

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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STEPHEN M. POPPER, KEITH F. AKERS, DAVID J. AUSTIN, JAMES D. BAKER, DAVID W. BAUGHMAN, CHARLES BEATTIE, WILLIAM BELEW, MICHAEL I. BERRY, JAMES P. BETTIGA, RONALD W. BIRD, ROBERT M. BOUCHARD, LEWIS P. BROWN, BERRY BUNCH, MATTHEW J. CONNELLY, CHARLES COUCH, ARTHUR CRABTREE, MICHAEL A. CREIDER, NOEL L. DAHLANDER, RUNDY K. DAVENPORT, CARL D'BENEDETTO, DONALD R. DE TENLEY, ROSS G. DOLAN, STEVEN E. DOTSON, MICHAEL G. FADDEN, G. MICHAEL FAIRLEY, CHARLES E. FEUCHTER, LARRY F. FICKEL, TERENCE R. FRASER, PICKENS N. FREEMAN, JR., MITCHELL A. GARNER, EMIL W. GARSKE, ALBERT J. GODE, RONALD F. GORR, JOSEPH W. GRAHAM, BRUCE K. GRANQUIST, GLEN N. HAGER, FRANCIS B. HAROLD, JOSEPH G. HENDERSON, JR., ARTHUR R. HIATT, ANDREW S. HUDSON, DENNIS W. HUTCHINS, DENNIS R. IRWIN, PATRICK C. KELLY, KITRIC S. KERNS, WILLIAM J. KOHL, III, LEWIS C. LAURITO, EARLE F. LIPSCOMB, FREDRICK T. LOOP, WILLIAM A. LOTTRIDGE, THOMAS J. LUCIANO, JAMES A. MAULTSBY, JAMES MCELHATTON, J. PETER MCELROY, DONALD H. MCGREGOR, PETER P. MCGUIRK, GARY L. MILLER, MALCOLM M. MILLHONE, GEORGE MONGOLD JR., JOHN J. MURPHY, KARNEY R. NAZARIAN, JR., ROBERT J. NOLAN, GARY L. PATES, J. PRICE PHELPS, JR., DANIEL J. PHILLIPI, DENNIS B. RAFFELSON, PAUL N. RASMUSSEN, WESLEY C. ROBINSON, STEVEN K. RUSS, TIMOTHY R. SCHWEIGHART, MICHAEL D. SHANKMAN, DAVID D. SIMMONDS, JAMES R. SMETHERS, RALPH D. SMITH, NICKIE J. STANGER, WALTER A. STARK, EARL B. STITT, III, EUGENE L. STROPES, JOHN H. TRIMM, GEORGE B. TULLOS, JAMES L. TWOHIG, ARTHUR M. UPSHAW, BRIAN L. WAGNER, JAMES L. WALSH, ALEX B. WATSON, JOE H. WEATHERMAN, GARRY L. WEIGAND, STEVEN K. WILSON, DAVID T. WIMBERLY, AND CLAUDE L. YOUNG,

THIRD AMENDED
COMPLAINT

03 CV 3408 (ERK)(MDG)

Plaintiffs,

-v.

US AIRWAYS, INC., and
US AIRWAYS GROUP, INC.,

Defendants.

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**JURY DEMAND: PLAINTIFFS DEMAND A TRIAL BY JURY OF ALL ISSUES
TRIALABLE OF RIGHT BY A JURY**

Plaintiffs STEPHEN M. POPPER, KEITH F. AKERS, DAVID J. AUSTIN, JAMES D. BAKER, DAVID W. BAUGHMAN, CHARLES BEATTIE, WILLIAM BELEW, MICHAEL I. BERRY, JAMES P. BETTIGA, RONALD W. BIRD, ROBERT M. BOUCHARD, LEWIS P. BROWN, BERRY BUNCH, MATTHEW J. CONNELLY, CHARLES COUCH, ARTHUR CRABTREE, MICHAEL A. CREIDER, NOEL L. DAHLANDER, RUNDY K. DAVENPORT, CARL D'BENEDETTO, DONALD R. DE TENLEY, ROSS G. DOLAN, STEVEN E. DOTSON, MICHAEL G. FADDEN, G. MICHAEL FAIRLEY, CHARLES E. FEUCHTER, LARRY F. FICKEL, TERENCE R. FRASER, PICKENS N. FREEMAN, JR., MITCHELL A. GARNER, EMIL W. GARSKE, ALBERT J. GODE, RONALD F. GORR, JOSEPH W. GRAHAM, BRUCE K. GRANQUIST, GLEN N. HAGER, FRANCIS B. HAROLD, JOSEPH G. HENDERSON, JR., ARTHUR R. HIATT, ANDREW S. HUDSON, DENNIS W. HUTCHINS, DENNIS R. IRWIN, PATRICK C. KELLY, KITRIC S. KERNS, WILLIAM J. KOHL, III, LEWIS C. LAURITO, EARLE F. LIPSCOMB, FREDRICK T. LOOP, WILLIAM A. LOTTRIDGE, THOMAS J. LUCIANO, JAMES A. MAULTSBY, JAMES MCELHATTON, J. PETER MCELROY, DONALD H. MCGREGOR, PETER P. MCGUIRK, GARY L. MILLER, MALCOLM M. MILLHONE, GEORGE MONGOLD JR., JOHN J. MURPHY, KARNEY R. NAZARIAN, JR., ROBERT J. NOLAN, GARY L. PATES, J. PRICE PHELPS, JR., DANIEL J. PHILLIPI, DENNIS B. RAFFELSON, PAUL N. RASMUSSEN, WESLEY C. ROBINSON, STEVEN K. RUSS, TIMOTHY R. SCHWEIGHART, MICHAEL D. SHANKMAN, DAVID D. SIMMONDS, JAMES R. SMETHERS, RALPH D. SMITH, NICKIE J. STANGER, WALTER A. STARK, EARL B. STITT, III, EUGENE L. STROPES, JOHN H. TRIMM, GEORGE B. TULLOS, JAMES L. TWOHIG, ARTHUR M. UPSHAW, BRIAN L. WAGNER, JAMES L. WALSH, ALEX B. WATSON, JOE H. WEATHERMAN, GARRY L. WEIGAND, STEVEN K. WILSON, DAVID T. WIMBERLY, AND CLAUDE L. YOUNG, as and for their Third Amended Complaint, respectfully allege as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to hear the causes of action set forth herein by virtue of 28 U.S.C. sec. 1331 (federal question jurisdiction); the

