added). Proper application of that conjunctive requirement to

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(emphasis added). The EOFPA sets forth the procedures by which "COEX pilots shall be selected *for employment at CAL*," EOFPA § 1.C (emphasis added), and refers to a pilot's ability to "delay his *transition to CAL*," *id.* § 1.G. The programs variously speak to an opportunity to participate in the CAL pilot selection process (PEP § A1.c), to be "*eligible to interview for a pilot position at CAL*" (id. § A.2.a), "*to interview for potential employment with Continental*" (PEP Side Letter § 1.c), or to *"be placed in an eligibility pool," (*EOFPA § 1.B) from which he or she may "*accept[] a CAL new hire pilot opportunity*" (*id.* § 1.F). *See also* Supplemental EOFPA ¶ F.4 (outlining provisions for certain pilots entering the eligibility pool to be *"entitled . . . to a Continental new hire class date").*

calculate the longevity of the pilots at issue turns upon the use of employment data establishing their initial training dates for CAL mainline flying and the periods of time when they "flowed" between COEX and CAL mainline flying.

The Merger Committees were sharply divided as to whether data establishing initial CAL mainline qualification training date and "flow-back" furlough periods for the disputed COEX pilots existed in any format from which objectively reliable or accurate longevity calculations could be made.

In response to information requests filed under the terms of the Process Agreement, United management initially advised the Committees that such information was not recorded in any single accessible database. After additional inquiries, the Company did produce some training records (the so-called "Zeus" database), records of time credited toward Continental's now-frozen DBP data and certain "XJT Furlough" information. The Zeus database contains dates on which Continental pilots, whether "flow-through" or "off-the-street hire, first began qualification training to fly on the mainline. The DBP data show retirement plan participation and the XJT entries of management indicate "flow-down" furlough periods.

By a process of cross-referencing Zeus, DB and XJT data points, the UAL Committee concluded the Zeus records were a generally reliable source for calculating the date of hire longevity of the cadre of disputed COEX pilots in its hybrid build model. Emphasizing the Company's less than ringing endorsement of its Zeus database and the five-year difference between Zeus records and "frozen" DBP data, the CAL Committee contended the Zeus data were inherently unreliable. Additionally, it posited that calculation of accurate longevity for COEX pilots from available data was impossible.

Midway through the arbitration hearings, with the encouragement of the Board, Company managers made another search of employment records. They located and sent to both Committees a previously undiscovered pertinent database, maintained by premerger Continental for FAA reporting purposes. Codenamed "INDOC", that database sets forth start dates of qualification training classes for pilots prior to performing CAL mainline flying.

After giving the Committees ample time to study that information, the Board invited further comment. The record evidence leaves us with no doubts about the authenticity of the INDOC database. We are persuaded that INDOC corroborates the accuracy of the cross-referenced Zeus/DB/XJT longevity calculations the UAL Committee used in building its hybrid model.

E. THE BOARD'S HYBRID ISL MODEL

1. General Principles

Longevity or "date-of-hire" integration consists of constructing an ISL by ranking employees solely based on their length of service at their respective pre-merger carriers. The status & category "ratio" methods characteristically construct the new seniority list with the goal that each individual's pre- and post-merger percentile ranking on his or her seniority list remains constant.

As the UAL prehearing brief aptly points out, those two methods inherently "pull in different directions". That is so because each model posits fundamentally different value judgments about the proper interpretation of the commonly espoused "fair and equitable" benchmark. The status and category model attempts to encapsulate in resin

and transfer unchanged an individual's premerger entitlements and the longevity model measures only individual's competitive ranking on the premerger list.

Conditions under which either traditional method, standing alone, produces an equally fair and equitable merged list are indeed rare. Moreover arbitral attempts to ameliorate the inevitable career expectation distortions of an ISL based solely on one or the other method by means of elaborate and lengthy Conditions and Restrictions have proven counterproductive and only served to perpetuate the pre-merger disputes. *See Northwest/Republic* (Roberts, 1989) and 24 subsequent interpretation awards between 1989 and 2010.

No method of using unqualified status & category or longevity seniority integration models adequately satisfies the equity and fairness standards underlying both methods. Under the current ALPA Merger Policy, the ISL process "both anticipates and accommodates custom tailoring a list that is responsive to observed 'equities' of the respective parties." *Pinnacle-Colgan-Mesaba*, at 3 (2011) (Bloch, Arb.).

On its face, we found the UAL hybrid proposal to be conceptually truer to ALPA merger policy than the CAL proposal. It is also clear to us that using a hybrid methodology that combines elements of both the Date-of-Hire and Status/Category ratio models can reduce aggregate equity distortion. The fairly straightforward combination of those two most commonly used methods in the UAL model was a good conceptual base for building our ISL. We therefore dug deeper to analyze and assess whether the 50/50 factor weighting UAL model proposed at the hearing produced an integrated list that we could judge both fair and equitable.

After carefully considering a large number of different alternatives, we concluded the UAL Committee's five-step list build model, with appropriate modifications by the Board, achieved our goal of a fair and equitable ISL in this case. To put it directly, using all of the ALPA Merger Policy factors produces a fair and equitable IAL; ignoring any of them would produce an unfair and inequitable seniority list.

In constructing our awarded ISL, Exhibit A, we made adjustments in Step 5 ("Factor Weighting") of the UAL hybrid model and added a new Step 6 to update the October 1, 2010 "snapshot date" lists used as "Base Seniority Lists" in Step 1 to build the awarded hybrid ISL. We explain those adjustments in the next two sections.

2. Step 5 Modifications

Although the concept of a 50/50 hybrid approach that weighted the two quantifiable factors equally was cosmetically appealing, we found that equal weighting still produced distortions in the overall list. It did so primarily by inserting unjustifiably large blocs of pilots from just one or another of the two legacy carriers. Accordingly, we concluded that some modification of the Step 5 factor weighting analysis was appropriate and necessary to achieve a more fair and equitable distribution.

In recalculating Step 5 of the UAL approach with alternative factor weights, we found that incremental modifications reducing the importance of longevity and increasing the importance of status & category reduced the observed inequitable distributions. Moreover, giving greater importance to status & category accounts more appropriately for important differences in the respective premerger fleets, widebody aircraft count and international flying, while still fairly recognizing the legitimate career expectations of the furloughed pilots in each group.

We found movement in the direction of greater fairness with each such incremental change in the 50/50 factor weightings. But after comparing various options, we found that giving 65% weight to status and category and 35% to longevity blended the two pilot groups most fairly and equitably from the top of the list to the bottom. After much discussion, we unanimously agreed to adopt the UAL list build model, with a 65/35 modification of the Step 5 factor percentages, thus producing the fair and equitable ISL which is Attachment A of our Award in this matter.

3. Step 6

As proposed in the arbitration hearings, the UAL Committee's model uses October 2010 lists in Step 1 of building its proposed hybrid ISL. By the time of the arbitration hearings in Summer 2013, those lists were going on three years old. When an arbitrated SLI occurs long after the snapshot date premerger lists, it is standard practice for the arbitrators to require updating of the base build lists by culling deceased, resigned or retired *etc.* pilots. To that end, during mediation under the Process Agreement, the Parties in this case signed a March 1, 2013 Agreement setting forth a detailed process for such updating. (*See* Paragraph 3 of the Process for Updating Certified Lists as of April 1, 2013, Joint Exhibit G, in Appendix 1, attached).

On that basis, the two Committees updated their respective May 17, 2010 lists. But, as appears clear from cross-examination testimony at transcript 4053-4054 and Joint Exhibit G itself, the October 1, 2010 lists of we used to build the awarded ISL were not similarly updated. Thus, Step 6 of our model updated the 65/35 hybrid ISL, using Paragraph 3 of the process agreed to by the Parties: “Remove individuals no longer on

the certified lists as of April 1, 2013 (*e.g.*, death, termination, retirement, resignation".

Based upon all of the foregoing, we directed the Technical Assistance Team to build an ISL, using the UAL hybrid model modified by our Steps 5 and 6. That ISL is attached as Exhibit A of our Award.

4. Constructive Notice Pilots

The concept of a constructive notice date ("CND") is not complicated: it is the date after which any pilot hired by either premerger airline is deemed to know that he or she will be working for a combined entity and that his or her career expectations will be a product of the success or failure of the combined airline, irrespective of which airline hired the pilot. S*ee, e.g., Atlas-Polar* at 9 ("The concept of 'Constructive Notice' is that when newly-hired pilots know, or should know, that their flying careers, and specifically their seniority status, may be determined in reference to an additional group of pilots, such pilots cannot be considered to be part of the premerger group and must be treated in a manner consistent with what should have been their realistic expectations at the time they were hired."); *see also Alaska-Jet America* at 7.

By agreement of the parties in this case, the CND is the MAD, May 3, 2010. *See* Protocol Agreement, JX B, § 2. Under the CND doctrine, "constructive notice pilots" are junior to all pilots on the merged ISL and listed in order of date of hire consistent with the Joint Collective Bargaining Agreement (JCBA.). There is no dispute between the two Committees as to the effect of the constructive notice doctrine. The only differences between them are focused narrowly on just two pilots on the CAL list, *i.e.*, whether it is fair and equitable for this Board to strictly apply the CND doctrine to Jonathan Yost and Craig Watts ("Yost" and "Watts").

Some of the surrounding facts are confidential and judicially sealed, but the facts of record are pretty straightforward. After passing the CAL pilot selection process, including the panel interview and simulator check, Yost was offered a pilot position at Continental on January 11, 2007, with promised enrollment in the first available training class after completion of his Air National Guard service. For reasons not developed in our record, several extensions of his full-time Air National Guard deployment prevented him from reporting for duty at CAL and entering the training class until September 27, 2011.

The UAL Committee maintains that Yost should be treated as a CND pilot under strict application of the doctrine, citing the Merger Policy definition of "date-of-hire" and the decision of a Federal District Court in *Quick v. Frontier Airlines, Inc.*, 544 F. Supp. 2d 1197 (D. Colo. 2008). The CAL Committee urges that mitigating circumstances, namely the lengthy extension of his military service to the Country, warrant a relaxation in the strict application of the doctrine. And because Mr. Watts is senior to Yost on the Continental list, the CAL Committee posits he must be accorded similarly flexible treatment, because Merger Policy bars Yost from "leapfrogging" above Watts on the combined ISL. (Part 3, Section C.4.d: "No integrated list shall be constructed which would change the order of the flight deck crew members on their own respective seniority lists."). [5]

Since the constructive notice doctrine ultimately is premised on fairness and equity, ISL arbitrators have exercised discretion about its application in some *sui*

[5] The CAL Committee also advanced an equity argument for Watts, based upon a Settlement Agreement disposing of certain employment related litigation he initiated against Continental. That settlement included a conditional offer of employment, which eventually ripened into his entry in the September 27, 2011 training class ahead of Yost. Because of our disposition of the Yost claim and the operation of Merger Policy Part 3, Section C.4.d, we do not address the Watts equity claim *per se*.

generis situations. Sometimes that has resulted in less than strict application in circumstances when injustice would result from an overly rigid approach. *See, e.g.*, *Northwest-Republic* at 7-8 (1989) (Roberts, Arb.); *Saturn-Trans International* at 17-18 (1977) (Feller, Arb.). After carefully considering the undisputed facts in light of the fairness and equity standards that underpin Merger Policy, the Board concurs with CAL Committee's positions regarding both Yost and Watts.

The District Court in *Quick v. Frontier, op. cit.,* held that the airline's reversal of its earlier decision to relax the constructive notice doctrine due to military service. The court's decision in *Quick* turned solely on the definition of "employment" under the express language of the Uniformed Services Employment and Reemployment Act ("USERRA"), 38 U.S.C. § 4301 *et. seq*.

In short, the *Quick* decision begs the questions of Merger Policy fairness and equity presented in our case. It is those fundamental Merger Policy standards that drive our determination to sustain the CAL Committee's petition and place Yost above the CND line. Merger Policy Part 3, Section C.4.d requires similar treatment of Watts on our awarded ISL. However, the CAL suggestion of placing these two pilots high up on the ISL, ahead of thousands of senior pilots hired years, or even decades, before them would not be fair and equitable.

Rather than simply stapling Watts/Yost to the bottom of the ISL, we added them to the end of the October 2010 CAL Seniority List. Watts remains above Yost, with each assigned a Longevity credit of zero in our hybrid build model. This gives them both slots on the bottom tier of the awarded ISL, but fairly places them among the least senior furloughed pilots.

F. CONDITIONS AND RESTRICTIONS

Our review of many prior ISL arbitration decisions teaches that elaborate conditions and restrictions unduly complicate implementation of an Integrated Seniority List. The interminable disputes they generate tend to breed animosity that corrodes flight crew relations. Our Award seeks to achieve its goals of fairness and equity primarily through the construction and creation of the ISL itself, while awarding only standard and necessary conditions and restrictions of limited reach and duration.

In most respects, the competing Conditions and Restrictions proposed by the respective Committees covered traditional common ground and mutually satisfied the fair and equitable standards of Merger Policy. In constructing our conditions and restrictions, we selected what we deemed to be the best of each and made minimal adjustments. But it is necessary that we address and resolve three points of controversy in those common subject matter proposals.

1. "Qualification Training"

The UAL Committee's pilots in training proposed C&R (Number 1.3) is as follows:

> Pilots who, at the time of implementation of an integrated seniority list, are in the process of completing or who have completed qualification training for a new position (e.g., B-777 Captain or A-319 First Officer) may be assigned to the position for which they are being or have been trained, regardless of their relative standing on the Integrated Seniority List.

Two of the CAL Committee's proposed C&Rs address pilots in training:

> Neither the implementation of the ISL nor the implementation or expiration of a condition or restriction herein, in and of itself, shall cause the displacement of any pilot from his or her then-current position (including a pilot who has been awarded a position but has not commenced or completed training).
>
> Pilots who, at the time of implementation of the ISL, are in the process of completing or who have completed qualification training for a new position (*e.g.,* B-777 Captain or A-

> 320 First Officer) may be assigned to the position for which they are being or have been trained, regardless of their relative standing on the ISL. Pilots awarded new positions shall be considered as "in the process of completing . . . qualification training for a new position", within the meaning of this provision, unless and until they have cancelled their bids for the new positions, withdrawn from training, failed the training without further recourse to further training, or successfully completed the training.

The CAL Committee's training protection proposals include "a pilot who has been awarded a position but has not commenced or completed training." (Emphasis added). That expanded definition would have the Board sweep into protective coverage some 400 CAL pilots awarded tentative February 2014 positions in the January 2013 CAL Bid 14-02. As of the close of these arbitration hearings, many of those individuals had not even been awarded a training date, let alone begun training. Moreover, treating them as "currently in" those positions or "in the process of completing training" would unilaterally rewrite language mutually agreed to by the CAL pilots, the UAL pilots and the Company (*See* TPA Section 5-B. Acceptance of the Integrated Seniority List, in Appendix 1).

There simply is no fair and equitable basis for this Board to award what the CAL Committee proposes. Under the guise of protecting pilots from displacement from "then-current positions", it would extend such protection to pilots who don't actually have such positions at all. In short, if granted, it would interfere with the fair operation of the ISL forever by placing CAL pilots immovably in positions that their ISL seniority would not entitle them to hold. For all of those reasons, this Board did not adopt the CAL Committees' proposed C&R Numbers 1(b) and 1(c).

2. The Widebody Aircraft Fences

The traditional stovepipe preference of pilots for international long haul flying in widebody aircraft is well established. Nor is it a myth that for many years mainline

pilots, in general, have considered so-called "jumbo" jet aircraft flying as the pinnacle of career expectations. Premerger United's much older fleet had significantly more jumbo jets than did the premerger CAL fleet. Continental had no 747s and fewer 777s. But that is not the end of the story. It is not clear to us that flying jumbo-sized jets can remain for much longer the "holy grail" epitome of pilot career expectations. Few industries are as dynamic and unpredictable as the airline industry. That makes accurate prognostication of costs, markets and technologies problematic. That said, it appears from the record before us that size does still matter, but not necessarily jumbo size, *per se*.

Today's fleet replacement and expansion plans are driven by considerations other than gargantuan dimensions and tonnage capacity. The dialogue about the future of international widebody flying has shifted beyond size to include the economics and ergonomics of widebody long haul capability. Newly created types of modern widebody long haul aircraft, with enhanced fuel efficiency, offer improved economics relative to premerger fleets irrespective of market conditions. In that regard, the announced international fleet replacement program of the merged Carrier calls for reducing combined fleet complexity and associated operating costs by eliminating altogether B747, 777, and 767 aircraft types and transitioning to two widebody aircraft types, Boeing's B787 and the Airbus A350.

The premerger UAL quantitative advantage in the jumbo jet component of its largely outdated overall fleet is counterbalanced by qualitative advantages of premerger Continental's more balanced, modernized and technologically advanced overall fleet. UAL alone had B747s and more B777s, but it had none of the CAL premerger fleet's next

generation B737 ERs. Neither side had A350s or any on firm order for near term delivery. However, CAL alone anticipated delivery of cutting edge widebody B787s (which have since arrived), with more on firm order.

Pilot career expectations are driven in important part by fleet composition dictation of available status and categories. On the basis of the foregoing facts and conclusions, we judged the widebody fences of the UAL Committee unduly complicated, inequitable and overreaching. We adopted, with some modification, the CAL Committee's more streamlined proposal to fence, for five years, B787 widebody flying for premerger CAL pilots and B747/A350 widebody flying for premerger UAL pilots.

G. DISPUTE RESOLUTION PROCEDURES

Both Committees propose that this Board retain jurisdiction to resolve any disputes over the interpretation and application of the Board's Award. The only significant difference between the two is that the UAL Committee proposed a specific dispute resolution procedure and the CAL Committee did not. Instead, CAL suggested that we send the Committees back to negotiations over this subject and reserve the possibility of arbitration over the shape of a dispute resolution mechanism if those negotiations fail.

Our review of the UAL proposal indicates it is identical to that previously agreed to and since utilized effectively by both the Delta and Northwest Merger Committees and the Southwest and Air Tran Committees. We find it significant that this dispute resolution mechanism, agreed to by competing veteran pilot merger committees in both of those prior SLI proceedings, was created by the same sets of well-informed experienced legal counsel who represent the respective Committees in our case. Several

years on, the dispute resolution machinery they jointly fashioned still functions well. We can find no good reason to compel them to reinvent a different version. Our Award Exhibit B is modeled on that same time-tested and attorney-approved dispute resolution process.

H. CLOSING

Our summary conclusions paraphrase and echo caveats expressed by every ALPA Merger Policy arbitration panel that precedes us. We inquired as to where the respective groups have been and we have made reasoned judgments as to where they were going. We attempted to recognize reasonable expectations of both premerger groups but rejected proposals that could not be reconciled with governing Merger Policy or resulted in untenable windfalls. As in all such seniority integration exercises, the fairness and equity assessment is focused necessarily on the respective groups, not on each or any individual pilot. Any such distortions are minimized to the extent possible in our awarded ISL. Regrettably but inevitably, there will be perceived disparities and mismatches by individuals on both sides under the merged list. George Nicolau's four basic verities of ISL arbitration are as apt and vital today as they were nearly a quarter of a century ago: each case turns on its own facts; the objective is to make the integration fair and equitable; the proposals advanced by those in contest rarely meet that standard; and the end result, no matter how crafted, never commands universal acceptance. *See Federal Express and Flying Tiger Pilots*, (1990, at pp. 27-28.).

CONTINENTAL AIRLINES AND UNITED AIR LINES
SENIORITY INTEGRATION ARBITRATION AWARD

A. The Integrated System Seniority List

The ISL for the pilots at United Airlines, Inc. shall be the List attached to this Award as Exhibit A.

B. Conditions and Restrictions

1. These conditions and restrictions are an integral part of the Integrated Seniority List ("ISL") and shall remain in full force and effect until their expiration by their terms.

2. Pilots hired by either CAL or UAL after May 3, 2010, other than pilots hired pursuant to Section 7-B of the TPA and CAL pilots Watts and Yost, shall be junior to all pilots on the ISL and shall be listed in order of date of hire consistent with the Joint Collective Bargaining Agreement (JCBA).

3. The ISL shall have only prospective effect. Specifically, and without limiting the generality of the foregoing, the following conditions shall apply:

   a. There shall be no "system flush" whereby a pilot may displace another pilot from the latter's position as a result of the implementation of the ISL or the implementation or expiration of any condition or restriction.

   b. Pilots on furlough status at the time the Integrated Seniority List is implemented may not bump or displace pilots in active status at that time.

   c. Pilots who, at the time of implementation of an integrated seniority list, are in the process of completing or who have completed qualification training for a new position (*e.g.,* B-777 Captain or A-319 First Officer) may be assigned to the position for which they are being or have been trained, regardless of their relative standing on the Integrated Seniority List.

4. There shall be no requirement or obligation to compensate Pilots for work not actually performed or positions not actually held during the period for which compensation is sought, as a result of the Integrated Seniority List and its implementation.

5. For a period of five (5) years beginning with the Bid Period in which the ISL is first implemented, or until the carrier takes delivery of its twenty-fifth (25th) B787 aircraft, whichever occurs sooner, no premerger Continental pilot may be awarded a Captain or First Officer vacancy on a B747 or A350 aircraft or displaced to one and no premerger United pilot may be awarded a Captain or First Officer vacancy on a B787 aircraft or displaced to one.

6. Should there be insufficient bidders from one premerger pilot group for any position in the allocated group of positions under paragraph 5 above, the filling of the position will be governed by the ISL. A pilot thereby awarded a position will, for purposes of processing future displacements under the collective bargaining agreement, be considered as junior to all pilots from the premerger pilot group entitled to the position. Notwithstanding the awarding of positions pursuant to this insufficient bidders provision, the restrictions set out in paragraph 5 above shall continue to apply during the terms specified in paragraph 5 above.

7. Until the first bid period 5 years following the implementation of the ISL, premerger UAL pilots involuntarily furloughed as of Oct 1, 2010 shall be subject to furlough (in their reverse seniority order) prior to the furlough of any premerger CAL pilot.

8. Each merger committee will promptly advise the other of the discovery of clerical or other errors that may affect the construction of the ISL. Any pilot erroneously omitted from the ISL shall be inserted into the ISL senior to the pilot from his or her pre-merger list previously junior to him or her. In the event of an inadvertent error in the construction of the ISL or an unintended omission of a pilot from the ISL, the Continental and United Merger Committees may agree upon and make an appropriate correction.

9. In accordance with ALPA Merger Policy, this Arbitration Board shall retain jurisdiction to resolve any unresolved disputes between the Continental and United Merger Committees as to the correct placement of a pilot on the ISL in accordance with the Board's Award, and/or the interpretation or application of these conditions and restrictions.

10. Post-Award disputes over the application of the ISL shall be resolved pursuant to the Dispute Resolution Procedures attached to this Award as Exhibit B.

Dana E. Eischen
/s/Dana Edward Eischen

Roger P. Kaplan
s/ Roger P. Kaplan

Dennis R. Nolan
/s/Dennis R. Nolan

Dated: September 3, 2013

APPENDIX 1

MERGER POLICY AND RELATED AGREEMENTS

SECTION 45 – ALPA MERGER AND FRAGMENTATION POLICY 4/30/09

* * *

C. SENIORITY LIST INTEGRATION

* * *

2. Compilation of Employment Data

a. Each MEC will maintain a system seniority list including at least the following data: seniority number, name, date of hire, and date of birth.

b. The merger representatives shall be responsible for determining the date of hire, date of birth, seniority number, furlough time and leaves of absence time for each flight deck crew member on its current seniority list utilizing Company payroll records and/or other records as necessary. ALPA staff may be utilized to compile this data. Each furlough and leave of absence or any intervening periods of service other than as a flight deck crew member with this Company shall be listed separately with an explanation covering the period. Furlough time directly related to a labor dispute or work stoppage, ALPA leaves, military leaves, FMLA (or Canadian equivalent) leaves and sick leaves shall not be included.

* * *

d. The date of hire shall be the date upon which a pilot first appears upon the Company's payroll as a pilot and also begins initial operational training required to perform such duties in airline operations. . . . Where an initial date of hire as a flight deck crew member is different from an initial date of hire as a pilot as defined above, both sets of data, together with explanations, shall be compiled for the purpose of resolving any inconsistencies among the parties to the merger with respect to special rights for such individuals.

* * *

4. Seniority List Integration – Negotiations

* * *

b. The merger representatives shall resolve any and all disputes and inconsistencies with regard to the employment data exchanged. The representatives shall be empowered to compromise their differences to the extent necessary to reach agreement except that the relative position of the flight deck crew members on their respective seniority lists shall be maintained. Areas remaining in disagreement shall be reduced to writing, stating the contentions of the parties, and shall be resolved, if necessary, by utilizing the mediation and arbitration procedures set forth in Part 3C 5 below.

* * *

d. No integrated list shall be constructed which would change the order of the flight deck crew members on their own respective seniority lists.

e. The merger representatives shall carefully weigh all the equities inherent in their merger situation. In joint session, the merger representatives should attempt to match equities to various methods of integration until a fair and equitable integrated seniority list is reached. Factors to be considered in constructing a fair and equitable integrated seniority list, in no particular order and with no particular weight, shall include but not

be limited to the following:

- Career expectations.
- Longevity.
- Status and category.

f. No integrated seniority list shall be subject to MEC or membership ratification.

5. Mediation and Arbitration

a. General

(1) The process described below includes two steps: mediation and arbitration.

(2) The purpose of mediation and arbitration shall be to reach a fair and equitable integrated seniority list, consistent with ALPA policy. The merger representatives and any Arbitrator serving in a mediation or arbitration capacity shall be bound by the provisions of Part 3C, subsections 4c, 4d and 4e above in constructing an integrated seniority list.

* * *

c. Arbitration Board and Proceedings

(1) Issues to be decided at the arbitration step shall be heard by a three-person Arbitration Board.

(2) The Arbitration Board shall be composed of three persons, all of whom shall be neutrals chosen by the merger representatives within twenty (20) days of the PID from a list of Arbitrators approved by ALPA, unless the involved MECs agree to have an Arbitration Board composed pursuant to subsection c(2)(a) below. The Chairman of the Arbitration Board shall be designated by agreement among the merger representatives or by the members of the Arbitration Board in the absence of such agreement.

* * *

e. Opinion and Award

(1) The Opinion and Award of the Arbitration Board shall be made and written in executive session and shall bear the signature of the three Arbitrators. . . . Participation in executive sessions shall be limited to Arbitration Board members only and the Arbitrators (or single Arbitrator of an Arbitration Board constituted under subsection c2(a) above) shall decide all issues.

(2) The Award of the Arbitration Board shall be final and binding on all parties to the arbitration and shall be defended by ALPA. The Award shall include any agreements reached at the mediation step. The Arbitration Board will include in its Award a provision retaining jurisdiction until all the provisions of the Award have been satisfied for the limited purpose of resolving disputes which may arise between the pilot groups with regard to the meaning or interpretation of the Award.

* * * * * *

TRANSITION and PROCESS AGREEMENT
09/26/10 [Extended on 02/29/12]

THIS TRANSITION and PROCESS AGREEMENT is made and entered into in accordance with the provisions of the Railway Labor Act, as amended, by and between CONTINENTAL AIRLINES, INC., UAL CORPORATION, UNITED AIR LINES, INC., and the AIRLINE PILOTS in the service of CONTINENTAL AIRLINES, INC. and UNITED AIR LINES, INC, respectively, as represented by the AIR LINE PILOTS ASSOCIATION by and through the ALPA Master Executive Councils of the Continental and United Pilots.

Purpose of this Transition and Process Agreement

Continental and UAL have entered into an Agreement and Plan of Merger, dated as of May 2, 2010 to bring about a "merger of equals" business combination.

* * *

The Parties, recognizing the value of the merger to the present and future shareholders of UAL and Continental, to the Pilots represented by ALPA, to the other employees of Continental and United, and to the traveling public, wish to begin the process to establish terms for a smooth and seamless movement from the present situation of separate Pilot groups employed by different airline companies and operating under separate contracts, to a single, unified Pilot group operating under a single contract, employed by a single air carrier within a single transportation system.

The present Transition and Process Agreement is the first step toward achieving this goal. Therefore, the Parties agree as follows:

* * *

Section 1
Definitions used in this Transition and Process Agreement

* * *

Seniority List Integration; SLI. The process agreed upon by the Continental and United MECs, and approved by ALPA in accordance with ALPA Merger Policy, for achieving an Integrated Seniority List, pursuant to the Protocol attached hereto as Attachment B.

* * *

Section 4 Separation of Operations

* * *

4-C. Aircraft.

(i) A list of all aircraft in the service of, or stored by, each Airline, and all orders, options and anticipated returns as set forth in the Airlines' respective fleet plans as of May 2, 2010, is attached hereto as Attachment "A". Such aircraft in the service of, stored by, or on order or option by United shall be designated as "United Aircraft" and such aircraft in the service of, stored by, or on order or option by Continental shall be designated as "Continental Aircraft." Except for Pilots hired from one Airline by the other (whether before the effective date of this Transition and Process Agreement or under its terms) and except as may be needed to comply with conditions prescribed by the FAA for the

purpose of transition to, and eventual operation under, a Single Operating Certificate, no Pilot of either Airline will fly as a crewmember on an aircraft in the fleet of the other Airline listed in Attachment A, or on an aircraft obtained from the represented value (as determined by a change order contained in a Supplemental Agreement to the original Boeing Purchase Agreement shown to the Association) of the orders or options of the other Airline as listed in Attachment A.

(ii) In the event that either Airline acquires aircraft not on Attachment A to replace aircraft on Attachment A, that aircraft shall be designated as a United Aircraft or Continental Aircraft based upon the aircraft being replaced. For purpose of this section, "replacement" means that the newly acquired aircraft can be matched, on a one-to-one basis, to an aircraft that has left or will leave the service of the Airline within six (6) months before or after the new aircraft enters service.

* * *

Section 5 Seniority List Integration

5-A. Integrated Seniority List. The seniority lists of United and Continental Pilots will be integrated pursuant to the Protocol attached hereto as Attachment B.

5-B. Acceptance of Integrated Seniority List. Subject only to the conditions stated below, the Parties will accept the results of the Seniority List Integration and incorporate them in the Joint Collective Bargaining Agreement.
(i) The Integrated Seniority List shall have only prospective effect. Specifically, and without limiting the generality of the foregoing, the following conditions shall apply:
a. There shall be no "system flush" whereby a Pilot may displace another Pilot from the latter's position as a result of the implementation of the Integrated Seniority List or the implementation or expiration of any condition or restriction; and

b. Pilots on furlough status at the time the Integrated Seniority List is implemented may not bump or displace pilots in active status at that time; and

c. Pilots who, at the time of implementation of an integrated seniority list, are in the process of completing or who have completed qualification training for a new position (e.g., B-777 Captain or A-319 First Officer) may be assigned to the position for which they are being or have been trained, regardless of their relative standing on the Integrated Seniority List.

(ii) There shall be no requirement or obligation to compensate Pilots for work not actually performed or positions not actually held during the period for which compensation is sought, as a result of the Integrated Seniority List and its implementation.

(iii) The Integrated Seniority List shall not contain conditions or restrictions that substantially increase the costs associated with training above those normally

associated with the merger of two airlines.

5-C. Use of Integrated Seniority List.

Unless the Parties otherwise agree they will not implement the ISL for any purpose prior to the Operational Merger Date.

5-D. Information for SLI.

Subject to execution of confidentiality agreements and legal requirements, the Airline Parties will respond as quickly as possible to the Continental MEC and United MEC SLI Merger Committees' reasonable requests for employment or other data and information for purposes of the Seniority List Integration. Any data or information provided by one of the Airline Parties to one MEC's SLI Merger Committee shall be simultaneously provided to the other MEC's SLI Merger Committee.

* * *

Section 7 Transition Job Security Protections

7-A. Furlough. Effective as of the Merger Agreement Date, no Continental or United Pilot (except Pilots hired after the Merger Closing Date, including those employed pursuant to Section 7-B below) will be placed on furlough, if at all, until the passage of one year after the Operational Merger Date. Nothing in this paragraph shall be construed to prohibit or require the recall of any Pilot on furlough as of the Merger Agreement Date.

7-B. Job Opportunities.

> (i) If either Continental or United intends to hire new Pilots, it will first offer employment to fill such positions in seniority order to Pilots on furlough from the other Airline. Acceptance or rejection of such an offer or failure to qualify will not affect a Pilot's recall rights or placement on the Integrated Seniority List (which shall be based upon his seniority position at the Pilot's originating Airline). A Pilot accepting an offer under this provision will be subject to the normal background and employment requirements of the employing Airline. The Pilot will be an employee of the employing Airline, within the applicable ALPA council for that Airline, but will not be required to serve or complete a probation period.
>
> * * *
>
> (iii) Pilots employed pursuant to this Section 7-B will exercise seniority for all purposes at the employing Airline in the seniority order of their originating Airline but junior to all Pilots who were on the seniority list of the employing Airline prior to the Merger Agreement Date. Upon implementation of the ISL Pilots will exercise seniority pursuant to their position on the ISL. All Pilots hired by the employing Airline after the Merger Agreement Date who are not Pilots employed pursuant to this Section 7-B will exercise their seniority for all purposes junior to all Pilots

who were on either seniority list prior to the Merger Agreement Date.

* * * * * *

PROTOCOL AGREEMENT
05/15/2010

This Agreement is made and entered into by and between the United Airlines and the Continental Airlines Master Executive Councils of the Air Line Pilots Association, International, and their respective Merger Representatives, pursuant to Part 2C 1 of Merger Policy.

1. DEFINITIONS

A. "**Agreement**" means this Protocol Agreement.
B."**UAL"** means United Air Lines, Inc.
C. **"CAL**" means Continental Airlines, Inc.
D. **"ALPA**" means the Air Line Pilots Association, International.
E. "**UAL MEC**" means the UAL Master Executive Council, a unit of ALPA.
F. "**CAL MEC"** means the CAL Master Executive Council, a unit of ALPA
G**. "Merger**" means a business transaction or the results of a business transaction of any kind in which VAL and CAL, and/or related corporate entities, and/or their separate airline operations will become a single business and operating entity for all purposes relevant to the pilots of each airline.
H. "**Merger Policy**" means Section 45 of the ALPA Administrative Manual, effective as of MAD.
1. "**Merger Announcement Date" (MAD**) means the date on which an agreement to Merge between VAL and CAL and/or their related corporate entities is publicly announced.
J. "**Merger Closing Date" (MCD**) means the date the Merger announced on the MAD, as it may be subsequently modified, is consummated and the entity created by the Merger becomes the owner and/or operator, either directly or indirectly, of the airline assets of VAL and CAL. For the purposes of this Agreement, the seniority integration process and timeline are predicated on the Merger closing two hundred days after MAD.
K. **"Integrated Seniority List" (ISL)** means a single pilot seniority list containing the names of the pre-merger VAL and CAL pilots integrated pursuant to the terms of this Agreement, including any accompanying Conditions and Restrictions.
L. **"JCBA"** means the joint collective bargaining agreement negotiated with management and approved and ratified by the appropriate ALPA, VAL MEC and CAL MEC officials and/or members.
M. "**Parties"** means the VAL MEC and Merger Representatives and the CAL MEC and Merger Representatives.
N. **"TA Date"** means the date that CAL, VAL and ALPA reach a tentative agreement on a JCBA approved by the CAL and VAL MECs.
O. **"Effective Date"** means the date this Protocol Agreement is approved by the CAL and VAL MECs and the President of ALP A.

2. PROCESSES FOR INTEGRATING THE UAL AND CAL SENIORITY LISTS AND COLLECTIVE BARGAINING AGREEMENTS

A. The Parties acknowledge that this Agreement constitutes an agreement pursuant to Part 2C 1 of Merger Policy for an alternative process to replace the seniority-integration decision process contained in Merger Policy. Except as specifically modified by this Agreement, Merger Policy shall apply to the creation of an ISL and a JCBA. The terms of Merger Policy, as modified by this

Agreement, shall be the exclusive process governing the integration of the UAL and CAL pilot seniority lists within ALPA in connection with the Merger, and each party hereby waives any right to invoke any provision of Merger Policy, including any request for a Process Implementation Date under Merger Policy, with respect to the process for determining the integration of the UAL and CAL pilot seniority lists in connection with the Merger.

B. Compilation, verification, certification and exchange of employment data shall commence promptly following the Effective Date, and, to the extent possible: (i) the UAL and CAL Merger Representatives shall compile employment data, independently review and verify such data, and deliver such data to individual pilots for confirmation within 20 days of the Effective Date; (ii) receive individual pilot protests within 30 days of the Effective Date; (iii) resolve individual pilot protests within 40 days of the Effective Date; and, (iv) certify and exchange seniority lists immediately following resolution of individual pilot protests. Such lists will show each pilot's name, employee number, seniority number, date of hire, and date of birth, as well as the pilot's seat, aircraft, domicile, and information reflecting each pilot's circumstances regarding the pilot's availability to engage in revenue flying (i.e., leave status, instructor status, management pilot status, medical/disability status (if twelve months or longer)), all as of the Effective Date, and the starting and ending dates of each of the pilot's furloughs, if any, other than strike-related furloughs. ALPA leaves, military leaves, personal leaves, FMLA leaves and sick leaves shall not be included. All means of electronic verification and exchange of employment data authorized by Merger Policy and any other methods as to which the UAL and CAL Merger Representatives may mutually agree shall be utilized in the employment data compilation, verification, certification and exchange processes. The certified seniority lists will thereafter be amended to reflect changes to the lists as of an agreed upon date closer to the time of the mediation and/or the arbitration referenced in Sections 2.F-2.K below.

C. The Constructive Notice Date shall be the MAD.

D. Upon MAD, the Merger Representatives shall commence direct negotiations on seniority integration.

* * *

H. The Arbitration Board shall decide the dispute if the Merger Representatives are unable to reach agreement on an ISL. . . .

* * *

J. The Arbitration Board shall establish rules of procedure and time limits consistent with this Agreement that, in its sole judgment, will permit it to issue an ISL no later than ninety days after MCD or as soon thereafter as is practicable.

K. Notwithstanding the time targets outlined above, nothing in this Agreement shall be construed to imply that the Merger Representatives, the Mediator or the Arbitrators should schedule any proceedings in a manner that might jeopardize the ability of either side, the Mediator or the Arbitrators to have a full and careful presentation and consideration of the evidence and arguments necessary and appropriate for the important matters at issue and to permit a reasoned and orderly development of a fair and equitable ISL.

L. Except as the parties may otherwise agree, in writing, the ISL shall not be used for any purpose until after MCD, nor shall the ISL be used except as a part of the JCBA.

M. Any disputes concerning the interpretation or application of this Agreement shall be resolved by the Arbitration Board.

* * * * * *

Process for Updating Certified Lists as of April 1, 2013
(By Agreement of the Merger Committees dated March 1, 2013)

1. Certify corrections to the May 17, 2010, certified lists.
2. Make changes to the May 17, 2010, certified lists as of April 1, 2013 (e.g., Base/Equipment/Status, name changes, furlough recall dates, LTD status).
3. Remove individuals no longer on the certified lists as of April 1, 2013 (e.g., death, termination, retirement, resignation).
4. Add individuals to the certified lists as of April 1, 2013 (e.g., settlement agreements, reinstatements).
5. Certification and exchange of certified lists as of April 1, 2013, by respective Merger Committees no later than April 8, 2013.
6. Each Merger Committee will promptly advise the other Merger Committee of any additional changes to the May 17, 2010 and April 1, 2013 lists resulting from the discovery of clerical or other errors.
7. The Merger Committees will apply the "twelve months or longer" proviso contained in Section 2.B. of the Protocol Agreement only to pilots on "medical/disability status."
8. Neither Merger Committee agrees that any item of the employment data set out in the other Merger Committee's certified lists is correct.
9. The Merger Committees have not agreed on whether the May 17, 2010 list, the April 1, 2013 list or a list dated on any other date is the appropriate list on which the Board should build an integrated seniority list.
10. As stated in the Parties' Protocol Agreement Section 2.C., the Constructive Notice Date shall be the Merger Announcement Date (May 3, 2010).

APPENDIX 2

Direct Examination Testimony of Captain James Brucia,
Chairman, CAL Merger Committee

Combined Transcript *See* Tr. 1129, Ln. 15-21; Tr. 1130, Ln. 13-22; Tr. 1131, Ln. 1-2, 20-22; Tr. 1133, Ln. 1-15; Tr. 1134, Ln. 1-5, 20-22; 1135, Ln. 1-14; Tr. 1150, Ln 3-14; Tr. 1154, Ln 3-14, 20-22; Tr. 1156. Ln. 3-5; Tr. 1156, Ln. 10-17; Tr. 1157, Ln 5-21; Tr. 1158, Ln. 1-22; Tr. 1159, Ln. 17-22; See *also* CAL Exhibits. G-1 thru G-8.

* * * * * *

Q All right. Tell us about what's in Exhibit 4 of your volume of materials, please.
A Exhibit 4 is the cover letter of an email I received from a gentleman named Ken Torrance, who is a Captain with us, and is the chairman of our system staffing committee -- Scheduling and Staffing Committee, SSC.

* * *

If you turn the page, you see a copy of the Continental system Bid 14-02. Let me just solve a little mystery right off the bat, why is it called 14-02. It just seems to be a number. Not really. 2014 February. 14 is the year. 02 is the month.

* * *

Q And tell us where it says base equipment status requirement for System Bid 14-02. What information has the Company displayed in its document here?
A Okay. This is the last page of the system bids that the CAL pilots have been very used to seeing for about 21 years at this point. . . . It has got the 14-02 min. We are going to get to that in a minute. I'm just pointing out to you that's what it says. It has got the 14-02 max. All right? . . . Look at the very bottom, the last row, All Total. All right? And go underneath that line, Min and Max, all right, the column Min and Max. The numbers are the same.

Q 4,936 and 4,936?
A Correct. ...What it tells you is your airline is doing one of two things. It's either growing or about to grow. Okay...Now, if you turn over to the next page.

Q What is the document, Captain Brucia?
A Up on top, it's the Category Staffing Requirements for Vacancies, effective 5-31-2013, June bid month. All right? This is out there. Right below that it says posted on 3-15, closes 3-25. And you have got the time frame that it covers, May, June, and July.

Q And which airline is this for?
A This is all for United. This is work product done by the United side of manpower planning. The previous page is work product accomplished by the CAL side of manpower planning.

* * *

And what you have asked me, Mr. Katz, is the function of doing the math between 2,062, subtracting that from 2,351, and that's the excess in terms of Captains that you don't need. You're staffing, but you don't need.

Q So that's 291?
A That's correct.

Q Captains that are not needed at United?
A That's correct. And if you go to the column just left of the 2,062, most of those 291 are there as active pilots already.

Q All right. And what inferences do you draw from these three pages that are contained in Exhibit 3, Captain Brucia, in regard to the construction of a fair and equitable merged list?
A We feel that Captains to Captains on the proper amount of Captains should be the way that list starts out. And in this case, 2,299 is the proper number of captains from each airline that bring comparable jobs to this merger.

Q And how would that translate into the construction of the top part of the list?
A .We believe it should be a one-to-one ratio of that number of Captains from both airlines coming together.

