

EXHIBIT A

STEPTOE & JOHNSON LLP

1330 Connecticut Ave., NW
Washington, DC 20036
Tel: (202) 429-3000
Facsimile: (202) 261-0658

JAMES & HOFFMAN, P.C.

1130 Connecticut Avenue, NW
Suite 950
Washington, D.C. 20036

Attorneys for the Allied Pilots Association

GUERRIERI, CLAYMAN, BARTOS & PARCELLI, P.C.

1900 M Street, N.W.
Washington, D.C. 20036
(202) 624-7400 (Phone)
(202) 624- 7420 (Facsimile)

Attorneys for Association of Professional Flight Attendants

Edward J. Gilmartin

General Counsel

Association of Flight Attendants-CWA

501 Third Street, N.W.
Washington, D.C. 20001

Attorney for Association of Flight Attendants-CWA

O'Donnell, Schwartz & Anderson, P.C.

1300 L Street, N.W., Suite 1200
Washington, DC 20005

David Rosen

General Counsel

Transport Workers Union of America

501 3rd Street, NW, 9th Floor
Washington, DC 20001

Lowenstein Sandler LLP

65 Livingston Avenue
Roseland, NJ 07068

Attorneys for Transport Workers Union of America

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA
450 Fifth Street, NW, Suite 8000
Washington DC 20530

STATE OF ARIZONA
1275 West Washington
Phoenix, AZ 85007

DISTRICT OF COLUMBIA
441 Fourth Street, NW, Suite 600 South
Washington, DC 20001

STATE OF FLORIDA
PL-01, The Capitol
Tallahassee, FL 32399

COMMONWEALTH OF PENNSYLVANIA
14th Floor, Strawberry Square
Harrisburg, PA 17120

STATE OF TENNESSEE
500 Charlotte Avenue
Nashville, TN 37202

STATE OF TEXAS
300 W. 15th Street, 7th Floor
Austin, TX 78701

and

Case No. 1:13-cv-01236-CKK

COMMONWEALTH OF VIRGINIA
900 East Main Street
Richmond, VA 23219

Plaintiffs,

v.

US AIRWAYS GROUP, INC.
111 W. Rio Salado Parkway
Tempe, AZ 85281

and

AMR CORPORATION
4333 Amon Carter Boulevard
Fort Worth, TX 76155

Defendants.

BRIEF AMICI CURIAE OF ALLIED PILOTS ASSOCIATION, ASSOCIATION OF PROFESSIONAL FLIGHT ATTENDANTS, THE ASSOCIATION OF FLIGHT ATTENDANTS-CWA AND TRANSPORT WORKERS UNION OF AMERICA IN SUPPORT OF DEFENDANT'S MOTION TO SET TRIAL DATE

The Allied Pilots Association, the Association of Professional Flight Attendants, the Association of Flight Attendants-CWA, and the Transport Workers Union of America – unions made up of American Airline employees whose careers depend on the competitive success of American Airlines and its affiliates (collectively “American”) – respectfully submit this brief *amici curiae* to express their strong support for Defendants’ Motion to Set Trial Date [ECF No. 11]. In light of the uncertainty cast upon the airline industry as a result of Plaintiffs’ complaint, it is critical to the Defendants, the *amici curiae*, the industry and the general traveling public that this Court address the merits of Plaintiffs’ claims in an expedited manner.

The United States Department of Justice (“DOJ”) brought this injunction action without warning on the eve of the confirmation of a Plan of Reorganization predicated on a merger

between American and US Airways Group, Inc. (“US Airways”). Anticipating a closing of the merger in early September, American and its unions had already made substantial preparations for the merger, making significant operational decisions. But as a result of this suit, American suddenly finds itself in competitive limbo. American’s market share, which has declined precipitously since DOJ approved prior mergers that created Delta Airlines (“Delta”) and United Airlines (“United”) in their current form, is likely to erode further while the uncertainty of Plaintiffs’ Complaint hangs over the airline and its customers.

At the heart of this dispute is the question of whether American can operate with a network that will compete effectively or whether it will be forced to adopt a stand-alone strategy as a second-tier carrier left to pick over the scraps left behind by its much larger competitors. As explained briefly below, American’s recent experience demonstrates that a stand-alone strategy is unlikely to succeed. But whether or not it can succeed, it is certain that American is an even less effective competitor so long as it must operate without a long-term strategy. And American cannot adopt a long-term strategy until it knows whether or not it is going to be permitted to acquire a network to compete with United and Delta. The damage to competition in the airline industry as a result of a less competitive American must be minimized by a decision on the merits on as prompt a schedule as possible.