Age Discrimination in Employment Act, as amended (29 U.S.C. sec. 621 et seq.); and by virtue of the Court's equitable, pendent, and supplemental jurisdiction (28 U.S.C. sec. 1367).

2. This Court is a proper venue for the claims set forth herein by virtue of 28 U.S.C. sec. 1391, by virtue of the fact that defendants do business within this district, in that US Airways, Inc. and US Airways Group, Inc. operates flights to and from major airports located in this district, employs thousands of personnel within this district, and is registered to do business within this State.

THE PARTIES

Plaintiffs

3. At all pertinent times referred to herein, all of the plaintiffs herein were residents of various jurisdictions and states (including New York).

4. Each of the plaintiffs herein was, and in the case of each plaintiff who has not as yet attained his or her sixtieth birthday, still is a pilot employed by US Airways, Inc., and has or had been so employed for many years.

5. Plaintiff STEPHEN M. POPPER is a resident of Red Bank, New Jersey, was born on June 11, 1943, and was 59 years of age at all pertinent times referred to herein.

6. Plaintiff KEITH F. AKERS is a resident of Estero, Florida, was born on August 10, 1943, and was 59 years of age at all pertinent times referred to herein.

7. Plaintiff DAVID J. AUSTIN is a resident of Soquel, California, was born on August 1, 1944, and was at least 58 years of age at all pertinent times referred to herein.

8. Plaintiff JAMES D. BAKER is a resident of Roxbury, Connecticut, was born on April 29, 1943, and was 59 years of age at all pertinent times referred to herein.

9. Plaintiff DAVID W. BAUGHMAN is a resident of Sewickley, Pennsylvania, was born on July 20, 1943, and was at least 59 years of age at all pertinent times referred to herein.

10. Plaintiff CHARLES BEATTIE is a resident of Alexandria, Virginia, was born on August 11, 1944, and was 58 years of age at all pertinent times referred to herein.

11. Plaintiff WILLIAM BELEW is a resident of Fair Oaks, California, was born on August 4, 1943, and was 59 years of age at all pertinent times referred to herein.

12. Plaintiff MICHAEL I. BERRY is a resident of Rancho Santa Fe, California, was born on March 2, 1944, and was at least 59 years of age at all pertinent times referred to herein.

13. Plaintiff JAMES P. BETTIGA is a resident of St. Helena, California, was born on January 1, 1944, and was at least 59 years of age at all pertinent times referred to herein.

14. Plaintiff RONALD W. BIRD is a resident of Encinitas, California, was born on September 27, 1944, and was at least 58 years of age at all pertinent times referred to herein.

15. Plaintiff ROBERT M. BOUCHARD is a resident of Henderson, Nevada, was born on December 1, 1943, and was at least 58 years of age at all pertinent times referred to herein.

16. Plaintiff LEWIS P. BROWN is a resident of La Jolla, California, was born on December 28, 1943, and was at least 59 years of age at all pertinent times referred to herein.

17. Plaintiff BERRY BUNCH is a resident of Fort Lauderdale, Florida, was born on March 6, 1944, and was at least 58 years of age at all pertinent times referred to herein.

18. Plaintiff MATTHEW J. CONNELLY is a resident of Mill Valley, California, was born on December 12, 1943, and was at least 59 years of age at all pertinent times referred to herein.

19. Plaintiff CHARLES COUCH is a resident of Landenberg, Pennsylvania, was born on September 16, 1944, and was at least 58 years of age at all pertinent times referred to herein.

20. Plaintiff ARTHUR CRABTREE is a resident of Tannersville, Pennsylvania, was born on December 23, 1944, and was 58 years of age at all pertinent times referred to herein.

21. Plaintiff MICHAEL A. CREIDER is a resident of Waxhaw, North Carolina, was born on August 31, 1944, and was at least 58 years of age at all pertinent times referred to herein.

22. Plaintiff NOEL L. DAHLANDER is a resident of Bainbridge Island, Washington, was born on May 22, 1945, and was 57 years of age at all pertinent times referred to herein.

23. Plaintiff RUNDY K. DAVENPORT is a resident of Steamboat Springs, Colorado, was born on November 21, 1943, and was at least 59 years of age at all pertinent times referred to herein.

24. Plaintiff CARL A. D'BENEDETTO is a resident of San Diego, California, was born on June 29, 1944, and was 58 years of age at all pertinent times referred to herein.

25. Plaintiff DONALD R. DE TENLEY is a resident of Emerald Isle, North Carolina, was born on June 14, 1943, and was 59 years of age at all pertinent times referred to herein.