* * *

Q And so using the April 1, 2013 list, how do we propose to integrate the First Officers, Captain Brucia?
A After we have integrated the top Captain list on a one-to-one basis, again 2,299 on both sides, we now have to allocate how many First Officers go along with that for the next block to be integrated together. What we have done here is include the First Officers, realize that there are augmentation requirements.

* * *

Q Captain Brucia, what's the overall augmentation ratio for the entire Continental fleet?
A We're using 1.271. And I think we're shortchanging ourselves a bit, but that's the way it's going to work out.

Q All right. And that's based on the OAG data for the 12 months preceding the April 1, 2013 date; correct?
A That's correct.

Q All right. And using the same reference of source material, what did Captain Butcher find was the First Officer augmentation ratio for the entire United Airlines fleet?
A For the United fleet, we gave them credit for 1.347 First Officers per Captain.

Q Okay. And then what's the calculation that occurs next?
A -- the way you arrive at your number, of course, is to take the 2,299 Captains we talked about, and I'm using the Continental line at this point, multiply that

times the 1.271, the overall augmentation ratio for Continental pilots, and that equals 2,922 First Officers for the Continental side.

Q So that augmentation ratio explains that the number of Captains generates 2,922 -- a need for 2,922 First Officers at Continental.
A That's correct, sir.

Q And does it work similarly for the United side of the equation?
A Exactly. The math -- the equation would be 2,299 United Captains, multiplied times 1.347, which is the overall augmentation ratio for the United First Officers, which results in a total number of United First Officers of 3,097.

Q Okay. Why we couldn't do this in our heads, the computers can ratio 2,922 to 3,097 and apply that to the people who are left after the Captain ratio is developed, and use that ratio to integrate the next group of people on the Continental/United seniority list.
A That's correct.

Q And so also, we're doing this on an entitlement basis, that is sometimes referred to as a stovepipe, on the assumption that the pilots, who are the first 2,299 on each list, would be the ones who could bid Captain, and whether they in actual practice will bid Captain doesn't matter, they're holding Captain entitlements. And so the top 2,299 in each group are -- they're together, followed by a ratio developed, as you described in Exhibit 5, applied to the next group of pilots.
A That's correct.

Q Okay. And then would the United furloughees be placed on the list below them?
A That's correct.

Q And then who following the United furloughees?
A The constructive notice pilots that came to this merger.

* * * * * *

EXHIBIT 33

In the Matter of the Seniority Integration Dispute Between:

THE PILOTS OF REPUBLIC AIRLINES, INC.

AND

THE PILOTS FORMERLY EMPLOYED BY HUGHES AIR-WEST, INC.

Hearings Held - January 5, 6, 7, 8, 9, February 2, 3, 4, 5, 6, 19, 20, 21, 1981

Before the Arbitration Panel

Richard I. Bloch, Esq. - Chairman
John A. O'Keefe
Wade Sommermeyer

APPEARANCES:

For the Republic Pilots

Ronald B. Natalie, Esq.
Joseph L. Manson, III, Esq.

For the Pilots Formerly Employed by Hughes Air West

Daniel M. Katz, Esq.

OPINION

Facts

In a transaction consummated in October of 1980, Republic Airlines acquired all stock of the Hughes Air Corp., which did business as Hughes Airwest. Republic now operates Airwest as a wholly owned subsidiary -- Republic-West -- but from an operational standpoint, and for all purposes in this proceeding, the companies are considered a single entity.

Airwest is the product of a 1968 three-way merger of Bonanza, Pacific and West Coast Airlines. (West Coast was itself the product of an earlier merger.) Republic, for its part, was the outgrowth of an amalgamation between North Central and Southern Airlines in 1979.

The combination of the two airlines, and the two ALPA-represented groups,[1] set into motion ALPA's "Merger Policies", drafted for the purpose of resolving disputes arising over the integration of the respective seniority lists. This Board was constituted for the purpose of issuing an Opinion and Award with respect to the list. Hearings were held and testimony taken during January and February of 1981.

The Board has carefully reviewed the extensive materials in this case. It would be fruitless to attempt to comment on each aspect of the testimony. Suffice it to say that the Board has given careful consideration to the evidence and the arguments. In certain respects, Board members have differed over the final result. Thus, they have noted their "concurrence" with this Award which should be interpreted as an indication that they do not fully endorse each aspect. Nevertheless, the overall result carries the unanimous approval of the duly-constituted Board.

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[1] The Republic group consists of about 1200 pilots. There are about 600 pilots on the Airwest Seniority list.

The elements to be considered by the Board, it is agreed, are the same as those charged to the merger representatives under Section I (C) (5) of the Merger Policies:

> The merger representatives shall carefully weigh the equities inherent in their merger situation such as potential for present earnings, future promotional opportunities and any other factors they may deem important. They shall attempt to match said equities to the various methods of integration until a fair and equitable agreement is reached provided that relative position of the flight deck operating crew members on their seniority lists shall be maintained.

While there is some dispute, to be considered below, as to application of the merger policies, the clear objective is to preserve, to whatever extent possible, the pre-merger expectations of the respective pilots, including salary, the nature of flying assignments, and the advancement path as well as, among other things, furlough and downgrading expectations. In general, then, one evaluates the nature and quality of the jobs each group brings to the merger.

The parties dispute the means by which the integrated list should be finally constructed. Article I (C) (5) of the Merger Policies establishes a four step procedure by which the merger representatives "weigh the equities" of the merger, disucssed above. The "steps" are as follows:

I - MERGER POLICY AND PROCEDURES

Step I Compile a merged list solely on the basis of the employment date of each flight deck operating crew member as established herein. If such integration does not produce acceptable accommodation throughout the entire list, then it will be necessary to proceed with additional steps in order to find accommodation for those areas remaining in disagreement.

Step II Adjust the list established in Step I, above, by deducting furlough time and intervening periods of service other than as a flight deck operating crew member referenced in B-1, above, except that furlough time directly related to a labor dispute or work stoppage as defined in B-1 above, ALPA leaves, military leaves and sick leaves shall not be deducted. Use of the factors authorized above is subject to negotiation and may be deducted in whole or in part to whatever extent will help arrive at a satisfactory accommodation.

Step III Attempt to balance or protect the equities of those individuals who remain subjects of disagreement after the application of Steps I and II, above, through the use of a temporary seniority list, bidding priorities and restrictions or similar arrangements which will expire upon the occurrence of a specific event, a definite duration or date.

Step IV Where the application of the steps above do not provide a satisfactory accommodation, deviation may be permitted, to the extent necessary, to reach a fair and equitable solution without disturbing any individual's relative position on his senioirty list. Nothing herein shall preclude the use of various combinations of the steps listed above.

Thus, the parties are advised to consider the date of hire (Step I), length of actual service (Step II), temporary priorities or restrictions (Step III) and, finally, other

"deviations" (Step IV) in order to reach a satisfactory accommodation of the respective interests.

The Airwest group characterizes these Steps as reflecting priorities -- date of hire, it says, should control, all other things being equal. The Republic group, for its part, sees the Steps as mere procedural sequences, with no necessary preferences intended therein.

Reasonably interpreted, the Steps establish a rational method for resolving merger questions. Intuitively, one would conclude that, all things being equal, lists should be merged on a date of hire and, failing that, a length of service basis, etc.

Prior arbitration cases support this general approach. But it is abundantly clear that arbitration boards have been granted, and have employed, wide discretion in fashioning awards.

Arbitrator Ben Aaron documented the early history of the policies in the 1954 Flying Tiger-Slick case. He cited the 1947 "Fourth Executive Board" resolution to appoint a special committee to consider the problem and, in the event of a merger, to constitute a Board for the purposes of resolving any disputes. The procedure stipulated, in part, that:

> ...2. The Board in reaching its decision shall recognize the employment dates of pilots as a factor, recognize the employment status of pilots prior to merger as a factor, recognize that monetary gains or losses by pilots of either air line should be kept to a minimum, resist loss of employment by any pilots involved, and minimize gain or loss of future advancement opportunities. However, if such losses do result, that payment be set for such loss.

The minutes of ALPA's system Seniority List Merger Committee of February of 1950 stated as follows:

> The Committee believes that each case must be considered on the basis of its individual merits, with full consideration of the following items:
>
> 1. Recognition of employment date as a factor.
> 2. Recognition of employment status as a factor.
> 3. Monetary losses to be held to a minimum.
> 4. Resistance to loss of employment and plan to recompense for such a loss.
> 5. Minimize loss or gain of future advancement possibilities.

Thus, these relatively early notes reflect recognition that the facts of each case must, in the final analysis, control and that various factors, including employment date, employment status, and the other elements mentioned above must be considered. Specification of the five factors, however, led to some internal dispute, as reflected by various modifications to the Policy which were later implemented.

In Slick Corporation and Airlift International (1968) the Arbitration Board considered the expectations of the

respective groups in the context of whether there should be any deviation from a basic length of service approach.

> The governing consideration reduce themselves largely to factual matters and the inferences to be drawn from the facts. What were the conditions faced by each of the pilot groups? What were their employment expectations? What did each group contribute in the merger to employment and earnings opportunities? Why should there be any deviation from the application of straight length of service? What status and what earning level has been achieved? (At p. 5.)

In that case, the Board considered, among other things, the fact that while one group of pilots was more senior, the other group was in a stronger business position, with a "better employment outlook and a better prospect of providing superior equipment for its flight crews." (At p. 7.) Other elements were considered, including leave of absence provisions in the labor contracts, etc.

In the Pacific Airlines, West Coast and Bonanza, case (1968) West Coast and Pacific had been formed considerably earlier than Bonanza. Predictably, the Pacific and West Coast pilots favored merging seniority lists with principal emphasis on length of service, while Bonanza pilots endorsed a ratio approach to give their senior pilots standing on the seniority list comparable to that of the older Pacific and West Coast pilots. At that time, Section XII of the ALPA policy manual,

specifically method II, specified length of service as a primary guide.

In adopting a ratio approach, the principal concern of the Arbitration Board was, as it noted:

> ...With the practical consequences, as distinguished from simply mental or psychological displeasure which the pilots may feel at not being as highly placed on the list as they would like. ...[We] were not so much concerned with the practical economic consequences of one approach or the other. Speaking for myself, I would have favored using straight length of service as a basis for merging the lists if there were no substantial practical inequities which could not be cured by special protective provisions. I cannot speak for my colleagues on this point; however, it was apparent to all of us that there were special inequities which could not be handled with protective provisions. Those inequities had to do with a pilot's seniority rights within his domicile. (At p. 12.)

Thus, that Arbitration Board, recognized the importance of the respective equities of the situation. On this basis, notwithstanding approximately equal contributions of each airline, the Board departed from a basic "length of service" approach in constructing a seniority list. Said the Board:

> In our view, that simply does not follow logically - we think it is more logical, as well as more fair, to construct the list so that each pilot group has a roughly equal share in future prospects. (At p. 15.)

A 1969 decision concerning Alaska and Alaska Coastal Airlines considered more than merely length of service; it

reviewed the benefits which would obtain through acquisition by one airline of the other airline's new aircraft. Accordingly, restrictions were built in, along with a 70/30 ratio which accounted for the respective size of the two groups.

In Cordova and Alaska Airlines (1968) Arbitrator Harry Platt stated:

> In consideration of the facts and problems peculiar to the merger and, conformably to ALPA merger policy, as we understand it, this Arbitration Board concludes that the attached integrated seniority list, which is compiled on the basis of length of service but with certain restrictions on seniority exercise, is fair and equitable under all the circumstances of this case. The qualifications we deem necessary in order to achieve a fair result are briefly these: [a series of some four qualifications and restrictions followed.] (At pps. 15 and 16.)

In that case, Chairman Platt recognized a basic length of service approach, coupled with certain necessary short term restrictions.

In the arbitration between Trans Caribbean and American Airlines, (1974), Arbitrator Russell Smith concluded that Trans Caribbean was in a perilous financial position; that it had made 14 approaches to lending institutions and investment bankers in unsuccessful efforts to obtain long term financing.

Nevertheless, there is some indication in that award that troublesome financial status, while relevant, would not

necessarily be controlling on the outcome of the case. Indeed, the arbitrator, having reviewed virtually every prior decision to date at the time, concluded that "widely varying methods of integration have been used. ...It is apparent that in some if not in all prior arbitrations the tribunal has been confronted with claims of relevance of the "precedents." It is equally clear, however, that in no case so far as I can discover have these precedents been regarded as establishing firm guidance for solution of the cases in which they were cited." (At p. 25.)

The Merger Policies before the Smith Board were the 1971 version which, in relevant part, tracks the language of the 1980 version before the present Board. As to these policies, the Arbitrator made certain findings. For example, at page 32 he noted that the present policy statement in paragraph 5, referring as it does to 'potential for present earnings,' and 'future promotional opportunities' strongly implies the relevance of relative financial condition of the respective carriers but that it could not be said that this was recognized as a controlling consideration. "Employment status" and "job contribution" were factors not specifically mentioned in the policies but could be implicitly relevant under one or more of the expressly stated considerations such as "potential for present earnings"

and "any other factors [deemed] important." Assumedly, these factors would also permit consideration of pilots furloughed or working status.

As Arbitrator David Cole noted in the 1952 Pan Am-AOA case:

> The one conclusion flowing from the precedents, and confirmed by the observations of the CAB the ALPA, and a number of witnesses who appeared before us, is that there is no real pattern to follow. The solution of each such problem must be largely tailored to the facts and positions of the employees in the particular case, which is what this Board has done in reaching its conclusions.[2] (At p. 4.)

This Board concludes that the merger policies do, indeed, set forth a general guide, in the form of a series of ordered alternatives to be applied to the facts of a given case. As in predecessor cases, this Board has evaluated all the evidence, including, but in no sense limited to, the financial conditions of the respective carriers, their equipment complement, routes, collective bargaining agreements etc. in order to determine the most equitable method of merging the lists.

In the overall, then, the Board finds that the Merger Policy establishes a significant series of Steps to be observed and implemented, to the extent possible. But it is

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[2] See also the opinion of Arbitrator Benjamin Aaron in the 1954 Flying Tiger-Slick case and Chairman Platt's decision in the above-mentioned Alaska-Cordova case.

also clear from an examination of both the Merger Policy and arbitral precedent that heavy emphasis on a case-by-case approach invests the Arbitration Board with significant responsibilities as to finding the facts and broad discretion with respect to applying them.

In the final analysis, it is not so much the theory of the integration as the evaluation of the facts that separates these parties.

In analyzing the present case, this Board has inquired initially as to whether a date of hire list will be responsive to the equities of the situation. This proved not to be feasible, as will be discussed below.[3]

Neither, however, does the Republic Representatives' ratioed approach satisfy the present requirements. In this case, the Board finds that a mixture of each parties' recommendations more properly serves the goals of the Merger Policies.

Republic Position

According to Republic, the merger establishing Airwest was a disaster. Between 1968 and 1976, Airwest hired no pilots and, moreover, it suffered extensive furloughs and

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[3] Past history strongly suggests that a pure date of hire integration is rarely adopted, for varying reasons. In the numerous awards rendered in such proceedings, only one -- Frontier-Central -- adopted straight date of hire integration among pilots. Even in this case, the Airwest request is tempered by various adjustments intended to accommodate observed inequities.

downgrading among pilot forces. Efforts in the early 70's to turn the airline around were moderately successful, but with the advent of statutory deregulation in 1978, followed by a strike, the carrier again fell on hard times. It defaulted, it is claimed, on its equipment debt late in 1979, requiring its parent Summa Corporation, to pledge its credit in order to continue operations.

In April of 1979, Airwest engaged Merrill Lynch to find a buyer. Only three serious offers were available. Beyond Republic, the prospective buyers included two non-airline companies, one of which sought the purchase for the exclusive purpose of liquidating the aircraft. The other proposed to sell the equipment, then lease it back for the purpose of conducting operations on a significantly reduced scale. This, it is contended, made the future prospect for Airwest, and for its pilots, bleak, indeed. As an alternative to disposing of the airline, Summa reviewed proposals by its management to continue service. But at least one proposal would have reduced two-thirds of the service points and replaced existing 727's with DC9's. Additionally, there was the strong probability of selling equipment to generate cash, with the consequent loss of pilot positions. Therefore, it is argued that one possibility

for Airwest would have been massive furloughs with the likelihood of the selling of some planes. More likely would have been extensive layoffs resulting from the sale and leaseback of planes, with reduced operations. It is probable, says the Republic group, that a third option would have been pursued, had Republic not acquired the company. This would have involved sale to a buyer who would simply disband the company. As to Airwest, then, it is argued that the future expectations were at best less than the pilots now face.

Republic, it is claimed, reflects the prospect of strong growth and advancement. Both North Central and Southern had done well prior to the merger, with Southern maintaining an edge in growth rate and Republic showing strongly in terms of financial position and future development. Both companies were growing rapidly, both had ordered new equipment. While Airwest had the prospect of no new aircraft deliveries at the time of the merger, Republic contemplated delivery of 17 new planes. No pilots were on furlough. Indeed, immediately after the acquisition, Republic recalled 12 pilots from the Airwest list.

In view of the overall expectations of the Republic pilots, who generally foresee promotion to Captain in the next few years as well as the advancement of First and Second Officers, the Republic group proposes merging the Seniority lists on a

ratioed basis of three Republic pilots to one Airwest pilot.

Airwest Position

The Airwest group characterizes the merger as a rescue of Republic. Airwest, like other airlines, was profitable from 1972 through 1978. A strike in 1979 resulted in a loss, but during the 1972 - 1978 period, while North Central did relatively better than Airwest, Southern Airlines was less profitable than Airwest in virtually all years except 1975.

Republic was, indeed, profitable in 1979. But in 1980, due to the recession and the effects of the North Central-Southern merger, it lost 25 million dollars for the first three quarters. Airwest's load factors were in reasonably good shape, dropping slightly from 58.2% to 56.6% in the third quarter of 1980, whereas Republic's load factors for the same period dropped from 54 to 43%. This is some indication, it is claimed, that Airwest is a strong company.

As to the relationship with the parent Summa Corporation, it is claimed that the decision to sell the airline had little to do with Airwest's inherent financial condition. The decision may be attributed, instead, to the fact that the Howard Hughes estate, upon his death, had an estate tax deficit of somewhere in the nature of a quarter of a billion dollars.

Needing cash to pay the federal government, Summa sold the Sands Hotel and various real estate holdings in Nevada as well as Airwest. This, it is projected, will generate approximately 280 million dollars by March of 1981. The corporation's needs to raise capital for these purposes, it is claimed, merely outweighed their needs for the airline.

Airwest management proposed to expand operations in July of 1978, but when it became apparent that not all financing could be generated from the flying and that cash would be required from the parent company (which needed it to pay the estate taxes) the decision was made to sell; this, despite a booming year in 1978.

Airwest representatives say it was likely that the airline would have continued in business in much the same manner. Even the sale and leaseback proposal did not amount to fewer planes. While points serviced would have been reduced, there would have been more flying with the same number of planes.

It is acknowledged that Airwest went through hard times. At the time of the Hughes takeover, a successful lawsuit against the corporation resulted in a 90 million dollar judgment. Once the takeover had been accomplished, Hughes management made the decision to phase out the non-jet business. The process of converting to an all-jet fleet

and realigning routes was costly and resulted in protracted furloughs, some as extensive as four to six years, to date, and involving 100 or more pilots. But that, it is claimed, was merely payment required to put the airline in fighting trim. It is a payment that Republic has not yet made, but that will be ultimately required.

Airwest's geographical advantages, it is claimed, and its more modern fleet, as well as a strong reputation among consumers, bode well. Republic's cities, on the other hand, are shrinking both in size and income.

Republic still has turbo props -- Convair 580's -- which are expensive and ill-suited to the requirements of the 1980's. With the decreasing emphasis on the Convair turboprop aircraft, pilots flying them can count on extensive furloughs. Whereas Airwest has completed its painful trimming procedures, the furlough process at Republic has only just begun. Even now, it is claimed, Republic is rapidly dropping cities to be serviced. Airwest also has access to foreign routes in Mexico and Canada which would be unavailable, absent the merger, to the Republic pilots.

The Airwest pilots propose a seniority list reflecting three features. First, it wishes to protect the western domiciles of those employees who have invested in a lifestyle they have come to expect. It seeks domicile protection for the Airwest

pilots.

Second, it suggests abandoning various restrictions concerning bidding on the Republic system. In a merger arbitration involving Southern and North Central, Arbitrator Theodore J. Vass established a number of bidding restrictions for positions on the various equipment. While the restrictions will be discussed in some detail below, as a general matter, Airwest foresees an administrative nightmare inherent in implementing the restrictions and therefore suggest they be scrapped entirely.

Finally, and most significantly, the Airwest representatives maintain that the integrated list be constructed on a straight "date of hire" basis. This, they say, is an effective and equitable method of merging the lists, excepting that some 300 people will be inserted at the lower end of the list between Pilot Costemalle and the next senior individual -- Farrington. Therefore, for Costemalle through Agenbroad (the last working Airwest pilot,) an adjustment is necessary in order to preserve their ability to move up. Various additional suggestions, which will not be detailed here, were proferred as to other possible adjustments and amendments to an otherwise straight date-of-hire list.

Analysis

On the basis of the testimony and evidence, the Board concludes the appropriate integration of these lists must proceed with the essential emphasis on length of service. With a series of adjustments required by the circumstances, and which will be discussed in detail below, that is the method most responsive to the relative positions of the respective groups.

Some initial comments are in order. The parties' meticulous presentations actively promote their desired pictures. Republic sees Airwest as floundering financially, beset by mismanagement and searching vainly for a serious purchaser. Acquisition of Airwest was nothing less than a rescue operation, it is claimed.

Airwest says it rescued Republic. It characterizes Republic as a thinly spread, short-stage carrier in immediate jeopardy due to over-capacity, inefficient aircraft serving low density, short haul markets. Republic was desperately seeking entry into the sun-belt area and was desirous of acquiring Airwest's already-established facilities, among other things. Acquisition of Airwest, it is claimed, was a stroke of substantial good fortune.

Yet, assuming one would neither sell a golden goose nor purchase a white elephant, if one accepts the respective characterizations of the acquired company, it is readily apparent that this acquisition would never have taken place. But it did. One might assume, (and the evidence proves the assumption accurate) that the true picture is somewhere in the middle.

The evidence demonstrates that the two airlines at the time of merger were, with certain exceptions, relatively comparable. One may reasonably speculate that, absent the merger, the future of each airline was at least uncertain. Firm predictions in this area are impossible. Any attempt at forecasting the future of the airline industry in general is perilous. But an analysis and/or prognosis of these two companies is made particularly troublesome by a number of factors.

Both companies are the product of prior mergers, as indicated earlier. Facts and figures become elusive and misleading in the context of the financial and operational gymnastics that unavoidably accompany such events.

Moreover, an extraordinary series of external events compounds the forecasting problem. The Airline Deregulation Act of 1978 which, among other things, allowed virtually unlimited entrance to routes and markets, caused companies to

scurry for answers as to their continued viability, particularly smaller regional companies such as those involved here. Extraordinary fuel costs, a relatively insignificant item in earlier years, made equipment selection and upgrading critical factors.

Equal to these aspects, in terms of analysis and forecasting problems, was the 1976 death of Howard Hughes. Hughes owned 22% of Airwest's and all of Summa Corporation's stock, which itself owned 78% of Airwest. There is considerable dispute between these parties as to whether Airwest was sold as a means of raising cash for the estate tax liability or whether, instead, the Company was merely sold as a marginal enterprise in the normal course of business affairs. Given the extensive sale of holdings following Hughes' death it is hardly possible to conclude it was business as usual. There is some cause to conclude that estate taxes were a meaningful factor, as claimed by Airwest. Albert Fitzgibbons, a Merrill Lynch representative active in the sales program testified, that one of the considerations faced by Summa was that they were under substantial financial constraints "as a result of the possibility of large estate tax being due on the estate of Howard R. Hughes."[4] It was for this reason Summa Corporation

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[4] At p. 10 of the December 12, 1980 deposition

considered it not prudent to infuse substantial amounts of capital into Airwest which, at that time, was among the weakest capitalized airlines in the industry. But even assuming this to be the case, it is by no means dispositive of the ultimate question. Faced with the estate tax needs, Summa could well have considered the enterprise marginal, as claimed by Republic, and for that reason decided to sell. But it might also have seen the business as a reasonably reliable commodity which could generate cash for the same purpose. These factors, and others, make firm pronouncements on past reasons or future prospects an imposing exercise.

Nevertheless, this Board is required to attempt to fashion a reasoned assessment of the respective postures of these companies at the time of merger in order to forge an integrated seniority list which, to whatever extent possible, reflects the equities and expectations of the two pilot groups.

On the basis of the testimony and evidence, the Board concludes that, in many, although in not all, respects, these airlines were in substantial parity as to their status at the time of the merger.

The Companies at the Time of Merger

Airwest, at the time of the merger, was facing economic difficulties. Summa Corporation had purchased the

airline in 1970 for about $90 million. This purchase price well exceeded the book value, with the excess being treated as "property acquisition adjustment," actually a "good will" entry. But this sum was eventually written off, partially in response to the reality that airline deregulation was severely impacting airlines' ability to compete in various markets; that easy access to new routes was a significant and potentially detrimental competitive factor.

The Company had been doing reasonably well up to 1978. A six year forecast projected a total of 84 aircraft for the Airwest fleet by 1983, including 72 DC9's, 9 727-200's and 3 F27-A's leased to another airline. Moreover, Airwest had established facilities in the west and southwest which, as indicated by witness Secor Browne, were important factors. Established facilities at key terminals amount to practical realities not to be overlooked.

Following the initial acquisition of Airwest in 1970, with the exception of a contribution by Summa to a $40 million judgment and some initial contribution of monies in return for stock, there was no continuing input of funds. The 1978 six-year forecast by Airwest management, albeit eventually rejected

by the management, shows an aggressive and optimistic approach to the airline's future. Certain objective factors appear in the evidence which purport to present the picture of a generally improving airline. Yield factors and stage lengths were improving. Turbo props were either sold or released to be operated in foreign countries. Load factors from 1970 through 1978 had improved as a result of marketing strategies. Passenger miles were up as were block hours and revenue per aircraft miles. Foreign routes -- Canada and Mexico -- were in certain cases profitable, although not uniformly so. Management's assessment was that, over time, these routes would be valuable. But in the overall, it is reasonably apparent that the future for this airline, particularly in a deregulated environment, was at least cloudy.

Absent the large contribution of additional cash, company officials contemplated cutbacks. Projections made both to bankers and to the Federal Government showed an intention to substantially decrease the market and to cancel existing plans to buy new aircraft. The Board of Directors decided, for example, to sell the new 727's when they were acquired as well as to cancel three additional options then outstanding on 727's in order to bolster cash flow.

In 1978, the airline had a net income of about $5 million. The operating profit, net profit and passenger load figures with respect to the first half of 1978, as opposed to the first half of 1979, seemed to indicate that deregulation would not be affecting the airline as much as might have originally been feared. However, the effects of the strike in September of 1979 severely affected earnings. In 1979, Airwest incurred a loss of about $22 million. In the first three quarters of 1980, it suffered an $11 million loss. The 1979 losses, testifies a witness, caused the airline to be in technical default on certain of its equipment loans which were in large part tied to the prime rate. The 1979 furlough reached 117 pilots, or about 20% of the work force.

In the overall, the past history of the company reflects extensive furloughs, recent losses and a costly fleet regeneration program. While it is claimed that this is the prospect facing Republic, it is nevertheless the legacy brought to the merger by the Airwest group.

In 1978, as indicated earlier, Airwest management proposed to Summa a $400 million program to improve services. But with rising fuel costs, tight dollars, the spector of deregulation, and the necessity of a capital infusion to

support such a program, Summa decided, instead, to sell.

According to William Rankin, President of Summa, the Board of Directors began considering the sale in the fall of 1978. In April of 1979, Merrill Lynch was given exclusive rights to act as sales agent for the purpose of disposing of the company. The general opinion, Rankin testified, was that Airwest was not in a position to survive in a deregulated environment. He believed the Company had not accurately projected the increased competition likely to arise in such circumstances. Applications were pending at the Civil Aeronautics Board by a number of carriers for entry into Airwest markets, including 11 of the top 15 markets. As a result, Airwest would no longer have major monopoly markets to offset losses incurred elsewhere in the system.

In the overall, he saw the airline as thinly capitalized, with little net worth and a large amount of debt. It was assumed that lenders would be unimpressed by the debt-equity ratio. In terms of alternative uses of capital, the decision was made to dispose of Airwest.

The parties differ as to the nature of the various sales options. On the one hand, as one witness noted, the airline was on the sales block for only about nine months,

not a notably long period of time.

The record reflects letters of inquiry, and of apparent interest, from a number of parties. But it may hardly be said these somehow constitute grounds to project a future of uninterrupted service for Airwest personnel.[5]

In March of 1980, agreement was reached with Republic to sell the airline for about $49 million. This however, was adjusted downward at closing in response to observed profitability of the airline. The eventual purchase price was about $38 million.

Republic, for its part, was clearly in business at the time of the merger. According to the evidence, the airline has on order 10 DC9-80's for delivery in 1981 and 1982 and 3 Boeing 727's for delivery in 1981. Additionally there are options on 4 DC9-80's for delivery in 1982.

According to testimony of the Vice President in charge of Finance, submitted in written form, management determined to dispose of some of the less efficient aircraft as well. Testimony by A. L. Maxson before the CAB indicated that the plan involved selling 15 DC9-10 aircraft over

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[5] After a letter of intent was executed with Republic in March of 1980, Northwest Airlines asked to review the financial position of the airlines. One or more meetings were held, but nothing further developed.

the next two years upon receipt of the more efficient planes. Indeed, the entire DC9-10 fleet would eventually be for sale. Nevertheless, the overall assumption was that the resulting fleet would remain at about the same size or perhaps slightly larger. A witness testified that the necessary $850 million of necessary financing to cover these purchases had already been obtained.

Republic maintains that whereas normally the acquisition of another company would enhance advancement opportunities, assuming under-utilization, Airwest brought with it about 100 furloughed pilots reflecting, if nothing else, failure to exploit existing capacity.

Republic pilots are all working. Indeed, according to the evidence since the hiring of the last Airwest pilot, in July of 1978, Republic had continued hiring through August of 1980. Starting in November of 1979, Airwest started furloughing, yet Republic continued to hire. Ninety-three pilots from Airwest were on furlough from November of 1979 through February of 1980.

Nevertheless, Republic's future absent the merger was, like Airwest's, uncertain. Testimony and evidence on

demographics strongly suggest a net migration to the west occurring during the '70's. Notwithstanding Republic's extensive network centralized in the midwest, the unprofitability of a number of the small cities combined with a predictable population shift would make the dropping of such cities a necessity. And, taken together with the influx of a commuter market and approaching constraints on federal subsidies,[6] paring down the existing system appears a virtual certainty. As early as 1977, many companies foresaw the onset of deregulation and began to move out of the small markets. This was not the case for Republic, however, which continues to depend heavily on the subsidized cities.

Sixty-three subsidized cities were on the Republic system; 11 such cities were on the Airwest system and much of the Republic equipment is dedicated to use in those cities.

Republic's route structure is, as one witness described it, a "spider web" of interconnecting short stage lengths. It is, according to the evidence, an expensive and potentially inefficient system wherein the advantages of multiple service points are often outweighed by the cost of servicing them. In all, the evidence reflects a system which needs, and is

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[6] So-called Section 406 federal subsidies exist to attract airlines to small and medium-size cities. However, the Airline Deregulation Act of 1978 has authorized a sharp cutback in such funds as of January 1, 1983.

beginning to receive, considerable pruning. The record is replete with Republic's CAB applications to drop service.

It is in this area that acquisition of Airwest may prove to be a sound and thoughtful decision. Testimony before the CAB by Republic's Board Chairman indicated that the benefits of acquiring Airwest outweighed the various problems. He noted that Republic and Airwest systems connect at six major metropolitan areas, linking Hughes Airwest with both the northern and southern systems of Republic. The existence of an established distinct regional route system such as offered by Airwest was attractive with respect to enlarging the overall Republic system. Republic Airlines saw the acquisition as meaning that it would become a national airline consisting of "three strong regional systems, growing together by exchanging traffic over the triangle of bridge routes linking those systems."

The evidence was also clear that the 23 Convair 580's are to be regarded as highly uneconomic. Airwest witnesses contend that their use is a major factor in causing Republic's fuel efficiency to be the worst in the industry.

In the overall, therefore, certain conclusions must be drawn. These carriers are in many respects alike, not only

as to the equipment,[7] but also the nature of the cities served, the uncertain prospects for the future and the need to respond to the financial realities of the times. Airwest did so by selling the airline. Republic, on the other hand, is pursuing the course of retrenchment and fleet regeneration, as suggested by the Airwest personnel. While the prospects were perhaps somewhat more predictable for Republic pilots, and with due recognition that it was the Republic Company that purchased Airwest, nevertheless, it would be a substantial exaggeration to consider the acquisition a rescue mission. Whether seen in terms of equipment, routes, finances or even the labor agreements themselves, this combination was one of well-matched

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[7] The present fleet mix for Republic is as follows:

REPUBLIC

Ten Boeing 727's
Twenty-seven DC9-50's
Fifty-nine DC9-30's
Thirty-eight DC9-10's
Twenty-one Convair 580's

At the time of merger, the carriers stood as follows:

REPUBLIC	AIRWEST
Four Boeing 727's	6 Boeing 727's
Twenty-six DC9-50's	
Twenty-eight DC9-30's	Thirty-one DC9-30's
Twenty-eight DC9-10's	Ten DC9-14's and 15's
Twenty-four Convair 580's	

participants. This finding leads to a number of conclusions concerning the integration method.

Integration of Lists by Length of Service

The Board has carefully reviewed the respective proposals of the parties and concludes that neither Republic's 3:1 ratio approach nor Airwest's straight date-of-hire methodology is satisfactory. Neither system is responsive to the relatively equal position of these carriers and each, in certain respects, inflicts significant inequities upon various members of the work force. The finding is that, in these particular circumstances, a "length of service" approach is appropriate, wherein pilots from the respective carriers are to be merged on the seniority list on the basis of length of service.[8] Time spent on furlough prior to the merger is not credited.[9]

There are a number of qualifications and restrictions to be dealt with in constructing such a list. It is to these that this opinion now turns.

Member Sommermeyer's superb concurring opinion highlights his firm belief that partial credit for furlough time is appropriate. For the reasons that follow however, this option has been rejected.

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[8] Pilots on disability leave and who presently retain seniority rights shall be given a seniority number. Time spent on disability shall not be deducted in calculating length of service.

[9] But see "Furloughed Pilots", p. 44, infra.

Testimony by Airwest was both persuasive and moving as to the plight of the furloughed pilot, who is in many respects wed to the Airline. At the least, the cost of accepting another position is forfeiture of the potential to return to a unique and well-compensated position.

But one must view the situation in perspective. The choice, difficult as it is, arises as a result of comprehensive employment protection incorporated as a significant contractual bargain. It is an alternative to full unemployment and gives the pilot the absolute right to return as soon as his number is reached. This is a right that often extends for many years. One may readily acknowledge the equities of protecting relative seniority within a given pilot seniority list, as is provided by contract. But in the context of comparing lists in the merger situation, the equities are different.

In the difficult business of analyzing respective strengths and weaknesses, furloughs become an important (and one of the few) objective indices of carrier performance. As between two carriers, the fact that one keeps its work force working is significant. This had been recognized in virtually every arbitrated dispute in this area.[10]

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[10] As Member Sommermeyer candidly notes, the Allegheny-Lake Central, Allegheny-Mohawk and Universal-American Flyers cases were instances of negotiated, not arbitrated, mergers. The American-TCA case did not fully credit furlough time. See pp. 54-55 of that opinion.

In this case, Airwest contends, as has been noted, that its pilots have "paid their dues" through necessary lay-offs and fleet regeneration. One may accept this argument as having contributed to Airwest's viability at the time of merger. It is part of the basis upon which this Board has adopted the basic length of service approach. It would be inconsistent, however, to at once acknowledge these previous hardships as "dues paid" while at the same time crediting -- "repaying" -- the individuals for such time spent and thereby ranking them even higher on the final list. The relative positions of these pilot groups and the equities of the case do not support such result.

In sum, while recognizing there are important contrary arguments, well-enunciated by Member Sommermeyer's comments, the conclusion is that these circumstances do not warrant seniority credit - even on a partial basis -- for time spent on furlough prior to the merger.

Bonanza Blockers

In the 1968 Arbitration Award concerning the merger of West Coast, Pacific and Bonanza Airlines into Airwest, Arbitrator Lewis Gill concluded that Bonanza pilots should be ratioed in among the rest of the pilots on a list otherwise

constructed by length of service. Thus, the result is not a 'pure' length of service list. Recognizing the parties' stipulation that pilots retain their relative rank order of seniority, the Board concludes that the list in this case should be constructed by removing the so-called Bonanza Blockers, constructing the list on the basis of length of active service, then reinserting the names of those affected Bonanza pilots immediately ahead of the Airwest pilot they preceeded on the original list. In this manner, an overall length of service approach will be adhered to as closely as possible while still accounting for retention of the pre-existing rank order.

The ALEA Strike

Ninety-three pilots for Airwest have not worked since September 10, 1979, the date of the Airline Employees Association's strike. The question is whether credit should be given for such time off and, if so, how much. According to the record, the strike was over on November 9, 1979; work resumed on the 10th.

There may well be a relationship between the financial impact of the strike and the continued furlough of the affected pilots. Nevertheless, while there is no cause to

reduce length of service time for the period of the strike, the evidence satisfactorily establishes the date beyond which the pilots were on a bona fide layoff. The finding, therefore, is that the length of service shall be adjusted to recognize seniority accrual to November 9, 1979. Beyond that, the pilots are assumed to have been on furlough.

Saudi Flying

The parties differ as to whether service by certain pilots pursuant to a "wet lease" to Saudi Arabia should be considered as service for purposes of seniority credit. The Board finds that such service should be counted.

On the one hand, a pilot working for another carrier during layoff should not reasonably expect to accrue seniority credit in the context of a length-of-service approach. But this may hardly be seen as comparable to this situation. The wet lease was an agreement by Airwest to supply planes and pilots. A joint agreement between the Company and the pilots established reasonably extensive understandings with respect to recall, longevity accruals for base pay and vacation purposes, and other matters. It was not service in the business-as-usual sense. But it was a close and continuing relationship with the Company and should fairly be viewed as service for purposes of seniority accrual in the present context.

The Vass Award

The restrictions imposed via the Vass Award are to be continued and applied to the instant merger. In all cases, the intent of the Board is to incorporate the specific language of the Vass award except as modified below. The modifications the Board has dealt with, as will be noted, concern required ratio changes.

Arbitrator Theodore J. Vass heard the case involving the North Central-Southern merger. His comprehensive and thoughtful decision, rendered in April of 1980, established a number of restrictions and conditions which were, again, exceptions to a list otherwise based on length of service. In part VI of his award, Arbitrator Vass wrote provisions for terminating the restrictions, including the stipulation that all restrictions would expire January 1, 1984, if not terminated under other terms before that date.

The Airwest representatives claim that the Vass award, if incorporated within this merger integration, will create a procedural nightmare; they suggest it simply be scrapped. There is reason to be concerned about just this prospect. The provisions of that award, while carefully considered, were constructed in the context of that merger. There was no reason to project their impact in a subsequent merger.[11]

[11] It is true, however, that Vass was by no means unaware of the possibility of a subsequent merger, as indicated by various conditions in the award itself. For example, in paragraph VI, referred to above, he specifies that:

On the other hand, it must be readily recognized that when one speaks in terms of expectations, the restrictions brought to the merger by the Republic pilots were clearly expected. These were rulings formulated in response to the observed equities of the North Central and Southern pilots' situations and the finding is that, notwithstanding obvious administrative difficulties in implementation, they should be respected and retained. There must be a procedure for determining which positions and aircraft are affected by the Vass award in the context of this merger. That is, a procedure must exist which at once perpetuates the Vass restrictions as applicable to the Republic pilots while at the same time protecting the rights of Airwest pilots to fulfill their reasonable expectations as to status and equipment type. This has been accomplished with a ratioed approach between the two groups.

Boeing 727 Restrictions

The Vass award restricted the first 24 Captaincies on Boeing 727's to North Central pilots until January 1, 1984. Prior to January 1, 1982, if more than four Boeing 727's were

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11 (Cont'd)

> The DC-9 quota and ratio system shall terminate as of the delivery date of the 105th jet aircraft acquired by the company, excluding aircraft acquired as the result of a merger subsequent to the merger to which this award pertains.

to be operated, the first six Captain positions would be allocated to North Central pilots. The restrictions on the remaining three 727's expire January 1, 1982.

In the context of the merger with Airwest, the Board finds the following procedure appropriate. Airwest presently has six Boeing 727's in service and assuming a crew complement of six Captains for each aircraft, this would result in 36 Captain positions. Republic presently has four (three additional to be delivered in March of 1981) times six, or 24 positions. Assuming present levels of Airwest staffing are maintained, Airwest pilots shall be restricted from bidding on further Boeing 727 vacancies until January 1 of 1982.

From January 1 of 1982 through January 1 of 1984, all 727 Captain vacancies shall be awarded so as to retain the overall ratio in the 727 Captain complement of seven Republic pilots to six Airwest pilots. If the number of Captain vacancies is reduced, they should be reduced on a seven to six basis, or in the manner necessary to recreate a seven to six ratio.

Boeing 727 First and Second Officer Positions

According to the Vass award, B-727 First and Second Officer Positions were unrestricted. However, if the number of First Officer positions was reduced, North Central would get

24 of the positions.

Airwest brings six active 727's, therefore 36 First Officer slots, to the merger. There are, therefore, a total of 60 First Officer positions. In the present context B-727 First and Second Officer positions should be unrestricted, except as restricted under the Vass award.

However, no pilot will be removed from a position he held as of the date implementation began in order to award a similar position to a pilot of the other group. However, if a reduction occurs, the 727 First Officer position shall remain unrestricted until there are 60 or fewer First Officer positions. Below 60, they shall be reduced on the basis of the ratio of three Airwest pilots to two Republic pilots. (This is in accordance with the Vass award's retaining the last 24 727 First Officer positions to North Central pilots.)

DC-9 Restrictions

The Vass award stated that, as of July 1, 1979, a ratio of 240 North Central to 174 Southern pilots was established for Captains only. As positions were added, they were to be added on a two to one ratio.

The overlay appropriate in this instance is as follows. Presently, Airwest has 41 DC-9's and Republic has 83 DC-9's

(those to be delivered in March or April of 1981 are not counted in this context.) Therefore, Captain vacancies are to be considered in a ratio of two Republic to one Airwest. These provisions shall apply until January 1 of 1984 or the end of the DC-9 restrictions in accordance with Vass.

Vacancies in excess of the present level of Captain positions -- 744 -- will be awarded on a three to one ratio (three Republic to one Airwest.)[12] Vacancies below that level shall be filled on a two to one ratio, which reflects the 83:41 aircraft complement of Republic to Airwest.

Decreases in the number of vacancies shall be handled as follows: Reduce on a three to one ratio to 744 then, below that, on a two to one ratio.

The above restrictions are to end at the time of the occurrence of any of the items set forth in Paragraph VI of the Vass award (p. 8.)