I. THE AMICUS PARTIES

The Allied Pilots Association (“APA”), an unincorporated association, is a labor union founded in 1963 by a group of American Airlines pilots. The APA is the largest independent pilots’ union in the world. The APA is the certified collective bargaining agent for approximately 10,036 American pilots, 100% of its mainline pilots and approximately 76% of its total pilots.

The Association of Professional Flight Attendants (“APFA”) is the certified bargaining representative of approximately 16,000 Flight Attendants employed by American Airlines. Today, this workforce is about 36% smaller than it was in May 2002, when almost 25,000 Flight Attendants worked for American.

The Association of Flight Attendants-CWA (“AFA”), is the certified collective bargaining representative for the approximately 1,800 flight attendants employed by American Eagle Airlines, Inc., the wholly-owned subsidiary of American Airlines. AFA is also the certified collective bargaining representative for the approximately 8,000 flight attendants employed by US Airways, Inc. AFA has a direct financial interest in the successful re-organization of American Airlines and its emergence from bankruptcy protection through the consummation of its agreed-to merger with US Airways

The Transport Workers Union of America (“TWU”) represents over 200,000 employees in the airline industry, railroad industry, and transit sector, as well as employees in other industries. In the airline industry TWU represents employees at American Airlines, Southwest Airlines and a number of other carriers. TWU currently represents about 23,000 employees at American Airlines including aircraft mechanics (and related employees), fleet service employees (baggage handlers and related employees), Materials Logistics Specialists, Flight Dispatchers, Simulator Pilot Instructors, Maintenance Control Technicians and Flight Simulator Technicians. TWU represents Flight Dispatchers on US Airways. TWU also represents Mechanics & Related, Fleet Service, Dispatchers, and Ground School Instructors at American Eagle. In 2000, TWU represented about 35,000 American Airlines employees. Since 2000, the number of TWU represented employees at American has shrunk to 23,000.

The careers of the American employees represented by *amici* depend heavily on the competitive success of American and the airline industry as a whole. For instance, because of industry-wide seniority rules, pilots and Flight Attendants tend to stay with one carrier for their entire careers. The *average* tenure of the current APA pilots is almost 18 years. On average Flight Attendants have worked for American for more than 20 years. Thus, it is fair to say that few interested parties care more than the *amici's* members about the long-term survival and competitiveness of American.

II. AMERICAN HAS BEEN AN INEFFECTIVE COMPETITOR TO CARRIERS WITH LARGER NETWORKS

In 2008, DOJ approved the merger of Delta Airlines and Northwest Airlines, creating a combined carrier with a national network of flights that easily exceeded American's capacity. Then, in 2010, following the same antitrust analysis, DOJ approved the merger of United Airlines and Continental Airlines. This created a second national business carrier with a network vastly superior to American's.

The creation of these two large competitors and their superior networks had a devastating effect on American, especially in the critical market for business travelers. The much smaller American faced strategic challenges that eroded its market share. In particular, the more limited size and scope of American's network – the interconnected web of airline routes through which the airline services its customers – “put it at a competitive disadvantage relative to its largest major network carrier competitors – United and Delta.” Updated Declaration of Andrew Yearley In Opposition to Debtors' Motion to Reject Collective Bargaining Agreements Pursuant to 11 U.S.C. § 1113 (Bankr. Ct. Dkt. No. 2722-1) at ¶ 10, attached hereto as Exhibit 1, (the “Yearley Declaration”). American's share in most regions of the United States has “significantly eroded over the last decade as its key network carrier competitors have consolidated and extended their

network and scale advantages.” *Id.* One significant effect has been a steady loss of American’s “high-yield corporate customers and frequent elite travelers to the superior networks of United and Delta.” *Id.*

The loss of market share can be measured in a loss of American employee jobs. The APA has more than 10,000 members because it once took that many pilots and more to fly the American system. Due to its ever diminishing market share, however, only 7,959 pilots are actively flying. Since 2000, active number of TWU employees at American has plummeted from 35,000 to 23,000. The APFA workforce is about 36% smaller than it was in May 2002, when almost 25,000 Flight Attendants worked for American. Without a network similar in scale to Delta and United, American will continue to decline and over the long term might join other airlines with insufficient networks – such as PanAm and TWA – in the ashbin of airline history. The result would be fewer competitive routes for the industry, lessened competition, and a significant loss of jobs for amici’s membership.