26. Plaintiff ROSS G. DOLAN is a resident of Philadelphia, Pennsylvania, was born on July 7, 1943, and was 59 years of age at all pertinent times referred to herein.

27. Plaintiff STEVEN E. DOTSON is a resident of Palm City, Florida, was born on April 4, 1943, and was 59 years of age at all pertinent times referred to herein.

28. Plaintiff MICHAEL G. FADDEN is a resident of Fairfield, California, was born on September 5, 1943, and was 59 years of age at all pertinent times referred to herein.

29. Plaintiff G. MICHAEL FAIRLEY is a resident of New Castle, New Hampshire, was born on May 4, 1943, and was 59 years of age at all pertinent times referred to herein.

30. Plaintiff CHARLES E. FEUCHTER is a resident of Roswell, Georgia, was born on October 12, 1943, and was 59 years of age at all pertinent times referred to herein.

31. Plaintiff LARRY F. FICKEL is a resident of Seabeck, Washington, was born on April 23, 1943, and was 59 years of age at all pertinent times referred to herein.

32. Plaintiff TERENCE R. FRASER is a resident of Salineville, Ohio, was born on June 29, 1944, and was 58 years of age at all pertinent times referred to herein.

33. Plaintiff PICKENS N. FREEMAN, JR. is a resident of Lake Wylie, South Carolina, was born on March 14, 1944, and was at least 59 years of age at all pertinent times referred to herein.

34. Plaintiff MITCHELL A. GARNER is a resident of East Falmouth, Massachusetts, was born on September 2, 1943, and was 59 years of age at all pertinent times referred to herein.

35. Plaintiff EMIL W. GARSKE is a resident of Fort Lauderdale, Florida, was born on October 25, 1944, and was at least 58 years of age at all pertinent times referred to herein.

36. Plaintiff ALBERT J. GODE was born on December 11, 1943, and was at least 59 years of age at all pertinent times referred to herein.

37. Plaintiff RONALD F. GORR is a resident of Pittsburgh, Pennsylvania, was born on September 9, 1943, and was at least 59 years of age at all pertinent times referred to herein.

38. Plaintiff JOSEPH W. GRAHAM is a resident of La Jolla, California, was born on December 24, 1943, and was 59 years of age at all pertinent times referred to herein.

39. Plaintiff BRUCE K. GRANQUIST is a resident of Olivenhain, California, was born on September 25, 1943, and was 59 years of age at all pertinent times referred to herein.

40. Plaintiff GLEN N. HAGER is a resident of West Linn, Oregon, was born on October 30, 1944, and was 58 years of age at all pertinent times referred to herein.

41. Plaintiff FRANCIS B. HAROLD is a resident of St. Augustine, Florida, was born on May 15, 1943, and was 59 years of age at all pertinent times referred to herein.

42. Plaintiff JOSEPH G. HENDERSON, JR. is a resident of Indianapolis, Indiana, was born on October 5, 1943, and was at least 59 years of age at all pertinent times referred to herein.

43. Plaintiff ARTHUR R. HIATT is a resident of Ponta Gorda, Florida, was born on November 20, 1943, and was at least 59 years of age at all pertinent times referred to herein.

44. Plaintiff ANDREW S. HUDSON is a resident of Lincoln University, Pennsylvania, was born on April 2, 1944, and was 58 years of age at all pertinent times referred to herein.

45. Plaintiff DENNIS W. HUTCHINS is a resident of Fox Island, Washington, was born on June 17, 1944, and was 58 years of age at all pertinent times referred to herein.

46. Plaintiff DENNIS R. IRWIN is a resident of San Diego, California, was born on September 19, 1943, and was at least 59 years of age at all pertinent times referred to herein.

47. Plaintiff PATRICK C. KELLY is a resident of Littleton, New Hampshire, was born on May 30, 1944, and was at least 58 years of age at all pertinent times referred to herein.

48. Plaintiff KITRIC S. KERNS is a resident of Palm Harbor, Florida, was born on October 18, 1943, and was at least 59 years of age at all pertinent times referred to herein.

49. Plaintiff WILLIAM J. KOHL, III is a resident of Warner Springs, California, was born on March 7, 1944, and was at least 59 years of age at all pertinent times referred to herein.

50. Plaintiff LEWIS C. LAURITO is a resident of San Antonio, Texas, was born on October 8, 1943, and was at least 58 years of age at all pertinent times referred to herein.

51. Plaintiff EARLE F. LIPSCOMB is a resident of Sherman, Connecticut, was born on July 4, 1943, and was 59 years of age at all pertinent times referred to herein.

52. Plaintiff FREDRICK T. LOOP is a resident of North Kingstown, Rhode Island, was born on July 8, 1943, and was at least 59 years of age at all pertinent times referred to herein.

53. Plaintiff WILLIAM A. LOTTRIDGE is a resident of Estero, Florida, was born on December 9, 1943, and was at least 58 years of age at all pertinent times referred to herein.

54. Plaintiff THOMAS J. LUCIANO is a resident of Alameda, California, was born on September 5, 1943, and was at least 58 years of age at all pertinent times referred to herein.

55. Plaintiff JAMES A. MAULTSBY is a resident of Cashiers, North Carolina, was born on April 30, 1944, and was at least 58 years of age at all pertinent times referred to herein.

56. Plaintiff JAMES McELHATTON is a resident of Cape May Court House, New Jersey, was born on August 3, 1943, and was 59 years of age at all pertinent times referred to herein.