DC-9 First Officer Positions

The Vass award allowed these to be bid on an unrestricted basis and the same shall apply in this context.

Convair 580 Restrictions

Convair 580 Captain positions at former Southern

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[12] Utilizing the parties' undisputed staffing ratio of 6:1, the Board arrives at a DC-9 Captain staffing level of 744.

domiciles were reserved by the Vass award to Southern pilots (a maximum of 29 Captains.) All vacancies at former Southern domiciles were to be unrestricted after six months. Convair 580 restrictions end when DC-9 restrictions end, according to Vass.

As to this merger, Airwest pilots shall be ineligible to bid or to bump Convair Captain positions until January 1, 1984 or until such time as the DC-9 restriction under the Vass award are terminated.

Convair 580 First Officer Positions

Under the Vass award, these were unrestricted and shall be under this award as well.

Termination of Restrictions

All restrictions, to the extent still applicable, expire January 1 of 1984. Nothing herein shall preclude the merger representatives or their duly authorized replacements from mutually agreeing to restrictions or to their waiver.

New Equipment

Under the Vass award, all Captain positions on types of aircraft not found in the Republic Airline's fleet as of the date of the implementation of the award, which have higher pay rates than the DC-9, shall be subject to a quota and ratio system similar to the DC-9 Captain quota and ratio system -- two North Central to one Southern in that case.

The award in this decision is similar. All Captain positions on aircraft not found in the Republic Airlines fleet as of the implementation date of this award which have higher pay rates than the DC-9 shall be awarded on a ratio of two Republic pilots to one Airwest pilot, which approximates the ratio of working pilots. Any such restriction shall end when the DC-9 restrictions are terminated.

Domicile Protection

The Vass award gave a pilot the priority right to return to the domicile in the event of a displacement. (See Section VIII, p. 9 of the Vass award.) It protected a pilot during the life of the restrictive provisions or within seven months of the displacement if it occurred during the life of the restricted provisions, whichever afforded the longer protection.

That same protection shall apply in this case and is extended to Airwest domiciles.

Domicile Closing

The domicile closing provision established by Arbitrator Vass (See Section IX, p. 9 of the Vass Award) is retained and, additionally is extended to be applied in the same manner as between Airwest and Republic.

In the event of a domicile closing, the provisions are to be applied first as between Airwest and Republic and then as between North Central and Southern.

Miscellaneous

Implementation of the Vass award and this award shall not cause any bumping of pilots from one pre-merger group by pilots from the other pre-merger group.

In the event of a reduction in force, a reduced pilot may bump a pilot junior to him on his pre-merger seniority list.

The Board recognizes that here, as in the Vass award, there are potential fact situations that may arise and that are not necessarily accommodated by these provisions. Nevertheless, faced with the choice between continuing the existing provisions, with requisite modifications, and scrapping them in their entirety, the choice was to maintain the language. The parties are, of course, free to modify or to abolish any and all provisions by mutual agreement.

Furloughed Pilots

The Board has carefully considered the plight of the furloughed pilots, particularly with respect to the finding herein that time on furlough, prior to the merger, shall not apply toward accumulated seniority on the integrated list.

On the one hand, the majority of this Board is persuaded that the equities support the denial of credit for furlough time in comparing the respective seniority lists for merger purposes.[13] On the other hand, it is apparent that, absent the merger, a furloughed pilot would continue to accrue seniority on his seniority list and the relative seniority standing would not change.

To accommodate both these considerations, the Board concludes that seniority numbers shall be assigned as of the merger date - October 1, 1980. Whatever considerations are appropriate in evaluating the respective contributions to the merger are thereafter irrelevant. At merger, the two lists become one and there is no cause to view the situation as distinguishable from the normal furlough wherein, as indicated above, a pilot's relative standing on the seniority list would remain constant.

By this mechanism, a laid off pilot will be in relatively more senior status than a colleague who was working at the time of the merger and who, indeed, may be working now. But this is not inappropriate. Such placement will have occurred as a result of more extensive, albeit prior, active

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[13] See p. 32, supra. But see Member Sommermeyer's concurrence.

service by the furloughed pilot. However, nothing in this Award should be construed as granting a furloughed pilot the right to displace a working pilot.

A qualification is in order. To avoid a mechanical 'switching' effect wherein a pilot recalled for but a minimal period of time displaces another, the pilot must remain in an active, non-furlough, status for no less than sixty days after his first flight on a revenue trip as a functioning crew member.

By request of both parties, this Board shall retain jurisdiction to resolve disputes arising as to interpretation or application of this Award.

Richard I. Bloch, Esq.
Chairman

John A. O'Keefe
Concurring

Wade Sommermeyer
Concurring

April 13, 1981

Republic - Air Carrier

RHA

CONCURRING OPINION

Because I cannot fully agree with one aspect of the majority opinion, I would concur. The merger of the pilot seniority lists from Republic and Hughes Airwest was a most challenging task for the Arbitration Board in general and in particular for the Arbitrator. He is to be commended for the conclusions which were reached, especially when one reviews the considerable length of testimony and voluminous exhibits which each pilot group so thoroughly and professionally presented. The primary method of constructing the combined seniority list was to use length of service. Had a ratio method of three to one or even two to one been applied, one pilot group would have suffered gross inequities. By using a length of service approach, both pilot groups were treated more equitably, minimizing the impairment of job security and earning an advancement potentials that would have resulted had the above-mentioned ratio methods been applied.

By retaining the Blocker methodology and inserting these individuals into the combined list relatively in the same position as they previously were on the original list, the Arbitrator maintained the delicate equities for this group of pilots and demonstrated his respect for the original decision by Lewis M. Gill in 1968. This Board member also fully agrees with the Arbitrator's decision concerning the Saudi Flying

and the strike-related furlough of Airwest pilots in the fall of 1979. In all of these matters the Arbitrator has judiciously weighed the evidence and rendered a fair and just decision.

There is one important area where an error was made. No credit was given to either pilot group for any time while on furlough from his respective airline.

In the labor market the position of an airline pilot is somewhat unique. Once he receives a seniority number with an airline the individual becomes a part of that company, both by tradition and contract. Once furloughed he is not free to seek meaningful employment, either as a pilot with another company or different employment in any other industry unless he elects to relinquish his seniority number. This is true today moreso that it was twenty or thirty years ago, although even in the 1950's it was not uncommon for a pilot to be refused work on one airline until he removed himself from the seniority list of his previous employer. Any furloughed pilot will testify that one of the first questions a potential employer will ask an applicant is if he is hired will he drop from his airline's seniority list.

The labor contracts throughout the industry reflect the importance placed upon the seniority number both by the pilots and their respective airlines. Every major carrier today has some type of furlough protection or consideration for the pilots whom they employ. Five to seven years retention

on the seniority list and four to six month pay after furlough is standard throughout the industry. One major airline contract provides for ten years on the seniority list, up to six months pay, and the accrual of total longevity for pay and benefits during the furlough period.

The various pilot unions have considered furlough protection such an important area that they have paid the high price demanded by the airlines through the process of contract negotiations. It is, therefore, difficult for this member of the Board to understand why two pilot groups would not be given any consideration for furlough time, when such is as common a part of their contract as are pay rates and working conditions. To ignore this hard fought for provision of any pilot contract is tantamount to claiming that the individual pilots do not operate under a contractual agreement between themselves and their company.

The recognition of credit for furlough is a common provision throughout the industry. Furlough is not looked at as a separation from the Company. As previously mentioned this shift in the industry has taken place over several decades as is exemplified in the development of the pilots working agreements. The amount of credit to be given in a merger situation must take into consideration the pilot groups to be consolidated. In the case of Republic and Airwest the most equitable method would be 50% credit for furlough up to and including the first year. Twenty-five percent

credit would be applied for each year thereafter, for a maximum of three years after the first year. This would allow some credit for a maximum of four years. The total credit this would generate would be 455 days for an entire four year period.

Four hundred fifty-five days when applied to a length of service list does not effect, to any large degree, the working condition or job expectations of those pilots who might be jumped on the list.

This formula was selected in consideration to what effect a person with furlough time would have upon others on the list. Larger credit would prove to be inequitable to those with no furlough time. The four year period was selected not in relation to the two specific airlines concerned in this merger, but in accordance with comprehensive industry factors consistent with most airlines.

Up to a period of four years, a pilot would require only a short retraining course to return to active status. Thus, up to this point one still retains a value to the company and his equity increases even if he is not working. After four years, the cost of training escalates to some point in time where the company would be financially ahead to hire a new employee. On an individual basis, it is reasonable to assume that if one were not recalled in this time, a prudent

person would seriously consider some alternative vocation regardless of what provisions for furlough protection his contract contained.

There is sufficient precedent within the airline industry to apply to this case. In his most thorough and exhaustive study of American Airlines and Trans Caribbean Airlines (1974), Russell A. Smith gave credit for those individuals with furlough time from both airlines. It is the opinion of this Board member that the Smith decision is somewhat of a classic for the industry insofar as he made a substantial effort to carefully compare each part of his arbitration with most of the major cases up to that time.

Any date of hire list by definition gives full credit for furlough. Several negotiated settlements will serve as an example. The Frontier and Central merger of 1967 was straight date of hire. Allegheny-Lake Central in 1968, Allegheny-Mohawk in 1971, and Universal-American Flyers in 1971 are all examples of straight date of hire.

Careful consideration was given to the equities of both pilot groups. Airwest has pilots with over four years furlough time, whereas Republic has none in that category. To apply a higher percent of credit for a longer period would be a windfall to those Airwest pilots at the expense of several Republic pilots. Republic has more people with one

year or less furlough time. However, this is the period of the majority of furloughs on both airlines. By applying the largest percentage for the first year, more pilots from both airlines are given credit.

Time spent on furlough does have a value and must be dealt with in any airline merger for this period of time in the airline industry. Ideally, and in accordance with ALPA policy, a straight date of hire merger is preferable if possible. This would automatically eliminate any problem of furlough credit. However, I concur with Mr. Bloch in his selection of a length of service list. The reasons for this are well-presented in his decision and need not be reviewed here. One hundred percent credit for furlough time would not be equitable to the Republic pilots, who have more people with furlough time, but less total number of days of furlough. For the approximately 76 Airwest pilots with more than four years furlough, some credit will allow them to move up the list to a position that is more commensurate with their age, job expectations and date of hire.

Wade Sommermeyer

Wade Sommermeyer
Board Member

EXHIBIT 34

In The Matter Of:

IN THE MATTER OF THE SENIORITY INTEGRATION OF THE PILOTS OF THE NEW AMERICAN AIRLINES

Vol. 1

September 29, 2015

ICR
INABNET COURT REPORTING

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BEFORE THE MCCASKILL-BOND AMENDMENT

SECTIONS 3 AND 13 ARBITRATION BOARD

DANA E. EISCHEN, IRA F. JAFFE, M. DAVID VAUGHN

- x
In the matter of the seniority :
integration involving the Pilots of :
:
NEW AMERICAN AIRLINES :
- x

Tuesday, September 29, 2015

Arlington, Virginia

The meeting in the above-entitled matter commenced on the 29th day of September, 2015, at 9:20 a.m., at the Sheraton Pentagon City, 900 S. Orme Street, Arlington, Virginia.

ON BEHALF OF THE ALLIED PILOTS ASSOCIATION:

EDGAR JAMES, ESQ.
DANIEL M. ROSENTHAL, ESQ.
MARK R. MYERS, ESQ.
KEITH WILSON
LARRY ROSSELOT
ALLISON CLARK
STEPHANIE BREAM

ON BEHALF OF AMERICAN AIRLINES, INC.:

ROBERT SIEGEL, ESQ.
PAUL D. JONES, ESQ.
CHRIS HOLLINGER, ESQ.
TRISTAN MORALES, ESQ.

ON BEHALF OF THE AMERICAN AIRLINES PILOTS SENIORITY INTEGRATION COMMITTEE:

WESLEY G. KENNEDY, ESQ.
RYAN M. THOMA, ESQ.
MARK STEPHENS
ANDREW ENGELKE

ON BEHALF OF THE WEST PILOTS MERGER COMMITTEE:
JEFFREY R. FREUND, ESQ.
ROGER POLLAK, ESQ.
JOSHUA B. SHIFFRIN, ESQ.
MARTY HARPER, ESQ.
RUSS PAYNE

ON BEHALF OF THE EAST PILOTS MERGER COMMITTEE:
WILLIAM R. WILDER, ESQ.
KELLY ISON
RICK BROWN
PHILIP OSTERHUS

ALSO PRESENT: MEMBERS OF EACH MERGER COMMITTEE

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American, and 200 are US Airways pilots. And there are still, as of that date, 750 US Airways pilots at the bottom of the list.

That, with all due respect to my friend, Wes, is not an integrated seniority list. That is not a fair and equitable integration of the pilots of these two airlines. That is not a list that any Board of Arbitrators can endorse. That is not a list that the 15,000 pilots who are going to be flying for American Airlines deserve to be saddled with.

Thank you.

ARBITRATOR JAFFE: Thank you, Mr. Freund.

Why don't we take five, and then pick up.

Off the record, please.

(A recess was taken from 10:41 until 11:08 a.m.)

ARBITRATOR JAFFE: Mr. Kennedy, at your convenience.

MR. KENNEDY: Thank you, Arbitrator Jaffe and members of the Panel.

We, obviously, appreciate and continue to appreciate the Panel's service to the parties in

this, I dare say, unprecedented proceeding.

We have given you a very detailed prehearing position statement in writing, which we intended to be a roadmap to the case, including the background facts, the equities that we think are significant in our proposal, and why it's fair and equitable.

We assume you have read that. We commend it you. And I'm going to try to confine myself to the high points in this opening statement.

You're obviously operating under the fair and equitable standard under Section 3 of the Allegheny-Mohawk Labor Protective Provisions, which I think are Joint Exhibit 55, and under the McCaskill-Bond statute.

Let me be the first to cite Arbitrator Nicolau's statement in Tiger-Federal Express, that each of these cases turns on its own facts.

However, as we set forth in our prehearing statement, there's a lot of case law under the fair and equitable standard. And you can divine some significant principles under the fair and equitable

standard from that case law.

The essence of the fair and equitable standard is an examination of the pilot groups reasonable premerger career expectations.

Mr. Wilder says in his prehearing statement that you shouldn't base your assessment of what's fair and equitable on what might have been. But, in fact, that's what career -- that's what the examination of career expectations is of necessity.

The Panel noted in Northwest-Delta that assessing what might have been or predicting the future can be daunting. But that's what the stuff of career expectations is.

So the focus is reasonable premerger career expectations.

Seniority for these purposes is significant, not as a date, not as a number, but based on the bidding power and the economic work opportunities it confers on an individual pilot relative to other pilots within a particular system.

I will say for at least -- for at least one point, I agree with Jeff's prehearing statement.

Jeff makes the point in his prehearing statement that what is fair -- the measure of what is fair and equitable is not the methodology, but the list. And I would add to that, how the list will operate in the merged system and what its impact will be.

Form should not trump substance. No one methodology should be fetishized for its own sake.

With all due respect to every arbitrator that has ever done one of these cases, every case turns on its own facts. And the test is not what particular methodology is used, but the list and its impact in the real world.

We -- in our -- in footnote 7 of our prehearing statement, we go through some of what we see as the limitation of longevity as an element in the fair and equitable standard. Unless you have identical -- identical list demographics, identical competitive positions, and identical carriers, a date -- a date by itself or a length of time by itself does not reflect the relative bidding power between pilot groups on different lists and in

different systems.

Longevity is also not a group equity. It's an individual equity. Unlike category and status, it changes value when it's taken from one pilot and assigned to another pilot. And when it transfers, its lifespan changes because -- because individual pilots have different ages, different retirement dates, and different time horizons.

A fair and equitable solution should be simple. The list should do the work with limited conditions and restrictions for the purpose of transitioning to the fair unrestricted operation of the fair and equitable -- of the integrated seniority list.

I agree with Jeff, again, that based on these factors and other factors, the trend has been away from date-based seniority integrations, historically.

ALPA policy may now refer to longevity as a factor, but we are not operating under ALPA policy. We are operating under the fair and equitable standard without any modification.

Premerger jobs in different categories and statuses may be comparable in weighing premerger expectations and incurred constructing a fair and equitable integrated seniority list.

Conversely, and this is going to be very important in this case, jobs in the same category and statuses can have different values. In particular, differences in premerger compensation and benefits and disproportionate economic gains from the merger are appropriate equities to be taken into account in constructing a fair and equitable seniority list.

That is a position that has been endorsed in arbitrations, quoted in our prehearing statement, including cases in which each of the three of you has sat as an arbitrator.

It is a position that has been taken in past cases by principals of the parties in this room, lawyers for the parties in this room, experts for the parties in this room in past cases.

Jeff made a reference to the Delta-Northwest case in this connection. We quoted

you the passage from the Delta-Northwest decision and the context in which it arose. I would also point out that this was a factor that Arbitrator Nicolau relied on at the West pilots' urging in his award in the US Airways-America West case.

Projected attrition is one equity, but it is to be weighed together with one -- with other equities in determining what is an overall fair and equitable result.

A fair and equitable integration should continue in place pre-existing conditions and restrictions governing the relationship among pilots in a premerger group.

Demographic anomalies between the affected premerger lists can be a factor to consider in determining the appropriate integration methodology. All of that is laid out in our briefs with quotations from prior cases.

In this case, the parties have -- another critical element is that the parties in this case have stipulated to the appropriate snapshot date, i.e., the date immediately prior to which the pilot

groups' premerger expectations are to be weighed.

That date is December 9, 2013, the date the merger was given final bankruptcy court approval and was consummated.

Mr. Freund's Appendix 2 to his prehearing brief gives you a reasonably good explanation of why that date was selected. I don't necessarily agree to all of it.

Legally, the merger was not a hostile takeover. It was a consensual merger. But Jeff gives a good explanation of why December 9, 2013 is the correct snapshot date.

Accordingly, the major of the equities can largely be reduced to one question. Immediately prior to December 9, 2013, which group's expectations would a pilot reasonably have preferred to have?

That question can be answered based on objective fact, which, as John Adams said, can be stubborn things.

We know what the facts were immediately prior to December 9, 2013. And we believe that they

ultimately will not be subject to serious dispute. And our analysis of the equities and our proposal follows from those objective facts.

In contrast, if wishes were horses, the other merger committees' analyses and proposals rely on alternative assumptions about what they would like the facts to have been, but which they were not as of December 8, 2013.

The first objective fact is that there were three seniority lists in effect as of December 9, 2013. The American list, the East list, and the West list.

That is recited -- that is recited in paragraph 2.b of the Protocol Agreement, which is Joint Exhibit 10.

It's why you have a separate West Committee because there were separate East and West lists with separate interests and expectations as of the snapshot date.

The West Committee doesn't like that fact. The West Committee wants you to act as if the Nicolau Award was in place at that time, credit the

West pilots with virtual jobs they didn't have and virtual career expectations that they didn't have as if that was actually the case.

It wasn't the case.

The Nicolau Award wasn't in place in December 8, 2013.

The East and West pilots were under separate seniority lists with separate collective bargaining agreements in separate operations.

That is a fact. It's stubborn, but it's a fact.

And absent the merger, in accordance with the US Airways-America West Transition Agreement, the Nicolau Award could only have been implemented through a single collective bargaining agreement between US Airways and USAPA.

There is no objective evidence that that would have occurred without the merger with American. There is no objective set of facts -- there was no objective set of facts as of December 8, 2013, providing a roadmap to a single CBA or the Nicolau Award absent the transition with

American.

So it's -- so to be clear, if the West pilots ultimately achieve the Nicolau Award, it will be because of this merger and this arbitration.

So there were three separate sets of premerger equities as of December 9, 2013. A second set of objective facts is that the premerger equities of those groups can be measured by objective facts.

On every significant metric, a reasonable pilot would have preferred -- would have preferred to have the American pilots' expectations immediately prior to the merger, rather than the East or West pilots'.

That is the answer in every respect and, as I said, we do not believe will ultimately be subject to serious dispute.

As of December 9, 2013, we know what the carriers' premerger networks were. American has more hubs. It had more varied hubs. American had a larger route network, especially internationally.

We know what the carriers' premerger

fleets and fleet plans were as of December 9, 2013, based on the attachments to the MOU, which were agreed to by the carriers and APA and USAPA at the time of the MOU, as well as the carriers' public statements about -- in regulatory filings about what their fleets were.

American has a larger fleet. American had a more varied fleet, particularly in Group 4 aircraft.

American had projected fleet growth in its fleet plan, which gave American the flexibility to match its fleet plans to the market realities going forward.

US Airways was projecting a basically flat fleet over the coming years.

We know the carriers' standalone competitive positions. In particular, we know how American Airlines performed under its standalone business plan for a year prior to the merger, including the 2012 CBA with APA.

American was performing successfully under the standalone plan for a year prior to the merge,

notwithstanding the unprecedented gains that the American pilots had gained in the 2012 CBA in bankruptcy.

In fact, American paid out profit sharing to pilots and other employees based on that performance prior to the merger, which, if not unprecedented in a bankruptcy, is almost unprecedented.

And perhaps more significantly, we know the pilots premerger compensation and benefits.

On December 9, 2013, the American pilots were working under the 2012 CBA, the standalone CBA, which was an industry standard contract.

Contrary to what the West and East pilots say in their prehearing statements, that contract included a midterm industry parity pay adjustment, which included US Airways as a comparator, which was an odd thing to include in the comparisons if the 2012 CBA was negotiated with an eye to the merger.

And so the American pilots had been -- had and had been working under an industry standard standalone CBA for a year at the time of the merger.

At the time of the merger, the USAir pilots -- the East pilots were continuing to work under the 1998 US Airways contract as it had been amended in two bankruptcies. And the West pilots were continuing to operate under their 2003 standalone pre-US Airways merger contract.

These are all facts.

Now, the East and West Committees both effectively tell you these are not the droids you're looking for. They try to put the rabbit in the hat by starting from the assertion that this was a merger of equals and that you can therefore ignore the stubborn facts about what the equities were prior to that date.

They also ignore positions in some cases taken by themselves, their experts, and counsel in prior cases.

Now, it may be the case, as Mr. Wilder asserts in his prehearing statement, that everybody entered into this merger because they perceived it to be in their economic and strategic interest.

I'm willing to assume that that's what

parties do.

That does not mean that, absent the transaction, those parties' situations were the same or would have been the same going forward.

It may be the case, as West and East assert, that everybody benefited from the merger. And when you -- if you look at our exhibits, we acknowledge the benefits that the post -- that the merger has provided to the merged pilot group through the MTA and the JCBA.

But that does not mean that the premerger groups started from the same place or have benefited equally from the merger.

And, again, the proof is ultimately in the pudding. American had been performing successfully for a year on a standalone basis under its standalone CBA.

Now, both the East Committee and the West Committee posit that the merger was the only possible strategy for American going forward.

We acknowledge, and I don't think it has ever been a secret, that the pilots viewed the

merger as the best strategy for American, but that doesn't mean it was the only strategy.

There was never a question of American's economic survivability when it went into bankruptcy or as it pursued the standalone plan. It was a strategic strategy by the Company. It had -- it had its financial position going in with such that it didn't require debtor-in-possession refinancing.

The East and West Committees point to statements by Management and, in particular, representatives of APA, regarding what they refer to as the standalone plan. The contention was not that the standalone plan would be a failure. The contention was that the merger was a better strategy.

Also significantly, the statements relied on by the East and West Committees, if you look at when they were in the timeline, they relate almost entirely to the initial 1113 term sheets that American presented in early 2012, and predated the bankruptcy court's ruling on those contentions and the negotiations of what ultimately became the 2012

CBA.

In particular, Jeff read a quote from Ed James this morning, which I believe is also recited in his prehearing brief. That quote was from April of 2012, just before the 1113 started -- trial started, based on the initial 1113 term sheets, prior to the later developments, which ultimately led to the 2012 CBA.

And in particular, I would commend to you the Court's decisions on the 1113 motion, which are in evidence as, I believe, a joint exhibit, and which we quote extensively in our prehearing statement, in which the Court made clear the context in which the motion was tried and the 2012 CBA was ultimately negotiated, namely in the context of American's standalone business plans.

The East and West, in particular, ask you to assume that the compensation and benefits -- and economic benefits of the merger were equal and that the pilot groups' expectations were comparable in that respect.

It's simply not a fact.

As I indicated, as of December 9, 2013, the American pilots had been working for a year under their standalone CBA. They were going to continue to work under that contract, merger or no.

The West Committee simply ignores that in their prehearing statement, contrary to the position they took in the Nicolau arbitration in the context of much smaller gaps in compensation and benefits.

The East Committee is apparently going to attempt a sleight of hand to claim credit for the 2012 CBA. The evidence will not bear that out. The 2012 CBA was based on American's standalone business plan.

The Court ruled on -- the Court ruled on the 1113 motion in the context of the standalone business plan. And then the second LBFO, which became the 2012 CBA, was based on -- negotiated based on the continuation of the -- of an earlier LBFO, which had been voted down.

It was negotiated during a period when it is undisputed that the carriers, American and US Airways, were under a nondisclosure agreement and

all merger-related labor negotiations were blackout.

It was agreed to and ratified before the MOU negotiations commenced in December of 2012, and it was approved by the bankruptcy court in the context of the standalone business plan before the merger was announced.

And, again, it went into effect before the merger was agreed to and would have remained in effect, merger or no merger.

That 2012 CBA gave the American pilots industry standard compensation. It included -- it included, as I said, a midterm pay parity adjustment, so that it is simply not true to say that the American pilots achieved industry standard compensation or parity solely through the MOU.

In particular, Mr. Wilder mentioned the American pilots' equity recovery in the bankruptcy. That was all part of the standalone business plan. That was in the LBFOs. It was in the 2012 CBA.

And in terms of the retention of the pension plan, the evidence of the AA pilots' pensions that term was -- the termination of the

pension plan was actually removed from the 1113 term sheet before the 1113 trial began.

So it is simply not to the case to say that the pension -- the retention of the pension was made possible only through the merger.

The East Committee is apparently going to try to spin a timeline that will persuade you that this couldn't have happened without the leverage created by the potential merger, or without the East pilots' participation. They might wish that were so, but the factors are otherwise.

In contrast, there's no dispute about the terms and conditions of employment in place at US Airways immediately before the merger.

As I have noted, they were operating under separate bankruptcy -- separate collective bargaining agreements that were, by any reasonable measure, not equal to the American pilots' contract. And there was no prospect of that changing absent the merger.

The impasse over the Nicolau did stand in the way of a single collective bargaining agreement.

And as of December 9, 2013, the last word in the Addington litigation was Judge Silver's denial of the Company's request for declaratory relief, by which they sought guidance about how to go forward.

So as of December 9, 2013, there was no single agreement. There was no agreement over the Nicolau -- the treatment of the Nicolau Award, and the parties were without guidance.

And in fact, their negotiations were parked by the National Mediation Board at that time. And after Judge Silver's decision, USAPA asked to have those negotiations unparked, even though the merger was supposedly happening. And that request to unpark the negotiations had not been successful.

Contrary to what Mr. Freund asserted in his prehearing statement and what he said again this morning, the Nicolau award was not the only impediment to an industry standard contract for the US Airways pilots.

US Airways' business model was based on being a low-cost carrier. After the America West merger, it changed its three letter designator to

LCC.

Its business model depended on its cost advantage over other carriers. The numbers show that. Doug Parker said so publicly, as reflected in our exhibits, and USAPA's leadership acknowledged as much.

Only through the merger, including the MOU and the MTA, could the East and West pilots achieve industry standard compensation and compensation and benefits comparable to the American pilots.

The MOU states on its face that it was negotiated from the 2012 American standalone CBA. And even the improvements on that, the improvements on the 2012 CBA that were called for in the MOU, the $87 million that APA became entitled to, were to be negotiated by American and APA.

And, again, the East pilots' own Union leadership, including their counsel, including USAPA's counsel and merger counsel, said as much.

A third set of objective facts is the demographics of the list. We know what projected age 65 attrition was for the three pilot groups. In

the near term, the East pilots continue to have proportionally more attrition than the other two groups.

Shortly after what will likely be the implementation of the integrated seniority list, the American pilots will pass the East pilots in absolute numbers year over year.

And around the amendable date of the JCBA in 2020, the American pilots will surpass the other groups on a proportional basis in terms of attrition.

Those are -- that's simple math from the age-65 calculations.

The premerger lists are not in longevity order. The American list is not in longevity order. The East list was not in longevity order. And certainly, if you start from the Nicolau list, that list is not in longevity order. It has people 17 years out of date of hire seniority next to each other.

The carriers had different metrics by which to measure seniority and longevity. We

don't -- one thing we don't have good data on is absence data -- furlough data and other absence data from the Company.

And we have the facts where -- about what pilots are active and inactive. And there are likely to be issues -- there are going to be issues about who is treated as an active pilot as of December of 2013, and who is not.

Just to name four.

The -- to name three, the West pilots claim credit for jobs for pilots who indisputably were on contractual short-term disability as of December 9, 2013, which contractually disqualified them from active service.

The East Committee claims credit for pilots' service in a separate regional operations, MidAtlantic Airlines, which Arbitrator Nicolau, a federal trial court, a federal appellate court, and a System Board of Adjustment have all found to the contrary.

And finally, there is -- finally, there is the Letter T issue, which Jeff raised in his opening

statement. The Letter T pilots, who are pilots who had originally been furloughed by American in the wake of 9-11, under Section 17 and Letter T of the American contract, when offered recall from furlough, they exercised a right to defer return to active status subject to various conditions.

Following deferral, from our point of view, they were effectively in a voluntary leave of absence status from which they could return to active status at their choosing so long as American was continuing to hire pilots.

And Section 17 in Letter T continued to apply to those pilots under the -- have continued to apply under the MTA and the JCBA.

As of December 9, 2013, there were 1,065 pilots in that status. They were not on furlough status. Their expectation was to come back to work at a time of their choosing with the same expectations as every other American Airlines pilot.

They were not in inverse seniority order as you traditionally find furloughed pilots. There were pilots junior to them that had jobs and career

expectations based on those jobs.

In fact, throughout -- as of December 2013, and since then, American was hiring new hire pilots beneath -- underneath them on the seniority list.

The remaining Letter T pilots are unlikely to return to service. They have passed up numerous economic and other incentives to do so and the remaining pilots are not likely to return.

Now, the East and West Committees both treat these pilots as furloughees, as if they were the junior pilots on the list and had no jobs.

That is -- the effect of that is to artificially reduce the American pilots' equities to treat junior American Airlines pilots, who were actively working on the snapshot date as if they had no jobs and had career expectations -- and had no career expectation.

So you're going to hear a lot about Letter T, and we're going to have evidence about Letter T as part of our case in chief.

One other -- one other -- I'll pass on

that.

A fourth set of objective facts is what has occurred since the merger.

The first consequence of the merger is that the East and West pilots have already benefited substantially from the merger, and out of proportion to the benefits that the American pilots have derived to date from the merger.

The merger enabled the East and West pilots to achieve industry standard compensation in parity with the American 2012 CBA, which the American pilots had already had for a year on a standalone basis.

The East and West pilots are going to enjoy those unprecedented economic gains regardless of the outcome of this integrated seniority list proceeding, and those gains dwarf gains that the parties have relied on in prior cases in the similar vein, including the West pilots in the Nicolau arbitration, and the Continental pilots in the United-Continental arbitration.

Another thing that has happened since the

merger, as you know, is the Ninth Circuit has ruled on the Nicolau Award.

The Ninth Circuit found that it was a DFR violation for USAPA not to include -- not to enter into the MOU without implementing the Nicolau Award. And, as we have indicated in our prehearing, from our view, that's the tiebreaker in terms of how to integrate the East and West lists as part of this proceeding.

But the Ninth Circuit also recognized that the Nicolau Award was not in effect, and that there was no guarantee that it ever would be in effect, which underscores our view of the equities.

If the West -- again, if the West pilots now achieve the implementation of the Nicolau list, which we acknowledge is the nearly inevitable conclusion based on the Ninth Circuit's decision, that will only be as a result of this merger in this proceeding.

Another thing that has happened and is happening subsequent to the merger is the merged carrier is rationalizing its combined fleet plan to

reduce the projected growth of the fleet. The effect of which is to reduce the growth expectations that the American pilots had prior to the merger.

Another thing that's happening post merger is that the administration of Letter T is, frankly, moving toward a conclusion.

Since the merger, as of today, on the 193 of the 1,065 Letter T pilots have returned. The remainder have stayed out, notwithstanding a series of incentives for them to return.

And at least so long as the Company continues to hire, as of May 2016, every pilot is going to have to declare his intention whether to come back or not.

So that at the point when the integrated seniority list is implemented, we should know the objective facts about who will actually return and who will not. And that's similar to the Frontier-Republic-Midwest-Lynx integration in which there were Frontier pilots in what was called voluntary leave of absence status that was a very similar status to Letter T.

By the time the seniority arbitration was concluded, they were all back at work and were treated as other pilots in the integration.

These are the significant objective facts weighing in your determination of what will be a fair and equitable integration of the seniority lists. Our proposal is based on those facts.

Now, this case is not about the history of APA's seniority integrations and what APA's merger policy has or has not been in the past. And I'm not going to rehearse that here in response to Mr. Freund's opening statement.

I will note that, absent the Protocol Agreement and the preliminary arbitration that was included in the Protocol Agreement, the West Committee wouldn't be here.

They would not be in this case. That happened because, before APA became the single bargaining representative, APA went to the mat in negotiating the Protocol Agreement to assure that there was a process to determine whether there should be a West Committee.

So if we -- if we want to talk about APA's motivations and -- our Committee's motivation and APA's merger policy, let's consider all the facts.

Our proposal, as I said, is based on our view of these objective facts. We start with the Nicolau Award. We integrate the East and West pilots on that basis updated to December 9, 2013 for attrition.

Now, Mr. Freund says in his brief that, well, it should be of no consequence to us whether we integrate the East and West pilots based on the Nicolau Award or on some other basis. That's not true. It does matter to us. It has a real impact on the American pilots.

The effect of using the Nicolau Award instead of three lists to integrate the lists is to move most West pilots significantly up the seniority list. It's why they have been fighting for it for the last nine years.

That placement of West pilots vis-a-vis East pilots on the seniority list changes the age demographics of the list, changes the attrition

patterns going forward by leaving younger West pilots higher on the list where they become blockers to older American pilots, where they wouldn't have been if you hadn't used the Nicolau Award.

In addition, it places the West pilots in -- it places West pilots in positions on the integrated seniority list where they have seniority sufficient to hold positions that they have never had access to.

So there's a pent-up demand among West pilots for positions that the Nicolau list gives them access to that they have never had access to.

That is going to result in the rationalization of what positions West pilots hold over time.

That rationalization should happen vis-a-vis the East pilots to rationalize seniority amongst those two groups, not on the American pilots who have not been party to the Hatfield-and-McCoys feud between the other two groups.

That is magnified by the continued rationalization of the post merger fleet.

And parenthetically, if Jeff is looking for an explanation of why our proposal today is different than it was in July, it's because of these effects of the Nicolau Award and because of the continued changes in the fleet plan, among other reasons.

Having determined how to treat the East and West pilots, we pull and plug in active pilots, which is the traditional methodology.

We then follow a category and status integration, which we do adjust to reflect the particular equities of this case.

We, frankly, do fairly basic category and status rankings. There are two particular issues. We treat Group 4 First Officer as a position comparable to Group 2 Captain, which you will see is borne out by the evidence. We treat Group 1 Captain as being equivalent to Group 2 First Officer. You will see that that's supported by the evidence.

We then adjust those category and status rankings because, under the case law I have referred to, jobs in the same category and status rankings

can have different equitable values depending on the premerger carriers.

And the equities of the American pilots in those category and statuses were different than the equities of the East and West pilots in the same category and statuses, particularly with respect to compensation and benefits.

And that really can't be argued. If you look at how both the East Committee and the West Committee describe their category and status rankings, they are based on pay. They are referred to as pay categories. So it's not a mystery to take into account the economic value of the jobs in ranking the jobs.

We then construct the list on that basis. We plug the pull-and-plug pilots back in. And then we propose a one-time adjustment immediately prior to implementation to accommodate the actual number of pilots who have returned from Letter T status.

And to be clear, it's an adjustment by moving American pilots down the list to take into account the number of pilots who have returned.

We do propose limited conditions and restrictions, which are described in our proposal and our prehearing brief.

We have attempted to keep those limited to transition to the fair and equitable operation of the integrated list.

To the extent there are changes in those fences, since our original proposal in July, they are necessitated in particular or among other things by the application of the Nicolau Award and the continued rationalization of the fleet, among other things.

To return to another subject, you may ask, What about longevity? Well, we actually did consider longevity as a factor, and we decided that it was not a proper basis for integration in this proceeding.

I refer you back to our footnote 7, which I referred to before, about the limitations of longevity as an equity. And in particular, the limitations of using a smoothing method, which moves longevity from one group from one pilot to another,

and which changes the value of the equity.

We believe that our proposal is fair and equitable. And as I indicated above, the fairness in equity is not measured by the methodology. It's not even measured by the list in a vacuum. It's measured by the list as it will operate in the merged system in allocating economic and work opportunities.

We're going to give you some projections about the effect of our proposed list going forward based on specific assumptions and taking into account what we know about the fleet and attrition going forward.

It is -- to be clear -- and we will make it clear again when we present it -- it is not meant to predict what is going to happen to an individual pilot going forward because there is no way to know whether each of the individual assumptions will be correct for an individual pilot.

It is meant to measure collective group impact and measure the relative impact of one proposal vis-a-vis another proposal.

It is, frankly, very similar to analysis that Mr. Akins, the West Committee's expert, has presented in prior cases.

We believe that our proposal equitably allocates the upside of the economic benefits of the integration. The AA pilots will maintain their career expectations. And you will see don't -- don't gain terribly much economically as a result of the integration -- as a result of the merger.

The East and West pilots will both make unprecedented economic gains as a result of the merger under our proposal, far beyond what -- far beyond what has been relied on in prior case.

And even at the most junior end of the list -- and I'll come back to the stapling notion in a moment -- but even at the junior end of the list, the East and West pilots -- and, actually, it's primarily East pilots because -- at the bottom of the list, come out economically very far ahead of where they would have absent the merger. And have -- and frankly, given their age, have very long horizons to enjoy the benefits of the merger.

We believe that our proposal will equitably allocate the down side of the rationalization of the fleet.

Our proposal will accomplish the rationalization of the jobs as between the East and West without adversely affecting the American pilots.

And it bears noting that the benefits that the East and West pilots are gaining from the merger in economic terms are all front loaded. They have those today, and they are going to have them regardless of the outcome of this proceeding.

Whatever benefits the American pilots get from the merger are much more out into the future and will have to be awaited.

And our proposal will accommodate the -- whatever the actual objective facts with respect to Letter T turn out to be.

The other Merger Committees' proposals are largely, in our view, based on assumptions that are not borne out by the objective facts and both fetishize the methodology used in

United-Continental, which there's no reason to believe was not appropriate or fair and equitable for United-Continental.

But both the West Committee and the East Committee in effect tell you to -- suggest to you that you should use that methodology because it was used in United-Continental, and it's wonderful.

In addition to the fact that you have to look at the case on its own facts and look at the fairness and equity of the lists on its own facts, both the West and the East assert the assumption that longevity and status and category are necessarily competing with each other, that one balances off the other.

That may have been the case in the United-Continentals. It is not the case here. With these lists, and particularly if you use the Nicolau Award, which is not a date-based list, longevity and category and status actually interact with each other and push in the same directions in many ways.

So you should be wary of assuming that those are competing interests that you have to

balance off against each other.

The East pilots, who have always been pro longevity and pro date of hire, will now take a list -- the American list that is not based on longevity or date of hire, and, in measuring date of hire on that list, take every opportunity they can do to reduce or ignore sweat equity that pilots have put into the enterprise. And that relates to significant portions of the American list.

They treat the Letter T pilots, who are not truly in furlough status and who are interspersed throughout the list, worse than they would have treated their own furloughed pilots in America West-US Airways who were, in fact, on furlough and were at the bottom of their seniority list.

And I dare say the East pilots would not like the hybrid methodology quite so much if you started from the Nicolau Award rather than three separate lists.

The West pilots, who have never recognized longevity -- and you can go back and read their

presentations to Arbitrator Nicolau -- are now eager to plug longevity -- are now eager to take the Nicolau list, which is not a longevity based list, and plug longevity into it in a way that gives them the benefit of the East pilots' longevity through the smoothing process.

By doing the smoothing process for longevity, you will take longevity from older, more senior East pilots and give it to West pilots; who will then take advantage of it and take advantage of it for a much longer period of time than their counterparts would have taken advantage of it.

On top of that, the West pilots will take the economic gains they have gotten from the merger, take credit for the East longevity, and we will show you the magnitude of the transfer longevity.

Including, it appears to us, for East pilots who have been inactive for years, but who have stayed on the East seniority list, but who will then -- but who will get credit for longevity in the West pilots' calculation, which will then be transferred to West pilots.

And finally, the West pilots will take the 1,165 American jobs corresponding to the Letter T pilots and push them to the bottom of the list, notwithstanding the career expectations associated with the Letter T pilots and the pilots at the bottom of the list.

Now, Mr. Freund went out of his way to discuss APA's supposed policy of stapling people to the bottom of the list.

Well, who proposes -- if you want to talk about who proposes stapling, go back and read the Nicolau Award.

There were more than 1,400 East pilots stapled to the bottom of that list, 32 and a half percent of the East pilots were stapled under the Nicolau Award.

In the West's proposal, the junior West pilot -- and bear in mind, although most of the West pilots charts are two colored, blue and silver, the West pilots are actually representing the orange or brown pilots, the West pilots.

The junior West Pilots under the West

proposal has 1,465 American pilots junior to him and 441 East pilots junior to him.

So you can -- you can evaluate who is or is not an advocate of stapling.

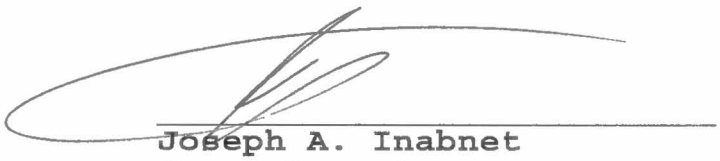
And frankly, the issue is beside the point. The issue is look at the lists, look at what's fair and equitable, and look at how that list is projected to operate in the merged system in relation to the premerger career expectations that each of the groups brought to the party.

You're going to hear a lot of testimony. You're going to read a lot of exhibits in this case. We predict that at the end of the proceeding, you'll be able to go back to our prehearing statement and see the roadmap to a fair and equitable resolution of this proceeding, which reflects the reasonable premerger career expectations of the pilot groups will equitably allocate the benefits of the merger going forward and will avoid undue windfalls for one group as a result.

We believe our proposal is fair and equitable and it should be adopted by the Board.

CERTIFICATE OF REPORTER

I, Joseph A. Inabnet, do hereby certify that the transcript of the foregoing proceedings was taken by me in Stenotype and thereafter reduced to typewriting under my supervision; that said transcript is a true record of the proceedings; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.