III. BANKRUPTCY PROCESS RESULTS IN AMERICAN BEING SET TO ACQUIRE A NETWORK EQUAL TO ITS COMPETITORS.

Following years of losses in the market dominated by United and Delta, on November 29, 2011, AMR Corporation, American Airlines, Inc. and affiliates were forced to file Chapter 11 reorganization proceedings in the United States Bankruptcy Court for the Southern District of New York, Case No. 11-15463 (the “Bankruptcy Case”). Early in those proceedings, American’s incumbent management sought to reorganize based upon a stand-alone plan for emergence. The problems with this approach were apparent from the outset and ultimately American’s creditors opted for a more competitive approach and one followed by other industry players – building American’s network to equal its competitors through a merger.

American sought a merger partner in U.S. Airways, whose routing network is almost entirely complementary to its own. On February 14, 2013, American and US Airways announced that both companies had approved a merger agreement and that the “combination is expected to be completed in the third quarter of 2013.” *See American Airlines And US Airways To Create A Premier Global Carrier – The New American Airlines* at p. 4, dated February 14, 2013, available at <http://phx.corporate-ir.net/phoenix.zhtml?c=117098&p=irol-IRHome>. To achieve a merger by the end of the third quarter, on February 22, 2013, American sought Bankruptcy Court approval to enter into the Merger Agreement. *See Motion to Approve Merger Agreement* (Bankr. Ct. Dkt. No. 6800).¹ The Bankruptcy Court entered an Order Approving the Merger Agreement on May 10, 2013 (Bankr. Ct. Dkt. No. 8096).²

American then filed a Plan of Reorganization based upon the merger of American and US Airways. All classes of creditors voted in favor of the Plan. To facilitate closing in the third quarter, the Bankruptcy Court set a confirmation hearing for August 15, 2013. *See Order Setting Confirmation Hearing* (Bankr. Ct. Dkt. No. 8614).³

¹ Motion of Debtors for Entry of Order Pursuant to 11 U.S.C. §105(a), 363(b) and 503(b) Authorizing and Approving (I) Merger Agreement Among AMR Corporation, AMR Merger Sub, Inc., And US Airways Group, Inc., (II) Debtors’ Execution of And Performance Under Merger Agreement, (III) Certain Employee Compensation and Benefit Arrangements, (IV) Termination Fees, and (V) Related Relief (Bankr. Ct. Dkt. No. 6800).

² Order Authorizing and Approving (I) Merger Agreement Among AMR Corporation, AMR Merger Sub, Inc., And US Airways Group, Inc., (II) Debtors’ Execution of And Performance Under Merger Agreement, (III) Certain Employee Compensation and Benefit Arrangements, (IV) Termination Fees, and (V) Related Relief (Bankr. Ct. Dkt. No. 8096)

³ Order (I) Approving Notice of Disclosure Statement Hearing; (II) Approving Disclosure Statement; (III) Establishing a Record Date; (IV) Establishing Notice and Objection Procedures for Confirmation of the Plan; (V) Approving Solicitation Packages and Procedures For Distribution Thereof; (VI) Approving the Forms of Ballots and Establishing Procedures for Voting on the Plan; and (VII) Approving the Form of Notice to Non-Voting Classes Under the Plan (Bankr. Ct. Dkt. No. 8614).

IV. THE DOJ SUIT PLACES AMERICAN AND ITS EMPLOYEES IN COMPETITIVE LIMBO

Amici were hopeful that the combination of American and U.S. Airways would significantly enhance American's ability to compete with Delta and Northwest, thus increasing competition in the domestic and international airline markets and enabling American's continued viability. In the last few months, for instance, hundreds of pilots have been called in off the furlough lists in anticipation of increased flying upon consummation of the merger. Increased American flights means more competitive routes and increased competition in the industry.

Unfortunately, DOJ waited until the eve of the anticipated merger to file the Complaint, placing American in an even more precarious position. Anticipating that the closing would occur shortly after the confirmation hearing, American and US Airways had undertaken a selection process for management at the merged company. Many of American's upper management, some by their own choice, were not to continue and were to be replaced by U.S. Airways personnel.⁴ As a result, on the management side, American is little more than a shell. Understandably, the management that remains, many of whom are slated to be replaced, naturally lack the same incentives as the proposed management team to aggressively protect American and its diminishing market share during any delay in closing the merger. Nor is it possible to recruit new management in light of the uncertainty hanging over the company.