57. Plaintiff J. PETER McELROY is a resident of Reading, Pennsylvania, was born on July 25, 1943, and was 59 years of age at all pertinent times referred to herein.

58. Plaintiff DONALD H. MCGREGOR is a resident of Hickory, North Carolina, was born on September 11, 1943, and was 59 years of age at all pertinent times referred to herein.

59. Plaintiff PETER P. MCGUIRK is a resident of Arlington, Virginia, was born on August 23, 1943, and was 59 years of age at all pertinent times referred to herein.

60. Plaintiff GARY L. MILLER is a resident of Delray Beach, Florida, was born on January 14, 1944, and was at least 59 years of age at all pertinent times referred to herein.

61. Plaintiff MALCOLM M. MILLHONE is a resident of Annapolis, Maryland, was born on April 29, 1944, and was at least 58 years of age at all pertinent times referred to herein.

62. Plaintiff GEORGE MONGOLD, JR. is a resident of Concord, North Carolina, was born on March 27, 1943, and was at least 59 years of age at all pertinent times referred to herein.

63. Plaintiff JOHN J. MURPHY is a resident of Norwell, Massachusetts, was born on February 11, 1944, and was at least 59 years of age at all pertinent times referred to herein.

64. Plaintiff KARNEY R. NAZARIAN, JR. is a resident of Sanbornton, New Hampshire, was born on October 20, 1943, and was at least 58 years of age at all pertinent times referred to herein.

65. Plaintiff ROBERT J. NOLAN is a resident of Burke, Virginia, was born on October 6, 1945, and was at least 57 years of age at all pertinent times referred to herein.

66. Plaintiff GARY L. PATES is a resident of Philadelphia, Pennsylvania, was born on April 7, 1945, and was at least 57 years of age at all pertinent times referred to herein.

67. Plaintiff J. PRICE PHELPS, JR. is a resident of San Diego, California, was born on July 12, 1944, and was at least 58 years of age at all pertinent times referred to herein.

68. Plaintiff DANIEL J. PHILLIPI is a resident of Sacramento, California, was born on February 18, 1944, and was at least 57 years of age at all pertinent times referred to herein.

69. Plaintiff DENNIS B. RAFFELSON is a resident of San Diego, California, was born on November 11, 1943, and was at least 58 years of age at all pertinent times referred to herein.

70. Plaintiff PAUL N. RASMUSSEN is a resident of Moon Township, Pennsylvania, was born on February 15, 1945, and was at least 57 years of age at all pertinent times referred to herein.

71. Plaintiff WESLEY C. ROBINSON is a resident of Niantic, Connecticut, was born on February 2, 1945, and was at least 57 years of age at all pertinent times referred to herein.

72. Plaintiff STEVEN K. RUSS is a resident of Sewickley, Pennsylvania, was born on August 31, 1945, and was at least 57 years of age at all pertinent times referred to herein.

73. Plaintiff TIMOTHY R. SCHWEIGHART is a resident of Solana Beach, California, was born on July 4, 1943, and was at least 59 years of age at all pertinent times referred to herein.

74. Plaintiff MICHAEL D. SHANKMAN is a resident of New Rochelle, New York, was born on October 22, 1943, and was at least 58 years of age at all pertinent times referred to herein.

75. Plaintiff DAVID D. SIMMONDS is a resident of Winnsboro, Texas, was born on October 26, 1943, and was at least 58 years of age at all pertinent times referred to herein.

76. Plaintiff JAMES R. SMETHERS is a resident of Wenatchee, Washington, was born on March 25, 1944, and was at least 58 years of age at all pertinent times referred to herein.

77. Plaintiff RALPH D. SMITH is a resident of Purcellville, Virginia, was born on March 5, 1944, and was at least 58 years of age at all pertinent times referred to herein.

78. Plaintiff NICKIE J. STANGER is a resident of Escondido, California, was born on September 19, 1943, and was at least 59 years of age at all pertinent times referred to herein.

79. Plaintiff WALTER A. STARK is a resident of Reno, Nevada, was born on July 13, 1943, and was 59 years of age at all pertinent times referred to herein.

80. Plaintiff EARL B. STITT, III is a resident of Las Vegas, Nevada, was born on September 24, 1943, and was at least 59 years of age at all pertinent times referred to herein.

81. Plaintiff EUGENE L. STROPES is a resident of Jacksonville, Florida, was born on April 21, 1944, and was at least 58 years of age at all pertinent times referred to herein.

82. Plaintiff JOHN H. TRIMM is a resident of Heflin, Alabama, was born on August 17, 1943, and was at least 58 years of age at all pertinent times referred to herein.

83. Plaintiff GEORGE B. TULLOS is a resident of Antioch, Tennessee, was born on September 6, 1943, and was at least 59 years of age at all pertinent times referred to herein.

84. Plaintiff JAMES L. TWOHIG is a resident of Essington, Pennsylvania, was born on October 19, 1944, and was at least 57 years of age at all pertinent times referred to herein.

85. Plaintiff ARTHUR M. UPSHAW is a resident of Midlothian, Virginia, was born on May 26, 1944, and was 58 years of age at all pertinent times referred to herein.

86. Plaintiff BRIAN L. WAGNER is a resident of San Diego, California, was born on October 10, 1943, and was at least 59 years of age at all pertinent times referred to herein.

87. Plaintiff JAMES L. WALSH is a resident of Lafayette, California, was born on September 17, 1944, and was at least 57 years of age at all pertinent times referred to herein.

88. Plaintiff ALEX B. WATSON is a resident of Brighton, Colorado, was born on May 10, 1943, and was at least 59 years of age at all pertinent times referred to herein.