Joseph A. Inabnet
Court Reporter

EXHIBIT 35

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CHRISTOPHER W. KATZENBACH
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June 3, 2015

BY U.S. MAIL and BY EMAIL TO apa@mcstephens.net
Captain Mark Stephens
Chairman, Seniority List Integration Committee
Allied Pilots Association
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Fort Worth, TX 76155-2512

In Re: Integration of Seniority Process For American Airlines/U.S. Airways Pilots – Protection Of Interests of American Airlines Flow-Through Pilots

Dear Captain Stephens:

I am writing on behalf of the American Airlines Flow-Thru Pilots Coalition ("AAFTPC").

On October 17, 2014, APA's attorney, Edgar James, wrote to me stating: "I want to reiterate that we believe that the pre-merger American Airlines Pilots Seniority Integration Committee ["AAPSIT"] is dedicated to advocating zealously on behalf of all premerger American pilots. The chairman of that committee, Captain Mark Stephens, asks that you submit to him any brief or other written material that you wish to have considered by his Committee."

It is our understanding that arbitration hearings on the seniority list integration arbitration are scheduled to start on June 29, 2015. At this point, however, we are unaware of the position of AAPSIT in the proceedings and cannot fully comment or submit materials for AAPSIT to consider. Accordingly, to respond to the issues, the AAFTPC needs the following information as to the seniority issues involved, including APA/APPSIT's positions and the positions of the other parties on the issues:

1.A. What are APA's and AAPSIT's positions—initial, interim or final—as to:

- Reordering the existing AA pilot seniority list.
- Defending the occupational seniority dates issued to AA Pilots under Supplement W Paragraph III. B, including AAPSIT's position with respect to other parties' desires to reorder the AA seniority list.

1.B. What is APA's and APPSIT's position on the criteria or adjustments to occupational seniority that will be used to dovetail the U.S. Airways pilots into the list and how that would occur? This would include any position as to:

- Placement of U.S. Airways Pilots on the seniority list relative to the existing seniority order.
- Seniority credit for time served at U.S. Airways and any regional subsidiaries.
- Seniority credit for time while on furlough (including furlough from U.S. Airways, AA or other carriers).
- Seniority credit for time served at American Eagle, Trans World Airlines, or other carriers.

1.C. What is APA's and AAPSIT's position as to seniority based on occupational seniority date, based on the date a pilot began working on the AA property ("date of hire") or based on classification date.

- One of the AAPSIT committee members stated that "Pilots will be credited for the time they are on the AA property." What was meant by this statement?
  - Currently, many of the AA pilots who obtained seniority dates under Supplement W have occupational seniority dates earlier than the dates they began working on the AA property because of being withheld at American Eagle for operational reasons, because of inclusion of the TWA Pilots on the list, and because of violation of Supplement W.
    - Is the reference to "credit" intended to indicate that pilots may have their seniority date on the integrated list determined by the date the pilots began working for AA rather than their existing occupational seniority date?
- Apart from the above statement, has APA or AAPSIT taken any position as to seniority in the final integrated list based on occupational seniority, date of hire or classification date?
- Whether a pilot's Length of Service ("LOS") for pay purposes will affect the pilot's placement on the integrated seniority list.

1.D. Please provide us a digital copy of the American Airlines, America West, and USAir pre-merge seniority lists, including the dates of hire and furlough periods for each pilot on these lists.

2. What is the position of the other parties to the arbitration as to placement on the integrated seniority list?

- What is the written position or positions of the other parties on how seniority should be determined and how a final integrated seniority list should be created? Can you provide us copies of any written statements that have been presented on this issue (including any statements of position that may have been introduced in the arbitration that determined who would be parties to the current arbitration process).

- If the other parties have not submitted written statements, to the best of your knowledge what are their positions on determining seniority and integrating seniority?

Thank you in advance for your prompt attention to this matter. Please call or email me if you have any questions or require any additional information.

Very truly yours,

Christopher W. Katzenbach

I have authorized the request for the information sought in this letter. I further authorize providing the requested information to Christopher W. Katzenbach.

Greg Cordes, AA Pilot # 146514

2. What is the position of the other parties to the arbitration as to placement on the integrated seniority list?

- What is the written position or positions of the other parties on how seniority should be determined and how a final integrated seniority list should be created? Can you provide us copies of any written statements that have been presented on this issue (including any statements of position that may have been introduced in the arbitration that determined who would be parties to the current arbitration process).

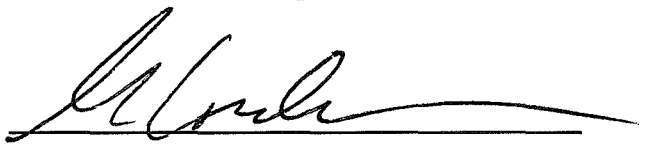
- If the other parties have not submitted written statements, to the best of your knowledge what are their positions on determining seniority and integrating seniority?

Thank you in advance for your prompt attention to this matter. Please call or email me if you have any questions or require any additional information.

Very truly yours,

Christopher W. Katzenbach

I have authorized the request for the information sought in this letter. I further authorize providing the requested information to Christopher W. Katzenbach.



Greg Cordes, AA Pilot # 146514

EXHIBIT 36

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June 10, 2015

BY EMAIL AND FIRST CLASS MAIL

Christopher W. Katzenbach, Esq.
Katzenbach Law Offices
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San Rafael, California 94901

Re: American Airlines/US Airways Pilot Seniority Integration

Dear Mr. Katzenbach:

The undersigned is counsel for the American Airlines Pilots Seniority Integration Committee ("AAPSIC"). Captain Mark Stephens, Chairman of the AAPSIC, has forward your letter of June 3, 2015 to me for response. Kindly direct future communications with the AAPSIC to me as its counsel.

The AAPSIC is the entity charged with representing the interests of the pre-merger American Airlines Pilots in the pending integration of the American Airlines seniority lists with the US Airways (East and West) seniority lists. The AAPSIC is autonomous from the APA National Officers, Board of Directors and Legal. Your letter requests a variety of detailed information, including information regarding the positions to be taken by the AAPSIC and the other Merger Committees representing the US Airways East and West Pilots in the upcoming seniority integration arbitration. The Merger Committees' positions and presentations are still being developed, and will be presented in the arbitration process on a schedule established by the parties and the Arbitration Board, beginning with the exchange of pre-hearing statements of position and proposed exhibits on June 19, 2015. The Merger Committees' submissions will become available to the Committees' pilot constituents in due course, except insofar as they are subject to Non-Disclosure Agreements. The AAPSIC is not otherwise under any duty to disclose to individual pilots or groups of pilots, such as your clients, the information referenced in your letter, including the internal deliberations, work product, or intended positions or presentation of the AAPSIC and its counsel; or what the AAPSIC may anticipate may be the intended positions or presentations of other parties to the upcoming arbitration.

Consistent with Edgar James' October 17, 2014 letter to you (quoted in your letter to Captain

Stephens), the AAPSIC is dedicated to advocating zealously the interests of the pre-merger AA Pilots seniority list as a whole, including your clients. Among other things, there is no contemplation of changing the relative placement of any pilot on the pre-merger American seniority list *vis a vis* other pilots on the pre-merger seniority list.

As you acknowledge, in his letter Mr. James invited you to submit to the AAPSIC any brief or other written material that you wished to have considered by the Committee. Although you have not availed yourself of that opportunity in the seven and one-half months since that invitation, the AAPSIC remains willing to consider any brief or written material your clients wish to have it consider in its representation of the pre-merger American pilot group in this matter.

Thank you for your attention.

Very truly yours,

Wesley Kennedy

cc (By Email): AAPSIC
Edgar N. James, Esq.
Daniel M. Rosenthal, Esq.

EXHIBIT 37

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CHRISTOPHER W. KATZENBACH
ckatzenbach@kkcounsel.com

June 25, 2015

BY U.S. MAIL and BY EMAIL TO kennedy@ask-attorneys.com
Wesley Kennedy
Allison, Slutsky & Kennedy, P.C.
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Chicago, IL 60606

In Re: Integration of Seniority Process For American Airlines/U.S. Airways Pilots – Protection Of Interests of American Airlines Flow-Through Pilots

Dear Mr. Kennedy:

My clients obtained a copy of AAPSIC's brief and proposed seniority list. While we are still in the process of digesting this information, we have several points that concern us and as to which we request additional information and explanation.

1. Page 71, footnote 9 of AAPSIC's brief states, in part: "The Merger Committees have stipulated that service at regional affiliates (including American Eagle) is not credited for purposes of longevity in this proceeding." We are uncertain what this statement is intended to mean. Can you explain how, if at all, longevity was used to construct AAPSIC's proposed integrated seniority list?

Will you provide me a copy of this stipulation?

What was the purpose of this stipulation? The AAPSIC Brief does not explain why this stipulation was made or its purpose (other than to single out Flow-Through Pilots for adverse treatment).

To the extent that this stipulation impacts the position of the Flow-Through Pilots on either the AA seniority list of the integrated seniority list proposed by AAPSIC, we request that AAPSIC withdraw from this stipulation until AAPSIC can discuss it and its effects with the Flow-Through Pilot group. Additionally, we request that AAPSIC make (or seek) revisions to any stipulation as are necessary to protect the rights of Flow-Through pilots from being impacted adversely by stipulations of this kind that appear directed predominantly at them and their employment/seniority situation.

2. Looking at AAPSIC's proposed integrated seniority list, a large block of US Airways pilots have been inserted starting at seniority number 13561 and ending at

number 14316. This appears to be Item 7 on page 76 of APPSIC's brief plus the pull and plug US Airways pilots. Item 7 appears to be based on Ratio 6 (page 75) that covers pilots before the last (Ratio 7) category of Post-2007 pilots. The practical effect of this insertion is to drop the seniority of the remaining 124 AA pilots by about 755 numbers.

What is the reason for this insertion?

Will you please provide the dates of hire (and other seniority dates if other dates were used) for the US Airways pilots on the foregoing block of pilots?

Will you also provide the pre-integration seniority dates for the AA pilots at numbers 13560 and 14317?

3. Ratio 7 is based on Post-2007 hiring. AAPSIC's brief (p. 75) indicates that Ratio 7 includes 124 AA pilots. Earlier in the brief, AAPSIC describes this group as including pilots all AA pilots who came onto the property post-2007 and that this group would be integrated with post-2007 US Airways Third List pilots on a ratio basis (Brief pp. 74-75). This ratio arises from the relative number of pilots hired with post-2007 seniority numbers. This results in inserting four or five US Airways pilots between each AA pilot. As discussed in Point 4 below, there is no rational basis to treat these AA pilots as if they were part of the US Airways Third List pilots. This treatment results in vastly diminished seniority placement for these AA pilots arising solely because AA has fewer post-2007 pilots with seniority numbers than US Airways has for this group.

It is our understanding that the 124 AA pilots in this group are all Flow-Through Pilots with AA seniority numbers arising because of the remedy provided in FLO-0903 awarding 154 AA seniority numbers to Eagle pilots. Under this award, it is our understanding that each of these AA pilots had a seniority date of April 30, 2008. Can you confirm or clarify this?

Will you provide the pre-integration seniority dates for the AA pilots (if other than April 30, 2008) and the date-of-hire dates for the US Airways pilots in this section of the integrated seniority list?

4. The integrated seniority treatment of the US Airways Third List group appears to arise from a notion that this group had constructive notice that their seniority placement could be changed (referred to as "Constructive Notice") because of the Nicolau award in a dispute between East and West US Airways pilots. AAPSIC Brf. p. 74. However, the Constructive Notice issue relates to the placement of new and old East/West US Airways pilots, not AA pilots. The Constructive Notice is notice that new US Airways pilots hired following the East-West merger might be subordinate to the original East and West US Airways pilots. *Ibid.*

AA pilots were not part of the dispute from which this Nicolau award arose. AAPSIC Brf. p. 68. Constructive Notice appears related only to the job expectations at US Airways following the East-West merger, not to job expectations at AA. See

AAPSIC Brf. pp. 70-71. The AA Flow-Through Pilots had very different job expectations than the Third List pilots. Their job expectations were job for job opportunities at AA based on their AA seniority position on the overall AA seniority list. Their expectations were the same as other AA pilots on the pre-merger list and totally unlike the expectations of the US Airways pilots who were on the Third List.

To put our position simply and based only on the limited review we have been able to conduct to date, we believe that there is no rational basis to integrate the 124 AA pilots in Ratio 7 with the US Airways Third List Pilots or to put any block of US Airways pilots ahead of these 124 AA pilots. We believe these 124 AA pilots should, at least, be part of Ratio 5, the same position as other AA pilots who operated the same equipment (see AAPSIC Brf. p. 73), before the insertion of the large group of US Airways pilots noted above and before the Third List US Airways pilots.

Will you please explain why the 124 AA pilots hired post-2007 were integrated with the Third List group of US Airways pilots and the reason for the ratio used?

Will you please explain why and how these 124 AA pilots had notice that their career expectations at AA would be diminished in reference to the US Airways pilots placed on the Third List or in reference to the original US Airways pilots who were not on the Third List?

Will you please explain why any of these 124 AA pilots should have their career expectations at AA diminished by insertion of US Airways Third List pilots ahead of them on the integrated seniority list through the ratios used?

Will you please explain why these 124 AA pilots were put in Ratio 7 rather than in Ratio 5 with the other AA pilots on the pre-merger AA seniority list? I would note that the AAPSIC brief describes the inclusion of these 124 pilots with the US Airways Third List, but provides no explanation for that inclusion other than the fact that the AA pilots were post-2007 hires.

The post-2007 date apparently derives entirely from the 2007 Nicolau award and its aftermath. Will you explain how AA pilots hired post-2007 should be treated like pilots hired by US Airways post-2007 while the validity of the Nicolau award was being contested by the US Airways pilot groups?

As always, thank you for your prompt attention to these matters.

Very truly yours,

Christopher W. Katzenbach

EXHIBIT 38

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July 9, 2015

BY EMAIL AND FIRST CLASS MAIL

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Re: American Airlines/US Airways Pilot Seniority Integration

Dear Mr. Katzenbach:

I have your letters of June 16 and 24.

As you may be aware, on June 29, 2015, following the decision of the U.S. Court of Appeals for the Ninth Circuit in Addington v. USAPA, Nos. 14-15757, 14-15874, the USAPA Merger Committee withdrew from the seniority integration arbitration process. The Arbitration Board has deferred the commencement of the seniority integration arbitration to September 29, 2015; and has directed APA to exert best efforts to establish a new East Pilots Merger Committee to represent the interests of the pilots on the separate pre-merger US Airways (East) seniority list in effect as of December 9, 2013. In light of those developments, the American Airlines Pilots Seniority Integration Committee (AAPSIC) has withdrawn the proposal, position statement and proposed exhibits previously submitted. The AAPSIC is reviewing its position in light of these developments, in anticipation of the rescheduled commencement of the hearing.

Consequently, at this time there is no specific AAPSIC proposal. At the same time, I wish to address some of the significant misconceptions in your letters, and in communications the AAPSIC has received from individual former American Eagle pilots.

In my previous correspondence, I have explained that the AAPSIC has no intent to alter in any way the order in which pilots appeared on the pre-merger American seniority list as of December 9, 2013, including the placement of your clients on that pre-merger list. That sequence is based on the Occupational Seniority Dates assigned to pilots pursuant to the American/APA collective bargaining agreement. The AAPSIC has no intent to change those Occupational Seniority Dates in determining any pilots' placement on a proposed integrated seniority list.

To this point, the AAPSIC has not advanced any seniority integration proposal relying in any way on adjustments to any pre-merger American pilot's "longevity" or "length of service" in the construction of an integrated seniority list. At the same time, the AAPSIC entered into a stipulation with the West Pilots Merger Committee, the USAPA Merger Committee and the Company that, for purposes of any such adjustments, a pilot's credited length of service will exclude service at regional affiliates (e.g., American Eagle, Mid-Atlantic). That stipulation reflected the fact that the seniority being integrated is seniority on the mainline American and US Airways seniority lists (including their direct predecessors through mergers or acquisitions). Service on the seniority lists of other carriers (including separate regional affiliates) does not constitute service at the mainline carrier. Under the stipulation, your clients would be given seniority credit in the mainline operation in accordance with the applicable mainline collective bargaining agreement. This is consistent with the treatment of service at regional affiliates in past seniority integrations, including the recent United/Continental case, which I assume that you have reviewed.

Your clients' placement on the pre-merger American seniority list was based, in part, on a series of Board of Adjustment arbitration awards involving disputes involving the interpretation and application of the former Supplement W to the American/APA CBA. Those decisions included the following arbitration awards, copies of which are enclosed with this letter:

* FLO-0903 (LaRocco)
* FLO-0106 (LaRocco)
* FLO-0107 (Bloch)
* FLO-0903 (Remedy)(Larocco)
* FLO-0108 (Nicolau)

These awards are responsive to many of the concerns expressed in your letter and other communications received by the AAPSIC directly from former "Supplement W" pilots.

Supplement W was a four-party agreement among American, APA, American Eagle, and the Air Line Pilots Association, International (ALPA). Under that four-party agreement, APA represented the interests of the American Airlines Pilots active at American at the time of the events giving rise to the particular proceeding; the interests of American Eagle Pilots were represented by ALPA. Accordingly, APA's duty was to the American Airlines Pilots, not to American Eagle Pilots represented by ALPA.

As we have previously made clear, the AAPSIC's charge is to represent the interests of the pre-merger American Pilots as a whole in the seniority integration. Any AAPSIC seniority integration proposal will be based on extensive, detailed analysis of the relevant equities, and seniority and other data; and will represents the Committee's best assessment of what is fair and equitable for the pre-merger American Pilots, including your clients.

Thank you for your attention.

Very truly yours,

Wesley Kennedy

WK:td
encl.

cc (By Email): AAPSIC
Edgar N. James, Esq.

EXHIBIT 39

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CHRISTOPHER W. KATZENBACH
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July 13, 2015

BY U.S. MAIL and BY EMAIL TO kennedy@ask-attorneys.com
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In Re: Integration of Seniority Process For American Airlines/U.S. Airways Pilots – Protection Of Interests of American Airlines Flow-Through Pilots

Dear Mr. Kennedy:

Thank you for your letter of July 9, 2015. However, your letter does not respond to the specific questions I asked nor provide the requested stipulation respecting regional carrier service I requested. In addition, your letters have not fully responded to the questions and requests we have previously made in my letters dated June 25, 2015, June 17, 2015 and my June 3, 2015 letter to Captain Stephens.

While I understand that AAPSIC has withdrawn its proposed integrated seniority list, there is no reason from my clients to think that AAPSIC will not resubmit the proposed integrated seniority list in substantially the same form or that any negotiations with the West and New East committees would not reflect the AAPSIC proposed list as well.

Similarly, AAPSIC has not withdrawn from the stipulation regarding longevity at regional air carriers, including American Eagle. While I have noted that the AAPSIC's list asserts that longevity is not used as a factor in its proposed list, there is no guarantee that longevity will not be used by the arbitrators in formulating a list even if AAPSIC does not propose to use longevity.

While I note your assertion that excluding regional air carrier service is consistent with other seniority list integrations, I do not think that is the case or an appropriate stipulation for this merger.

First, I do not think there is any general rule such as you assert. The decision of Arbitrator Nicolau in the USAir/America West merger included pilots in Mid-Atlantic Airways, who had not flown at all for US Airways and had no apparent rights to jobs at US Airways, in the integrated USAir/America West seniority list. *US Airways and America West Airlines* (Nicolau 2007) ("Nicolau Decision") pp. 20-21. Similarly, the

arbitration in *Republic Airlines and Hughes Air-West* (Bloch 1981) including time flying under a lease to Saudi Arabia. Decision p. 36.

Second, whether to include or exclude time is, like other seniority merger issues, a factual question. It is well-established that, in all seniority merger arbitrations, "each case turns on its own facts." Nicolau Decision, p. 19. Issues of longevity often reflect pilots' "sweat equity" in their carrier's operations, including financial sacrifices by pilots to help their carrier. See, e.g., Nicolau Decision, p. 14. Such "sweat equity" is abundantly present in the case of the Eagle Flow-Through Pilots. I would, in particularly, note the following:

- The Flow-Through Agreement represented an integration of AA and Eagle pilots. This was a significant benefit to their joint parent company AMR.
    - The negotiation of the Flow-Through Agreement, and its acceptance by the Eagle pilots, was critical to resolving labor disputes at AA in 1997 between AA and APA. Among these issues was AMR's desire to allocate new regional jets to American Eagle while APA desired that these regional jets be allocated to AA and flown by pilots APA represented.[1]
        - The fact that APA wanted AMR to give these jets to AA in 1997 rather than to Eagle highlights the fundamental point that time flying these jets should be included in overall seniority where all the flying was done for AMR-owned carriers.
    - AA obtained a source of experienced jet captain pilots whose qualifications would be readily determinable from their performance at Eagle.
    - Eagle obtained the benefit of being able to retain experienced pilots because of the future job opportunities that would be available to Eagle pilots at AA. The promise of jobs at AA was a disincentive for Eagle pilots to seek employment with other airlines and competitors with AA or Eagle. The training freezes and operational holds at Eagle also allowed Eagle to keep experienced captains for Eagle's operations; captains would be willing to stay at Eagle during such holds because of the anticipated move to AA once the hold was lifted.

[1] ALPA represented the pilots at Eagle. The various corporate entities that were American Eagle had been combined into a single bargaining unit in about 1995.

- Eagle pilots took financial and career risks in accepting the Flow-Through Agreement and in anticipation of moving to AA.
    - Rather than leave Eagle for jobs at other mainline carriers, they stayed at Eagle in anticipation of jobs at AA once the various holds on moving to AA were lifted.
    - They exposed themselves to pay and status reductions under the flow-down provisions of the Flow-Through Agreement. Flow-down was a critical factor in resolving the AA/APA labor disputes involving allocation of regional jets. By exposing themselves to the risks of flow-down, the Eagle pilots directly contributed to the resolution of labor disputes at AA and AMR's desire to allocate regional jets to Eagle rather than AA.
    - In fact, flow-down became the dominant aspect of the agreement until mid-2007 when AA began hiring new pilots. About 378 AA pilots—including many of the TWA-LLC pilots on the AA seniority list who had never flown for AA—flowed-down and displaced Eagle jet captains.[2] In contrast, only 124 Eagle Pilots had managed to flow-up to AAL before September 11, 2001.
    - Eagle pilots accepted the 1997 collective bargaining agreement at Eagle entirely because of the existence of rights under the Flow-Through Agreement. The pilots initially rejected the proposed contract in 1997; they thereafter voted to accept it only when they were threatened with loss of flow-up rights if they did not ratify the proposed contact rather than holding out for better contract terms.

Third, other facts of this case—also essential to the general rule that each case turns on its own facts—demonstrate that service at Eagle for the Flow-Through Pilots should be considered as part of the longevity, sweat equity and career expectations elements of seniority integration.

- The Flow-Through Agreement was all about the career expectations of Eagle pilots. As noted above, they sacrificed and remained at Eagle to obtain the promise of advancement to AA.
- The Eagle pilots' rights to flow-up to AA were repeatedly frustrated by APA and AA, resulting in numerous arbitration decisions finding that their flow-up rights were violated. See FLO-0107 (Bloch 2008); FLO-0108 (Nicolau 2009 and 2010); FLO-0903 (LaRocco 2007 and 2008). As a

[2] Arbitrator LaRocco in FLO-0903 (2007) noted that 174 of the 378 pilots who flowed-down were former TWA-LLC pilots. Decision, p. 17.

result, Eagle pilots were forced to stay at Eagle longer than justified. While they should have restarted moving to AA in 2007, they did not move to AA until 2010.

- TWA-LLC pilots, who had never been previously hired by AA, started moving to AA in 2007 because of the violations of the Flow-Through Agreement noted in the above arbitration decisions. Consequently, these TWA-LLC pilots gained an extra three years of longevity at AA over Eagle pilots who were kept at Eagle because of AA's and APA's violations of the Flow-Through Agreement.

- APA's agreement on longevity to include only time at AA or mainline carriers is little more than an agreement to take advantage of APA's prior violation of the Flow-Through Agreement, to give an additional reward to the TWA-LLC pilots who benefitted from these violations and to impose an additional burden on the Flow-Through Pilots who were the victims of AA's and APA's violation of their rights.

Accordingly, issues of longevity, career expectations and career and economic sacrifice for the discrete group of Flow-Through Pilots remain factors that we believe are not being factored appropriately into the proposed seniority lists or addressed in the SLI arbitration. Indeed, the stipulation to exclude regional service undermines consideration of these factors for the Flow-Through Pilots. This makes it all the more important for the Flow-Through Pilots to obtain the information we have previously requested in order to protect their interests. Accordingly:

A. Please respond to the questions and information requests in my letter dated June 25, 2015 (referred to by you as my June 24 letter) regarding AAPSIC's proposed seniority list that remain unanswered.

B. Please respond to the questions and information requests in my letter dated June 17, 2015 (referred to by you as my June 16 letter) that remain unanswered.

C. Please respond to the questions and information requests in my letter to Captain Stephens dated June 3, 2015 that remain unanswered.

D. Please provide me a copy of the stipulation on service with regional carriers.

E. Finally, in reviewing AASPIC's proposed integrated list, we cannot determine which pilots have been allocated to the status and category groups AAPSIC has made. Please provide AAPSIC's status and category allocations for pilots underlying its proposed integrated seniority list.

For your convenience, let me reiterate the questions and requests involved that remain unanswered from my prior correspondence.

Questions from in my letter dated June 25, 2015:

1. Page 71, footnote 9 of AAPSIC's brief states, in part: "The Merger Committees have stipulated that service at regional affiliates (including American Eagle) is not credited for purposes of longevity in this proceeding." We are uncertain what this statement is intended to mean. Can you explain how, if at all, longevity was used to construct AAPSIC's proposed integrated seniority list?

What was the purpose of this stipulation?

Please provide a copy of this stipulation.

2. Looking at AAPSIC's proposed integrated seniority list, a large block of US Airways pilots have been inserted starting at seniority number 13561 and ending at number 14316. This appears to be Item 7 on page 76 of APPSIC's brief plus the pull and plug US Airways pilots. Item 7 appears to be based on Ratio 6 (page 75) that covers pilots before the last (Ratio 7) category of Post-2007 pilots. The practical effect of this insertion is to drop the seniority of the remaining 124 AA pilots by about 755 numbers.

What is the reason for this insertion?

Please provide the dates of hire (and other seniority dates if other dates were used) for the US Airways pilots on the foregoing block of pilots?

Please provide the pre-integration seniority dates for the AA pilots at numbers 13560 and 14317?

3. Ratio 7 is based on Post-2007 hiring. AAPSIC's brief (p. 75) indicates that Ratio 7 includes 124 AA pilots. Earlier in the brief, AAPSIC describes this group as including all AA pilots who came onto the property post-2007 and that this group would be integrated with post-2007 US Airways Third List pilots on a ratio basis (Brief pp. 74-75). This ratio arises from the relative number of pilots hired with post-2007 seniority numbers.

It is our understanding that the 124 AA pilots in this group are all Flow-Through Pilots with AA seniority numbers arising because of the remedy provided in FLO-0903 awarding 154 AA seniority numbers to Eagle pilots. Under this award, it is our understanding that each of these AA pilots had a seniority date of April 30, 2008. Can you confirm or clarify this?

Please provide the pre-integration seniority dates for the AA pilots (if other than April 30, 2008) and the date-of-hire dates for the US Airways pilots in this section of the integrated seniority list?

In addition to the foregoing previously asked questions, please explain why AAPSIC has used a post-2007 date. The constructive notice date in the

USAir/America West merger was about November 2005 and the Third List pilots were defined as pilots hired after that date in 2005, not post-2007.

4. The Constructive Notice/Third List issue related only to the job expectations and seniority placement at US Airways following the East-West merger, not to job expectations or seniority placement at AA.

Please explain why the 124 AA pilots hired post-2007 were integrated with the Third List group of US Airways pilots and the reason for the ratio used?

Please explain why and how these 124 AA pilots had notice that their career expectations at AA would be diminished in reference to the US Airways pilots placed on the Third List or in reference to the original US Airways pilots who were not on the Third List?

Please explain why any of these 124 AA pilots should have their career expectations at AA diminished by insertion of US Airways Third List pilots ahead of them on the integrated seniority list through the ratios used?

Will you please explain why these 124 AA pilots were put in Ratio 7 rather than in Ratio 5 with the other AA pilots on the pre-merger AA seniority list?

Questions from my letter dated June 17, 2015:

1. We request copies of any and all documents submitted by the TWA-LLC pilots to the APA/AAPSIC pertaining to the seniority list integration (SLI) involving US Airways' pilots.

2. Please clarify what you intended to mean in your statement about relative placement on the seniority list? In particular, did you intend to allow for the possibilities indicated in numbered paragraphs 1 or 2 (at page 2 of my June 17, 2015 letter), or numbered paragraph 3 (in my June 17 letter) was what you intended to convey. If something different than the situations described in numbered paragraphs 1, 2 or 3, please clarify what it was you intended to mean by your comment.

3. One of the AAPSIC committee members stated that "Pilots will be credited for the time they are on the AA property." Was this statement intended to state that seniority integration or placement on the integrated list will be based on the date a pilot began working on the AA property?

Questions from my letter dated June 3, 2015.

1. What is APA's and AAPSIC's position on:

Seniority credit for time served at U.S. Airways and any regional subsidiaries. (While you note the issue of Mid-Atlantic service, these pilots were placed on

the US Air seniority list; you do not indicate if AAPSIC proposes any revision to their treatment on the integrated seniority list.)

Seniority credit for time while on furlough (including furlough from U.S. Airways, AA or other carriers).

Seniority credit for time served at American Eagle, Trans World Airlines, or other carriers. (Again, while you indicate that seniority at regional carriers will not be included, it is unclear how AAPSIC is treating time at American Eagle for AA pilots who flowed-down to American Eagle when on furlough from AA.)

2. One of the AAPSIC's committee members stated that "Pilots will be credited for the time they are on the AA property." What was meant by this statement? (I repeated this question in my June 17 letter, but have still not received an answer.)

3. What is AAPSIC's position whether a pilot's Length of Service ("LOS") for pay purposes will affect the pilot's placement on the integrated seniority list?

As always, thank you for your prompt attention to these matters.

Very truly yours,

Christopher W. Katzenbach

EXHIBIT 40

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August 13, 2015

BY EMAIL AND FIRST CLASS MAIL

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Re: American Airlines/US Airways Pilot Seniority Integration

Dear Mr. Katzenbach:

This is in reply to your letter dated July 13, 2015, in which you reiterated your extensive demands for information from the American Airlines Pilots Seniority Integration Committee (AAPSIC), including information regarding the AAPSIC's June 19, 2015 seniority integration proposal, which as you know has been withdrawn and is not operative at this time.

I note that, on July 6, 2015 – one week before you sent your letter to me – you filed suit against the Allied Pilots Association in the U.S. District Court for the Northern District of California, claiming that the AAPSIC's withdrawn proposal violated APA's duty of fair representation to your clients. Among other things, since your letter relates to matters which you had already made the subject of litigation when you made the request, it would be inappropriate to respond further outside the scope of the formal litigation process.

Very truly yours,

Wesley Kennedy

WK:td

cc (By Email): AAPSIC
Edgar N. James, Esq.

EXHIBIT 41

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October 9, 2015

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In Re: Integration of Seniority Process For American Airlines/U.S. Airways Pilots – Protection Of Interests of American Airlines Flow-Through Pilots

Dear Mr. Kennedy:

My clients have reviewed AAPSIC's recent submissions in the SLI process. They have the following initial comments and requests for additional information.

COMMENTS AND CONCERNS

1. AAPSIC has apparently revised its proposed integrated seniority list to eliminate certain of the matters I addressed in prior letters. In particular, APPSIC's new proposed list no longer puts the last 124 FTPs with the US Air Third List pilots and now integrates these FTPs ahead of the Third List pilots together with other American pilots in Ratio 5 applying to Group I CA/Group II FO. AAPSIC's brief does not explain why it made this change, but does note that the FTPs are being treated the same as other American pilots. AAPSIC Prehearing Statement (September 19, 2015) at p. 19 fn 12. While the Ninth Circuit's decision in *Addington* was the reason for filing revised pre-hearing statements, *Addington* only affected the US Airways side of the SLI process.[1] We would appreciate AAPSIC's explanation for this change.

2. AAPSIC's basic approach using "career expectations," instead of "longevity," is inherently fairer. Generally, my clients agree on that approach.

3. AAPSIC has apparently withdrawn from its prior stipulation stating, "service at regional affiliates (including American Eagle) is not credited for purposes of longevity." Since we have not seen this stipulation, it is uncertain if AAPSIC can withdraw from it, if the other parties have accepted this withdrawal or if this withdrawal will become an issue in the arbitration. If we would be sure that preserving "pre-merge career expectation" was to be used as the sole standard for integration purposes, then the existence of that stipulation would be irrelevant. However, the other two parties to the SLI are strongly pushing for longevity to be used as the overriding integration

[1] Except insofar as *Addington* reaffirmed the duty of fair representation in the seniority list integration context and the duty not to discriminate against discrete pilot groups.

metric. We would therefore appreciate confirmation that this stipulation is no longer part of the SLI process for any party. We would also appreciate statement as to AAPSIC's current position how service at Eagle should (or should not) be a factor in developing a final seniority list in the event that some form of longevity is a factor.

4. While we are encouraged to see these important changes, due to the fact that there is a chance that some form of longevity will be part of the equation in the final integrated seniority list, it is important that AAPSIC is prepared to make a stand that the longevity for purposes of an integrated seniority list includes time flying as an Eagle Captain under the terms of Supplement W. Longevity in this sense would apply to both FTPs and other AA pilots (including TWA pilots) who were flying at Eagle as "flow-back" pilots. Longevity for this purpose would also include time an Eagle Captain was bumped from his/her position because of a flow-back under Supplement W.

5. We believe that there is overwhelming evidence to support that the time that a FTP was flying as a Captain at Eagle (including time if bumped in a flow-back) should be viewed as de-facto "mainline time" for the purposes of longevity. This is even more the case when viewed in comparison to the pilots that are being credited for mainline longevity for their relationships and flying duties at the other carriers. For example:

- In 1997 APA was arguing strongly that all of the jet flying jobs at AMR were mainline jobs. The President's Emergency Board's findings in 1997 expressly note APA's position. American subsequently ended up flying F100s with just 56 seats as part of the mainline carrier, although this type of aircraft/configuration would typically been considered a regional jet like the other regional jets being flown at Eagle. In fact, it was configured with *less* passenger seats than the Eagle regional jets the Eagle pilots were flying.

- AMR wanted to fly their newly ordered regional jets under the less expensive Eagle operating certificate. APA struck the airline over the issue. An Emergency Board was formed, which ruled that those jets would be allowed to be flown by the Eagle division, citing company economics, not equipment differential as the underlying reason. APA then came back saying that since it still believed that flying belonged to American mainline pilots, they needed to be able transfer pilots into that equipment in the event of a furlough at American, and as a quid pro quo, they agreed that the pilots operating that "regional" jet equipment were to be treated as de-facto mainline pilots, being issued American seniority numbers and having rights to transfer into all of the other American mainline equipment.

- A FTP while flying as an Eagle Captain under Supplement W had a career path, expectation and agreement to transfer to much higher paying American equipment. Held-back FTPs were already on the American

pilot seniority list and others without American seniority numbers were awaiting a training class so that they too could move to American. In contrast, the future value of a USAir pilot's expected career was worth substantially less. The fact is that once a FTP had solidified a clear career path with American very few if any FTPs would take a job offer to go to USAir or Am West. The FTP's American "mainline" career path expectation was clearly superior to the USAir pilots "mainline" career path expectation.

- The FTPs were being compensated more than many USAir FOs, and more than some USAir Captains. So, in addition to having superior career path expectations, an FTP's Jet Captain position was superior to the USAir "mainline" jobs in a basic metric of total compensation.

- The USAir merger committees propose that both Captains and F/Os flying EMB190 regional jet equipment at USAir are to be credited for "mainline longevity" accrual, yet American Eagle Captains holding AA seniority numbers, flying regional jet equipment, should not be credited for "mainline longevity" accrual. There is no logical basis for making that distinction.

- Eagle management openly wore American Airlines ID's and were compensated by AA, and had AA retirements.

- FTPs were training at the same mainline training facility (Flight Academy) in simulators and rooms right next to the mainline AA pilots.

- In staying at Eagle, and being subject to displacement because of flow-backs, the FTPs suffered significantly to preserve their career expectation that, eventually, they would flow-up to American. This is a form of "sweat equity" in the career expectations the FTPs had in the American/Eagle system that should be recognized in any final integrated seniority list, including lists that may use longevity as a factor in addition to (or even in place of) career expectations.

6. We are concerned, however, that AAPSIC's witness list[2] does not include any FTP who could testify to the matters noted above to show that the career expectations and working conditions of FTPs at Eagle were equivalent to American pilots already flying at American and superior to USAir pilots. We reiterate: Putting this information forward in the SLI process is critical to protecting the rights of FTPs in this process, particularly both under the career expectations approach AAPSIC has adopted and to refute arguments by USAir pilots that their "mainline" experience should count and Eagle experience of FTPs should not count in forming a final integrated seniority list.

[2] David Brown, Bruce Case, Timothy Daudelin, Donald S. Garvett, Jalmer Johnson, Per Lovfald and Mark Stephens.

REQUESTS FOR INFORMATION

Throughout the above comments, I have noted matters as to which we need additional information. In summary, the information we need is as follows:

A. A copy of the "longevity" stipulation and evidence that this stipulation is no longer being relied upon or asserted by any party in the SLI process.

B. An explanation for AAPSIC's change in position, from integrating some of the FTPs with USAir Third List pilots to the current proposal.

C. An explanation as to AAPSIC's position as to whether time flying at Eagle should be part of any longevity metric. If longevity would be a factor, we request AAPSIC's explanation as to how a longevity metric should be calculated and what time should be included/excluded (with particular reference to time at Eagle).

D. An explanation as to whether or not AAPSIC will be presenting any of the information noted in section 5 above, or any other information as to the FTPs' employment at Eagle that would support including time flying at Eagle as part of any factor or metric for an integrated seniority list, as an aspect of career expectations, longevity or other metric or factor that might be used.

1. If AAPSIC will not be presenting any of the information noted in section 5 above, or any other information as to the FTPs' employment and career expectations at Eagle in moving to American, an explanation why AAPSIC will not be presenting this information.

2. If AAPSIC will be presenting any of the information noted in section 5 above, or any other information as to the FTPs' employment and career expectations at Eagle in moving to American, what witnesses will be used and what information will AAPSIC be presenting.

As always, thank you for your prompt attention to these matters.

Very truly yours,

Christopher W. Katzenbach

cc. Edgar N. James, James & Hoffman, PC; Jeffrey B. Demain, Altshuler Berzon LLP

EXHIBIT 42

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October 15, 2015

VIA EMAIL

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Re: *Information requests to AA Pilot Seniority Integration Committee*

Dear Mr. Katzenbach:

This is in response to your October 9, 2015 letter to Mr. Wesley Kennedy, counsel to the AAPSIC in the seniority integration hearings being conducted pursuant to the McCaskill-Bond statute.

Virtually everything relevant to the questions posed in your letter can be found on the APA website, where we post all of the documents that have been submitted in connection with the proceeding--including the stipulations, briefs, and exhibits--as well as transcripts of the hearings, all as soon as they become available. AAPSIC is in the middle of putting on its direct case, which should be concluded this week with the possible exception of cross-examination.

Sincerely,

Edgar N. James
Counsel to the Allied Pilots Association

cc: APA National Officers
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Danny Rosenthal, Esq.
Jeff Demain, Esq.
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EXHIBIT 43

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In Re: Integration of Seniority Process For American Airlines/U.S. Airways Pilots – Protection Of Interests of American Airlines Flow-Through Pilots

Dear Mr. Kennedy:

In my October 9, 2015 letter, I addressed the need for AAPSIC to address longevity issues as they concern the Flow-Through Pilots ("FTPs"). Both of the other merger committees have used substantial longevity factors in their proposals. The East Committee has proposed a merger using 55% status and category and 45% longevity. The West Committee has proposed 65% status and category and 35% longevity. ASPSIC has proposed purely status and category, adjusted for superior career expectations at American Airlines.

The hearings in January will present the parties' challenges to the various proposals. This is the opportunity for AAPSIC to address the use of longevity in the East and West Committees' proposals. I understand that AAPSIC's position is that longevity is inappropriate because the American and East seniority lists were not based on date-of-hire (typical "longevity") but represented an amalgam of prior seniority integrations (AAPSIC Brf. pp. 18-19, 65-66), the Nicolau list was likewise not longevity based but actually increased the West pilots seniority by as much as 17 years above the date of hire (p. 66) and there is no consistent or reliable "date-of-hire" information (pp. 67-68). While I might agree that these are compelling factors against using longevity, there is no guarantee that the arbitrators will share AAPSIC's position. Because the East and West Committees both argue for a longevity factor and prior seniority list integration decisions have incorporated longevity—even if the cases are distinguishable—there is a significant possibility that a longevity factor will be used in a final seniority list.

SECOND REQUEST FOR AAPSIC'S POSITION ON LONGEVITY FOR FTPS

My clients reiterate what they have said before: Service at American Eagle should count towards longevity and AAPSIC needs to put on evidence supporting that point.

We have asked AAPSIC to state its current position how service at Eagle should (or should not) be a factor in developing a final seniority list in the event that some form

of longevity is a factor. We have not received any response. AAPSIC's brief does not address this issue at all, possibly because AAPSIC has rejected use of longevity.

THE EAST AND WEST COMMITTEE PROPOSALS ON LONGEVITY USE STANDARDS AND ASSUMPTIONS THAT PARTICULARLY HARM FTPS SENIORITY POSITION

As we also see the issues, if longevity is a factor, how is longevity to be calculated for the pilots who came to American through mergers or under the Flow-Through Agreement? Since AAPSIC has not stated a position—other than to reject longevity altogether—it is presently the East and West Committees who have identified the factors they feel appropriate. AAPSIC's position on these factors is, as noted above, unknown.

The East Committee proposal would give USAir pilots seniority from the date of hire at USAir, but restrict the TWA, Reno Air and FTPs to seniority based on the date they began flying for American (or TWA-LLC). East Brf. pp. 33-38. The East proposal also excludes furlough (*id.* p. 33) and flow-back time at Eagle from seniority (*id.* pp. 37-38), while including flow-back time for USAir pilots flying at MidAtlantic Airlines (MDA) on the theory that MDA was a "division" of USAir using USAir's operating certificate (*id.* at 36-37). We believe that including MDA time only benefits East pilots and not any West pilots at USAir.

The West Committee proposal apparently uses the date of hire as a mainline pilot, either at American or another mainline carrier (e.g., TWA), but not the date of hire at a non-mainline carrier such as Eagle. West Brf. at AII pp. 6, 8-9. The West Committee states: "AAPSIC agrees with this approach" (*id.* at AII p. 6) and specifically notes that AAPSIC is "the former Eagle pilots representative in this process" (*id.* at AII p. 6 fn. 4). The West proposal deducts furlough time (*id.* at AII pp. 7-8), except for TWA pilots when at TWA (*id.* at AII p. 9).