Lacking motivated incumbent leadership, American's competitive position is likely to erode further during the pendency of this case. As a result, employees whose job outlook had

⁴ See Terry Maxon, *Management Team at New American Airlines looks a lot like US Airways'*, Dallas News, June 10, 2013, available at <http://www.dallasnews.com/business/airline-industry/20130610-management-team-at-new-american-airlines-looks-a-lot-like-us-airways.ece>; see also Jay Boehmer, *US Airways Vets Dominate New AA Senior Management Team*, Business Travel News, <http://www.businesstravelnews.com/More-News/US-Airways-Vets-Dominate-New-AA-Senior-Management-Team/?ida=Airlines&a=proc>; *Management Shake-Up at American Airlines*, available at <http://dfw.cbslocal.com/2013/06/10/shake-up-planned-for-aa-management-team/>.

looked more certain in light of the proposed merger are facing further delays, more furloughs, and the great uncertainty regarding their future with the airline.

In these circumstances, the competitive position of American and the industry as a whole will be damaged while American is unable to undertake initiatives because of the uncertainty regarding its future. *Amici* respectfully submit that this Court will inevitably deny the relief sought by Plaintiff, once it reviews the evidence in this case. But critically, these issues must be resolved sooner rather than later. *Amici* understand the many demands made on a federal judge on a daily basis, but respectfully request that the Court grant the relief sought by American in its motion in order to give American (and its employees) the chance it deserves to survive as one of America's great airlines and enhance the overall competitiveness of the U.S. airline industry.

The DOJ injunctive action is having a real, immediate adverse impact on the lives of ordinary hard-working employees of American Airlines. We recognize this is unavoidable to some extent. We ask the Court to minimize that impact to the extent possible by granting Defendants' motion to set a trial date.

Dated: August 23, 2013

Respectfully submitted,

/S/ SHANNEN W. COFFIN
Filiberto Agusti (DC Bar No. 270058)
Shannen W. Coffin (DC Bar No. 449197)
Joshua R. Taylor
STEPTOE & JOHNSON LLP
1330 Connecticut Ave., NW
Washington, DC 20036
Tel: (202) 429-3000
Facsimile: (202) 261-0658
fagusti@steptoe.com

scoffin@steptoe.com
jrtaylor@steptoe.com

Edgar N. James (DC Bar # 333013)
Darin M. Dalmat (DC Bar # 978922)
JAMES & HOFFMAN, P.C.
1130 Connecticut Avenue, NW
Suite 950
Washington, D.C. 20036
Tel: (202) 496-0500
ejames@jamhoff.com
dmdalmat@jamhoff.com

Attorneys for the Allied Pilots Association

/S/ ROBERT S. CLAYMAN
Robert S. Clayman (DC Bar #419631)
N. Skelly Harper (DC Bar #1004509)
**GUERRIERI, CLAYMAN, BARTOS &
PARCELLI, P.C.**
1900 M Street, N.W.
Washington, D.C. 20036
Tel: (202) 624-7400
Facsimile: (202) 624- 7420
rclayman@geclaw.com
sharper@geclaw.com

Attorneys for Association of Professional Flight Attendants

/S/ EDWARD J. GILMARTIN
Edward J. Gilmartin (DC Bar #388361)
General Counsel
Association of Flight Attendants-CWA
501 Third Street, N.W.
Washington, D.C. 20001
Tel: 202-434-0577
egilmartin@afanet.org
Attorney for Association of Flight Attendants-CWA

/S/ RICHARD S. EDELMAN
Richard S. Edelman (DC Bar # 416348)
O'Donnell, Schwartz & Anderson, P.C.

1300 L Street, N.W., Suite 1200
Washington, DC 20005
Tel: (202) 898-1707
Facsimile: (202) 682-9276
REdelman@odsalaw.com

/S/ DAVID ROSEN
David Rosen (DC Bar # 181768)
General Counsel
Transport Workers Union of America
501 3rd Street, NW, 9th Floor
Washington, DC 20001
Tel: (202) 719-3839
Facsimile: (202) 347-0454
D-Rosen@TWU.org

/S/ JEFFREY BLUMENFELD
Sharon L. Levine
Jeffrey Blumenfeld (DC Bar # 181768)*
Lowenstein Sandler LLP
65 Livingston Avenue
Roseland, NJ 07068
Tel: 973.597.2500
jblumenfeld@lowenstein.com
slevine@lowenstein.com
* admitted only in DC

Attorneys for Transport Workers Union of America