89. Plaintiff JOE H. WEATHERMAN is a resident of Kingston, Tennessee, was born on November 16, 1943, and was at least 59 years of age at all pertinent times referred to herein.

90. Plaintiff GARRY L. WEIGAND is a resident of San Diego, California, was born on August 15, 1943, and was at least 58 years of age at all pertinent times referred to herein.

91. Plaintiff STEVEN K. WILSON is a resident of New Hampshire, was born on September 26, 1944, and was at least 57 years of age at all pertinent times referred to herein.

92. Plaintiff DAVID T. WIMBERLY is a resident of New Hampshire, was born on December 3, 1943, and was at least 58 years of age at all pertinent times referred to herein.

93. Plaintiff CLAUDE L. YOUNG is a resident of Leesburg, Virginia, was born on October 14, 1943, and was at least 58 years of age at all pertinent times referred to herein.

DEFENDANT

US Airways, Inc. and US Airways Group, Inc.

94. Upon information and belief, US Airways, Inc. is a corporation duly formed and existing pursuant to the laws of the State of Delaware.

95. US Airways, Inc. maintains a principal place of business in Arlington, Virginia.

96. Upon information and belief, US Airways, Inc. is registered to do business in the State of New York, and in fact conducts numerous flights into and out of airports located in this judicial district, including John F. Kennedy International Airport and LaGuardia International Airport.

97. At all pertinent times referred to herein, US Airways, Inc. was and is a carrier certified pursuant to Part 121 of the Federal Aviation Regulations.

98. At all pertinent times referred to herein, US Airways, Inc. was and is a wholly-owned subsidiary of US Airways Group, Inc.

99. Upon information and belief, US Airways Group, Inc. is a corporation duly formed and existing pursuant to the laws of the State of Delaware.

100. US Airways Group, Inc. maintains a principal place of business in Arlington, Virginia.

101. Upon information and belief, US Airways Group, Inc. is registered to do business in the State of New York, and in fact conducts numerous flights into and out of airports located in this judicial district, including John F. Kennedy International Airport and LaGuardia International Airport.

102. US Airways has approximately 279 aircraft and operates approximately 3,700 flights daily, carrying an average of more than 120,000 passengers.

103. US Airways currently employs approximately 3,441 pilots among the more than 28,000 persons in its employ.

104. US Airways serves 89 airports, including airports in 37 states throughout the United States, 10 European destinations, and 28 locations in Mexico and the Caribbean. It flies to almost 200 cities in the United States, Canada, Mexico, Europe, and the Caribbean.

BACKGROUND

US Airways' Financial Woes

105. Even prior to the terrorist attacks of September 11, 2001, US Airways was beset by financial difficulties.

106. In 2001, US Airways had lost \$17.35 a share and suffered further erosion of share value in the first half of 2002.

107. Following and at least partly due to the terrorist attacks of September 11, 2001, US Airways suffered further severe economic losses, imperiling the future of the Company.

108. It was widely reported that US Airways was financially more severely affected by the terrorist attacks than other major airlines, in part because its key hub at National Airport in Washington, D.C. remained closed long after other airports reopened and due to a sharp diminution in business on its New York/Washington shuttle after National Airport reopened.

109. To avert further crisis and in an effort to avoid seeking bankruptcy protection, US Airways engaged in concessionary bargaining with various employee groups, including pilots represented by ALPA.

110. At about the time such concessionary bargaining was ongoing, US Airways, in May 2002, warned in a Securities and Exchange Commission filing that bankruptcy was a real possibility.

111. In or about the middle of 2002, the concessionary bargaining resulted in an agreement by US Airways pilots to significant cuts in wages and benefits.

112. As of August 2002, both the pilot and flight attendant unions had already agreed to significant concessions.

Chapter 11 Protection

113. Prior to the summer of 2002, US Airways was already expecting a \$1 billion collateralized loan backed by a federal guarantee conditionally approved by the Air Transportation Stabilization Board ["ATSB"], provided US Airways could achieve significant concessions with unionized employees.

114. Despite concessionary contract bargaining, US Airways sought Chapter 11 bankruptcy protection from the U.S. Bankruptcy Court for the Eastern District of Virginia on or about August 11, 2002.

115. The Bankruptcy Court petition listed assets of \$7.81 billion and liabilities of \$7.83 billion.

Emergence from Bankruptcy

116. At the time of the bankruptcy filing, US Airways had pledged not to seek Bankruptcy Court powers to seek to void labor contracts. David Siegel, chief executive officer of US Airways, vowed a "labor-friendly Chapter 11 reorganization."

117. At the time of the Bankruptcy Court filing, US Airways aimed to emerge from bankruptcy in the first quarter of 2003.

118. As a result of protections offered by the United States Bankruptcy Code and the concomitant ability to restructure aircraft leases and, in some cases, to reject such leases outright, US Airways saved considerable funds.

119. In the latter part of 2002, when revenue projections were unmet, additional restructuring negotiations commenced in order that US Airways might avoid filing for Chapter 7 bankruptcy.

120. The second round of restructuring was completed in or about the middle of December 2002.

121. Between the time of US Airways' August 2002 bankruptcy petition and mid-December 2002, ALPA had agreed on behalf of US Airways pilots to \$565 million in annual wage and benefit concessions over a period of more than six years.

122. In exchange for some of those concessions, US Airways undertook to maintain a particular minimum fleet size.

The Defined Benefit Plan

123. As of the time of US Airways' bankruptcy filing and for many years prior thereto, the pilots' pension plan was a defined benefit plan [the "DB Plan"], established and maintained pursuant to ERISA sec. 3(35).