Including all mainline flying time at prior mainline carriers particularly harms the FTPs seniority position and job expectations. In effect, this jumps TWA-LLC and USAir pilots ahead of the FTPs and/or results in dragging down the credited longevity for the combined group of TWA-LLC and FTPs pilots relative to the USAir pilots. Additionally, the remaining FTPs of the154 FTPs who were awarded seniority dates of April 30, 2008 in the FLO-0903 arbitration are put at the bottom of the resulting West proposed seniority list, ahead of only the 20 most recently-hired pilots with December 2013 hire dates. In effect, these FTPs have entirely lost the benefit of the seniority date awarded in the FLO-0903 arbitration.

In sum, under both the East and West proposals, longevity is constructed in ways that particularly harm the FTPs.

- The East proposal gives credit for TWA-LLC flying prior to TWA pilots being placed on furlough, excludes all Eagle flying time, but includes MidAtlantic flying time for USAir pilots.

- The West proposal gives TWA-LLC pilots, including Staplees, credit for all mainline flying, but excludes all Eagle time for FTPs. The West proposal undoes the seniority award in FLO-0903.

- The effect of the various proposals is evident from looking at the resulting FTPs' placement. All lists have seniority numbers to 15019. Janette McMurtrie (the first of the FTPs awarded seniority under FLO-0903) is number 14317 on the AAPSIC list, but is number 14744 on the East list and 14889 on the West List. In other words, excluding Eagle time from the longevity calculation drops McMurtrie 427 places on the East list and 572 places on the West list.

AAPSIC Must Present Argument And Evidence That Excluding Eagle Time Is Arbitrary and Inequitable In This Case

Because there is a chance that some form of longevity will be part of the equation in the final integrated seniority list, and the East and West proposals significantly harm the FTPs seniority positions, it is important that AAPSIC take the position and present evidence that any longevity for purposes of an integrated seniority list includes time flying as an Eagle Captain under the terms of Supplement W.

Longevity in this sense would apply to both FTPs and other AA pilots (including TWA pilots) who were flying at Eagle as "flow-back" pilots. Longevity for this purpose would also include time an Eagle Captain was bumped from his/her position because of a flow-back under Supplement W.

As we stated in our October 9 letter, we believe that there is overwhelming evidence to support that the time that a FTP was flying as a Captain at Eagle (including time if bumped in a flow-back) should be viewed as de-facto "mainline time" for the purposes of longevity. This is even more the case when viewed in comparison to the pilots that are being credited for mainline longevity for their relationships and flying duties at the other carriers. For example, and to repeat what we said in our October 6 letter:

- In 1997 APA was arguing strongly that all of the jet flying jobs at AMR were mainline jobs. The President's Emergency Board's findings in 1997 expressly note APA's position. American subsequently ended up flying F100s with just 56 seats as part of the mainline carrier, although this type of aircraft/configuration would typically been considered a regional jet like the other regional jets being flown at Eagle. In fact, it was configured with *less* passenger seats than the Eagle regional jets the Eagle pilots were flying.

- AMR wanted to fly their newly ordered regional jets under the less expensive Eagle operating certificate. APA struck the airline over the issue. An Emergency Board was formed, which ruled that those jets would be allowed to be flown by the Eagle division, citing company economics, not equipment differential as the underlying reason. APA then came back saying that since it still believed that flying belonged to American mainline pilots, they needed to be able transfer pilots into that equipment in the event of a furlough at American, and as a quid pro quo, they agreed that the pilots operating that "regional" jet equipment were to be treated as de-facto mainline pilots, being issued American seniority numbers and having rights to transfer into all of the other American mainline equipment.

- A FTP while flying as an Eagle Captain under Supplement W had a career path, expectation and agreement to transfer to much higher paying American equipment. Held-back FTPs were already on the American pilot seniority list and others without American seniority numbers were awaiting a training class so that they too could move to American. In contrast, the future value of a USAir pilot's expected career was worth substantially less. The FTP's American "mainline" career path expectation was clearly superior to the USAir pilots "mainline" career path expectation. The fact is that once a FTP had solidified a clear career path with American, no FTPs would take a job offer to go to USAir, AmWest or most other smaller "mainline" carriers—as that would mean giving up the favorable seniority position the FTPs already had at AA and the greater career opportunities at AA in exchange for starting over at the bottom with another carrier.

- The FTPs were being compensated more than many USAir FOs and more than some USAir Captains. So, in addition to having superior career path expectations, an FTP's Jet Captain position was superior to the USAir "mainline" jobs in a basic metric of total compensation.

- The USAir merger committees propose that both Captains and F/Os flying EMB190 regional jet equipment at USAir are to be credited for "mainline longevity" accrual, yet American Eagle Captains holding AA seniority numbers, flying regional jet equipment, should not be credited for "mainline longevity" accrual. There is no logical basis for making that distinction.

- Eagle and AA had a close and integrated relationship as subsidiaries of AMR, Inc.

    - Eagle management openly wore American Airlines ID's, was compensated by AA and had AA retirement benefits.

- FTPs were training at the same mainline training facility (Flight Academy) in simulators and rooms right next to the mainline AA pilots.

- AA management lobbied the Eagle pilots to accept the Flow-Through Agreement and the related Eagle/ALPA CBA.

- In staying at Eagle, and being subject to displacement because of flow-backs, the FTPs suffered significantly to preserve their career expectation that, eventually, they would flow-up to American with the advantage of their previously-awarded AA seniority numbers. This is a form of "sweat equity" in the career expectations the FTPs had in the AA/Eagle system. The use of longevity in airline seniority list mergers is generally justified as reflecting pilots' "sweat equity" in the airline. Excluding the "sweat equity" of the FTPs in any final integrated seniority list that uses longevity as a factor would be contrary to the entire "sweat equity" theory that justifies the use of longevity in the first place.

Please advise me as to AAPSIC's position on the above matters, whether AAPSIC will advocate that Eagle flying time be included in any longevity calculation and the evidence AAPSIC intends to present on that issue.

If AAPSIC intends to accept the point (as the West Committee asserts) that Eagle flying time is excluded from longevity calculations, please advise me as to the reasons for AAPSIC's position. In this regard, I am already aware that AAPSIC opposes any use of longevity. What I want to know is (a) does AAPSIC agree or disagree with the position that Eagle time does not count for any longevity calculation that might be used and (b) the reasons for AAPSIC's position on this issue.

AAPSIC's silence on this issue will simply serve to affirm the West Committee's position that Eagle time should be excluded, particularly (as the West Committee noted) AAPSIC is the FTPs' representative in the proceeding. Accordingly, silence is not a neutral option, but a *de facto* concession that Eagle time should be excluded. The reasons why AAPSIC should make such a concession are critical for understanding AAPSIC's position and determining if AAPSIC's actions are taken in good faith in accord with the standards applicable to its (and APA's) duty of fair representation.

As always, thank you for your prompt attention to these matters.

Very truly yours,

Christopher W. Katzenbach

cc. Edgar N. James, James & Hoffman, PC; Jeffrey B. Demain, Altshuler Berzon LLP

EXHIBIT 44

Edgar N. James
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Judith A. Scott
Kathy L. Krieger
David P. Dean
Darin M. Dalmat
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January 7, 2016

VIA E-MAIL AND FIRST CLASS MAIL

Christopher W. Katzenbach, Esq.
Katzenbach Law Offices
912 Lootens Place, 2nd Floor
San Rafael, CA 94901
ckatzenbach@kkcounsel.com

Re: Your letter to Wesley Kennedy of December 21, 2015

Dear Mr. Katzenbach:

I am writing in response to your letter of December 21, 2015, to Wes Kennedy. I note, at the outset, that you are currently suing APA on behalf of certain American Airlines pilots who formerly worked for American Eagle. *See American Airlines Flow-Thru Pilots Coalition, et al. v. Allied Pilots Ass'n, et al.*, N.D. Cal. Case No. 3:15-cv-03125-RS. Your lawsuit complains about the conduct of APA in relation to the seniority integration process currently underway involving pilot groups from American Airlines, U.S. Airways, and America West.

In view of that ongoing litigation, I do not think it would be appropriate for APA or the seniority integration committees to comment on the arguments presented in your letter or to provide you with the information you requested regarding the positions that may be taken by the American Airlines Pilots Seniority Integration Committee ("AAPSIC") in the seniority integration arbitration. When AAPSIC presents its positions, those positions will be made available to you, and anyone else who is interested, on a website accessible to all pilots, along with the positions presented by the other pilot committees. In response to your demands that AAPSIC incorporate particular evidence and arguments in its positions that you believe will advance the interests of the former American Eagle pilots, please understand that AAPSIC represents the entire pre-merger American Airlines pilot group and must take positions that balance the interests of various segments of that pilot group and craft its positions to reflect neutral principles, rather than favoring the interests of one particular segment over another. I

understand that Mr. Kennedy has distributed your letter to the AAPSIC members, so that they can take your input into account along with those of other segments of the pilot group they represent

Thank you for your consideration.

Sincerely,

Edgar N. James /Jmb

Edgar N. James
James & Hoffman, P.C.
Counsel to the Allied Pilots Association

EXHIBIT 45

1997 AA/APA Contract
Letter CC: Service Credit Furlough Pilots

[Previous Page] | [Next Page]
[1997 Contract Title Page & Table of Contents]

LETTER CC

May 5, 1997

James G. Sovich
President
Allied Pilots Association
P.O. Box 5524
Arlington, TX 76005-5524

Service Credit for Furloughed Pilots

Dear Captain Sovich:

As of May 5, 1997, the Company shall credit, for pay purposes only, all pilots who were on furlough at any time between January 1, 1993, and March 3,1997, with one (1) day toward their length of service for each two (2) days on furlough. This credit shall remain applicable to a pilot's length of service only until the pilot reaches the first pay step of the A-Scale as it then exists. The pilot shall then remain at that same A-Scale pay step, receiving any general pay scale increases applicable to that pay step, until the pilot's actual length of service would move him or her to a higher pay step. The award of this special credit shall not result in any back pay. As this credit is solely for pay purposes, it shall not impact any other matter, including probationary status.

Very truly yours,

Jane G. Allen
Vice President
Employee Relations

Agreed:

James G. Sovich
President
Allied Pilots Association

[Previous Page] | [Top of Page] | [Next Page]
[1997 Contract Title Page & Table of Contents]
[INDEX] | [DISCLAIMER]

EXHIBIT 46

LETTER CC (2)

July 10, 2001

Captain John E. Darrah
President – Allied Pilots Association
14600 Trinity Boulevard #500
Fort Worth, Texas 76155-2512

Re: Furlough Length of Service

Dear Captain Darrah:

Effective as of April 10, 2001, all American Pilots previously furloughed by American Airlines will have the length of time they were on furlough added to their total accredited service for all purposes, including, but not limited to computing pay rates, vacation accrual and calculating credited service under the Pilot Retirement Benefit Program (the Plan) in accordance with the following guidelines:

- Pilots furloughed prior to April 1, 1977 shall have company service restored for vacation accrual.
- Pilots furloughed on or after April 1, 1977 and during the 1980's shall have company service restored for vacation accrual and credited service restored for pension benefits.
- Pilots furloughed in the 1990's shall have company service restored for vacation accrual and pay, and credited service restored for pension benefits.

American Airlines will provide APA with a list of American Pilots affected by this provision, along with back-up data and documentation for the calculation implementing this provision. American Airlines will also notify and provide each affected American Pilot with back-up data and documentation on the corrections to their Plan benefits.

For pilots whose credited service is adjusted by the above language, the amount of any benefit payable under the Pilot Retirement Benefit Plan shall not be reduced by any benefit which a pilot is entitled to receive under any other related Plan if the benefit provided by any such other Plan is provided for a period for which a member's credited service is adjusted pursuant to this Agreement. As previously agreed, all Plan amendments shall be subject to APA's agreement on the terms of the amendment.

American will implement the pay provision within 120 days after the execution of this agreement. The remaining provisions must be implemented by December 31, 2001. All provisions are fully retroactive to April 10, 2001.

Sincerely,

AMERICAN AIRLINES, INC.

By: */ signed /*
Jeffrey Brundage
Vice President
Employee Relations

AGREED (as of the date
first written above):

ALLIED PILOTS ASSOCIATION

By: __*/ signed /*____
Captain John Darrah
President

EXHIBIT 47

UNITED PILOT AGREEMENT

AGREEMENT

BETWEEN

UNITED AIRLINES, INC.

AND THE

AIR LINE PILOTS

IN THE SERVICE OF

UNITED AIRLINES, INC.

AS REPRESENTED BY THE

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL

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Table of Contents

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Table of Contents

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Table of Contents

UNITED

Table of Contents

UNITED

Table of Contents

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Table of Contents

UNITED

Table of Contents

Table of Contents

MEMORANDA OF UNDERSTANDING

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Section 3 - Compensation

3-A Pay Rates

3-A-1 The hourly rates for Captains and First Officers shall be as provided in the following tables.

Captain Pay Rates on First Day of Bid Period in which Date of Signing Occurs

	Longevity											
Aircraft	1	2	3	4	5	6	7	8	9	10	11	12
A380	302.98	305.43	307.94	310.41	312.90	315.36	317.84	320.30	322.79	325.23	327.71	330.20
A350	215.43	217.17	218.95	220.71	222.48	224.23	225.99	227.74	229.51	231.25	233.01	234.78
A330	215.43	217.17	218.95	220.71	222.48	224.23	225.99	227.74	229.51	231.25	233.01	234.78
747	215.43	217.17	218.95	220.71	222.48	224.23	225.99	227.74	229.51	231.25	233.01	234.78
777	215.43	217.17	218.95	220.71	222.48	224.23	225.99	227.74	229.51	231.25	233.01	234.78
787	215.43	217.17	218.95	220.71	222.48	224.23	225.99	227.74	229.51	231.25	233.01	234.78
767-400	215.43	217.17	218.95	220.71	222.48	224.23	225.99	227.74	229.51	231.25	233.01	234.78
767-200/300	178.04	179.55	181.01	182.50	184.03	185.46	186.84	188.38	189.73	191.76	193.81	195.82
757-300	178.04	179.55	181.01	182.50	184.03	185.46	186.84	188.38	189.73	191.76	193.81	195.82
757-200	173.47	174.81	176.19	177.63	179.05	180.48	181.89	183.29	184.71	186.12	187.56	188.97
737-800/900	173.47	174.81	176.19	177.63	179.05	180.48	181.89	183.29	184.71	186.12	187.56	188.97
A320/321	173.47	174.81	176.19	177.63	179.05	180.48	181.89	183.29	184.71	186.12	187.56	188.97
MD80/90	173.47	174.81	176.19	177.63	179.05	180.48	181.89	183.29	184.71	186.12	187.56	188.97
A319	166.17	167.54	168.92	170.28	171.65	173.02	174.39	175.76	177.13	178.50	179.87	181.24
737-500/700	166.17	167.54	168.92	170.28	171.65	173.02	174.39	175.76	177.13	178.50	179.87	181.24
CS300	166.17	167.54	168.92	170.28	171.65	173.02	174.39	175.76	177.13	178.50	179.87	181.24
EMB195	130.70	131.67	132.76	133.84	134.88	135.96	137.01	138.09	139.15	140.23	141.33	142.38
EMB190	111.19	112.02	112.94	113.85	114.73	115.66	116.55	117.48	118.38	119.30	120.23	121.12
CRJ900	111.19	112.02	112.94	113.85	114.73	115.66	116.55	117.48	118.38	119.30	120.23	121.12

First Officer Pay Rates on First Day of Bid Period in which Date of Signing Occurs

	Longevity											
Aircraft	1	2	3	4	5	6	7	8	9	10	11	12
A380	60.92	163.41	191.23	195.87	200.56	205.62	211.36	216.19	218.53	221.50	223.49	225.53
A350	60.92	116.19	135.97	139.27	142.60	146.20	150.28	153.72	155.38	157.49	158.91	160.36
A330	60.92	116.19	135.97	139.27	142.60	146.20	150.28	153.72	155.38	157.49	158.91	160.36
747	60.92	116.19	135.97	139.27	142.60	146.20	150.28	153.72	155.38	157.49	158.91	160.36
777	60.92	116.19	135.97	139.27	142.60	146.20	150.28	153.72	155.38	157.49	158.91	160.36
787	60.92	116.19	135.97	139.27	142.60	146.20	150.28	153.72	155.38	157.49	158.91	160.36
767-400	60.92	116.19	135.97	139.27	142.60	146.20	150.28	153.72	155.38	157.49	158.91	160.36
767-200/300	60.92	96.06	112.41	115.16	117.95	120.92	124.24	127.17	128.44	130.59	132.18	133.74
757-300	60.92	96.06	112.41	115.16	117.95	120.92	124.24	127.17	128.44	130.59	132.18	133.74
757-200	60.92	93.52	109.41	112.09	114.78	117.67	120.96	123.73	125.05	126.75	127.91	129.07
737-800/900	60.92	93.52	109.41	112.09	114.78	117.67	120.96	123.73	125.05	126.75	127.91	129.07
A320/321	60.92	93.52	109.41	112.09	114.78	117.67	120.96	123.73	125.05	126.75	127.91	129.07
MD80/90	60.92	93.52	109.41	112.09	114.78	117.67	120.96	123.73	125.05	126.75	127.91	129.07
A319	60.92	89.63	104.88	107.44	110.04	112.81	115.97	118.64	119.92	121.56	122.67	123.79
737-500/700	60.92	89.63	104.88	107.44	110.04	112.81	115.97	118.64	119.92	121.56	122.67	123.79
CS300	60.92	89.63	104.88	107.44	110.04	112.81	115.97	118.64	119.92	121.56	122.67	123.79
EMB195	60.92	70.45	82.44	84.45	86.46	88.65	91.11	93.22	94.20	95.50	96.39	97.24
EMB190	60.92	60.92	70.14	71.84	73.55	75.41	77.51	79.30	80.14	81.24	82.00	82.72
CRJ900	60.92	60.92	70.14	71.84	73.55	75.41	77.51	79.30	80.14	81.24	82.00	82.72

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Captain Pay Rates on January 1, 2014

	Longevity											
Aircraft	1	2	3	4	5	6	7	8	9	10	11	12
A380	328.73	331.39	334.11	336.79	339.50	342.17	344.86	347.53	350.23	352.87	355.57	358.27
A350	233.74	235.63	237.56	239.47	241.39	243.29	245.20	247.10	249.02	250.91	252.82	254.74
A330	233.74	235.63	237.56	239.47	241.39	243.29	245.20	247.10	249.02	250.91	252.82	254.74
747	233.74	235.63	237.56	239.47	241.39	243.29	245.20	247.10	249.02	250.91	252.82	254.74
777	233.74	235.63	237.56	239.47	241.39	243.29	245.20	247.10	249.02	250.91	252.82	254.74
787	233.74	235.63	237.56	239.47	241.39	243.29	245.20	247.10	249.02	250.91	252.82	254.74
767-400	233.74	235.63	237.56	239.47	241.39	243.29	245.20	247.10	249.02	250.91	252.82	254.74
767-200/300	193.17	194.81	196.40	198.01	199.67	201.22	202.72	204.39	205.86	208.06	210.28	212.46
757-300	193.17	194.81	196.40	198.01	199.67	201.22	202.72	204.39	205.86	208.06	210.28	212.46
757-200	188.21	189.67	191.17	192.73	194.27	195.82	197.35	198.87	200.41	201.94	203.50	205.03
737-800/900	188.21	189.67	191.17	192.73	194.27	195.82	197.35	198.87	200.41	201.94	203.50	205.03
A320/321	188.21	189.67	191.17	192.73	194.27	195.82	197.35	198.87	200.41	201.94	203.50	205.03
MD80/90	188.21	189.67	191.17	192.73	194.27	195.82	197.35	198.87	200.41	201.94	203.50	205.03
A319	180.29	181.78	183.28	184.75	186.24	187.73	189.21	190.70	192.19	193.67	195.16	196.65
737-500/700	180.29	181.78	183.28	184.75	186.24	187.73	189.21	190.70	192.19	193.67	195.16	196.65
CS300	180.29	181.78	183.28	184.75	186.24	187.73	189.21	190.70	192.19	193.67	195.16	196.65
EMB195	141.81	142.86	144.04	145.22	146.34	147.52	148.66	149.83	150.98	152.15	153.34	154.48
EMB190	120.64	121.54	122.54	123.53	124.48	125.49	126.46	127.47	128.44	129.44	130.45	131.42
CRJ900	120.64	121.54	122.54	123.53	124.48	125.49	126.46	127.47	128.44	129.44	130.45	131.42

First Officer Pay Rates on January 1, 2014

	Longevity											
Aircraft	1	2	3	4	5	6	7	8	9	10	11	12
A380	66.10	177.30	207.48	212.52	217.61	223.10	229.33	234.57	237.11	240.33	242.49	244.70
A350	66.10	126.07	147.53	151.11	154.72	158.63	163.05	166.79	168.59	170.88	172.42	173.99
A330	66.10	126.07	147.53	151.11	154.72	158.63	163.05	166.79	168.59	170.88	172.42	173.99
747	66.10	126.07	147.53	151.11	154.72	158.63	163.05	166.79	168.59	170.88	172.42	173.99
777	66.10	126.07	147.53	151.11	154.72	158.63	163.05	166.79	168.59	170.88	172.42	173.99
787	66.10	126.07	147.53	151.11	154.72	158.63	163.05	166.79	168.59	170.88	172.42	173.99
767-400	66.10	126.07	147.53	151.11	154.72	158.63	163.05	166.79	168.59	170.88	172.42	173.99
767-200/300	66.10	104.23	121.96	124.95	127.98	131.20	134.80	137.98	139.36	141.69	143.42	145.11
757-300	66.10	104.23	121.96	124.95	127.98	131.20	134.80	137.98	139.36	141.69	143.42	145.11
757-200	66.10	101.47	118.71	121.62	124.54	127.67	131.24	134.25	135.68	137.52	138.78	140.04
737-800/900	66.10	101.47	118.71	121.62	124.54	127.67	131.24	134.25	135.68	137.52	138.78	140.04
A320/321	66.10	101.47	118.71	121.62	124.54	127.67	131.24	134.25	135.68	137.52	138.78	140.04
MD80/90	66.10	101.47	118.71	121.62	124.54	127.67	131.24	134.25	135.68	137.52	138.78	140.04
A319	66.10	97.25	113.79	116.57	119.39	122.40	125.83	128.72	130.11	131.89	133.10	134.31
737-500/700	66.10	97.25	113.79	116.57	119.39	122.40	125.83	128.72	130.11	131.89	133.10	134.31
CS300	66.10	97.25	113.79	116.57	119.39	122.40	125.83	128.72	130.11	131.89	133.10	134.31
EMB195	66.10	76.44	89.45	91.63	93.81	96.19	98.85	101.14	102.21	103.62	104.58	105.51
EMB190	66.10	66.10	76.10	77.95	79.80	81.82	84.10	86.04	86.95	88.15	88.97	89.75
CRJ900	66.10	66.10	76.10	77.95	79.80	81.82	84.10	86.04	86.95	88.15	88.97	89.75

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Captain Pay Rates on January 1, 2015

	Longevity											
Aircraft	1	2	3	4	5	6	7	8	9	10	11	12
A380	338.59	341.33	344.13	346.89	349.69	352.44	355.21	357.96	360.74	363.46	366.24	369.02
A350	240.75	242.70	244.69	246.65	248.63	250.59	252.56	254.51	256.49	258.44	260.40	262.38
A330	240.75	242.70	244.69	246.65	248.63	250.59	252.56	254.51	256.49	258.44	260.40	262.38
747	240.75	242.70	244.69	246.65	248.63	250.59	252.56	254.51	256.49	258.44	260.40	262.38
777	240.75	242.70	244.69	246.65	248.63	250.59	252.56	254.51	256.49	258.44	260.40	262.38
787	240.75	242.70	244.69	246.65	248.63	250.59	252.56	254.51	256.49	258.44	260.40	262.38
767-400	240.75	242.70	244.69	246.65	248.63	250.59	252.56	254.51	256.49	258.44	260.40	262.38
767-200/300	198.97	200.65	202.29	203.95	205.66	207.26	208.80	210.52	212.04	214.30	216.59	218.83
757-300	198.97	200.65	202.29	203.95	205.66	207.26	208.80	210.52	212.04	214.30	216.59	218.83
757-200	193.86	195.36	196.91	198.51	200.10	201.69	203.27	204.84	206.42	208.00	209.61	211.18
737-800/900	193.86	195.36	196.91	198.51	200.10	201.69	203.27	204.84	206.42	208.00	209.61	211.18
A320/321	193.86	195.36	196.91	198.51	200.10	201.69	203.27	204.84	206.42	208.00	209.61	211.18
MD80/90	193.86	195.36	196.91	198.51	200.10	201.69	203.27	204.84	206.42	208.00	209.61	211.18
A319	185.70	187.23	188.78	190.29	191.83	193.36	194.89	196.42	197.96	199.48	201.01	202.55
737-500/700	185.70	187.23	188.78	190.29	191.83	193.36	194.89	196.42	197.96	199.48	201.01	202.55
CS300	185.70	187.23	188.78	190.29	191.83	193.36	194.89	196.42	197.96	199.48	201.01	202.55
EMB195	146.06	147.15	148.36	149.58	150.73	151.95	153.12	154.32	155.51	156.71	157.94	159.11
EMB190	124.26	125.19	126.22	127.24	128.21	129.25	130.25	131.29	132.29	133.32	134.36	135.36
CRJ900	124.26	125.19	126.22	127.24	128.21	129.25	130.25	131.29	132.29	133.32	134.36	135.36

First Officer Pay Rates on January 1, 2015

	Longevity											
Aircraft	1	2	3	4	5	6	7	8	9	10	11	12
A380	68.08	182.62	213.70	218.90	224.14	229.79	236.21	241.61	244.22	247.54	249.76	252.04
A350	68.08	129.85	151.96	155.64	159.36	163.39	167.94	171.79	173.65	176.01	177.59	179.21
A330	68.08	129.85	151.96	155.64	159.36	163.39	167.94	171.79	173.65	176.01	177.59	179.21
747	68.08	129.85	151.96	155.64	159.36	163.39	167.94	171.79	173.65	176.01	177.59	179.21
777	68.08	129.85	151.96	155.64	159.36	163.39	167.94	171.79	173.65	176.01	177.59	179.21
787	68.08	129.85	151.96	155.64	159.36	163.39	167.94	171.79	173.65	176.01	177.59	179.21
767-400	68.08	129.85	151.96	155.64	159.36	163.39	167.94	171.79	173.65	176.01	177.59	179.21
767-200/300	68.08	107.36	125.62	128.70	131.82	135.14	138.84	142.12	143.54	145.94	147.72	149.46
757-300	68.08	107.36	125.62	128.70	131.82	135.14	138.84	142.12	143.54	145.94	147.72	149.46
757-200	68.08	104.51	122.27	125.27	128.28	131.50	135.18	138.28	139.75	141.65	142.94	144.24
737-800/900	68.08	104.51	122.27	125.27	128.28	131.50	135.18	138.28	139.75	141.65	142.94	144.24
A320/321	68.08	104.51	122.27	125.27	128.28	131.50	135.18	138.28	139.75	141.65	142.94	144.24
MD80/90	68.08	104.51	122.27	125.27	128.28	131.50	135.18	138.28	139.75	141.65	142.94	144.24
A319	68.08	100.17	117.20	120.07	122.97	126.07	129.60	132.58	134.01	135.85	137.09	138.34
737-500/700	68.08	100.17	117.20	120.07	122.97	126.07	129.60	132.58	134.01	135.85	137.09	138.34
CS300	68.08	100.17	117.20	120.07	122.97	126.07	129.60	132.58	134.01	135.85	137.09	138.34
EMB195	68.08	78.73	92.13	94.38	96.62	99.08	101.82	104.17	105.28	106.73	107.72	108.68
EMB190	68.08	68.08	78.38	80.29	82.19	84.27	86.62	88.62	89.56	90.79	91.64	92.44
CRJ900	68.08	68.08	78.38	80.29	82.19	84.27	86.62	88.62	89.56	90.79	91.64	92.44

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Captain Pay Rates on January 1, 2016

	Longevity											
Aircraft	1	2	3	4	5	6	7	8	9	10	11	12
A380	348.75	351.57	354.45	357.30	360.18	363.01	365.87	368.70	371.56	374.36	377.23	380.09
A350	247.97	249.98	252.03	254.05	256.09	258.11	260.14	262.15	264.18	266.19	268.21	270.25
A330	247.97	249.98	252.03	254.05	256.09	258.11	260.14	262.15	264.18	266.19	268.21	270.25
747	247.97	249.98	252.03	254.05	256.09	258.11	260.14	262.15	264.18	266.19	268.21	270.25
777	247.97	249.98	252.03	254.05	256.09	258.11	260.14	262.15	264.18	266.19	268.21	270.25
787	247.97	249.98	252.03	254.05	256.09	258.11	260.14	262.15	264.18	266.19	268.21	270.25
767-400	247.97	249.98	252.03	254.05	256.09	258.11	260.14	262.15	264.18	266.19	268.21	270.25
767-200/300	204.94	206.67	208.36	210.07	211.83	213.48	215.06	216.84	218.40	220.73	223.09	225.39
757-300	204.94	206.67	208.36	210.07	211.83	213.48	215.06	216.84	218.40	220.73	223.09	225.39
757-200	199.68	201.22	202.82	204.47	206.10	207.74	209.37	210.99	212.61	214.24	215.90	217.52
737-800/900	199.68	201.22	202.82	204.47	206.10	207.74	209.37	210.99	212.61	214.24	215.90	217.52
A320/321	199.68	201.22	202.82	204.47	206.10	207.74	209.37	210.99	212.61	214.24	215.90	217.52
MD80/90	199.68	201.22	202.82	204.47	206.10	207.74	209.37	210.99	212.61	214.24	215.90	217.52
A319	191.27	192.85	194.44	196.00	197.58	199.16	200.74	202.31	203.90	205.46	207.04	208.63
737-500/700	191.27	192.85	194.44	196.00	197.58	199.16	200.74	202.31	203.90	205.46	207.04	208.63
CS300	191.27	192.85	194.44	196.00	197.58	199.16	200.74	202.31	203.90	205.46	207.04	208.63
EMB195	150.44	151.56	152.81	154.07	155.25	156.51	157.71	158.95	160.18	161.41	162.68	163.88
EMB190	127.99	128.95	130.01	131.06	132.06	133.13	134.16	135.23	136.26	137.32	138.39	139.42
CRJ900	127.99	128.95	130.01	131.06	132.06	133.13	134.16	135.23	136.26	137.32	138.39	139.42

First Officer Pay Rates on January 1, 2016

	Longevity											
Aircraft	1	2	3	4	5	6	7	8	9	10	11	12
A380	70.12	188.10	220.11	225.47	230.86	236.68	243.30	248.86	251.55	254.97	257.25	259.60
A350	70.12	133.75	156.52	160.31	164.14	168.29	172.98	176.94	178.86	181.29	182.92	184.59
A330	70.12	133.75	156.52	160.31	164.14	168.29	172.98	176.94	178.86	181.29	182.92	184.59
747	70.12	133.75	156.52	160.31	164.14	168.29	172.98	176.94	178.86	181.29	182.92	184.59
777	70.12	133.75	156.52	160.31	164.14	168.29	172.98	176.94	178.86	181.29	182.92	184.59
787	70.12	133.75	156.52	160.31	164.14	168.29	172.98	176.94	178.86	181.29	182.92	184.59
767-400	70.12	133.75	156.52	160.31	164.14	168.29	172.98	176.94	178.86	181.29	182.92	184.59
767-200/300	70.12	110.58	129.39	132.56	135.77	139.19	143.01	146.38	147.85	150.32	152.15	153.94
757-300	70.12	110.58	129.39	132.56	135.77	139.19	143.01	146.38	147.85	150.32	152.15	153.94
757-200	70.12	107.65	125.94	129.03	132.13	135.45	139.24	142.43	143.94	145.90	147.23	148.57
737-800/900	70.12	107.65	125.94	129.03	132.13	135.45	139.24	142.43	143.94	145.90	147.23	148.57
A320/321	70.12	107.65	125.94	129.03	132.13	135.45	139.24	142.43	143.94	145.90	147.23	148.57
MD80/90	70.12	107.65	125.94	129.03	132.13	135.45	139.24	142.43	143.94	145.90	147.23	148.57
A319	70.12	103.18	120.72	123.67	126.66	129.85	133.49	136.56	138.03	139.93	141.20	142.49
737-500/700	70.12	103.18	120.72	123.67	126.66	129.85	133.49	136.56	138.03	139.93	141.20	142.49
CS300	70.12	103.18	120.72	123.67	126.66	129.85	133.49	136.56	138.03	139.93	141.20	142.49
EMB195	70.12	81.09	94.89	97.21	99.52	102.05	104.87	107.30	108.44	109.93	110.95	111.94
EMB190	70.12	70.12	80.73	82.70	84.66	86.80	89.22	91.28	92.25	93.51	94.39	95.21
CRJ900	70.12	70.12	80.73	82.70	84.66	86.80	89.22	91.28	92.25	93.51	94.39	95.21

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Captain Pay Rates on January 1, 2017

	Longevity											
Aircraft	1	2	3	4	5	6	7	8	9	10	11	12
A380	359.21	362.12	365.08	368.02	370.99	373.90	376.85	379.76	382.71	385.59	388.55	391.49
A350	255.41	257.48	259.59	261.67	263.77	265.85	267.94	270.01	272.11	274.18	276.26	278.36
A330	255.41	257.48	259.59	261.67	263.77	265.85	267.94	270.01	272.11	274.18	276.26	278.36
747	255.41	257.48	259.59	261.67	263.77	265.85	267.94	270.01	272.11	274.18	276.26	278.36
777	255.41	257.48	259.59	261.67	263.77	265.85	267.94	270.01	272.11	274.18	276.26	278.36
787	255.41	257.48	259.59	261.67	263.77	265.85	267.94	270.01	272.11	274.18	276.26	278.36
767-400	255.41	257.48	259.59	261.67	263.77	265.85	267.94	270.01	272.11	274.18	276.26	278.36
767-200/300	211.09	212.87	214.61	216.37	218.18	219.88	221.51	223.35	224.95	227.35	229.78	232.15
757-300	211.09	212.87	214.61	216.37	218.18	219.88	221.51	223.35	224.95	227.35	229.78	232.15
757-200	205.67	207.26	208.90	210.60	212.28	213.97	215.65	217.32	218.99	220.67	222.38	224.05
737-800/900	205.67	207.26	208.90	210.60	212.28	213.97	215.65	217.32	218.99	220.67	222.38	224.05
A320/321	205.67	207.26	208.90	210.60	212.28	213.97	215.65	217.32	218.99	220.67	222.38	224.05
MD80/90	205.67	207.26	208.90	210.60	212.28	213.97	215.65	217.32	218.99	220.67	222.38	224.05
A319	197.01	198.64	200.27	201.88	203.51	205.13	206.76	208.38	210.02	211.62	213.25	214.89
737-500/700	197.01	198.64	200.27	201.88	203.51	205.13	206.76	208.38	210.02	211.62	213.25	214.89
CS300	197.01	198.64	200.27	201.88	203.51	205.13	206.76	208.38	210.02	211.62	213.25	214.89
EMB195	154.95	156.11	157.39	158.69	159.91	161.21	162.44	163.72	164.99	166.25	167.56	168.80
EMB190	131.83	132.82	133.91	134.99	136.02	137.12	138.18	139.29	140.35	141.44	142.54	143.60
CRJ900	131.83	132.82	133.91	134.99	136.02	137.12	138.18	139.29	140.35	141.44	142.54	143.60

First Officer Pay Rates on January 1, 2017

	Longevity											
Aircraft	1	2	3	4	5	6	7	8	9	10	11	12
A380	72.22	193.74	226.71	232.23	237.79	243.78	250.60	256.33	259.10	262.62	264.97	267.39
A350	72.22	137.76	161.22	165.12	169.06	173.34	178.17	182.25	184.23	186.73	188.41	190.13
A330	72.22	137.76	161.22	165.12	169.06	173.34	178.17	182.25	184.23	186.73	188.41	190.13
747	72.22	137.76	161.22	165.12	169.06	173.34	178.17	182.25	184.23	186.73	188.41	190.13
777	72.22	137.76	161.22	165.12	169.06	173.34	178.17	182.25	184.23	186.73	188.41	190.13
787	72.22	137.76	161.22	165.12	169.06	173.34	178.17	182.25	184.23	186.73	188.41	190.13
767-400	72.22	137.76	161.22	165.12	169.06	173.34	178.17	182.25	184.23	186.73	188.41	190.13
767-200/300	72.22	113.90	133.27	136.54	139.84	143.37	147.30	150.77	152.29	154.83	156.71	158.56
757-300	72.22	113.90	133.27	136.54	139.84	143.37	147.30	150.77	152.29	154.83	156.71	158.56
757-200	72.22	110.88	129.72	132.90	136.09	139.51	143.42	146.70	148.26	150.28	151.65	153.03
737-800/900	72.22	110.88	129.72	132.90	136.09	139.51	143.42	146.70	148.26	150.28	151.65	153.03
A320/321	72.22	110.88	129.72	132.90	136.09	139.51	143.42	146.70	148.26	150.28	151.65	153.03
MD80/90	72.22	110.88	129.72	132.90	136.09	139.51	143.42	146.70	148.26	150.28	151.65	153.03
A319	72.22	106.28	124.34	127.38	130.46	133.75	137.49	140.66	142.17	144.13	145.44	146.76
737-500/700	72.22	106.28	124.34	127.38	130.46	133.75	137.49	140.66	142.17	144.13	145.44	146.76
CS300	72.22	106.28	124.34	127.38	130.46	133.75	137.49	140.66	142.17	144.13	145.44	146.76
EMB195	72.22	83.52	97.74	100.13	102.51	105.11	108.02	110.52	111.69	113.23	114.28	115.30
EMB190	72.22	72.22	83.15	85.18	87.20	89.40	91.90	94.02	95.02	96.32	97.22	98.07
CRJ900	72.22	72.22	83.15	85.18	87.20	89.40	91.90	94.02	95.02	96.32	97.22	98.07

3-A-2 The pay rate for a Flying Flight Segment shall be the pay rate for the actual aircraft flown. The pay value of a Trip that is dropped with pay (e.g., due to sick leave, training not included in Monthly Schedule Preferencing, etc.) will be the dollar value of the dropped Trip.

3-A-3 The pay rate for deadheading and for all other circumstances (e.g., the pay rate for MPG, training included in Monthly Schedule Preferencing, vacation included in Monthly Schedule Preferencing, minimum pay values, etc.) shall be a blended pay rate, determined as follows:

3-A-3-a On the first day of each Bid Period, the blended pay rate for a Pilot shall be determined by prorating the Pilot's pay rate for each aircraft type applicable to the Pilot's Equipment type (regardless of whether or how much the aircraft type is operating at the Pilot's Base). The proration will be made using the ratios of the number of each applicable aircraft type to the total number of aircraft applicable to the Pilot's Equipment type. If a Pilot's Equipment type has one applicable aircraft type, his blended pay rate will be equal to his operating pay rate.

3-A-3-a-(1) Example: If the total number of aircraft applicable to the 737 Equipment type is thirty (30) 737-700s and seventy (70) 737-800s, the blended pay rate for a 12-year 737 Captain in January 2014 is 0.3 times $196.65 plus 0.7 times $205.03, or $202.52.

3-A-3-a-(2) Example: Since the 777 Equipment type has one (1) applicable aircraft type, the blended pay rate for a 12-year 777 Captain in January 2014 is equal to the operating pay rate, or $254.74.

3-A-3-a-(3) Example: If the total number of aircraft applicable to the 756 Equipment type is twenty (20) 767-400s, thirty (30) 767-200s, twenty (20) 757-300s and thirty (30) 757-200s, the blended pay rate for a 8-year 756 Captain in January 2014 is 0.2 times $247.10 plus 0.3 times $204.39 plus 0.2 times $204.39 plus 0.3 times $198.87, or $211.28.

3-A-3-b Only the aircraft in the Company Fleet, defined in Section 1-L-6, shall be included in the calculations in Section 3-A-3-a.

3-B Longevity for Pay

3-B-1 A Pilot's longevity shall begin to accrue on the date he is hired as a Pilot and shall continue to accrue except as otherwise provided for in this Agreement.

3-B-2 Longevity increases shall become effective on the first day of that Bid Period for longevity dates from the first through the twentieth days of the Bid Period, and on the first day of the following Bid Period for the longevity dates after the twentieth day of the Bid Period.

3-B-3 A Pilot shall continue to accrue longevity when on furlough.

3-B-4 A Pilot whose name is removed from the Seniority List as set forth in Section 6 shall forfeit all previously accrued longevity.

3-C Base Pay

3-C-1 Bid Period Minimum Pay Guarantee ("MPG")

3-C-1-a Lineholder MPG

3-C-1-a-(1) A Lineholder's MPG is equal to two hours and twenty minutes (2:20) for each day in his awarded schedule that is not a vacation day and is not an unpaid absence, but shall in no case be more than seventy (70) hours.

3-C-1-a-(2) If a Lineholder's PTC drops below the MPG specified in Section 3-C-1-a-(1), his MPG will become equal to and then track with his PTC, provided that his final MPG will be no greater than seventy (70) hours.

3-C-1-a-(3) If a Lineholder's initial PTC is below the MPG specified in Section 3-C-1-a-(1), a change in his PTC shall cause a proportional change to his MPG, but in no case will his MPG be more than seventy (70) hours.

3-C-1-a-(3)-(a) Example: A Lineholder's initial PTC is fifty (50) hours and his MPG is seventy (70) hours. If his PTC is reduced to forty (40) hours, his MPG shall be reduced to fifty-six (56) hours. If his PTC is then increased to forty-five (45) hours, his MPG will increase to sixty-three (63) hours.

3-C-1-a-(3)-(b) A Lineholder shall remain subject to Section 3-C-1-a-(3) until his PTC equals or exceeds his MPG, in which case his MPG shall become equal to and then track with his PTC, provided that his final MPG shall be no greater than seventy (70) hours.

3-C-1-b Reserve MPG

3-C-1-b-(1) A Reserve's MPG, rounded to the nearest minute, shall be four hours, three minutes and twenty seconds (4:03:20) for each reserve day.

3-C-1-b-(1)-(a) When a Reserve has two (2) unused Short Call and/or Field Standby assignments in a Bid Period, his MPG shall increase by one (1) hour for each of the next three (3) unused Short Call or Field Standby assignments. A used Short Call assignment is one in which he is assigned to Field Standby without an intervening Off-Duty Period or is assigned to a Trip scheduled to depart within thirteen (13) hours of the time the Trip assignment is made. A used Field Standby assignment is one in which he is given a Trip that is scheduled to depart prior to an intervening Off-Duty Period.

3-C-1-b-(1)-(b) When a Reserve has five (5) unused Short Call and/or Field Standby assignments in a Bid Period that were assigned to him (that is, not picked up), his MPG shall increase by one (1) hour for each subsequent unused Short Call or Field Standby assignment that is also assigned to him.

3-C-1-b-(2) Notwithstanding Section 3-C-1-b-(1), a Reserve who is awarded a pure Short Call line shall receive an MPG, rounded to the nearest minute, of four hours, thirteen minutes and twenty seconds (4:13:20) for each reserve day.

3-C-1-b-(3) A reserve day or day off for which a Reserve receives Add Pay under the provisions of Sections 5-E-5-c, 5-F-5-b or 5-F-5-c shall not count as a reserve day when calculating his MPG.

3-C-1-b-(4) If a Reserve requires a day off to be restored in a subsequent Bid Period under the provisions of Section 5-F-5-e, the lost day off shall not count as a reserve day when calculating his MPG in the current Bid Period. If he is a Reserve in the Bid Period in which the restoration occurs, the restored day off shall count as a reserve day when calculating his MPG in that Bid Period.

3-C-2 Lineholder Protected Time Credit ("PTC")

3-C-2-a A Lineholder's initial PTC shall be the Line Pay Value of his schedule after Monthly Schedule Preferencing is completed, as adjusted for bid errors, if any. A Lineholder's PTC for a Bid Period shall not exist until after Monthly Schedule Preferencing for that Bid Period is completed.

3-C-2-b If the Lineholder voluntarily adjusts his schedule, his PTC value shall increase or decrease by the net pay value of the transaction.

3-C-2-c Notwithstanding Section 3-C-2-b, if the Lineholder receives an assignment under Section 20-H-5 or Step Five or Step Six of Section 20-I, if the net pay value of the transaction is positive, his PTC value shall increase by the net pay value of the transaction. If the net pay value of the transaction is negative, his PTC is unaffected.

3-C-2-d If the Lineholder is subject to Section 20-F because he lost a Trip or another assignment in its entirety, and he picks up or is given a new assignment whose pay value exceeds the pay value of the assignment that was lost, his PTC shall increase by the difference in such pay value.

3-C-2-e If the Lineholder drops an assignment without pay, including using unpaid sick leave, his PTC shall decrease by the pay value of the assignment dropped.

3-C-2-f If the Lineholder drops an assignment with pay (e.g., vacation drop, jury duty, travel days), his PTC is unaffected.

3-C-2-g Add Pay is not part of the Lineholder's PTC.

3-C-3 Line Pay Value

3-C-3-a Any pay not identified as Add Pay shall contribute to a Pilot's Line Pay Value.

3-C-3-b For purposes of Section 3-C-3-c, "actual pay hours" for a Flight shall begin when all cabin and cargo doors are closed and the parking brake is released and shall end when the aircraft arrives at a passenger unloading point and the first cabin or cargo door is opened.

3-C-3-c The pay value of a Trip shall be the greater of:

3-C-3-c-(1) The sum of the pay value of each Flight Segment in the Trip that actually operates. The pay value for each Flight Segment is the greater of actual pay hours or scheduled Flight Time for that Flight Segment.

3-C-3-c-(2) The minimum pay value of the Trip, as provided for in Section 5-G.

3-C-3-d If a Pilot is given an assignment under Section 20-H-5 or Step Six of Section 20-I that requires a schedule repair, his Line Pay Value shall be the greater of his Line Pay Value as it existed before the assignment was made or his Line Pay Value after he completes the assignment.

3-C-3-e For a Flight that operates over two (2) Bid Periods, the pay value for such flight shall attach to the Bid Period that contains the flight's local Departure time.

3-C-3-f Once a Flight departs, a Pilot shall accumulate pay value as outlined in Section 3-C-3-b regardless of whether the Flight cancels or terminates at a location other than the scheduled destination.

3-C-3-g Reserve Call Out Pay. When a Reserve at his Base is called to an airport and he does not fly, deadhead or sit Field Standby, he shall receive two (2) hours of pay.

3-C-3-h A Lineholder shall receive five (5) hours of pay for each day of a recurrent training fill-in assignment, not including days consisting entirely of travel. A Reserve shall receive five (5) hours of pay for each day of a recurrent training fill-in assignment, including days consisting entirely of travel.

3-C-3-i A Pilot who has days blocked for OE, in accordance with Section 20-C-3-c, shall receive pay equal to the greater of:

3-C-3-i-(1) three (3) hours for each day blocked (excluding the three (3) days off as provided for in Section 9-F-12); or

3-C-3-i-(2) three (3) hours per day while awaiting the start of his first OE Trip (excluding the three (3) days off as provided for in Section 9-F-12) plus the pay value of the OE Trip(s).

3-C-4 For each Bid Period, a Lineholder's base pay shall be the greater of his MPG, PTC or Line Pay Value, as compared on a dollar basis. For each Bid Period, a Reserve's base pay shall be the greater of his MPG or Line Pay Value, as compared on a dollar basis.

3-D Add Pay

3-D-1 Add Pay as provided for in this Agreement shall be in addition to the base pay described in Section 3-C-4.

3-D-2 When Add Pay is accrued in conjunction with a Flying Flight Segment, the Add Pay will be calculated using the pay rate from Section 3-A-2. Otherwise, the Add Pay will be calculated using the pay rate from Section 3-A-3. A Pilot's Add Pay will be calculated off of his pay rate (i.e., the pay rate shall not include Add Pay already received).

3-D-3 A Pilot who drops a Trip or activity, with or without pay, shall not receive Add Pay associated with that Trip or activity. A Pilot who drops a portion of a Trip or activity, with or without pay, shall not receive Add Pay associated with the portion dropped.

3-D-4 Unless otherwise stated, provisions that entitle a Pilot to Add Pay are discrete and independent events.

3-D-4-a Example: A 777 Lineholder who accepted a twenty (20) hour SRM Trip shall receive twenty (20) hours of Add Pay. If on that Trip he is required to deadhead in a middle seat on a Flight scheduled for four (4) hours, he shall receive an additional two (2) hours of Add Pay at his pay rate.

3-D-4-b Example: A Lineholder who accepted a lineholder premium pay Trip for seventy-five percent (75%) Add Pay shall receive Add Pay equal to seventy-five percent (75%) of the scheduled pay value of the Trip. If on that Trip he is reassigned under Section 20-I-5-b (assuming he volunteers for Section 20-I-5-b reassignments), he shall also receive Add Pay equal to 50% of the pay value of the scheduled Flight Time and Deadhead Time that is part of this reassignment, using the appropriate pay rates from Sections 3-A-2 and 3-A-3. The Add Pay for the reassignment will not affect the Add Pay for the lineholder premium pay Trip.

3-D-4-c Example: A Lineholder with an original Arrival time of 4 pm is reassigned into his day off. If there were six (6) hours of scheduled Flight Time after his original Arrival time, four (4) of which were on his day off, he shall receive three (3) hours of Add Pay for Section 20-L-6-a Late Pay and an additional two (2) hours of Add Pay for Section 20-L-6-b Day-Off Pay.

3-E Training Pay

3-E-1 Training Included in Monthly Schedule Preferencing

3-E-1-a A Pilot shall receive three and three-quarters (3.75) hours of pay per day for recurrent training.

3-E-1-b A Pilot shall receive three and three-quarters (3.75) hours of pay per day for training of less than five (5) days, excluding recurrent training.

3-E-1-c A Pilot shall receive three (3) hours of pay per day for training of five (5) days or more, excluding recurrent training.

3-E-2 Training Not Included in Monthly Schedule Preferencing

3-E-2-a A Lineholder shall receive pay equal to the pay value of the Trip(s) dropped.

3-E-2-b A Reserve shall receive pay equal to five hours (5:00) for each reserve day dropped.

3-E-3 Distance Learning

3-E-3-a In accordance with Section 9-G-16 and notwithstanding Section 3-E-2, a Pilot shall receive one (1) hour of Add Pay for every (4) hours of the standard training length of the distance learning (as determined according to Section 9-G-16-c), prorated, with a minimum pay of one (1) hour.

3-E-4 Section 3-E shall not apply to training covered under Section 9-J.

3-F Vacation Pay

3-F-1 Vacation included in Monthly Schedule Preferencing shall be paid as three and one-quarter (3.25) hours of Add Pay per day.

3-F-2 Vacation not included in Monthly Schedule Preferencing (i.e., vacation received through a vacation drop) shall be paid as follows and shall apply to the Pilot's Line Pay Value:

3-F-2-a A Lineholder shall receive pay equal to the pay value of the Trip dropped.

3-F-2-b A Reserve shall receive pay equal to five hours (5:00) for each reserve day dropped.

3-G Other Paid Absences and Activities

3-G-1 Except as otherwise provided in this Agreement, paid absences and activities that are included in Monthly Schedule Preferencing shall be paid two and eight-tenths (2.8) hours per day.

3-G-1-a The provisions of Section 3-G-1 do not apply to pilots awaiting training immediately after being recalled from furlough or to pilots on Company business.

3-G-1-b The provisions of Section 3-G-1 do apply to a Pilot who has Not Qualified (e.g., NQ, NP) days included in Monthly Schedule Preferencing due to an anticipated lapse in qualification.

3-G-2 Except as otherwise provided for in this Agreement, paid absences and activities that are not included in Monthly Schedule Preferencing shall be paid as follows:

3-G-2-a A Lineholder shall receive pay equal to the pay value of the Trip(s) dropped.

3-G-2-b A Reserve shall receive pay equal to five hours (5:00) for each reserve day dropped.

3-H Profit Sharing

3-H-1 Pilots shall participate in the Company profit sharing plan.

3-H-2 For profit-sharing based on the years 2012 and 2013, the Company profit sharing plan shall be funded with fifteen percent (15%) of pre-tax profit.

3-H-3 For profit-sharing based on the years 2014 and beyond, the Company profit sharing plan shall be funded with ten percent (10%) of pre-tax profit up to a pre-tax margin of six and nine-tenths percent (6.9%) plus twenty percent (20%) of pre-tax profit in excess of a pre-tax margin of six and nine-tenths percent (6.9%).

3-H-4 Special and unusual items shall be excluded from pre-tax profit when making the calculations in Sections 3-H-2 and 3-H-3.

3-I Miscellaneous

3-I-1 International Override. A Pilot shall receive Add Pay of six dollars and fifty cents ($6.50) per hour for Captains and four dollars and fifty cents ($4.50) per hour for First Officers for any flight that operates to or from an airport outside of the contiguous United States, Alaska, or Canada.

3-I-2 When a Pilot is entitled to the "greater of" two pay values, such comparison shall be made on a dollar basis.

3-I-3 Reassignments or operational loss of flying may increase or decrease a Pilot's Line Pay Value, in accordance with Section 3-C-3-c. Reassignments or operational loss of flying do not impact a Lineholder's PTC.

3-I-4 Performance Programs. Pilots shall participate in any broad-based employee performance program in which their performance contributes to the performance being rewarded (e.g. on-time incentive program, perfect attendance).

3-I-5 A Pilot shall be paid on the first (1st) and sixteenth (16th) of the month for the preceding Bid Period. The gross pay on the first (1st) shall be one half (1/2) of his MPG for the preceding Bid Period and the gross pay on the sixteenth (16th) shall be his calculated earnings from the preceding Bid Period less the gross pay received on the first (1st). In the event that either the first (1st) or the sixteenth (16th) of the month falls on a holiday or weekend, a Pilot shall be paid on the first business day immediately preceding the weekend or holiday, except that January 1st pay shall be paid on the first business day immediately following the holiday.

3-J New Aircraft Types

3-J-1 If the Company introduces an aircraft type that is not included in Section 3-A-1, the pay rate (as set forth in Section 3) and Equipment banding (as set forth in Section 8) for that new aircraft type shall be determined as follows:

3-J-1-a The Company shall give the Association notice of its intention to introduce a new aircraft type at least six (6) months prior to the estimated scheduled revenue service date or within thirty (30) days after entering into the contract for procurement of the new aircraft type, whichever is later.

3-J-1-b The parties shall meet within fifteen (15) days following a written request by either party to negotiate the pay rate and Equipment banding for such new aircraft type.

3-J-1-c The negotiations shall attempt to find a pay rate and Equipment banding that is consistent with the pay rates and Equipment banding of existing Equipment types. If such negotiations do not result in agreement within 100 days from the date this procedure is invoked, either party may submit the dispute to final and binding interest arbitration.

3-J-1-d The dispute shall be heard before an arbitrator selected from a panel of neutrals agreed upon in advance by the parties, using an alternate strike or other method of selection satisfactory to the parties. For Equipment banding, the arbitrator shall consider impact on quality of work life, additional training and currency requirements, etc.

3-J-1-d-(1) The hearing shall be conducted and briefing by the parties, if any, shall be completed 150 days from the date this procedure is invoked.

3-J-1-d-(2) The arbitrator's award shall be issued no later than 180 days from the date this procedure is invoked, and shall settle the dispute between the parties by giving the new aircraft type a pay rate and an Equipment band.

3-J-1-e Upon final agreement, or upon issuance of the arbitrator's award, as the case may be, retroactive compensation, if applicable, shall be paid to all pilots who operated the new

aircraft type in revenue service before the parties' agreement became effective or the award issued.

3-J-2 Nothing set forth herein shall prevent the Company from introducing a new aircraft type into revenue service before agreement is reached over its pay rate and Equipment band, provided that the pay rates assigned to the new aircraft type are not less than the minimum rates provided in Section 3-A-1.

UNITED

Section 25 - Duration

25-A Amendable Date

This Agreement shall become effective on the date of signing hereof, shall continue in full force and effect through and including January 31, 2017, and shall renew itself without change each succeeding February 1st thereafter unless written notice of intended change is served in accordance with Section 6, Title I, of the Railway Labor Act, as amended, by either party hereto at least thirty (30) days but no more than two hundred seventy (270) days prior to January 31, 2017, or any year thereafter. The parties shall commence direct negotiations with respect to such notice no later than thirty (30) days following the delivery of such notice.

25-B Incorporation of Other Agreements

This Agreement and any Letters of Agreement and Memoranda of Understanding entered into by the parties after the date hereof constitute the sole and entire agreement between the parties while they remain in effect, and shall cancel all Agreements, Supplemental Agreements, Amendments, Letters of Understanding and similar related documents executed between the Company and the Air Line Pilots Association prior to the signing of this Agreement.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement this 18th day of December, 2012.

For United Airlines, Inc.:

Mike Bonds
Executive Vice President
Human Resources and Labor Relations

Captain Fred Abbott
Senior Vice President
Flight Operations

P. Douglas McKeen
Senior Vice President
Labor Relations

Dan Casey
Vice President
Labor Relations

For the Air Line Pilots Association, International:

Captain Donald L. Moak
President
Air Line Pilots Association, International

Captain Jay Heppner
Chairman
UAL MEC

Captain Jay Pierce
Chairman
CAL MEC

Captain Dave Owens
Negotiating Committee Chairman
CAL MEC

First Officer Phil Otis
Negotiating Committee Chairman
UAL MEC

First Officer Brad Hunnewell
Negotiating Committee Vice Chairman
UAL MEC

First Officer Jeff Brown
Negotiating Committee
CAL MEC

Captain Corey Ferguson
Negotiating Committee
UAL MEC

First Officer Phil Lomness
Negotiating Committee
CAL MEC

First Officer Greg Everhard
Negotiating Committee
UAL MEC

EXHIBIT 48

DELTA
Pilot Working Agreement

UPDATED:
April 5, 2013

Agreement

Between

DELTA AIR LINES, INC.

and

THE AIR LINE PILOTS IN THE SERVICE OF DELTA AIR LINES, INC.

as Represented by the

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL

Duration July 1, 2012 – December 31, 2015

SECTION 2

DEFINITIONS AND GLOSSARY

A. Definitions

Note: Unless expressly noted in the body of a definition, each definition will apply throughout the PWA.

1. "13 B. 3. pilot" means a former pilot removed from the seniority list under ***Section 13 B. 3.***, on or after June 1, 2006, who is receiving disability benefits from the D&S Plan. Upon cessation of disability benefits, termination, or retirement, such former pilot will cease to be a 13 B. 3. pilot.
2. "Accrued vacation" means the vacation time (i.e., the number of weeks or days) a pilot is accumulating in a vacation year for use in the next vacation year. The accrual rate for such vacation is determined by the number of years of continuous employment the pilot completed before April 1st of the vacation year.
   Example: Assume that on October 1st, (i.e., at the completion of 50% of the vacation year) a pilot has not been on leave or furlough in excess of 30 days since the beginning of the vacation year. Such pilot will have accrued 50% of the vacation time to which he will be entitled on the next April 1st.
3. "Active payroll status" means the status of a pilot who is not on inactive payroll status.
4. "Administrative pilot" means a pilot who is removed from a category for the purpose of performing managerial, supervisory and/or administrative duties for the Company (e.g., a pilot in a payroll department other than 030 or 031).
   Exception: An instructor who does not perform managerial or supervisory duties (i.e., an instructor in payroll department 052) is not an administrative pilot.
5. "Advanced Qualification Program" (AQP) means the Company administered and FAA approved programs for all indoctrination, qualification, requalification, or continuing qualification training at Delta Air Lines.
6. "Advance entitlement" (AE) means an award (or, with respect to an entry level pilot, an award or assignment) to a category that is anticipated to become effective on a subsequent conversion date.
7. "AF" or "Air France" means Société Air France.
8. "Affiliate" means:
   a. any subsidiary, parent or division of an entity,
   b. any other subsidiary, parent or division of either a parent or a subsidiary of an entity, or
   c. any entity that controls another entity or is controlled by another entity, or is under common control with another entity, in either case, whether directly or indirectly through the control of other entities.
9. "Aggregate service" means all time starting from a pilot's date of employment with the Company as a pilot, with the exception of the following:
   a. periods of furlough, or
   b. unpaid leave in excess of 60 cumulative days.
10. "Aircraft model" means an aircraft (e.g., B-737-800, MD-88) within an aircraft type.
11. "Aircraft type" means one of the following groupings:

a. B-747-400	h. A-320/319
b. B-777	i. MD-90/MD-88
c. B-787	j. B-717
d. B-767-400ER	k. DC-9
e. A-330-300/200	l. EMB-190/195
f. B-767 (all except B-767-400ER)/B-757	m. CRJ-900
g. B-737-900/800/700/600	

12. "Aircrew program designee" (APD) means a pilot who is designated by the FAA to administer type rating evaluations.
13. "Air France/KLM/Alitalia joint venture" or "AF/KL/AZ JV" means the business relationship between Delta, Air France, KLM, and Alitalia in which the costs and revenues of international flights within the AF/KL/AZ JV are shared between or among the air carrier partners, as typified by the business relationship between Air France, KLM, Alitalia, and Delta that is embodied in the AF/KL JV agreement.
14. "Air France/KLM/Alitalia JV agreement" or "AF/KL/AZ JV agreement" means the Transatlantic Joint Venture Agreement between Delta Air Lines, Inc., Societe Air France, Koninklijke Luchtvaart Maatschappij N.V. and Compagnia Aerea Italiana, S.p.A. as in effect on April 1, 2010.
15. "Airman" means a person:
    a. whose name does not appear on the Delta Pilots' System Seniority List, and
    b. who is certified to operate the controls, and/or assist in the operation of the controls of a commercial aircraft at a cockpit position.
16. "Alaska" means Alaska Airlines, Inc.
17. "Alaska hub" means SEA, ANC, LAX and any other airport having a monthly average of at least 100 Alaska scheduled flight departures per day.
18. "Alaska marketing agreement" means the document titled "Marketing Agreement" signed on March 1, 2004 by Delta, Alaska and Horizon Air Industries, Inc., as from time to time amended.
19. "ALPA Aeromedical Advisor" is a doctor from ALPA's Aeromedical Office (Aviation Medicine Advisory Service).
20. "Annual compensation" for purposes of the profit sharing plan, means an employee's gross earnings during the profit sharing plan year, including any sick and vacation pay (whether paid by the Company or from a disability and survivor trust), but excluding: a) expense reimbursements, b) expense allowances, c) income required to be imputed to the employee for any reason pursuant to federal, state or local law, d) profit sharing awards, e) earnings from any other incentive compensation program, f) Company contributions to a retirement plan, g) disability payments, h) income from the grant, vesting, exercise or sale of Delta stock or Delta stock options, i) income relating to, or resulting from, bankruptcy claims, notes, or other securities, j) medical plan payments and k) severance payments. In addition, annual compensation for the purposes of the profit sharing plan includes pilot furlough pay.

21. "Applicable rate" means, for the purposes of ***Section 8***, the composite hourly rate plus international pay, if applicable, for the position held by the pilot at the time of the deadhead.
    Exception one: If a pilot holds a position with more than one rate when deadheading by air transportation to a flight segment(s), the applicable rate will be the rate for the aircraft model used on the first non-deadhead segment after the deadhead on which the pilot performed, or was scheduled to perform, duty as a crew member.
    Exception two: If a pilot holds a position with more than one rate when deadheading by air transportation on the last flight segment(s) of his rotation, the applicable rate will be the rate for the aircraft model used on the last non-deadhead segment before the deadhead on which the pilot performed, or was scheduled to perform, duty as a crew member.
22. "AS," when not referring to the AS code, means Alaska Airlines, Inc. and any carrier to the extent of its category B operations using the AS code.
23. "Asterisk rotation" means a rotation that:
    a. is published in the bid package,
    b. is scheduled to begin in one bid period and end in another,
    c. includes:
        1) a duty period that begins in the second bid period, and/or
        2) a flight segment in the second bid period with a different flight number than the last flight segment in the first bid period, and
    d. is subject to change or removal from a pilot's line.
        Note: An asterisk rotation may not be changed such that it is scheduled to release more than one day after its originally scheduled release.
24. "Attrition" means the number of pilots who leave the active service of the Company due to retirement, medical leave, any leave in excess of 30 days, disability, death, or termination.
25. "Average Line Value" (ALV) means a number of hours established by the Company between 72 and 84 hours (inclusive) that is the projected average of all regular line values, for a position, for a bid period.
26. "AZ" or "Alitalia" means Compagnia Aerea Italiana, S.p.A.
27. "Base" means a location to which a pilot is assigned.
28. "Base premium" means the premium developed each year separately for each of the options offered under the DPMP, for retirees and survivors, from the combined experience of a population composed of all retirees and survivors (pilot retirees and survivors and other retirees and survivors) participating in the DPMP and the Delta Health Plan, excluding HMOs and fully insured options. In the case of the premium attributable to children of pilot retirees, such base premium will be based on the combined experience of all dependents participating in the DPMP and the Delta Health Plan excluding HMOs and fully insured options. Such base premium will be developed by the Company's actuary using reasonable actuarial assumptions and methods that are designed to determine such base premium in the actuary's best professional judgment. The Company's calculation of the DPMP base premium will be subject to review by the Association. The Company will provide to the Association by June 15th of each year, data, assumptions and methodologies used to determine such costs and base premium. The Association may provide comments on such analysis under the DPMP by July 7th, and the Company's actuary will consider such comments in making its final

determination of the base premium. The methodology for determining the base premium will be applied separately to develop pre-Medicare eligibility age and post-Medicare eligibility age premiums.

29. "Bid period" means one of the following time periods:
    a. January 1st through January 30th (the "January bid period")
    b. January 31st through March 1st (the "February bid period")
    c. March 2nd through March 31st (the "March bid period")
    d. April 1st through May 1st (the "April bid period")
    e. May 2nd through June 1st (the "May bid period")
    f. June 2nd through July 1st (the "June bid period")
    g. July 2nd through July 31st (the "July bid period")
    h. August 1st through August 30th (the "August bid period")
    i. August 31st through September 30th (the "September bid period")
    j. October 1st through October 31st (the "October bid period")
    k. November 1st through November 30th (the "November bid period")
    l. December 1st through December 31st (the "December bid period")

    Note: The start and/or end dates of a bid period may be altered by mutual agreement between the Director – Crew Resources and the MEC Scheduling Committee Chairman.
30. "Block time" means the time beginning when an aircraft first moves for the purpose of flight or repositioning and ending when the aircraft comes to a stop at the next destination or at the point of departure.
31. "Board" means the Delta Pilots' System Board of Adjustment.
32. "Break-in-duty" means a rest period (measured from release to report) that is sufficient to break a pilot's duty period under ***Section 12 G.***
33. "Bundle 1" means flying on all routes (a) between Europe, on the one hand and North America, on the other hand, (b) between French Polynesia, on the one hand, and North America on the other hand, until such time as Air France/KLM/Alitalia ceases operations on any such routes, and (c) between AMS, on the one hand, and India on the other hand, until such time as the Company ceases operations between AMS and Mumbai. Terms in this definition are as defined in the Air France/KLM/Alitalia JV Agreement.
34. "Business day" means each day from Monday through Friday, except for Company holidays.
35. "Captain" means a pilot who is in command and who is responsible for the manipulation of, or who manipulates, the flight controls of an aircraft while under way, including takeoff and landing of such aircraft; who is properly qualified to serve as and holds currently effective airman's certificates authorizing him to serve as such pilot.
36. "Carry-over rate" means the dollar value of a pilot's accumulated credit for a bid period divided by such accumulated credit, expressed in dollars per minute.
37. "Category" means the combination of a pilot's position and base.
38. "Category A operation" means the operation of a flight segment by a Delta Connection Carrier:
    a. that is a Company affiliate, or
    b. using the DL code under an agreement with Delta that is not a prorate agreement.
39. "Category B operation" means the operation of a flight segment by a domestic air carrier:
    a. that is an affiliate of Alaska, or operates such flight segment under an AS code under an agreement with Alaska, other than a prorate agreement,

and

b. that only operates:

1) aircraft that:

a) are certificated for operation in the United States for 70 or fewer passenger seats, and

b) have a maximum certificated gross takeoff weight in the United States of 85,000 or fewer pounds; and/or

2) Bombardier Q-400 aircraft (under the terms and conditions of the Alaska Pilot Working Agreement).

40. "Category C operation" means the operation of a flight segment (other than a category B operation) by a Delta Connection Carrier under the DL code pursuant to a prorate agreement with Delta.

41. "Category freeze" means a period of time

a. that is determined under ***Section 22 G.***,

b. that commences on the date of a pilot's award of an AE or VD for which qualification training is required or on an entry level pilot's date of employment with the Company as a pilot, and

c. during which the pilot will (unless declared eligible by the Company) be ineligible to be awarded another AE with an earliest conversion date falling within the freeze period (other than to a new or reestablished category) for which qualification training is required.

42. "Circumstance over which the Company does not have control," for the purposes of ***Section 1***, means a circumstance that includes, but is not limited to, a natural disaster; labor dispute; grounding of a substantial number of the Company's aircraft by a government agency; reduction in flying operations because of a decrease in available fuel supply or other critical materials due to either governmental action or commercial suppliers being unable to provide sufficient fuel or other critical materials for the Company's operations; revocation of the Company's operating certificate(s); war emergency; owner's delay in delivery of aircraft scheduled for delivery; manufacturer's delay in delivery of new aircraft scheduled for delivery. The term "circumstance over which the Company does not have control" will not include the price of fuel or other supplies, the price of aircraft, the state of the economy, the financial state of the Company, or the relative profitability or unprofitability of the Company's then-current operations.

43. "Code" means the unique two-character designator code assigned to an airline by the International Air Transport Association (IATA). If IATA assigns or has assigned more than one designator code for use by Delta, Alaska, or Hawaiian or by a subsidiary of Delta or Alaska then such additional designator code(s) will be included within the DL code, AS code, or HA code, respectively.

44. "Company" means Delta Air Lines, Inc.

45. "Company affiliate" means an affiliate of the Company.

46. "Company flying" means all flying reserved under ***Section 1 C.*** for performance by pilots.

47. "Composite hourly rate" means the basic hourly rate of pay set forth in the pay tables of ***Section 3*** for each aircraft model, status and longevity step, computed with the traditional factors of speed, mileage, and gross weight taken into account.

48. "Contingent displacement" means a displacement from a pilot's new category that is caused by his displacement into that category.
49. "Contingent vacancy" means a vacancy in a pilot's former category that is caused by his award to a different category pursuant to an advance entitlement.
50. "Continuing qualification training" (CQ) means training necessary to maintain position qualification under FAR 121.427 and the Company's advanced qualification program (AQP) standards.
51. "Continuous training" means the combination of:
    a. training, and
    b. associated periods of interruption of training of three consecutive days or less.
52. "Control" for the purposes of ***Section 1***, will exist by entity A over entity B, only if A, whether directly or indirectly through the control of other entities:
    a. owns securities that constitute and/or are exchangeable into, exercisable for or convertible into more than:
        1) 30 percent (49 percent with respect to the Company's interest in a foreign air carrier) of B's outstanding common stock, or if stock in addition to common stock has voting power, then
        2) 30 percent (49 percent with respect to the Company's interest in a foreign air carrier) of the voting power of all outstanding securities of B entitled to vote generally for the election of members of B's Board of Directors or similar governing body, or
    b. has the power or right to manage or direct the management of all or substantially all of B's air carrier operations, or
    c. has the power or right to designate or provide all or substantially all of B's officers, or
    d. has the power or right to provide a majority of the following management services for B: capacity planning, financial planning, strategic planning, market planning, marketing and sales, technical operations, flight operations, and human resources activities, or
    e. has the power or right to appoint or elect or prevent the appointment or election of a majority of B's Board of Directors, or other governing body having substantially the powers and duties of a Board of Directors, or
    f. has the power or right to appoint or elect or to prevent the appointment or election of a minority of B's Board of Directors or similar governing body, but only if such minority has the power or right to appoint or remove B's Chief Executive Officer, or President, or Chief Operating Officer, or the majority membership of the Executive Committee or similar committee on B's Board of Directors, or the majority membership of at least one-half of B's Board committees.
53. "Conversion date" means the date on which the award or assignment of a pilot to a different category becomes effective.
54. "Co-terminal" means the following airport combinations:
    a. DCA/IAD
    b. DFW/DAL
    c. IAH/HOU
    d. JFK/EWR/LGA
    e. LAX/BUR/LGB/ONT/SNA
    f. MIA/FLL

g. ORD/MDW
h. SFO/OAK/SJC

55. "CQ eligibility period" means a series of three consecutive calendar months in which a pilot is eligible for CQ training.
    a. "CQ early month" means the first calendar month in a pilot's CQ eligibility period.
    b. "CQ base month" means the second calendar month in a pilot's CQ eligibility period.
    c. "CQ grace month" means the third calendar month in a pilot's CQ eligibility period.
56. "CQ golden days" means a block of five consecutive days during which a pilot will not be scheduled for CQ.
57. "Credit" means the time attributed to a pilot for PWA flight time limitations purposes.
58. "Credited reserve on-call day" (CROC day) means a day on which a reserve pilot:
    a. is on a rotation,
    b. receives pay and credit under ***Section 4 H.***,
    c. is on airport standby duty, or
    d. is on sick leave on an on-call day.
59. "D&S Plan" means the Delta Pilots Disability and Survivorship Plan, as Amended and Restated, Effective July 1, 1996, as amended. A reference in the PWA to the D&S Plan will exclude the NWA LTD Plan unless such reference in the PWA states otherwise.
60. "D&S Plan participant" means a person who is receiving or is entitled to receive benefits under the D&S Plan.
61. "Date of furlough" means the date on which a pilot's furlough begins.
62. "Date of recall" means the date a pilot is scheduled to report to duty in conjunction with a recall.
63. "Day" means calendar day.
64. "DBMS" means a computerized crew scheduling system operated by Flight Operations.
65. "DC Plan" means the Delta Pilots Defined Contribution Plan, as Amended and Restated Effective January 1, 2009, as amended.
66. "DC Plan participant" means a person who is receiving or is entitled to receive benefits under the DC Plan.
67. "Deadhead" means the surface or air transportation of a pilot between airports at the instruction of the Company.
    Exception one: Surface transportation to or from an airport for the sole purpose of lodging is not a deadhead.
    Exception two: Travel to and from training is not a deadhead.
68. "Delta" means the Company.
69. "Delta Connection Carrier" means a domestic air carrier that conducts flying under ***Section 1 D.***
70. "Delta Connection flying" means flying conducted by a Delta Connection Carrier for the Company.
71. "Delta Health Plan" means the non-collectively bargained medical and dental plan offered to flight attendants and ground employees and to retirees until age 65 (including HMOs, if applicable, and the no coverage option).
72. "Delta hub" means ATL, CVG, DTW, JFK, LAX, LGA, MEM, MSP, SLC, and any other airport having a monthly average of at least 100 Delta scheduled flight departures per day.

Exception: SEA is not a Delta hub, regardless of the number of scheduled flight departures.

73. "Delta Pilots' Medical Plan" (DPMP) means the collectively bargained medical and dental plan available to pilots, 13 B. 3. pilots, and pilot retirees under ***Section 25.*** The DPMP offers the options enumerated in ***Section 25 G. 1.***
74. "Delta Pilots' Retirement Plan" means the Delta Pilots Retirement Plan as Amended and Restated, Effective July 1, 1996, as amended.
75. "Delta Pilots' Savings Plan" or "DPSP" means the Delta Pilots Savings Plan, effective January 1, 2009.
76. "Director – Health Services" (DHS) means an Aviation Medical Examiner designated by the Company to conduct the medical review of a pilot under ***Section 14 G. 3.*** and ***Section 15 B.*** If the designated DHS becomes unavailable, the Company will promptly designate another Aviation Medical Examiner as the DHS.
77. "Disability status," "disability," or "disablement" means being eligible for and receiving disability benefits from the D&S Plan.
    Note one: A 13. B. 3. pilot is considered in disability status, disability, or disablement until cessation of disability benefits, retirement or termination.
    Note two: A pilot (or 13 B. 3. pilot) who has reached the maximum period of disability under the D&S Plan for psychiatric conditions, alcoholism, and/or drug abuse is not on disability status, disability or disablement after the end of that period of disability.
    Exception: This definition does not apply to a NWA disabled pilot.
78. "Displacement" means an award (voluntary displacement or VD) or assignment (mandatory displacement or MD) that is anticipated to become effective on a later conversion date to eliminate a surplus from a category.
79. "Distributed training" means training that is accomplished without a classroom, instructor in a classroom, flight training device, flight simulator or airplane. Distributed training includes training material the Company requires a pilot to complete that cannot be completed in conjunction with the normal course of preparing for flight. Examples of informational materials that are not distributed training include, but are not limited to, manuals updates (e.g., updates to FOM, Operations Manual 1 and 2, QRH, FCTM, Airway Manual), flight crew bulletins and flight operations bulletins.
80. "DL" means:
    a. Delta,
    b. its affiliates, and
    c. any other carrier to the extent of its category A operations of flight segments using the DL code.
81. "Doctor" means a medical professional who holds one of the following degrees:
    a. M.D.,
    b. D.O.,
    c. D.D.S.,
    d. D.C.,
    e. D.M.D., or
    f. D.P.M.
82. "Doctor's certificate" means written verification from a doctor indicating in general terms the nature of a pilot's sickness.

83. "Domestic air carrier" means an "air carrier" as defined in 49 U.S.C. Section 40102(a)(2) holding an air carrier certificate issued by the Administrator of the FAA under 14 C.F.R. Section 119.5.
84. "Domestic category pilot" means a regular or reserve pilot who is not an international category pilot.
85. "Domestic operation" means a flight segment to and from an airport, or between airports, located inside the contiguous 48 states of the United States, or a flight segment between an airport located in the Mainland United States and either Alaska or Canada.
86. "Domestic per diem" means the hourly meal allowance for time away from base that is applicable to a pilot while engaged in domestic operations.
    Note: See ***Section 11 I. 3.*** (travel to training), ***Section 23 P. 8.*** (out-of-base white slips) and ***Section 23 Q. 14.*** (out-of-base green slips).
87. "DPMA" means Delta Pilots Mutual Aid.
88. "DPMA disability benefit" means the optional supplemental disability benefit payable by DPMA to an eligible DPMA participant.
89. "DPMA dues" means the dollar amount of dues charged by DPMA for membership in DPMA.
90. "DPMA equivalent disability benefit" means the optional supplemental disability benefit described in ***Section 26 Q. 3. b.***
91. "DPSP participant" means a person who is receiving or is entitled to receive benefits under the DPSP.
92. "Duty period" means the elapsed time from report to release (for a break-in-duty).
93. "Earned vacation" means the vacation time (i.e., the number of weeks or days) a pilot is entitled to use in a vacation year.
94. "Earnings" means, for the purposes of a retirement or welfare benefit plan under ***Section 26***, the amount of a participant's remuneration that forms the basis for contributions or benefits under that plan.
95 "EASK" means equivalent available seat kilometers, a measurement of capacity adjusted for an aircraft's seat density and cargo capacity, as defined and calculated in the AF/KL/AZ JV agreement.
96. "Eligible family member," for the purposes of ***Section 6***, means:
    a. a relative who:
        1) resides in an eligible pilot's household,
        2) is dependent on the pilot for livelihood, and
        3) is claimed on the pilot's federal tax return as a dependent.
    b. an eligible pilot's spouse (including a person who is a domestic partner under the Delta Domestic Partner Program).
97. "Eligible family member," for the purposes of ***Section 25***, means eligible family member as defined in the DPMP. An eligible family member is not eligible for the DPMP or Delta Health Plan upon reaching Medicare eligibility age.
    Exception: An eligible family member described in ***Section 25 B. 1. Note***, ***Section 25 C. 4. a.***, and ***Section 25 D. 3. a.*** will remain eligible for the DPMP or Delta Health Plan upon reaching Medicare eligibility age.
98. "Eligible move" means the actual movement of all of an eligible pilot's household goods and personal effects from his former permanent residence to, and the establishment of, his new permanent residence at, a location that is:

a. within the United States, and
b. more than 50 straight line statute miles from:
   1) his former permanent residence, and
   2) the greater metropolitan area of his former base, as described in the then most recently published U.S. Census Bureau Metropolitan Areas Definition (See www.census.gov/population/www/estimates/metrodef.html).

Exception: An eligible move will not include a move by a pilot whose permanent residence, on the award date of his related conversion or the date of his recall from furlough, is located in, or located within 50 miles of, the greater metropolitan area of his new base.

99. "Eligible pilot" for the purposes of ***Section 6***, means a pilot who intends to complete or completes an eligible move and:
   a. converts into a position at another base via an MD or VD, or
   b. converts into a position at a new or re-established base within 12 months of the first pilot conversion at such base, or
   c. transfers from a closed base within the 12 months preceding the base closing, or
   d. is recalled from furlough to a base other than his furlough base, or
   e. otherwise transfers to a base at Company request,
   f. provided:
      1) he actually moves his household goods and personal effects to a new permanent residence that is within a 125 straight-line statute mile radius of the airfield reference point at his new base, and
   2) his current permanent residence is not within such radius, and
   3) he actually establishes his home at his new permanent residence, and
      4) his new permanent residence is at least 50 straight-line statute miles closer to the airfield reference point at his new base than is the permanent residence address from which he is relocating, and
      5) he agrees to repay the Company for such relocation benefits if, within 24 months of the conversion that entitled him to receive such relocation benefit, he:
         a) converts into a position at another base as the result of an advance entitlement, or
         b) relocates to another permanent residence outside such radius, without changing bases.

100. "Employment year" means a one-year period beginning on a pilot's employment anniversary date.
101. "Entity" means a natural person, corporation, association, partnership, trust or any other form for conducting business, and any combination or concert of any of the foregoing.
102. "Entry level pilot" means a pilot who has not completed his initial OE at the Company.
103. "Entry level position" means any position listed in ***Section 22 B.***
104. "Evaluation" means a check of a pilot's performance and/or proficiency pursuant to an FAR or as part of the Company's training including its Advanced Qualification Program (AQP).
105. "FAA" means the Federal Aviation Administration.
106. "FAA mandatory retirement age" means the latest age under Part 121 of the FARs or other applicable statutes that a pilot can serve as a PIC or SIC.
107. "FARs" means the Federal Aviation Regulations.

108. “First Officer” means a pilot who is second in command and who is to assist or relieve the captain in the manipulation of the flight controls of an aircraft while under way, including takeoff and landing of such aircraft; who is properly qualified to serve as and holds currently effective airman’s certificates authorizing him to serve as such First Officer.
109. “Five Member Board” means the System Board of Adjustment when comprised of two members appointed by the Company, two members appointed by the Association, and a neutral member selected by the parties, to decide a specific dispute.
110. “Fleet” means aircraft in service, undergoing maintenance, and operational spares.
111. “Flight segment”, for the purposes of ***Section 1***, means the operation of an aircraft with one takeoff and one landing.
112. “Flight time” means:
    a. actual block time on a functional check flight and a verification flight segment(s), and
    b. for all other flying, the greater of actual or scheduled block time on a flight segment(s).
113. “Flying,” “flown,” “flies,” and “fly,” for purposes of ***Sections 4***, ***12***, and ***23***, means:
    a. operation of a flight as a cockpit crewmember, and/or
    b. a deadhead by air.
114. "FMLA leave" means a leave of absence described in ***Section 13 H.***
115. “Foreign air carrier” means a “foreign air carrier” as defined in 49 U.S.C. Section 40102(a)(21).
116. “Foreign pilot base” means a base located outside the boundaries of the contiguous 48 states of the United States.
117. "Former NWA pilot" means a pilot who was an employee of NWA and whose name appeared on the NWA seniority list on the day preceding October 30, 2008.
118. “Four Member Board” means the System Board of Adjustment when comprised of two members appointed by the Company and two members appointed by the Association, to decide a specific dispute.
119. “Fragmentation transaction” means a transaction (other than a successor transaction) in which the Company or a Company affiliate (other than a Company affiliate performing flying only on permitted aircraft types) disposes of aircraft, route authority or slots (net of aircraft, route authority or slots acquired within the 12 month period preceding such transaction or acquired in a related transaction), which produced 12% or more of the operating revenue, block hours or available seat miles of the Company or Company affiliates (excluding revenue, block hours or available seat miles of Company affiliates performing flying only on permitted aircraft types) during the 12 months immediately prior to the date of the agreement resulting in the fragmentation transaction.
120. “Full service bank” or bank means an individual account maintained in DBMS for each pilot into which he may deposit and from which he may withdraw or borrow credit on a minute basis.
121. “Functional check flight” (FCF) means flying that involves the planned use of abnormal or “special” checklists and/or determinations of the airworthiness of major system items or troubleshooting.
122. “Furlough base” means the base to which a pilot was assigned on his date of furlough.
123. “Green slip” (GS) means a request by a pilot to be assigned same-day/next-day open time that may generate premium pay:

a. on his regular line days-off,
b. on his reserve line X-day(s),
c. on reserve line on-call days, while on long-call, with less than 12 hours notice, or
d. on his remaining reserve line on-call days in the current bid period after he has accumulated credit equivalent to the ALV in such bid period.

124. "Green slip with conflict" (GSWC) means a request by a regular pilot to be assigned same-day/next-day open time that may generate premium pay, and:
a. overlaps a scheduled rotation(s) remaining to be flown, or
b. creates an FAR or PWA conflict with a scheduled rotation(s) remaining to be flown.

125. "Hard non-fly day" means a non-fly day on which a pilot may not be inversely assigned to a rotation (e.g., vacation, APD day, reserve PD day, ALPA, legal duty, MLOA, or golden X-day).

126. "Hawaiian" or "HA" means Hawaiian Airlines, Inc.

127. "Hawaiian marketing agreement" means the document titled "Marketing Agreement" signed on June 11, 2007 by Delta and Hawaiian as from time to time amended.

128. "Hearing officer" means a Company-designated senior operating official.

129. "HMO above composite premium" means the amount charged by an HMO in excess of the composite amount the Company contributes to the cost of the Delta Health Plan (other than an HMO).

130. "Hub to hub" means a flight segment between a Delta hub and an Alaska hub.