124. As with any defined benefit plan, the employer contributed on an ongoing basis funds to pay promised benefits, and such funds were invested, such that investment gains and losses affected the employer's funding obligations, but did not alter the level of benefits to which participants are entitled.

125. In 1999, the DB Plan had sufficient assets to cover some 97 percent of benefit liabilities, and the following year the plan was more than 100 percent funded. Employer contributions to the plan had not been required since 1997 or prior thereto.

126. After September 11, 2001, funding of the DB Plan began dropping precipitously, due, at least in part, to poor stock market performance and low interest rates.

127. At some point in 2002, the level of funding of the DB Plan dropped to approximately 74 percent of benefit liabilities.

128. A drop below 80 percent of DB Plan funding triggers requirements for Deficit Reduction contributions by the employer in order to rapidly return the DB Plan to a funding level greater than 90 percent.

129. Such Deficit Reduction contributions would have required US Airways to pour hundreds of millions of dollars into the pilots' pension plan.

130. In a last-ditch effort to preserve the DB Plan, ALPA agreed, during the second round of contract restructuring in the second half of 2002, to significant cuts in DB Plan benefit levels.

131. Despite pilots' concessions, it was doubtful the DB Plan could be salvaged, and, shortly after culmination of the second round of contract restructuring, it was becoming increasingly clear that the DB Plan would be terminated.

132. Even besides US Airways' lack of available funds for Deficit Reduction contributions, US Airways and ALPA were keenly aware of the need to satisfy conditions that the ATSB (to which US Airways had applied for nearly a billion dollars in loan guarantees), might impose in order to approve US Airways' application. The ATSB would, quite obviously, seek proof that US Airways was likely to meet its financial obligations.

133. On or about January 9, 2003, US Airways presented to ALPA an initial draft of a Defined Contribution Plan [the "DC Plan"] intended to replace the DB Plan.

134. In a defined contribution plan, the employer is obligated only to make the promised contributions, if any, and has no obligation to assure that the plan has sufficient assets to fund any specific benefit level.

135. In January, 2003, US Airways informed the Pension Benefit Guaranty Corporation ("PBGC") of its intent to terminate the DB Plan effective March 31, 2003 (the date set for US Airways' emergence from bankruptcy protections), and to replace it with a defined contribution plan.

136. The notification to PBGC included the company's commitment to invest approximately \$850 million in pilot pension contributions for its pilots over the ensuing seven years. A substantially identical motion was filed in Bankruptcy Court.

137. On or about February 11, 2003, the ATSB, as expected, informed US Airways that the former had unanimously approved the \$900 million federal guarantee of a \$1 billion loan for the carrier, subject to provisions that included a finalized resolution of the pilot pension funding issue and the company's emergence from bankruptcy.

138. On or about March 1, 2003, as expected, the Bankruptcy Court ruled that US Airways had met the financial standards for a distress termination of the DB Plan.

139. On March 18, 2003, the Bankruptcy Court confirmed US Airways' plan of reorganization.

140. By the time of the Bankruptcy Court confirmation of its plan of reorganization, US Airways had already reported cost reductions of more than \$1 billion a year in labor costs.

141. The plan of reorganization, included a \$1 billion loan, of which \$900 million is guaranteed by the Air Transportation Stabilization Board (ATSB) and the balance provided by Retirement Systems of Alabama Holdings LLC and Bank of America. The reorganization plan took effect after US Airways made cost savings of \$1.9 billion.

142. Pilots who retired under the old DB Plan had an option to take their entire pensions in a lump sum, protecting them from any future economic happenstances.

143. Under the proposed DC Plan, as adopted, the retirement benefit was derived from a formula based upon an array of factors.

144. Under the proposed DC Plan, as adopted, a pilot's projected pay would be derived from the highest pay received by that pilot during any consecutive 36-month period during the ten-year period from the pilot's fiftieth birthday until the pilot's sixtieth birthday, and, depending upon the age of the pilot, the 36-month period might be actual, projected, or a combination thereof.

145. Under the proposed DC Plan, as adopted, a pilot's projected pay would be derived, if he was under age 50 as of January 1, 2003, from the projected pay he would receive in his last 36 months of employment with US Airways prior to retiring at age 60. Since the 36-month period considered must be after age 50, to the extent the pilot is not yet 53 years of age, the 36-month period would be either projected or a combination of actual and projected earnings.

146. The projected pay assigned to a pilot is based, under the DC Plan, on fleet plan, seniority progress, number of hours flown, and wage increases (negotiated or projected).

147. The annual average of the 36-month projected pay amount would, under the DC Plan, then be multiplied by a percentage derived from the product of the pilot's number of years of service to US Airways and 1.8 percent for up to the first 25 years of service and 1.0 percent for up to five years beyond the first 25 years.

148. The theoretical "annuity" benefit that resulted from this calculation would then be multiplied by 9.6279 to yield the lump sum equivalent of the theoretical annuity [the "Formula Benefit"].

149. Under the DC Plan, as adopted, the pilot's annuity from the Pension Benefit Guaranty Corp. is calculated by applying current PBGC regulations to the individual pilot's service and earnings as of the Date of Plan Termination. This figure, in turn, is multiplied by 10.49821 to yield the lump sum equivalent of the PBGC annuity [the "PBGC Lump Sum Figure"].