131. "Inactive NWA pilot" means a former NWA pilot who on October 30, 2008 was not in active payroll status, including but not limited to furlough, military leave exceeding 30 consecutive days, personal leave, family leave, medical leave, maternity leave or disciplinary suspension and has not returned to active payroll status as described in ***Section 25 V. 4. c.***
Note: A NWA disabled pilot is not an inactive NWA pilot.

132. "Inactive payroll status" means the status of a pilot who is furloughed, receiving benefits under the D&S Plan, military leave that exceeds 30 consecutive days, medical leave, personal leave (other than known personal leave), FMLA leave, maternity leave, or a pilot on a disciplinary suspension.

133. "Industry standard interline agreement" means an agreement or other arrangement between or among two or more carriers, such as the International Air Transport Association's "multilateral interline traffic agreements", or an "interline ticket and baggage agreement", establishing rights and obligations relating to the acceptance and accommodation of interline passengers and shipments.

134. "Initial training" means training necessary to create an equipment and status qualification.

135. "Interim period" means the period between the closing date of the corporate transaction pursuant to which the Company or any Company affiliate acquires control of the acquired airline (the "closing date") and the later of the effective date of an integrated seniority list or the effective date of a single collective bargaining agreement covering the pilots and airmen involved.

136. "International category pilot" means a regular or reserve pilot holding a position for which qualification for trans-oceanic navigation procedures is required.

137. "International operation" means a flight segment to or from an airport, or between airports, located outside the contiguous 48 states of the United States.

Exception: A flight segment between an airport located in the Mainland United States and either Canada or Alaska will not be considered an international operation.

138. "International partner flying" means flying performed by any foreign air carrier (which is not a Company affiliate):
    a. under or utilizing a designator code, trade name, brand, logo, trademarks, service marks, aircraft livery or aircraft paint scheme currently or in the future utilized by the Company or any Company affiliate, and/or
    b. on aircraft on which the Company or any Company affiliate has purchased or reserved blocked space or blocked seats for sale or resale to customers of the Company or any Company affiliate.
139. "International pay" means an hourly pay premium paid to a pilot for flight time flown in an international operation.
140. "International per diem" means the hourly meal allowance for time away from base that is applicable to a pilot while engaged in international operations.
    Note: An international category pilot assigned to training away from base will receive domestic per diem.
141. "International small-category" means an international category containing fewer than 1500 scheduled credit hours in a bid period.
142. "Intra-theatre flying" means a flight segment(s) flown by international category pilots between airports located outside the contiguous 48 states of the United States.
    Exception: An ocean crossing flight segment is not intra-theatre flying.
143. "Inverse assignment" (IA) means the assignment of open time in inverse seniority order under ***Section 23 N.*** or ***O.***
    Exception: An assignment to a reserve pilot who is among a group of reserve pilots in the same RAW value grouping under ***Section 23 A. 218.*** is not an IA.
144. "Inverse assignment with conflict" (IAWC) means an IA that:
    a. overlaps a scheduled rotation(s) remaining to be flown, or
    b. creates an FAR or PWA conflict with a scheduled rotation(s) remaining to be flown.
145. "Irregular operations" (IROPS) means an event(s) in the system (e.g., sickness, fatigue or no-show of another pilot, weather, mechanical, aircraft type substitution, substitution of one aircraft model for another aircraft model on which the pilot is not qualified, diversion, cancellation, overflight, misconnect, application of the FARs) that causes a pilot to be removed from his scheduled rotation or portion thereof.
146. "KL" or "KLM" means Koninklijke Luchtvaart Maatschappij N.V.
147. "Known absence" means a period of unavailability in a subsequent bid period for which a pilot is scheduled prior to initial line awards for such bid period (e.g., training, vacation, sick, MLOA, ALPA duty) during which a pilot may not be awarded a rotation(s) or on-call day(s).
148. "Known accident leave" means accident leave in the subsequent bid period that is known by the pilot before the date for the close of line bidding for such bid period as specified in ***Section 23 B.***
149. "Known personal leave" means a period of unpaid personal leave that is made available by the Company and awarded to pilots in a category, in seniority order, under ***Section 13 J. 2.***, during which a pilot will remain on active payroll status.

150. "Known sick leave" means sick leave in the subsequent bid period that is known by the pilot before the date for the close of line bidding for such bid period as specified in ***Section 23 B.***
151. "Legal duty" means participation by a pilot in a legal proceeding as:
    a. a juror, or
    b. a subpoenaed witness in:
        1) criminal litigation, or
        2) legal or administrative proceedings arising out of his employment with the Company.
        Exception: Participation in proceedings under ***Section 1***, ***16, 18***, ***19***, or ***27*** is not legal duty.
152. "Line" means a pilot's bid period schedule.
    a. "Initial line" means the line awarded/assigned to a pilot via PBS or DBMS.
    b. "Adjusted line" means a pilot's initial line as modified by the line adjustment process.
    c. "Regular line" means a line composed of training, vacation, leaves, rotations and/or days-off.
    d. "Reserve line" means a line composed of training, vacation, leaves, reserve on-call days and X-days.
    e. "Blank regular line" means a regular line that is constructed without rotations.
    f. "Specially created reserve line" means a reserve line that was not awarded/assigned in the initial line awards.
    g. "Reduced lower limit line" (RLL) means a regular line with a value that is less than the lower limit of his LCW that is constructed upon request to a pilot who cannot be awarded a regular line within his LCW.
153. "Line adjustment" means the process by which the Company removes a rotation(s) from a regular pilot's line for the next bid period, which would otherwise create an FAR and/or PWA conflict(s).
154. "Line check pilot" (LCP) means a pilot who is:
    a. selected by the Company and designated by the FAA, and
    b. authorized to administer evaluations during line operations.
155. "Line construction window" (LCW) means a range of hours that is seven and one half hours above and below the ALV for each position in each bid period. The LCW will not extend below 65 hours without mutual agreement between the Director – Crew Resources and the MEC Scheduling Committee Chairman.
156. "Line guarantee" means a line holder's minimum pay and credit entitlement in a bid period.
157. "Longevity" means all time beginning at date of employment as a pilot, and ending at termination of employment as a pilot, retirement as a pilot, or death.
    Exception one: For purposes of vacation, sick leave and pass benefits, the longevity of a pilot who transferred from another Company department will begin on his most recent date of employment with the Company.
    Exception two: Longevity (including vacation and sick leave) does not include periods during which a pilot remains on furlough due to his decision to bypass recall.
    Exception three: On October 30, 2008, a former NWA pilot will receive longevity credit as it existed at Northwest immediately prior to October 30, 2008 in addition to longevity

credit for any periods of furlough that occurred on or after July 31, 1992 (excluding any periods of furlough bypass).

158. "Low-time pilot" means a:
    a. Captain or First Officer who has not flown (excluding deadhead) 75 hours of block time as a Captain or First Officer in his aircraft type, or
    b. Captain or First officer on a MAC who, when the block hours he has flown on his aircraft type are added to the block hours of the other pilot(s), the sum does not satisfy the Department of Defense 250 hour combined total line operating experience requirement.
159. "Mainland United States", for the purposes of ***Section 1***, means the contiguous 48 states of the United States.
160. "Malaria endemic destination" (MED) means a destination that Flight Operations, in consultation with the International Flying Optimization Team (IFOT), has recommended that employees use a malaria chemoprophylaxis regimen when visiting as a crew member. Rotations to a MED will be designated in the bid package and on the pilot's rotation and a DBMS popup will remind a pilot assigned or awarded a rotation to a MED.
161. "Material change" means an amendment to the Alaska marketing agreement or the Hawaiian marketing agreement that:
    a. affects the codeshare or prorate terms or conditions of the Alaska marketing agreement or the Hawaiian marketing agreement and,
    b. has or would have an adverse material economic impact on:
        1) the structure or benefits of the Alaska marketing agreement or the Hawaiian marketing agreement to Delta, or
        2) a substantial number of the Delta pilots.
162. "Medicare disabled" means becoming eligible for Medicare benefits for a reason other than attainment of Medicare eligibility age.
163. "Medicare eligibility age" means the age at which an individual may apply for hospital insurance benefits under part A of Medicare as set forth in 42 U.S.C. 426(a)(1).
164. "Military Airlift Charter" (MAC) means all flight operations conducted as a charter under an agreement between the Company and the Department of Defense or any branch of the United States Armed Services, except for Civil Reserve Air Fleet operations. A rotation that includes MAC operations will be identified with a distinct designator for PBS/PCS and cannot be awarded to a pilot who has not completed his OE.
165. "Month," for the purposes of ***Section 1***, means calendar month.
166. "New or reestablished category" means, for the purposes of ***Section 22***, a category that has not been in existence for 60 days since the date of the first opportunity for the first conversion.
167. "New small narrowbody aircraft" means a B-717 or an A-319 aircraft that is not in the Company's fleet as of July 1, 2012.
168. "Non-consolidated pilot" means a pilot who has not completed consolidation requirements as set forth in the FARs (currently Section 121.434(g) or a pilot who has flown (excluding deadhead) less than 100 block hours, including OE, in his aircraft type).
169. "Non-fly day" means a day on which a pilot:
    a. does not perform flying for the Company,
    b. is not scheduled to perform flying for the Company,
    c. does not participate in training, other than distributed training (including travel days),

d. does not perform an SLI duty period (including a flex day),
e. is not on Company business,
f. is not removed from his scheduled rotation for the convenience of the Company, or
g. is not on long call or short call.

170. "Non-scheduled flight" means a publicity flight, contract flight, charter flight not shown on a regular line, scenic flight, attempt, rerouted flight, ferry flight, functional check flight, verification flight, proving run, experimental flight and airway aid test flight.

171. "Non-seniority list instructor" (NSLI) means an instructor who is:
a. not on the seniority list, or
b. currently receiving long term disability benefits under the D&S Plan (including the NWA LTD Plan).

172. "Northwest" means Northwest Airlines, Inc.

173. "NWA" means Northwest Airlines, Inc.

X. "NWA adjusted sick leave bank" means a pilot's NWA sick leave bank on October 30, 2008 (or, in the case of a NWA disabled pilot or inactive NWA pilot, his NWA sick leave bank at the applicable date under *Section 26 T. 3.*) reduced by the number of Delta sick leave credit hours awarded the pilot upon his transition to the Delta sick leave system.[1]

174. "NWA CBA" means the terminated NWA pilots' collective bargaining agreement that was in effect on the day preceding October 30, 2008.

175. "NWA disabled pilot" means a former NWA pilot whose disabling condition arose prior to October 30, 2008 and either (a) is eligible for and receiving disability benefits from either the NWA Pension Plan or the NWA LTD Plan, or (b) is a pilot who was eligible for and receiving disability benefits from the NWA Pension Plan until he attained age 60 on or after December 13, 2007 whether or not he commenced normal retirement benefits at age 60 or older from the NWA Pension Plan or the NWA Excess Plan.

176. "NWA Excess Plan" means the Northwest Airlines Pension Excess Plan for Pilot Employees as amended.

177. "NWA LTD Plan" means the Northwest Airlines LTD Plan for Pilot Employees as incorporated in the D&S plan.

178. "NWA MP3" means the Northwest Airlines Money Purchase Plan for Pilot Employees as incorporated in the DC Plan.

179. "NWA Pension Plan" means the Northwest Airlines Pension Plan for Pilot Employees as amended.

180. "NWA seniority list" means the NWA integrated pilots' system seniority list.

181. "NWA sick leave bank" means the accumulated sick leave hours of a former NWA pilot under the NWA CBA as of the day preceding October 30, 2008 (or, in the case of a NWA disabled pilot or inactive NWA pilot, as of the day preceding the applicable date under ***Section 14 D. 1. d.*** and ***e.***).

182. "Ocean crossing" means a flight segment:
a. across the Atlantic Ocean, or
b. across the Pacific Ocean, as follows:
1) between the North American continent and the Hawaiian Islands,
2) between the Hawaiian Islands and any point west of the 160 degree meridian,

[1] ***Section 2 A. X.*** (new) added by LOA #13.

3) between the North American continent and a point west of the 160 degree meridian,
4) between a Pacific Rim airport and Australia and/or New Zealand,
or,

c. to or from an airport in South America, as follows:
1) between the United States and any point further south of the equator than 3 degrees, 30 minutes south latitude on the South American continent, and
2) any flight segment scheduled for greater than eight hours to, within or from the South American continent,
or,

d. to or from an airport in Europe that crosses latitude 36°N. and/or longitude 45°E.,
or,

e. to or from an airport in Africa, as follows:
1) between the United States and any point on the African continent, and
2) any flight segment scheduled for greater than eight hours to, within or from the African continent,
or,

f. to or from an airport in Asia on a flight segment scheduled for greater than eight hours to, within or from the Asian continent,
or,

g. across the Arctic Ocean, between the North American continent and the Asian continent.

183. "OE shadow period" means a period of unavailability that is applied to a pilot's line prior to initial line awards under ***Section 11 F. 8.***, during which an award of a rotation(s) or on-call day(s) will be for pay purposes only. Any such rotation(s) or on-call day(s) will remain available to be awarded to another pilot in PBS.

184. "Off-line deadhead" means travel on a Delta Connection Carrier in category C operations (i.e., pursuant to a prorate agreement) or any carrier other than Delta Air Lines, Inc.

185. "Off-rotation deadhead" means travel initiated by a pilot, at the beginning or end of a rotation, by means other than the scheduled deadhead segment.

186. "On-line transportation" means travel on Delta Air Lines, Inc. and Delta Connection Carriers in category A operations (i.e., not a prorate agreement).

187. "OOA" means Out-of-Area.

188. "Open time" means a rotation(s) not awarded on a regular line in the initial line awards, or that otherwise becomes available.

189. "Operating experience" (OE) means performing the duties of Captain or First Officer under the supervision of an LCP under FAR 121.434 (c) and (f).

190. "Operational crewmember" means a pilot who operates the controls of the aircraft, assists in the operation or control of the aircraft, and/or serves as a relief Captain or relief First Officer.

191. "Out-of-base pilot" means a pilot who holds the same position at another base.

192. "Over-age-60 conflict" means the pairing of pilots, on a rotation(s) that contains a scheduled takeoff or landing outside the United States, of:
a. two over-age-60 pilots on a rotation not requiring an augmented crew.
b. three over-age-60 pilots on a rotation(s) containing a common, augmented flight segment requiring a relief pilot.

c. four over-age-60 pilots on a rotation(s) containing a common, augmented flight segment requiring a relief crew.

193. "Parent" means any entity that controls another entity.

194. "Permanent residence" means the home where a pilot physically resides on a permanent basis and at which he intends to remain. Evidence of a pilot's permanent residence includes, but is not limited to, his DBMS residence address and residence address for Company benefits enrollment purposes.

195. "Permitted aircraft type" means:

a. an aircraft operated by Delta Private Jets as an affiliate of the Company (or a successor to Delta Private Jets that remains an affiliate of the Company), certificated in the United States for 19 or fewer passenger seats and with a maximum certificated gross takeoff weight in the United States of 65,000 or fewer pounds,
Exception: Up to five aircraft certificated in the United States for 19 or fewer passenger seats may have a maximum certificated gross takeoff weight in the United States of 99,900 or fewer pounds,
and

b. a propeller-driven or turboprop aircraft certificated in the United States for 37 or fewer passenger seats and with a maximum certificated gross takeoff weight in the United States of 37,000 or fewer pounds, and

c. one of up to nine aircraft operated under a prorate agreement with Chautauqua Airlines or Shuttle America Corporation, configured with 44 or fewer passenger seats and certificated in the United States with a maximum gross takeoff weight of 65,000 or fewer pounds, and

d. an aircraft (other than the aircraft in ***Section 1 B. 46. a.*** – ***c.***) certificated for operation in the United States for 50 or fewer passenger seats and with a maximum certificated gross takeoff weight in the United States of 65,000 or fewer pounds ("50-seat aircraft"), and

e. one of up to 102 aircraft configured with 51-70 passenger seats and certificated in the United States with a maximum gross takeoff weight of 86,000 pounds or less ("70-seat aircraft"), and

f. one of up to 153 aircraft configured with 71-76 passenger seats and certificated in the United States with a maximum gross takeoff weight of 86,000 pounds or less ("76-seat aircraft").
Exception one: If the Company establishes a fleet of new small narrowbody aircraft, the number of permitted 76-seat aircraft may increase on a one 76-seat aircraft for each one and one quarter new small narrowbody aircraft (1:1.25) ratio (rounded to the closest integer) up to a total of 223 76-seat aircraft. In the event more than 153 76-seat aircraft are in category A or C operations, then on January 1, 2014, and each succeeding January 1 thereafter, the Company will implement its plan to reduce the number of 50-seat aircraft in category A or C operations below 348 (the number of 50-seat aircraft in category A or C operations as of July 1, 2012) rounded to the closest integer, as follows:
1) 2.7 50-seat aircraft for each of the first additional ten 76-seat aircraft (above 153),
2) 2.7 50-seat aircraft for each of the next additional ten 76-seat aircraft (above 163),

3) 2.8 50-seat aircraft for each of the next additional ten 76-seat aircraft (above 173),
4) 2.9 50-seat aircraft for each of the next additional ten 76-seat aircraft (above 183),
5) 3.0 50-seat aircraft for each of the next additional ten 76-seat aircraft (above 193).
6) 3.1 50-seat aircraft for each of the next additional ten 76-seat aircraft (above 203), and
7) 4.6 50-seat aircraft for each of the next additional ten 76-seat aircraft (above 213).

Note one: Upon the delivery of a 223rd 76-seat aircraft, the number of permitted 50-seat aircraft will be 125 regardless of the number otherwise provided in ***Section 1 B. 46. f. Exception one***.

Note two: If on January 1, 2014, or any succeeding January 1 thereafter, the number of 50-seat aircraft in category A or C operations exceeds the maximum permitted number, the Company will require carriers that engage in category A or C operations to suspend or cease operations on a sufficient number of 50-seat aircraft or 76-seat aircraft to comply with these requirements within 60 days and to remain in compliance thereafter. The Company will be excused from compliance with the provisions of this Note in the event a circumstance over which the Company does not have control is the cause of such non-compliance.

Exception two: Up to the 36 EMB-175s that were operated and/or ordered by Northwest prior to October 30, 2008 may continue to be operated with up to a maximum gross takeoff weight of 89,000 pounds.

g. once the number of 76-seat aircraft permitted under ***Section 1 B. 46. f.*** is engaged in category A or C operations, such number of aircraft need not be reduced, so long as the then-current limit on the total number of 50-seat aircraft specified in ***Section 1 B. 46. f. Exception one*** is satisfied.

Exception one: If a pilot on the seniority list with an employment date prior to July 1, 2012 is placed on furlough, the Company will convert all 76-seat aircraft for operation as 70-seat aircraft. The number of such aircraft will continue to be limited by ***Section 1 B. 46. f.*** as though they were being operated as 76-seat aircraft. The Company may again commence operating such aircraft as 76-seat aircraft effective on the date that the most junior pilot protected by the first sentence of this ***Exception one*** is recalled from furlough.

Exception two: In the event the hiring or flow provisions of NWA LOA 2006-10 or LOA #9 cease to be available, either at the feeder carrier affiliate referenced in such LOAs or at another carrier, the number of permitted 76-seat aircraft in ***Section 1 B. 46. f.*** will be reduced by 35.

196. "Personal drop sick" (PDS) means a personal drop request by a pilot to engage in a routine health maintenance procedure. PDS requests will be granted at the discretion of the Chief Pilot's Office.

197. "Physical standards" means the standards established by the FAA for the issuance of a First Class Medical Certificate, including the FAA waiver and restriction policy.

198. "Pilot" means an employee of Delta Air Lines, Inc. whose name appears on the Delta Air Lines Pilots' system seniority list.

Note: For ease of reading in ***Section 1***, the defined term "pilot" may be modified by the word "Delta." Such modification does not change the meaning of the defined term "pilot."

199. "Pilot change schedule" (PCS) means a process for the submission of requests for:
    a. military leave of absence (see ***Section 13 D.***)
    b. personal drop (PD), qualified personal drop (QPD) and authorized personal drop (APD) (see ***Section 23 I.***)
    c. swap with the pot (see ***Section 23 H.***)
    d. white slip (see ***Section 23 P.***)
    e. yellow slip (see ***Section 23 T.***)
    f. GS and GSWC (see ***Section 23 Q.***)
    g. X-day move (see ***Section 12 N. 9.***)
    h. additional day off (see ***Section 23 S. 16.***)
    i. recovery slip (see ***Section 23 J.***)
200. "Pilot retiree" means a pilot (or 13 B. 3. pilot) who retired after June 1, 2006 or a former NWA pilot who retired after October 30, 2008.
    Exception: A NWA disabled pilot is not a pilot retiree.
201. "Pilot-to-pilot swap board" means an electronic system through which a pilot offers and/or executes a rotation drop, swap, and/or pickup with another pilot under ***Section 23 F.***
202. "Pilot Working Agreement" or "PWA" means the basic collective bargaining agreement between Delta Air Lines, Inc. and the air line pilots in the service of Delta Air Lines, Inc. as represented by the Air Line Pilots Association International, together with all effective amendments, supplemental agreements, letters of agreement, and letters of understanding between the Company and the Association.
203. "Position" means the combination of a pilot's aircraft type, status, and classification as domestic or international.
204. "PPO Option B" means the plan providing medical and dental benefits that was in effect under the NWA CBA, as amended.
205. "Pre-merger Delta pilot" means a pilot whose name appeared on the Delta seniority list immediately prior to October 30, 2008.
206. "Premium pay" means pay as set forth in ***Section 23 U.*** applicable to:
    a. an inversely assigned rotation or flight segment(s).
    b. a GS rotation.
    c. a GSWC rotation.
    d. a domestic category rotation assigned/awarded to an international category pilot or an international category rotation assigned/awarded to a domestic category pilot under ***Section 23 N. 28.*** or ***Section 23 O. 25.***
207. "Pre-tax income" (PTIX) means, for any calendar year, the Company's consolidated pre-tax income calculated in accordance with Generally Accepted Accounting Principles in the United States and as reported in the Company's public securities filings but excluding: a) all asset write downs related to long term assets, b) gains or losses with respect to employee equity securities, c) gains or losses with respect to extraordinary, one-time or non-recurring events (including without limitation one-time transition or integration costs incurred in connection with the merger of the Company and Northwest

Airlines Corporation during the two year period following the merger), and d) expense accrued with respect to the profit sharing plan.

208. "Proficiency check" (PC) means any of the following validation or evaluation events in the simulator or Flight Training Device administered under the AQP:
    a. Procedures Validation (PV)
    b. Maneuvers Validation (MV)
    c. Line Operational Evaluation (LOE)

    Note: MV and LOE for a pilot obtaining a type rating are not proficiency checks.

209. "Proficiency check pilot" (PCP) means:
    a. a pilot who is selected by the Company and designated by the FAA and authorized to administer proficiency checks in other than line operations, and/or
    b. an NSLI who is selected by the Company and designated by the FAA and authorized to administer proficiency checks in other than line operations under ***Section 11 D.***

210. "Profit/loss sharing agreement" means an agreement or arrangement in which the Company or a Company affiliate shares in the economic performance of one or more other carriers and/or of its or their affiliate or affiliates, through incremental revenue sharing or the sharing of profits or losses in connection with the Company's and the other carrier or carriers' carriage of passengers. An agreement or arrangement that constitutes an industry standard interline agreement, a codeshare agreement with a carrier engaged in international partner flying in which there is no sharing in the economic performance of the carrier's flying through incremental revenue sharing or the sharing of profits or losses, a prorate agreement, a sales/super commission agreement, the Hawaiian and Alaska marketing agreements, and an arrangement between the Company and any Company affiliate and one or more Delta Connection Carriers is not a profit/loss sharing agreement.

211. "Projection" means the sum of a pilot's accumulated credit and remaining scheduled credit within the bid period.

212. "Pro rata portion of the ALV" means the ALV for a position divided by the number of days in a bid period.

213. "Pro rata portion of the reserve guarantee" means the reserve guarantee for a position divided by the number of days in a bid period.

214. "Prorate Agreement" means an agreement between the Company or a Company affiliate and another carrier or its affiliate for the proration of interline revenue between them, under a standard interline prorate formula, and in a manner that provides no economic benefit to the Company other than from the carriage of passengers by the Company. The term "economic benefit" does not include the reimbursement of distribution costs or industry standard interline service charges.

215. "Purchased vacation" means the vacation days that a pilot receives as a result of a full service bank transaction.

216. "Qualification training" means training necessary to create a position qualification (i.e., initial, transition, upgrade, requalification, transoceanic ground school).

217. "Qualified SLI" means an SLI who can function as the instructor of record.

218. "RAW value grouping" means a range of RAW values for each category in each bid period determined by mutual agreement between the Director – Crew Resources and Scheduling and the MEC Scheduling Committee Chairman, and made available no later than the last day of the prior bid period.

219. "Recalled-medical hold" means the status of a pilot who is unable to present the Company with a First Class Medical Certificate within 30 days of receipt of his notice of recall.
220. "Recency" or "recency of experience" means the requirement of a Captain or First Officer to make at least three takeoffs and landings within a 90-day period under FAR 121.439.
221. "Recovery slip" means a request by a regular pilot to be awarded open time under ***Section 23 J.*** in lieu of being assigned recovery flying under ***Section 23 K. 1.***
222. "Reestablishment of recency" means the training and checking required under FAR 121.439 to reestablish qualifications that have lapsed due to lack of recency.
223. "Regular pilot" means a pilot who holds a regular line.
224. "Release" means:
    a. for purposes of determining a pilot's break-in-duty, the later of:
        1) 30 minutes after the block-in of his last flight segment, or
        2) the actual time he is released by the Company (after completion of any additional duty required by the Company) to begin a rest period sufficient to break his duty period under ***Section 12 G.***
    b. for purposes of determining a pilot's duty period credit and rotation credit, the later of:
        1) 30 minutes after the actual block-in of his last flight segment,
        2) 30 minutes after the adjusted block-in of his last flight segment determined by adding the scheduled block time of such flight segment to the later of the scheduled or actual departure time of such flight segment, or
        3) the actual time he is released by the Company (after completion of any additional duty required by the Company) to begin a rest period sufficient to break his duty period under ***Section 12 G.***
225. "Relief Captain" means a Captain who is current in his position and augments a crew.
226. "Relief crew" means a relief Captain and a relief First Officer, collectively.
227. "Relief First Officer" means a type rated First Officer who is current in his position and augments a crew.
228. "Report" means the later of the actual or scheduled time that a pilot begins duty. Such scheduled time:
    a. in a domestic category is one hour before the scheduled departure of the first flying (including deadhead on on-line transportation or a Delta Connection Carrier) segment.

    Exception: Such scheduled time is 90 minutes before the scheduled departure of the first off-line deadhead segment other than a Delta Connection Carrier.
    b. in an international category is:
        1) 90 minutes before the scheduled departure of the first:
            a) flight segment (excluding an intra-theatre deadhead flight segment) in a duty period containing an ocean crossing, (including an ocean crossing deadhead, that originates outside the continental United States).
            b) off-line deadhead segment other than a Delta Connection Carrier.

        Exception: Flight segments to/from Hawaii will have a 60-minute report.
        2) one hour before the scheduled departure of an:

a) intra-theatre flight segment, (including an on-line transportation or a Delta Connection Carrier non-ocean crossing deadhead).
b) ocean crossing deadhead that originates within the United States.
c) international category duty period composed solely of domestic flying.

229. "Reroute" means:
a. alteration of a pilot's rotation or portion thereof due to irregular operations to:
1) delete a previously scheduled flight segment(s), and/or
2) add a flight segment(s) that is not open time (including flying removed from open time),
or
b. alteration of a pilot's rotation or portion thereof to:
1) delete a previously scheduled flight segment(s), and/or
2) add a flight segment(s) under ***Section 23 N. 20.*** or ***O. 15.***;
and
c. notification to the pilot, after the airborne departure of his first flight segment, of such alteration.

Note: An alteration in the departure, enroute or arrival time of a scheduled flight segment does not constitute a reroute.

230. "Reserve assignment weighting" (RAW) means a value assigned to a reserve pilot that is based on his accumulated credit in a bid period, his CROC days in a bid period, and his number of short call credits in a bid period. A reserve pilot's RAW is used as part of the process of sequencing him for assignment to open time. Such value will be calculated using the following formula, rounded to the nearest integer:

Reserve assignment weighting = $[(A \div C) \times 75] + [(B \div D) \times 100] + (E \times 5)$, where:

A = the reserve pilot's credit hours accumulated in the bid period plus prorated credit hours associated with his period of unpaid absence and/or vacation and/or training (other than qualification or distributed training), if any. The number of prorated hours associated with his period of unpaid absence and/or vacation and/or training (other than qualification or distributed training) will be determined by multiplying the number of days of his unpaid absence and/or vacation and/or training (other than qualification or distributed training) by the reserve guarantee and then dividing that product by 30 or 31 (days of the bid period).

B = the reserve pilot's CROC days plus prorated CROC days associated with his period of absence other than sick leave, if any (e.g., vacation, training, MLOA, PLOA). The number of prorated CROC days associated with his period of absence other than sick leave will be determined by multiplying the number of days of his absence by 18 (on-call days per bid period) and then dividing that product by 30 or 31 (days of the bid period).

C = the reserve guarantee.

D = number of on-call days in a full month of reserve.

E = the number of short call periods for which the pilot has been credited in the bid period.

231. "Reserve day" means a day on which a reserve pilot is scheduled to be on either an on-call day or an X-day.

232. "Reserve pilot" means a pilot who holds a reserve line.

233. "Reserve pro rata share" means the reserve guarantee divided by the associated number of on-call days in a bid period on a reserve line.
234. "Reserve utilization order" (RUO) means an order of assigning open time to reserve pilots, within days-of-availability groupings, that is based upon a comparison of their RAW value groupings.
235. "Retired" means the termination of employment of a pilot (or 13 B. 3. pilot) under circumstances that enable him to receive an early, normal, or deferred retirement benefit under the Delta Pilots Retirement Plan or the DC Plan, or an early, normal, late or deferred retirement pension (but not a terminated vested benefit) under the NWA Pension Plan.
Note: A NWA disabled pilot is not considered retired.
236. "Retirement date" means the early, normal, late or deferred retirement date (but not terminated vested benefit commencement date), whichever is applicable, as defined in the Delta Pilots Retirement Plan, the DC Plan, or the NWA Pension.
237. "Rotation" means a duty period, or series of duty periods, that is identified by number and scheduled to begin and end at a pilot's base, and all the flight segments contained therein. The release of a regular pilot for a break-in-duty at his base that is within such a series of duty periods ("in base layover") will not end his rotation.
238. "Rotation guarantee" means the pay guarantee under ***Section 4 F.***
239. "Savings Plan" means the Delta Family-Care Savings Plan.
240. "Scheduled block hour" means an hour of scheduled block time.
241. "Scheduled block times" means the greater of the flight times set forth in the:
    a. Company operating schedules, or
    b. bid package.
242. "Scheduled flight" means a flight published in the bid package or shown in the Company's operating schedules and extra sections thereof.
243. "Scheduled legal duty leave" means legal duty leave that is reported by the pilot to the Company prior to the close of line bidding for the bid period in which the legal duty leave is scheduled to occur, and that the Company, at its discretion, places on the pilot's schedule prior to the close of line bidding for such bid period.
244. "Seniority" means a pilot's number on the seniority list.
245. "Seniority date" means the date of a pilot's seniority as shown on the seniority list.
246. "Seniority list" means the Delta Air Lines Pilots' system seniority list.
247. "Seniority list instructor" (SLI) means an instructor who is a pilot.
Exception: An instructor who is a pilot currently receiving long term disability benefits under the D&S Plan (including the NWA LTD Plan) cannot be an SLI.
248. "Service provider" means any entity, other than the Company, that provides any services for the DPSP including, but not limited to, the record-keeper and trustee.
249. "Sick" means disabled due to sickness, as defined in ***Section 14 A. 11.***
250. "Sick leave shadow period" means a period of unavailability that is applied to a pilot's line prior to initial line awards under ***Section 14 H.***, during which an award of a rotation(s) or on-call day(s) will be for pay purposes only. Any such rotation(s) or on-call days(s) will remain available to be awarded to another pilot in PBS.
251. "Sick leave year" means the period from June 1 of each year to the subsequent May 31.
252. "Sickness" means any personal medical condition of a pilot, physical or mental, that disables him from performing duties as a flight crewmember.

253. "Sick occurrence" means the period between the time a pilot calls in sick and the time that he calls in well.
Note: Regular line days off and reserve X-days within a sick occurrence will not be considered to be sick leave.
254. "Single operating certificate" (SOC) means the date on which the FAA issues the Company an operating certificate that grants the authority to conduct flight operations of the Company and Northwest as a single airline.
255. "SLI duty period" means one of the following when performed by an SLI:
    a. one FTD or simulator period including brief and debrief.
    b. one training and/or evaluation event in an aircraft including brief and debrief.
    c. a VF(s) and/or an FCF(s), not to exceed 10 hours.
    d. a day of Company business away from his training center.
    e. a duty period of up to 13 scheduled hours and 15 actual hours during which an SLI deadheads to and/or from a training location and performs SLI duties.
    f. a period consisting solely of deadheading to or from a training location.
    g. service as part of a crew complement for one FTD or simulator period, including brief and debrief.
    h. up to eight hours (exclusive of meal break) of office duties or special projects (an "office day").
Note: An SLI may be required to perform any SLI duties during his office day or additional SLI duties that have arisen on short notice during his SLI duty period. Such SLI will be credited with an additional SLI duty period only if he is required to remain on duty in excess of eight hours (exclusive of meal break).
256. "Soft non-fly day" means a non-fly day other than a hard non-fly day (i.e., a day on which a pilot may be inversely assigned to a rotation).
257. "Standard deviation" means an index of variability as set forth in *Robert L. Winkler and William L. Hays, Statistics, Probability, Inference and Decision, 164-5 (2d Ed. 1975).*
258. "Standing bid" means a pilot's order of category preferences, as they exist in DBMS, for AEs, MDs, and VDs. A pilot's category preferences may include:
    a. a minimum acceptable relative seniority ranking (by number or percentage) in the category (including his own category),
    b. a specification for "regular line only", or
    c. his willingness to be displaced in lieu of a pilot who is junior to him and in his category.
259. "Status" means a pilot's rank as Captain or First Officer.
260. "Subsidiary" means any entity that is controlled by another entity.
261. "Sufficient qualifications" means the requirements imposed by law and this PWA to enter training or serve as a pilot for Delta Air Lines, Inc.
262. "Supplemental vacation" means the vacation days that a pilot receives (for use in the current or following vacation year) due to being inversely assigned into an X-day(s) (***Section 23 S. 16.***).
263. "Survivor" or "eligible survivor" means the spouse or child of a deceased pilot, 13 B. 3. pilot, or pilot retiree, as defined in the D&S Plan.
Exception: The spouse or child of a deceased NWA disabled pilot is not a survivor or eligible survivor as those terms are defined in the D&S Plan.

264. "Targeted line value" (TLV) means a 12 bid period rolling average of the ALV for a position that will be between 75 and 80 hours (inclusive).
265. "Theater qualification" means a program for qualification of international category Captains in a specified area of operations as set forth in the Airway Manual.
Note one: The Company will review with the Association any plans to modify the terms and provisions of the theater qualification program set forth in the Airway Manual.
Note two: The addition of a new theater that affects 12 or more scheduled round trips per bid period in a category will be subject to the implementation schedule under ***Section 11 K. 5.*** The Company and the Association will meet and confer to agree upon an implementation schedule related to a significant modification of an existing theater.
266. "Time away from base" means the period beginning with report at base and ending upon release at base.
Exception: The "time away from base" of a pilot who is assigned to training away from base will end at block-in at his base.
267. "Top-up disability benefit" means the supplemental disability benefit payable to a former NWA pilot under ***Section 26 Q. 4.***
268. "Total projected costs" for the DPMP for each calendar year will be determined by an actuary selected by the Company and will be developed from the combined experience of a population composed of all of the Company's active employees participating in medical and dental plans excluding HMOs and fully insured options. The Company's actuary will use reasonable actuarial assumptions and methods that are designed to determine such total projected costs in the actuary's best professional judgment. By June 15th of each year, the Company will provide to the Association the actuary's detailed preliminary determination of what the total projected costs will be for the following calendar year. The Association may provide comments on such analysis by July 7th, and the Company's actuary will consider such comments in making its final determination of total projected costs.
269. "Training" means a Company-sponsored program of instruction and/or evaluation required by an AQP, the Company, or the FARs (e.g., recency, qualification training, CQ, distributed training).
270. "Training day(s)" means a day(s) in which a pilot is scheduled to:
    a. attend continuous training.
    b. travel between his base and the training location.
271. "Trans-oceanic duty period" means a duty period that contains an ocean crossing (including deadheading).
272. "Unanticipated accident leave" means accident leave for the current or subsequent bid period that is reported to the Company by a pilot after the line award for the bid period.
273. "Unanticipated sick leave" means sick leave for the current or subsequent bid period that is reported to the Company by a pilot after the line award for the bid period.
274. "Unassigned pilot" means a pilot in excess of PWA staffing requirements who is assigned to an aircraft type and base but does not currently hold a status.
275. "United States" means the United States and its possessions and territories including but not limited to the Commonwealth of Puerto Rico.
276. "Unscheduled legal duty leave" means legal duty leave that the Company does not place on a pilot's schedule prior to the close of line bidding for the bid period in which the legal duty leave is scheduled to occur.

277. "Unverified sick leave" means sick leave not verified under ***Section 14 F. 2.***

X. "VA" or "Virgin Australia" means the collective single party to the Virgin Australia Joint Venture Agreement that consists of Virgin Australia Airlines Pty Ltd, Virgin Australia International Airlines Pty Ltd, Virgin Australia Airlines (NZ) Ltd, and Virgin Australia Airlines (SE Asia) Pty Ltd.[2]

278. "Vacation bank hours" means the hours in a pilot's vacation bank. Such vacation bank hours will be equal to 3:15 for each day of a pilot's earned vacation, together with purchased and supplemental vacation for use in the current vacation year.

279. "Vacation period" means a portion(s) of the combination of a pilot's earned, purchased and supplemental vacation that is designated by the pilot as:
   a. primary,
   b. secondary,
   c. tertiary,
   d. quaternary, or
   e. quinary.

280. "Vacation year" means the period that begins on April 1st each year and ends on the following March 31st.

X. "VA joint venture" or "VA JV" means the business relationship between Delta and Virgin Australia in which incremental revenues of international flights within the VA JV are shared between the air carrier partners, as typified by the business relationship between VA and Delta that is embodied in the VA JV agreement.[3]

281. "Verification flight" (VF) means flying that is performed to determine whether a maintenance repair action has successfully resolved the pertinent problem, provided such flying does not involve:
   a. the planned use of abnormal or special checklists, or
   b. determinations of the airworthiness of major system items or troubleshooting.

X. "Virgin Australia Joint Venture agreement" or "VA JV agreement" means the commercial Joint Venture Agreement between Delta and Virgin Australia submitted for approval to the U.S. Department of Transportation ("DOT").[4]

282. "White slip" means a request by a regular pilot to be awarded open time under ***Section 23 P.***

283. "Window of circadian low" (WOCL) means 0101 to 0459 (pilot's base time).

284. "Within days-of-availability groupings" means an order of assigning open time under ***Section 23 N.*** or ***O.*** to reserve pilots based upon a comparison between each pilot's days-of-availability and the length of the rotation.

285. "Within least disruption groupings" means an order of assigning open time to reserve pilots for whom such assignment would extend into their regular line and conflict with a rotation(s). Such pilots will be sequenced for assignment by least number of rotation days to be dropped.

286. "Within least intrusion groupings" means an order of assigning open time to reserve pilots for whom such assignment would extend into their regular line days-off, but would not extend into a rotation(s). Such pilots will be sequenced for assignment by least number of days interrupted.

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[2] ***Section 2 A. X.*** (new) added by LOA #14.
[3] ***Section 2 A. X.*** (new) added by LOA #14.
[4] ***Section 2 A. X.*** (new) added by LOA #14.

287. "X-day" means a 24-hour duty-free period at a pilot's base, on a reserve line.
288. "Year" means a calendar year.
289. "Yellow slip" means a request by a reserve pilot to:
    a. become first in sequence for assignment:
        1) to a specific rotation(s) (in seniority order within RUO among pilots submitting yellow slips for such assignment), or
        2) on a specific date(s) (in seniority order within RUO among pilots submitting yellow slips for such assignment),
    b. become first in sequence for conversion to short call at a specific time(s) and/or on a specific date(s) under ***Section 23 S. 2. c. Note two***, or
    c. be awarded up to two additional on-call days.

B. Acronyms

1. "ACARS" – Automated Communication and Reporting System
2. "AE" - Advance Entitlement.
3. "ALPA" – Air Line Pilots Association, International
4. "ALV" - Average Line Value
5. "AME" - Aviation Medical Examiner
6. "AQP" - Advanced Qualification Program.
7. "APD" – Authorized Personal Drop or Aircrew Program Designee
8. "ATP" – Airline Transport Pilot
9. "CME" – Company Medical Examiner
10. "COBRA" - Consolidated Omnibus Budget Reconciliation Act
11. "COMAT" – Company Material
12. "CROC" – Credited Reserve On-Call Day
13. "CQ" - Continuing Qualification Training
14. "CVR" - Cockpit Voice Recorder
15. "D&S Plan" – Delta Pilots Disability and Survivorship Plan
16. "DBMS" – Data Base Management System
17. "DHS" – Director of Health Services
18. "DPA" – Duty Period Average
19. "DPAC" – Delta Pilots Assistance Committee
20. "DPMP" – Delta Pilots Medical Plan
21. "FAA" –Federal Aviation Administration
22. "FAM" – Flight Advisory Message
23. "FAR" - Federal Aviation Regulation
24. "FCF" – Functional Check Flight
25. "FICA" - Federal Insurance Contributions Act
26. "FOQA" - Flight Operations Quality Assurance
27. "FSA" - Flexible Spending Account
28. "FTD" – Flight Training Device
29. "GS" - Green Slip
30. "GSWC" - Green Slip With Conflict
31. "HMO" - Health Maintenance Organization
32. "IA" – Inverse Assignment

33. "IAWC" – Inverse Assignment With Conflict
34. "IOE" - Initial Operating Experience
35. "IROPS" – Irregular Operations
36. "IRS" – Internal Revenue Service
37. "JSA" – Jump Seat Authority
38. "LCA" – Line Check Airman
39. "LCP" – Line Check Pilot
40. "LCW" – Line Construction Window
41. "LOE" – Line Operational Evaluation
42. "LTD" - Long Term Disability
43. "MD" – Mandatory Displacement
44. "MEC" – Master Executive Council
45. "MLOA" – Military Leave of Absence
46. "MPPP" - Delta Pilots Money Purchase Pension Plan
47. "MRO" - Medical Review Officer
48. "NME" - Neutral Medical Examiner
49. "NSLI" – Non-Seniority List Instructor
50. "NTSB" – National Transportation Safety Board
51. "OE" - Operating Experience
52. "OSS" – Operations Support System
53. "PBS" - Preferential Bidding System
54. "PCP" – Proficiency Check Pilot
55. "PCS" – Pilot Change Schedule
56. "PD" – Personal Drop
57. "PDS" – Personal Drop Sick
58. "PME" – Pilot Medical Examiner
59. "PMX" - Plan Medical Examiner
60. "PS" – Positive Space
61. "PTIX" – Pre-Tax Income
62. "PWA" – Pilot Working Agreement
63. "QPD" – Qualified Personal Drop
64. "RAW" – Reserve Assignment Weighting
65. "RUO" – Reserve Utilization Order
66. "SAQ" - Special Airport Qualification
67. "SLI" – Seniority List Instructor
68. "SPC" – Strategic Planning Committee
69. "SVP" – Senior Vice President
70. "TLV" - Targeted Line Value
71. "VD" – Voluntary Displacement
72. "VF" – Verification Flight
73. "VPN" – Virtual Private Network
74. "VRU" – Voice Response Unit
75. "WOCL" – Window of Circadian Low
76. "XCM" – Extra Crew Member

SECTION 3

COMPENSATION

A. Definitions

1. "Annual compensation" for purposes of the profit sharing plan, means an employee's gross earnings during the profit sharing plan year, including any sick and vacation pay (whether paid by the Company or from a disability and survivor trust), but excluding: a) expense reimbursements, b) expense allowances, c) income required to be imputed to the employee for any reason pursuant to federal, state or local law, d) profit sharing awards, e) earnings from any other incentive compensation program, f) Company contributions to a retirement plan, g) disability payments, h) income from the grant, vesting, exercise or sale of Delta stock or Delta stock options, i) income relating to, or resulting from, bankruptcy claims, notes, or other securities, j) medical plan payments and k) severance payments. In addition, annual compensation for the purposes of the profit sharing plan includes pilot furlough pay.
2. "Block time" means the time beginning when an aircraft first moves for the purpose of flight or repositioning and ending when the aircraft comes to a stop at the next destination or at the point of departure.
3. "Composite hourly rate" means the basic hourly rate of pay set forth in the pay tables of ***Section 3*** for each aircraft model, status and longevity step, computed with the traditional factors of speed, mileage, and gross weight taken into account.
4. "Domestic operation" means a flight segment to and from an airport, or between airports, located inside the contiguous 48 states of the United States, or a flight segment between an airport located in the Mainland United States and either Alaska or Canada.
5. "Entry level pilot" means a pilot who has not completed his initial OE at the Company.
6. "Flight time" means:
   a. actual block time on a functional check flight and a verification flight segment(s), and
   b. for all other flying, the greater of actual or scheduled block time on a flight segment(s).
7. "International operation" means a flight segment to or from an airport, or between airports, located outside the contiguous 48 states of the United States. Exception: A flight segment between an airport located in the Mainland United States and either Canada or Alaska will not be considered an international operation.
8. "International pay" means an hourly pay premium paid to a pilot for flight time flown in an international operation.

IN WITNESS WHEREOF, the parties hereto have signed this PWA this __th day of ____ 2012.

FOR THE COMPANY	FOR THE ASSOCIATION
_____	_____
Richard H. Anderson Chief Executive Officer	Captain Donald L. Moak President
_____	_____
Edward H. Bastian President	Captain Timothy S. O'Malley Chairman, Delta MEC
_____	
Stephen E. Gorman Executive Vice President & Chief Operating Officer	
_____	
Michael H. Campbell Executive Vice President – Human Resources & Labor Relations	
WITNESS:	WITNESS:
_____	_____
Captain Stephen M. Dickson Senior Vice President – Flight Operations	First Officer Parrish Olmstead Chairman – MEC Negotiating Committee
_____	_____
Robert L. Kight Vice President – Global HR Services & Labor Relations	First Officer Matthew Coons MEC Negotiating Committee
_____	_____
Brendan M. Branon Director – Labor Relations	First Officer Heiko Kallenbach MEC Negotiating Committee

_____	_____
Tim Hennie-Roed Director – Pilot Crew Resources & Scheduling	Captain Daniel J. Vician MEC Negotiating Committee

EXHIBIT 49

Tentative Agreement

September 17, 2009

by and between
Southwest Airlines Co. and the
Southwest Airlines Pilots' Association

FOR THE PERIOD
SEPTEMBER 1, 2006
THROUGH
AUGUST 31, 2011

Table of Contents

SECTION 22: REDUCTION IN FORCE, FURLOUGH AND RECALL

A. FURLOUGH

1. Except as provided in Section 22.A.2.b. of this Agreement, if the Company determines it is necessary to reduce the number of active pilots, the Company shall furlough pilots in reverse order of system seniority as listed on the Master Pilot Seniority List. All pilots holding a seniority number at the time of furlough shall be subject to the provisions of this Section regardless of their employment status at that time (e.g., active flying service, leave of absence, disability, probationary pilots).

2. Reductions in the number of pilots shall be accomplished as follows:

   a. A pilot shall receive at least thirty (30) calendar days notice with a copy to the Association prior to the effective date of any furlough. In the event he receives less than thirty (30) days notice, he shall be pay protected for thirty (30) days in lieu of that notice.

   b. Prior to the issuance of furlough notices, the Company may offer voluntary furloughs. Voluntary furloughs shall be granted in order of system seniority. The Company shall make its best effort to provide pilots at least thirty (30) calendar days notice of the offer of voluntary furloughs, with a copy to the Association.

3. A pilot who is on furlough shall file with the Company his current mailing address to be used in the event of recall. A pilot shall advise that Company department in writing of any change to his address.

4. A furloughed pilot shall retain all longevity and seniority accrued prior to furlough and shall continue to accrue longevity for a period of three (3) years. A furloughed pilot shall retain and continue to accrue seniority for a period of seven (7) continuous years.

5. A furloughed pilot shall retain his sick and OJI banks.

6. A furloughed pilot shall be compensated for any earned and accrued vacation that is unused as of the date of furlough.

7. The continuation of a pilot's benefits beyond his furlough date shall be governed by applicable state or federal laws except that a pilot shall continue to be eligible for Company-related insurance programs for a period of four (4) months. After this time, the pilot will be allowed to pay premiums at the applicable COBRA rate for a period of up to eighteen (18) additional months.

8. The Company shall notify the Association in writing if it anticipates a furlough or a recall. Upon written request, the Company shall meet and consult with the Association concerning possible adjustments to provisions of this Agreement that may avoid or mitigate the effects of a furlough.

9. A furloughed pilot shall continue to be eligible for Company jumpseat privileges, as provided in Section 2.K. of this Agreement, for twenty-four (24) months, subject to TSA approval. A

furloughed pilot will continue to have access to SWA Life, and CWA for eighteen (18) months. Company job postings are and will be available on SWALife. A furloughed pilot may coordinate with his last flight manager if he desires to apply for any Company positions.

10. A furloughed pilot will retain space available pass privileges on the Company route system for a period of twenty-four (24) months.

11. Recall shall be offered to all pilots on furlough prior to the employment of a new hire pilot.

12. The Company shall not schedule in excess of the contractual work day limits while any pilot is on furlough.

B. RECALL

1. Pilots, including pilots who have not completed their probationary period, shall be recalled from furlough in order of system seniority.

2. Furloughed pilots shall be notified of recall in writing with a copy sent to the Association. The notice shall allow the pilot at least thirty (30) days to report for duty. The pilot shall respond in writing within fourteen (14) calendar days following his receipt of the recall notice, and state whether he will accept recall.

3. A pilot recalled from furlough shall be returned to the payroll on the day he resumes active employment. His TFP rate shall be the TFP rate for the crew position to which he has been recalled.

4. If a recalled pilot is unable to return to active flying service due to medical reasons, the following shall apply:

   a. If the pilot was on disability at the time of furlough, his eligibility for disability benefits shall be governed by Section 14 of this Agreement.

   b. If the pilot was on sick leave at the time of furlough he shall not be entitled to sick leave until after he has returned to an active pay status; provided, however that if the pilot would otherwise be entitled to sick leave based on the same injury or illness that caused him to be on sick leave at the time of furlough, he may re-enter sick leave upon recall.

   c. If the pilot was not on sick leave at the time of furlough, he shall not be entitled to sick leave until after he has returned to an active pay status.

   d. If the pilot does not qualify for sick leave or disability, he shall be placed in a medical leave of absence.

   e. For purposes of Section 3.B.4.f. of this Agreement, a pilot shall be considered as having returned to a flying position.

5. A pilot may decline recall and remain on furlough if a junior pilot remains on furlough; provided, however, a pilot may not decline a recall if the Company has sent notice of recall

to all furloughed pilots, and the pilot has not requested and been granted a leave of absence in accordance with Section 12 of this Agreement.

6. Even if no junior pilot remains on furlough, a pilot may decline recall and remain on furlough for the duration of any individual contract of employment, not to exceed twenty-four (24) months, to which he is a party at the time of his recall. The pilot shall provide the Company a copy of his contract of employment.

7. A pilot's election to decline recall and remain on furlough in accordance with Section 22.B.4. or B.5. shall not extend the period of seven (7) years referred to in Section 22.A.4. of this Agreement.

8. A pilot who is recalled from furlough shall be guaranteed six (6) bid periods of employment as an active pilot, or in lieu thereof, six (6) bid periods worth of pay at ninety-five (95) TFP per four (4) week bid period.

C. INCENTIVE PLAN

The Company may, at its option, elect to avoid or mitigate a furlough by offering pilots or a specific group of pilots (using age or seniority, unless the Association consents to an alternate selection criteria) voluntary early retirement and/or severance packages. If made to a specific group of pilots, any offer shall be made on a uniform and non-discriminatory basis. The Company shall notify, meet and consult with the Association prior to making any offer pursuant to this paragraph.

D. NON-FLYING EMPLOYMENT OPPORTUNITIES

A pilot to whom a furlough notice has been issued may compete for available non-flying employment with the Company for which he is qualified for a period of ninety (90) days following the effective date of his furlough or until expiration of the period, if any, during which the pilot is entitled to receive furlough pay, whichever is later. If a pilot is offered and accepts non-flying employment, his pay, working conditions and benefits, including any relocation benefits, shall be determined by Company policies pertinent to that position.

E. FURLOUGH PAY

1. Each time a pilot is furloughed, he shall receive furlough pay based on his longevity as a pilot, in accordance with the table below. The TFP rate of furlough pay shall be the rate applicable to the pilot's crew status on the day prior to the effective date of his furlough. For purposes of this paragraph, bid period compensation is deemed to be ninety-five (95) TFP and a bid period is deemed to be four (4) weeks. Furlough pay shall be paid to a pilot as provided in Section 4, commencing with the bid period immediately following a pilot's furlough.

LONGEVITY AS PILOT FURLOUGH PAY	BID PERIODS
Less than 1 year	0.0
1 year or more, but less than 3 years	1.0
3 years or more, but less than 4 years	1.5
4 years or more, but less than 5 years	2.0
5 years or more, but less than 6 years	2.5
6 years or more, but less than 7 years	3.0
7 years or more, but less than 10 years	3.5
10 years or more	4.5

2. A furloughed pilot may elect to reduce the dollar amount of the payments of the furlough pay to which he is entitled by fifty percent (50%). In this event, the number of bid periods during which the pilot is entitled to receive furlough pay shall be doubled. Any election of this option shall be made prior to the effective date of furlough and may not be modified after the commencement of the furlough.

3. If a pilot receiving furlough pay is recalled, his furlough pay shall terminate on the date he resumes active employment. However, if the pilot has elected reduced payments in accordance with Section 22. E.2., he shall receive forty-seven and one-half (47.5) TFP of furlough pay per bid period, on a pro-rated basis, if applicable, for the period he was on furlough, not to exceed the maximum furlough pay to which the pilot is entitled pursuant to Section 22. E.1. of this Agreement.

4. If a furloughed pilot is on leave of absence on the effective date of furlough, his furlough pay, if any, shall be based on his scheduled or actual return from leave of absence, whichever is later. His furlough pay shall be reduced by a prorated amount for each day he was on leave of absence (or scheduled to be on leave of absence) after the effective date of the furlough.

5. If a furloughed pilot is offered and accepts non-flying employment with the Company, the total furlough pay to which the pilot is entitled shall be reduced by the compensation he received for his non-flying employment during the bid period(s) with respect to which the pilot is entitled to furlough pay, as provided in Section 22. E.1.

6. A furloughed pilot shall be issued a furlough identification card containing the pilot's name and date of furlough. The issuance of a furlough ID card shall not entitle furloughed pilots to benefits any greater than those specifically provided for such pilots under the terms of this Agreement.

SECTION 26: TERM OF AGREEMENT

Subject to an implementation schedule to be agreed upon by the parties, this Agreement shall be effective September 1, 2006 through August 31, 2011, and from year to year thereafter, unless either party gives written notice of its desire to modify the Agreement at least sixty (60) days prior to August 31 of each year beginning August 31, 2011.

For Southwest Airlines Co.

For Southwest Airlines Pilots' Association

EXHIBIT 50

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(SBN 108006)
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Attorneys for Plaintiffs AMERICAN AIRLINES FLOW-THRU PILOTS COALITION, GREGORY R. CORDES, DRU MARQUARDT, DOUG POULTON, STEPHAN ROBSON, and PHILIP VALENTE III on behalf of themselves and all others similarly situated

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

AMERICAN AIRLINES FLOW-THRU PILOTS COALITION, GREGORY R. CORDES, DRU MARQUARDT, DOUG POULTON, STEPHAN ROBSON , and PHILIP VALENTE III, on behalf of themselves and all others similarly situated, Plaintiffs, vs. ALLIED PILOTS ASSOCIATION and AMERICAN AIRLINES, INC., Defendants.	Case No.: 3:15-cv-03125 RS PLAINTIFFS' INITIAL DISCLOSURES UNDER RULE 26(a)

Plaintiffs AMERICAN AIRLINES FLOW-THRU PILOTS COALITION, GREGORY R. CORDES, DRU MARQUARDT, DOUG POULTON, STEPHAN ROBSON , and PHILIP VALENTE III make the following initial disclosures pursuant to Rule 26(a) of the Federal Rules of Civil Procedure.

A. PERSONS LIKELY TO HAVE DISCOVERABLE INFORMATION PLAINTIFFS MAY USE TO SUPPORT THEIR CLAIMS AND THE GENERAL SUBJECT OF THAT INFORMATION.

In identifying persons who are believed to have knowledge of discoverable information and the subjects of that information, plaintiffs are providing this information based on present knowledge or belief, without prejudice to the identification or use of other persons or information on other subjects, including matters learned through formal discovery or otherwise. The description of the general subject of the information is not intended to be a comprehensive or complete statement of the persons' knowledge or the information they may possess. In addition, individuals identified on contracts, agreements, letters or other documents produced in this matter would have knowledge of the circumstances pertaining to such documents. Plaintiffs direct defendants to those documents for the identity of such persons, in addition to the persons listed below.

1. Agents of defendant ALLIED PILOTS ASSOCIATION (APA), including:

A. Captain Mark Stephens, Chairman Seniority List Integration Committee. Knowledge of the Seniority List Integration (SLI) process, APA's positions as to placement on pilots on an integrated list (including placement of Flow-Through Pilots ("FTPs"), stipulations to exclude regional airline service as a longevity factor, FTPs' requests for information and participation in the SLI arbitration and APA's response to such requests.

B. Persons involved in negotiation of the recent collective bargaining agreements, including Captain Keith Wilson (APA President), Norman G. Miller, Negotiating Committee Chairman, Charles Hairston, Director Pilot Contract Negotiations, David C. Brown, Dean Colello, Carrie Giles, Ken Homes, Brian Smith, Jeff Thurstin, Negotiating Committee Members.

C. Attorneys for APA (Edgar James, James & Hoffman 1101 17th Street NW, Suite 510, Washington, D.C. 20036, (202) 496-0500; Wesley Kennedy, Allison, Slutsky & Kennedy, P.C., 230 West Monroe Street, Suite 2600, Chicago, IL 60606; (312) 364-9400. Response to claims, requests (including requests for information) and other matters from FTPs.

D. Attorneys for APA (David P. Dean, Emile S. Kraft, James & Hoffman, 1101 17th Street NW, Suite 510, Washington, D.C. 20036, (202) 496-0500) and other persons from APA (Keith Bounds, Doug Gabel, Rusty McDaniels). Knowledge of arbitrations involving the FTPs under the Flow-Through Agreement (FTA), in particular the events on March 30, 2010 at the hearing in FLO-0108, and discrimination against the FTPs by APA.

2. Agents of defendant AMERICAN AIRLINES, INC. (AAL), including:

A. Scott Kirby, AAL President; persons on the AAL bargaining committee (names unknown). Knowledge of negotiations for joint collective bargaining agreements, including 2015 agreements, regarding length of service credits and APA's proposals as to such credits and concerns of FTPs as to discrimination by APA.

B. Persons involved in negotiation of the recent collective bargaining agreements, including Paul Jones, Sr. VP & General Counsel, Beth Holdren, Managing Director, Todd Jewett, Sr. Manager, Keith Austin, Manage, Labor Relations (Flight), James Eaton, Sr. Manage – Pilot Negotiations, Lyle Hogg, VP Flight Operations, U.S. Airways, Inc.

C. Attorneys for AAL, including Harry A. Rissetto, Morgan, Lewis & Bockius, L.L.P., 1111 Pennsylvania Avenue NW, Washington, D.C. 20004, (202) 739-3000; Michelle A. Peak, American Airlines, Inc., 4333 Amon Carter Boulevard, MD 5675, Fort Worth, Texas 76155, (817) 963-2730 and other persons from AAL (Jim Anderson, Mark Burdette, Robert C. Stow, Sr.). Knowledge of arbitrations involving the FTPs under the Flow-Through Agreement (FTA), in particular the events on March 30, 2010 at the hearing in FLO-0108, and discrimination against the FTPs by APA.

3. Agents of American Eagle Airlines, including:

A. Matt Bartle, Counsel, Employee Relations, American Eagle Airlines, Inc., 4333 Amon Carter Boulevard, MD 5485, Fort Worth, Texas 76155; Jack Gallagher, Paul, Hastings, Janofsky & Walker, 875 15th Street NW, Washington, D.C. 20005, (202) 551-1712. These individuals would have knowledge of arbitrations involving the FTPs under the Flow-Through Agreement (FTA), in particular the events on March 30, 2010 at the hearing in FLO-0108, and discrimination against the FTPs by APA.

4. Agents of Air Line Pilots Association (ALPA), including:

A. Wayne M. Klocke, Senior Contract Administrator, Arthur Luby, attorney, Jim Lobsenz, attorney; 150 Westpark Way # 130, Euless, TX 76040, (815) 685-7474; 1625 Massachusetts Ave NW, Washington, DC 20036 , (703) 689-2270 . These individuals would have knowledge of arbitrations involving the FTPs under the Flow-Through Agreement (FTA), in particular the events on March 30, 2010 at the hearing in FLO-0108, and discrimination against the FTPs by APA.

5. Gregory R. Cordes, plaintiff. Knowledge of disparate pay and benefits received by FTPs, communications with APA and AAL regarding discrimination in pay and benefits and issues in SLI process. Operation of Flow-

Through Agreement and movement of pilots from Eagle to AAL. Knowledge of arbitrations under the Flow-Through Agreement.

6. Gregory R. Cordes, Dru Marquardt, Doug Poulton, Stephan Robson and Philip Valente III, plaintiffs. Knowledge of movement of pilots to AAL under the Flow-Through Agreement, differences and disparities in pay and benefits received by FTPs.

7. Gavin Mackenzie. 275 Williams Court, Mansfield, TX 76063; 817/473-0193. Knowledge of Flow-Through Agreement, its negotiation and operation. Knowledge of arbitrations under the Flow-Through Agreement.

8. Cathy McCann, former Vice President, People Department, American Eagle, Office of Mediation Services, National Mediation Board, 1301 K Street, NW, Suite 250 East , Washington, DC 20005-7011; 202-692-5028 . Knowledge of Flow-Through Agreement issues.

9. David Holtzman, Counsel, ALPA, 1625 Massachusetts Ave NW, Washington, DC 20036 , (703) 689-2270. Believed to have knowledge of favoritism of TWA pilots or discrimination against FTPs.

10. Members of the proposed class would have knowledge of the effect of APA's actions on them.

B. INITIAL IDENTIFICATION OF DOCUMENTS.

In identifying documents and persons who have possession of them, plaintiffs are only indicating documents of which they are presently aware and without prejudice to the use of documents later discovered through formal discovery or otherwise.

1. Documents contained on Disk labeled "Plaintiffs' Initial Disclosure of Documents." This disk will be provided to defendants by mail.

2. Flow-Through Agreement and Arbitration decisions under the Flow-Through Agreement, including Case Nos. FLO-0903, FLO-0108, FLO-0107.

3. National Mediation Board decisions, including 29 NMB No. 36; 23 NMB No. 17; 22 NMB No. 85; PEB Report No. 233(1997). The underlying testimony or submissions in these cases is also believed to contain documents that plaintiffs may use to support their claims.

4. FCC Letter, September 20,2011, to Carl B. Nelson, Associate General Counsel, American Airlines, Inc.

5. Submissions to the arbitration board in the pending proceedings involving seniority list integration arising from the acquisition by AAL of US Airways.

C. INITIAL COMPUTATION OF DAMAGES.

This is an initial computation. It is without prejudice to revision at any time, including revision based on additional evidence that may be obtained in discovery or through investigation.

Economic damages, initial calculations. Plaintiffs have calculated the loss of service credit (LOS) damages for 165 senior FTPs who received some service credits and 190 junior FTPs that received no service credits. These calculations are based on a comparison of the pay step achieved by other pilots (including TWA Staplees) with the pay steps achieved by comparable FTPs. In addition to pay loss, an additional 16% is added to reflect the reduction in retirement benefits resulting from the lower pay for FTPs. These calculations result in the following, projected to 12/31/2015 and for the time necessary to reach the 12 year pay maximum pay level:

Senior 165 FTPs		# Pilots	Total Damage
Total LOS pay damage for Senior FTP	**$121,661**	165	**$20,074,032**
Total Damage Through 12/31/15	**$96,431**	165	**$15,911,082**

Junior 190 FTPs		# Pilots	Total Damage
Total LOS pay damage for Junior FTP	**$299,851**	190	**$56,971,668**
Total Damage Through 12/31/15	**$184,892**	190	**$35,129,556**

Total Damage Until Pilots Reach 12y pay parity	**$77,045,700**
Total Damage through 12/31/15	**$51,040,638**

Attached as Exhibit A is a spreadsheet supporting the above calculations.

Plaintiffs believe that the FTPs would be entitled to additional economic damages for loss of A Fund (pension) benefits (not included in above) and certain Equity Distribution payouts that were negotiated for and given to other AAL pilots. Plaintiffs have not yet calculated these amounts, but generally plaintiffs would seek the same benefits and amounts as received by TWA Staplees. Damages arising from loss of seniority position arising from the SLI process are not included as that process has not concluded.

Non-economic damages. Plaintiffs are entitled to damages for emotional distress resulting from the discrimination against them. These damages are not subject to precise calculation. Plaintiffs believe that non-economic damages equal to 20% of economic damages would be a fair estimate of these damages.

Equitable relief. *Against APA*: A declaration that APA has breached its duty of fair representation and discriminated against the FTPs, including discrimination in negotiating LOS credits. An injunction directing APA to make up any monetary loss suffered by FTPs in the future arising from APA's breach of duty, including losses arising from the FTPs failure to receive LOS credits. A declaration that APA has breached its duty of fair representation owed to the FTPs in connection with the SLI process. An injunction directing APA to withdraw from the stipulation that service as American Eagle will not count for purposes of longevity in developing an integrated seniority list, an injunction directing APA to

make up any monetary loss suffered by FTPs in the future arising from APA's breach of duty affecting the FTPs placement on the integrated seniority list and an injunction prohibiting APA from using any integrated seniority list arising from the SLI process. *Against American Airlines*: An injunction prohibiting AAL from using any integrated seniority list arising from the SLI process.

Attorney fees. Plaintiffs will seek attorney fees under the common benefit and common fund theories. *Cruz v. Local Union No. 3,* 34 F.3d 1148l, 1158 (2nd Cir. 1994); *Sprague v. Ticonic National Bank*, 307 U.S. 161, 166-167 (1939).

Dated: September 23, 2015. KATZENBACH LAW OFFICES

By /s Christopher W. Katzenbach

Christopher W. Katzenbach
Attorneys for Plaintiffs AMERICAN AIRLINES FLOW-THRU PILOTS COALITION, GREGORY R. CORDES, DRU MARQUARDT, DOUG POULTON, STEPHAN ROBSON and PHILIP VALENTE III

EXHIBIT A

Year		2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
165 Senior FTP pilots that received some LOS Credit														
LOS Pay Step		3rd	4th	5th	6th	7th	8th	9th	10th	11th				
12th year Group 3 pay progression		121.98	121.98	121.98	121.98	165.32	170.27	175.38	180.64	186.06				
3rd year Group 3 pay progression		100.36	102.86	105.38	107.93	153.58	161.88	168.45	176.38	183.89				
Difference in rates		21.62	19.12	16.60	14.05	11.74	8.39	6.93	4.26	2.17				
Annual Difference in rates 1000 hours		21620.00	19120.00	16600.00	14050.00	11740.00	8390.00	6930.00	4260.00	2170.00				
Plus 16% Retirement		25079.20	22179.20	19256.00	16298.00	13618.40	9732.40	8038.80	4941.60	2517.20				
		# Pilots	Ttl Damage											
Total LOS pay damage for Senior FTP	**$121,661**	165	**$20,074,032**											
Total Damage Through 12/31/15	**$96,431**	165	**$15,911,082**											
190 Junior FTP pilots that received no LOS Credit														
LOS Pay Step				1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th
12th year Group 3 pay progression				121.98	121.98	165.32	170.27	175.38	180.64	186.06	191.64	197.39	203.31	209.41
1st year Group 3 pay progression				35.37	82.96	131.56	146.58	154.68	163.62	172.85	182.20	189.59	198.52	206.97
Difference in rates				86.61	39.02	33.76	23.69	20.70	17.02	13.21	9.45	7.80	4.80	2.44
Annual Difference in rates 1000 hours				86610.00	39020.00	33760.00	23690.00	20700.00	17020.00	13210.00	9445.10	7797.62	4797.07	2442.35
Plus 16% Retirement				100467.60	45263.20	39161.60	27480.40	24012.00	19743.20	15323.60	10956.32	9045.23	5564.60	2833.13
		# Pilots	Ttl Damage											
Total LOS pay damage for Junior FTP	$299,851	190	**$56,971,668**											
Total Damage Through 12/31/15	**$184,892**	190	**$35,129,556**											
Ttl Damage Until Pilots Reach 12y pay parity	**$77,045,700**													
Total Damage through 12/31/15	**$51,040,638**													
Note: These figures do not include damages to A Fund (pension) and Equity Distribution payouts														

EXHIBIT 51

PREHEARING MEETING BEFORE

DANA E. EISCHEN, IRA F. JAFFE, AND M. DAVID VAUGHN

- x
In the matter of the seniority :
integration involving the Pilots of :
:
NEW AMERICAN AIRLINES :
- x

Tuesday, June 30, 2015

Washington, DC

VOLUME 2

The meeting in the above-entitled matter commenced on the 30th day of June, 2015, at 2:11 p.m., at the Grand Hyatt, 1000 H Street, Northwest, Washington, DC.

ON BEHALF OF THE ALLIED PILOTS ASSOCIATION:

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C O N T E N T S

DOCUMENTS INCLUDED IN RECORD:

ARBITRATOR EISCHEN: Ninety seconds being potentially insufficient, we'll take five minutes.

(A recess was taken.)

ARBITRATOR EISCHEN: We are on the record, gentlemen.

MR. KENNEDY: Thank you, Arbitrator Eischen and members of the Panel.

I join Bob and Danny in thanking you for your efforts over the past couple of days to help us all find the most useful and prudent path forward.

If you add up the arbitrators and the lawyers in the room and the pilots, I think there have been a lot of years of seniority integration procedure engaged in by the people in this room.

I think it's fair to say that none of us have ever seen anything remotely like where we are now. We are in uncharted waters, and we appreciate the Panel's guidance and assistance in finding the way forward.

And for the reasons that Danny expressed, I think we agree that you have the authority to -- you have the authority to address these questions,

subject to some commentary about Question 2.

On the first question, whether APA should engage -- and before I get there, let me make clear, our committee is charged with representing the interests of the premerger AA pilots.

They are the people that we are charged with representing, and, obviously, we are their advocate in this process.

Part of that is advocacy for the process. Part of it is we want a process that's going to produce a result that will stand up and can be defended most effectively and has the least chance of blowing up in everyone's faces while it's going on or when it's over.

And in that vein, I address the three questions.

The first question is whether APA should engage in best efforts to establish a new merger committee to represent legacy US Airways East pilots.

We believe the answer to that question is clearly yes.

Those of us who have been in the room the last couple of days are familiar with the major themes that are involved here. But, in brief, this process obviously arises under the McCaskill-Bond statute and the fair and equitable standard.

The Company has legal responsibility for assuring that that process is complied with. You, as the Arbitration Board, formed under the McCaskill-Bond statute, are similarly responsible for assuring that that process is carried out.

That fair and equitable standard protects the process and outcome, not for the institutions involved. It's for what are referred to as the covered employees in the statute.

So, ultimately, the interest in fairness and equity is an interest in the employees affected by this proceeding.

And in this proceeding, at the time the merger was announced, there were three distinct seniority lists with three -- in operation, with three distinct sets of pilots, the pre-merger AA pilots, the pre-merger US Airways East pilots, and

the pre-merger US Airways West pilots.

And those groups of employees are protected by or have rights and expectancies created by McCaskill-Bond.

Parallel to that, APA, as the single bargaining representative, now has a duty of fair representation to all of those pilots.

That is not a duty to these committees or to the USAPA Merger Committee or to USAPA. That is duty to the pilots that APA represents, and that's a consideration parallel to the McCaskill-Bond statute that has to be taken into account.

The issue in front of us and the problem in front of us is protecting that process in very difficult and extraordinary circumstances.

To establish a process, which to the extent -- to the maximum extent possible meets the standards of McCaskill-Bond and minimizes the opportunities for the process to be disrupted or reversed while it's going on or after its over so that, God forbid, we don't have to do this again.

Now, as I indicated, the Protocol

references three separate seniority lists in effect as of December 9, 2013. Nicolau Award or no Nicolau Award, Ninth Circuit decision on Friday or no Ninth Circuit decision on Friday, that was the reality on December 9, 2013.

Those separate seniority lists in operation created distinct interests, regardless of whether the Nicolau Award ultimately becomes the seniority lists that arranges the East and West pilots in this process.

Even if the seniority list -- even if the Nicolau Award becomes the seniority list, there may be different arguments on the equities for those two separate seniority lists.

And certainly, in the transition from two seniority lists that have been in operation for nine years to the application of the Nicolau Award to those pilots is going to create transition issues that have to be dealt with in the implementation of the -- in putting the award into effect, and in which those two groups have distinct interests.

So it's not -- so it's not enough to say,

well, if the Nicolau Award is in effect, both sides have to advocate for the Nicolau Award, and that's the end of the question.

APA has recognized from the outset of this process that there were two distinct sets of interests between the East and West pilots, and the Company took that position in the Addington litigation under the McCaskill-Bond Act.

And, therefore, both APA and the Company took pains in negotiating the Protocol to create a structure in which those distinct interests could be heard through their own committees.

And you can frame that under -- there's a lot of case law under the McCaskill-Bond -- not under the McCaskill-Bond Act, but there's a lot of C.A.B. case law, frankly, which can lead you to various different conclusions about who is or is not entitled under McCaskill-Bond for representation.

But in this case, APA and the Company recognized, in negotiating the protocol, that there were, in fact, distinct interests here.

And regardless of how you feel about the

USAPA Committee's behavior on Friday, and there are various ways you can characterize it, and I would probably agree with most or all of those, the East pilots that that committee represented are still covered employees under the McCaskill-Bond Act.

They're still represented by APA, and they still have the same distinct interests in the process and in the outcome that they had before the events of Friday and yesterday.

Addressing that is not a matter of rewarding bad behavior or countenancing what has happened.

Those somewhat emotional arguments divert from the real question, which is we are where we are. And given where we are, what's the prudent way to go forward in order to best insulate the process from challenge down the road?

And the Arbitration Board, in our view, should -- and all of us should be hesitant to proceed in a manner that we know with a moral certainty creates a likelihood that the process might well blow up over these issues down the road.

So that's our starting point.

Now, Bob understandably says we negotiated the Protocol; we should all abide by the Protocol, and that should be the end of the analysis.

Danny kind of indicated the reason why that doesn't fully answer the question. The Protocol didn't contemplate what happened Friday and today. There's nothing in the Protocol that gives us any direct guidance about what to do in this circumstance. And there is, in fact, a gap that has to be filled in at this point.

To put more of a point on it, how is it that the USAPA Committee got into this process?

The USAPA -- the USAPA Committee continued to have a role in this process, even though APA was the certified bargaining representative because APA, as the certified bargaining representative, agreed in the Protocol to keep that merger committee in existence.

That's Section 8.a of the Protocol.

And APA agreed not to interfere with the existing governance structure of that committee,

which everybody knew meant that they were taking direction from USAPA.

So in effect, APA delegated to that committee part of its representational responsibilities.

And the fact that -- now that delegate has apparently quit. APA now has 3,500 or so of its constituents who, through this circumstance, no longer are represented in this process.

If a union certified under the Railway Labor Act delegated its representational authority to another entity and said, You're our agent on this property; you go handle representation as happens under the Railway Labor Act, if that delegate terminated the relationship or went out of existence or dissolved leaving those employees without representation by the anticipated delegate, I don't know that it would fulfill the union's duty to those employees under the Railway Labor Act to say, you're SOL. The delegate we picked is gone.

The Union would have an obligation to find another structure in which to provide

representation, and that's where we find ourselves today.

And the same kind of analysis could exist under the McCaskill-Bond Act.

So prudence, from our point of view, dictates that APA be authorized and directed to try and get a new committee to designate to represent the East pilots.

And similarly, remember how the West -- how did the West committee get here?

The West committee got here because they have been arguing for an extended period of time that they could not rely on the existing representative to advocate for them, that it wouldn't be fair and it wouldn't be compliant with the duty of fair representation or the McCaskill-Bond process. And, therefore, they argued for separate representation in this process.

They didn't argue for pilot participation or electronic submissions or something short of full participation. They argued for full participation.

APA recognized that argument. And

although it maybe could have taken another course, was careful in negotiating the Protocol -- and the same is true for the Company -- to create a process which allowed the West pilots that opportunity for representation.

So there's a certain irony in the position being advanced at this point that, now that this circumstance has happened, there's no need to provide representation for the 3,500 East pilots in this process.

Bob posited a hypothetical in his argument a few minutes ago that, you know, if the Addington case had come out the other way and the West committee had suddenly withdrawn, we wouldn't be sitting here. I'm not sure that's true.

I think, probably, we would be sitting here having a similar conversation if that had happened.

So we're in uncharted waters, and these are very hard questions.

Do I know the answers? No. I don't think anybody here really knows the answers to the legal

questions that underlie this. But there's no question that the exposure is there for all of us here, but particularly for the Company and APA and the Panel.

It's obvious, and the risk is real, that there will be a challenge and a real substantial challenge if no effort is made at this point to assure that there is East pilots representation in the process.

And you -- you could take some comfort, if there wasn't some evidence of a propensity for litigiousness, but that's sadly not the case.

I mean, we -- you have -- you have Mr. Bradford's letter yesterday adding some confusion to the situation. It's not hard to imagine some other group of East pilots challenging the process if there's not full representation and trying to bang their way into the process.

Certainly, there would be a challenge afterwards.

Now, there was an observation sometime over the last couple of days that, Well, seniority

integrations always produce litigation, and that's just part of the game.

That is certainly the case.

There have been relatively few pilot seniority integrations that haven't been challenged on some basis. I'm not sure that's a reason to douse ourselves in gasoline and wait for somebody to light the match.

So I understand, as I said, the Company's concern to abide by the Protocol, which those of us who were involved in negotiating it, I understand that.

I understand the importance of the schedule and the deadlines to the Company. I was there when those deadlines were negotiated.

I understand the Company's frustration with the delay and I'm sure what they see as a continuation of years of delay and confusion and obstreperousness that they have been confronted with.

But, again, that's not the question. The question is how best to go forward.

And there's a certain irony in the Company's position, I have to say.

As I indicated in the off-the-record discussions yesterday, the end game in this process is really not the issuance of the award. It's the implementation of the integrated seniority list for use by the pilots and use by the Company in administering seniority.

The Company has filed a position statement in which it tells -- in which it has told us it doesn't know when it will get to that point of implementing the list.

So the Company is telling you today, Well, the deadlines are important. The deadlines are important to get the arbitration done and get the award. But we don't know when this would actually be put into effect.

In fact, the -- if there's -- in fact -- the gap between the award and implementation is, in fact, an open invitation for people to come in and challenge the result and try and prevent it from being implemented and to expand the opportunities

for people to come in and make claims that, Oh, wait. Well, this should be enjoined because it was done wrong, ought to give us an additional moment of pause.

In any event, I think -- and I'll get to this again in Question 3. I think this can be dealt with, with a delay that's manageable given the fact that we have already effectively lost one of the scheduled weeks, and we're going to have to schedule some more time anyway.

I believe that, on top of that, adding this element to the process will not substantially extend the process beyond where it's already likely to have be to extended.

There has been a suggestion of something short of full participation. Some kind of electronic submission by any USAir pilot or East pilot who wants to submit something. I don't think that's adequate to protect the process from challenge.

There have been cases where there has been such a process. The arbitration, with respect to

what's called Supp C, included pilot participation days that were similar to what's being suggested.

That didn't -- those pilots weren't presenting evidence. They didn't get -- they didn't have the right to cross-examine. They weren't subject to cross-examination. It clearly was not the same level of participation as having full participation.

And in that case, that pilot participation was in supplement to full representation by a committee -- by committees representing each constituent pilot group's interests.

So I don't think that pilots -- East pilots who would otherwise claim that they're being deprived of their right to representation under McCaskill-Bond would find that to be an adequate substitute.

I'm not sure that it's fair to other parties, such as us. If those individual East pilots are going to come in and present the position of the East pilots, do we get to cross-examine them? Do they have the same access to information that the

other committees do?

It's just -- we just don't think that that would be the same process.

And we don't think that that's the process contemplated under the McCaskill-Bond, which contemplates that if there's a group that has a separate set of legally cognizable interests, such as, in this case, being on a separate seniority list pre-merger, that -- if McCaskill-Bond means that they get representation, it means they get representation, it seems to me.

So I don't think -- I don't think -- however well intentioned or salutatory the pilot -- the pilot participation suggestion is, I don't think it meets the need.

So on question one, we think that prudence by the parties and by the Arbitration Board indicates that whatever desire we have to get this done fast and get this done on schedule doesn't override the need to conduct the process in a way that minimizes the exposure and risk that we're going to have to come back here and do it again.

So we think that the answer to Question 1 is yes. APA should make its best efforts to formulate an East committee.

If, as the first step of that process, that want to take Captain Bradford's letter and try and get some clarity as between USAPA and its merger committee as to whether that structure may still be willing to participate in the process, that's a perfectly appropriate exercise of APA's discretion.

But in any event, the proper course here is for APA to make its best efforts to convene a West and East committee.

The second question is whether that committee, if any, should be deemed bound by the Ninth Circuit's decision in Addington.

The answer is, we think is perhaps and probably. We do -- I mean, there is a legitimate question of the extent to which the Arbitration Board can really decide that question.

It's not necessarily up to the Board who is subject to the Ninth Circuit's order or not.

That's ultimately -- and any resulting

injunction. That's ultimately for the courts to decide.

We suppose that ultimately, to the extent that the Ninth Circuit process, which is obviously still playing itself out, and any resulting injunction, if the Ninth Circuit Panel decision survives and it extends to APA and any East Merger Committee that it designates, the answer is presumably yes, they're bound by the Ninth Circuit.

It's going to depend, in part, on exactly what the injunction says. Who does it apply to? What are its restrictions?

And we won't really know that until the mandate comes down from the Court of Appeals and the language of the injunction is finalized by Judge Silver and is known.

At the same time, we certainly understand APA's desire for guidance on this and the Company's desire to have the Arbitration Board's perimeter on whatever it is that happens here, that having it authorized by the Arbitration Board is certainly a belt or a suspender or a cummerbund or something.

And maybe if you take this action now, if you direct APA to go appoint a Merger -- find a Merger Committee, and that fact and that directive to APA is in front of Judge Silver when she formulates the injunction, maybe that will inform the terms of the injunction and help to make the injunction clearer as to how it will apply -- how it will apply to this process going forward.

So that's our position on Question 2, which may or may not be helpful.

Question 3 is what should the revised schedule for the ISL hearing be, including, without limitation, the schedule for establishing a new East Merger Committee.

If the answer to Question 1 is one (sic), APA obviously has to be given an appropriate opportunity to carry out its best efforts.

In a perfect world, we would want to know the outcome of the Addington process. Is there going to be a petition for rehearing?

What's going to happen to that petition for rehearing? When does the mandate come down?

What does the injunction say?

In a perfect world, it would wait until the end of that process.

This clearly is not necessarily a perfect world. But at the very least, APA needs to have an appropriate opportunity to carry out what it needs to do in connection with Question 1.

As I have said off the record, the issuance of the Panel decision on Friday requires the AAPSIC to sit back and reassess our position, which was formulated on the assumption that the status of the Nicolau Award, as between the East and West pilots, was not a -- it was undecided.

That Panel decision has obviously changed the playing field from that perspective and has changed the landscape in front of us. So we -- we need an opportunity to, frankly, recalibrate our position and our presentation in light of that.

As I have indicated off the record yesterday, we hereby recall our position statement in this matter, which attached our proposal. We recall our proposed exhibits. We are going to

reassess our position.

As a practical matter, none of this -- none of this, what I just -- our activities and APA's activities aren't going to happen by Monday, July 13.

So we don't see, in that posture, how useful -- how use can be made of those hearing days, even if you let the West committee go ahead. We don't know how to cross-examine their witnesses without knowing what our position is going to be.

If you don't have an East committee and there's going to be an East committee, it's hard to see how even the West committee could go forward in that posture.

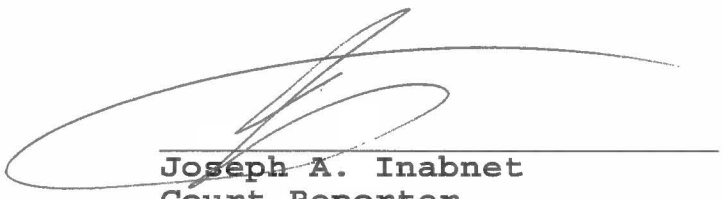
It's not pleasant for anybody, but I think it's the reality.

If needed, we can hold to the dates commencing September 29. We can proceed on those dates.

The Panel has suggested some dates subsequent to that, subsequent to the scheduled dates off the record.

CERTIFICATE OF REPORTER

I, Joseph A. Inabnet, do hereby certify that the transcript of the foregoing proceedings was taken by me in Stenotype and thereafter reduced to typewriting under my supervision; that said transcript is a true record of the proceedings; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.



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