150. The PBGC Lump Sum figure, together with (if applicable) the pilot's Target Benefit Plan and/or Shuttle B Plan, when subtracted from the Formula Benefit, yields the figure that the DC Plan is to pay the particular pilot [the "Needed DC Balance"]

151. Each pilot has a unique contribution rate under the DC Plan. This rate reflects the percentage of projected pay necessary to be contributed monthly to that pilot's DC Plan balance such that, with earnings assumed at eight percent, the balance at age 60 is equal to that pilot's Needed DC Plan Balance.

152. This contribution rate is limited to 100 percent of pay by the provisions of the DC Plan. If a pilot's percentage is less than 100 percent, this indicates that the monthly contributions to that pilot's DC

Plan, together with earnings thereon, is adequate to provide the Needed DC Plan Balance.

153. If a pilot's contribution rate is limited by the 100 percent of pay maximum, that pilot will receive insufficient monthly contributions, such that, together with earnings thereon, the affected pilot's DC Plan balance at age 60 will be less than the Needed DC Plan balance.

154. Such a pilot's Projected DC Plan Balance Age 60 is the projected balance from his DC Plan contributions, at a 100 percent of pay match, together with earnings thereon. The difference between the Needed DC Balance and the Projected DC Plan Balance Age 60 is the deficit [the "Deficit"] of that pilot's DC Plan.

155. Thus, as a simplified illustration, for a typical 59-year-old pilot employed for 30 years, the number of years of service, up to 25 years, would be multiplied by 1.8 percent, and the remainder by 1.0 percent. The total, 50 percent, is multiplied by final average earnings after age 50, of, say, \$200,000, yielding a \$100,000.00/year theoretical benefit, which is multiplied by 9.6279, which converts the figure to a lump sum, which in this case is \$962,790 (disregarding various offsets from other benefits). That figure is deemed the benefit lump sum equivalent and is considered the pilot's gross target or "Formula Benefit." The benefit that will be paid by the PBGC, based upon the given pilot's circumstances, in such a case would be \$46,740. That figure would be multiplied by 10.49821, yielding \$490,691.00, which would then be subtracted from the Formula Benefit. The US Airways Target Benefit Plan and Shuttle B Plan balances, if applicable, would likewise be subtracted. The result, \$113,533.00, would be the sum that the DC Plan should pay the pilot [the "Needed DC Balance"]. From that would be subtracted the sum that the pilot is expected to earn prior to age-

60 retirement (with interest at eight percent), the Projected DC Balance Age 60, which in this case is \$28,274, yielding a deficit of \$85,269.

156. Under longstanding Federal Aviation Regulations, no pilot may continue to serve as a pilot-in-command or as a first officer of any commercial airliner after having attained his sixtieth birthday.

157. Under the DC Plan, as adopted, pilots who were too close to retirement, especially those within two to three years of turning age 60, would not achieve the target benefit and, in fact, would fall precipitously below the target benefit, creating a Deficit.

158. As a result, many of those who were within two to three years of their mandatory age 60 retirement date and who, in many cases, had devoted 25 years or more to US Airways, would have little time to build up their target benefit before retiring and thus would have a sharply diminished pension upon retirement.

159. Upon information and belief, the DC Plan, as designed, would substantially disenfranchise the oldest pilots and thus permit US Airways to reap a short-term windfall in savings over the ensuing two to three years as its oldest pilots retired.

160. Upon information and belief, US Airways specifically recognized, and, in fact, informed the pilots' union, the Air Line Pilots Association, that approximately 165 of the oldest pilots, from among US Airways' more than 3,700 pilots, would not have enough time available under the DC Plan to achieve their respective target benefits.

161. Younger pilots, who had significant time periods in which to contribute to the new DC Plan, would likely achieve their respective target benefits or at least would have a reasonable opportunity to do so.

162. Despite the anomalous outlook for pilots depending upon how close to retirement they were, the PBGC tentatively approved the proposed DC Plan, finding that it was just barely acceptable.

163. Nonetheless, the PBGC had indicated that it would be receptive to correcting inequities that would affect those pilots who were just a few years from retirement.

164. US Airways' original proposal had a varying percentage of income to be paid to pilots depending upon the pilots' respective ages. The less time available to the pilot to achieve the required DC Plan balance, the higher the percentage of income had to be.

165. Under the company proposed DC Plan, the cost of funding the plan would decline rapidly after the first few years.

166. If older pilots, especially those within just a few years of the mandatory retirement age, would have had the opportunity to achieve their target benefits, the startup cost of the DC Plan could have been capitalized and amortized into the future when ongoing costs of funding the plan would dramatically decline.

167. US Airways formally presented a proposed replacement DC plan to PBGC on or about January 15, 2003.

168. The effect was to substantially disenfranchise the oldest pilots who were within two to three years of retirement and who, for the most part, had devoted the largest number of years of dedicated service to US Airways.

169. Under the provisions of the DC Plan, approximately 96 percent (or, roughly, 3,385) of the approximately 3,527 active pilots currently on the US Airways seniority list would be expected to receive their full target benefit.

170. The remaining approximately 150 pilots (including some who had just retired) would not receive their full target benefit under the DC Plan.

Of those, as of January 1, 2003, virtually all of them were between ages of 57 and 59.

171. In addition, under the DC Plan, those pilots who were near the mandatory retirement age of 60 would receive significant contributions into their non-qualified plan and thus could not be rolled over into an individual retirement account at age 60 and would be subject to immediate taxation in the pilot's year of retirement. By contrast, most younger pilots would draw their entire benefits from the qualified DC plan and thus would be able to delay tax.

COUNT I

AGE DISCRIMINATION

[Against Defendants US Airways, Inc. and US Airways Group, Inc.]

[On Behalf of All Plaintiffs]

[Age Discrimination in Employment Act; Older Workers Benefit Protection Act]

[DAMAGES SOUGHT: AT LEAST \$200,000 PER PLAINTIFF]

172. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs "1" through "141" hereof, with like force and effect as though set forth at length herein.

173. U.S. Airways, Inc. is an "employer" within the meaning of the Age Discrimination in Employment Act and the Older Workers Benefit Protection Act and as defined in 29 U.S.C. sec. 630, in that it is a "person," as therein defined, that is engaged in commerce and has 20 or more employees.

174. Plaintiffs were born on various dates, and all are within the protected age group as set forth in the Age Discrimination in Employment Act.

175. US Airways has discriminated against each of the plaintiffs because of the latter's ages.

176. The conduct of US Airways from and after in or about March 2003, with respect to its participation in the design of a defined contribution

plan, constitutes a willful violation of 29 U.S.C. secs. 623(a) and 623(j), inasmuch as the decisions of US Airways with respect to the pilots' pension plan were based in whole or in part upon the plaintiffs' respective ages.

177. Upon information and belief, US Airways has engaged in a pattern or practice of discriminating against certain pilots who are 40 years of age or older, and in particular against those who are closest to the mandatory retirement age of 60.

178. US Airways' discrimination, as alleged herein, against older pilots has adversely affected each such pilot.

179. By reason of the forgoing, the complaining plaintiffs herein have been deprived of certain pension benefits since April 1, 2003.

180. Upon information and belief, in so acting, US Airways has violated the provisions of the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. sec. 621 et seq.) and the Older Workers Benefit Protection Act (29 U.S.C. sec. 623 et seq.).

181. On various dates beginning in or about the latter portion of 2003, all or virtually all of the complaining plaintiffs complied with 29 U.S.C. sec. 626(d) by filing a charge of age discrimination [the "Charge"] with the Equal Employment Opportunity Commission ["EEOC"] and, pursuant to EEOC's dual-filing agreements, with a state or local human rights agency.

182. Each such Charge alleged discrimination by ALPA and US Airways.

183. Each such Charge was filed at least 60 days prior to the date hereof, and named both US Airways, Inc. and ALPA as respondents.

184. Those plaintiffs who did not file such a charge were victimized by the same pattern of discrimination and the same actions and omissions as were directed against plaintiffs who filed such a charge and hereby adopt allegations of the plaintiffs who filed a charge.

185. On behalf of all or virtually all of the complaining plaintiffs, the EEOC issued a "right-to-sue" letter within 90 days of the date this Second Amended Complaint was filed with the Court.

186. By virtue of US Airways' willful and unwarranted discriminatory actions, each of the complaining plaintiffs was deprived of such sum as may be determined at trial to represent the pension benefits they would be, or would have been, entitled to upon their respective retirements, but in no event less than Two Hundred Thousand (\$200,000.00) Dollars for each plaintiff.

187. In the alternative, the complaining plaintiffs are entitled to an Order enjoining US Airways and ALPA from such discriminatory practices and enjoining such defendants to amend the defined contribution plan to prevent undue harm to older pilots.

188. Each of the complaining plaintiffs is also entitled to the costs of maintaining this claim, including reasonable attorneys' fees.

WHEREFORE, PLAINTIFFS STEPHEN M. POPPER, KEITH F. AKERS, DAVID J. AUSTIN, JAMES D. BAKER, DAVID W. BAUGHTMAN, CHARLES BEATTIE, WILLIAM BELEW, MICHAEL I. BERRY, JAMES P. BETTIGA, RONALD W. BIRD, ROBERT M. BOUCHARD, LEWIS P. BROWN, BERRY BUNCH, MATTHEW J. CONNELLY, CHARLES COUCH, ARTHUR CRABTREE, MICHAEL A. CREIDER, NOEL L. DAHLANDER, RUNDY K. DAVENPORT, CARL D'BENEDETTO, DONALD R. DE TENLEY, ROSS G. DOLAN, STEVEN E. DOTSON, MICHAEL G. FADDEN, G. MICHAEL FAIRLEY, CHARLES E. FEUCHTER, LARRY F. FICKEL, TERENCE R. FRASER, PICKENS N. FREEMAN, JR., MITCHELL A. GARNER, EMIL W. GARSKE, ALBERT J. GODE, RONALD F. GORR, JOSEPH W. GRAHAM, BRUCE K. GRANQUIST, GLEN N. HAGER, FRANCIS B. HAROLD, JOSEPH G. HENDERSON, JR., ARTHUR R. HIATT, ANDREW S. HUDSON, DENNIS W. HUTCHINS, DENNIS R. IRWIN, PATRICK C. KELLY, KITRIC S. KERNS, WILLIAM J. KOHL, III, LEWIS C. LAURITO, EARLE F. LIPSCOMB, FREDRICK T. LOOP, WILLIAM A. LOTTRIDGE, THOMAS J. LUCIANO, JAMES A.

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a. As to the claims set forth in Count I, as against defendants US Airways, Inc. and US Airways Group, Inc., such sum as may be determined at trial, but in no event less than the sum of Two Hundred Thousand (\$200,000.00) Dollars for each plaintiff herein, or, in the alternative, an Order enjoining the US Airways defendants from such discriminatory practices and enjoining such defendants to amend the defined contribution plan to prevent undue harm to older pilots;

- together with the costs and disbursements of this action, applicable interest, attorneys' fees, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
June 1, 2005

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