

**Exhibit B**

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

**TO: INDIVIDUAL CLASS MEMBERS**

You are receiving this Notice because we believe you are a member of a class action. A lawsuit filed on your behalf has a proposed settlement that will result in a payment to you if you decide to accept the terms of the settlement.

In addition to this Notice, the materials sent to you include: (1) the Settlement Agreement; (2) the motion for preliminary approval of the settlement and the Court's Order; (3) the Motion for Attorney's Fees and Costs; and (4) an Election Form with a self-addressed, stamped return envelope. You should review these materials carefully before making your election.

Frequently asked questions are:

**1. Am I in the Class?**

You are one of 679 retired U.S. Airways pilots that form the Class. If you satisfy the definition of a class member, you may claim a portion of settlement fund and receive money for the release of your claims.

The Class is defined as follows:

All participants and/or beneficiaries of the Retirement Income Plan for Pilots of U.S. Air Inc., who, from February 28, 1997 to March 31, 2003, elected to receive a lump-sum payment as a full or partial distribution of their retirement benefits, but who did not receive their lump-sum payment on the first day of the month coinciding with or following their Normal Retirement Date (or alternatively, for early retirees, the date on which they elected to begin receiving their retirement income).

**2. What was the lawsuit about?**

The US Airways Plan allowed retirees to choose between receiving their benefits as a lifetime monthly annuity or as a lump sum payment actuarially equivalent to the annuity payments. For pilots who chose the annuity option, payments commenced on the first day of the month after the pilot retired, also known under the Plan as the Benefit Commencement Date. For retirees who chose to receive their benefits as a lump sum, US Airways calculated the amount of that benefit to be actuarially equivalent to the annuity benefit as of the Benefit Commencement Date. However, those pilots who chose the lump sum payment were generally not paid the lump sum until 45 days after the Benefit Commencement Date, and they were not paid interest accrued on their benefits during that delay in payment.

Captain James Stephens and Captain Richard Mahoney retired from their jobs as US Airways pilots in 1996 and 1999, respectively. They, like many other US Airways pilots, chose to receive their retirement benefits as a lump sum but did not receive their lump sum payments until 45 days after their Benefit Commencement Date.

In 1997, Stephens filed an administrative claim with US Airways arguing the company was required to pay interest for the 45-day delay under both the terms of the Plan and ERISA, 29 U.S.C. § 1054(c)(3), which requires that lump sum benefits be the “actuarial equivalent” of the annuity benefit. Stephens argued that ERISA’s actuarial equivalence rule required not only that his lump sum benefit be calculated to be actuarially equivalent to the annuity benefit as of the time the annuity benefit would have started, but also that he paid the lost time value of the lump sum benefit to the extent payment of the lump sum was delayed past the Benefit Commencement Date. When US Airways denied his claim, Stephens appealed to the US Airways Retirement Board, which rejected Stephens’s claim in 1999.

In response to rejection of Stephen's claim by the US Airways Retirement Board, in 2000, Stephens and other pilots filed a complaint against the Plan and US Airways in the United States District Court for the Northern District of Ohio. They sought to represent a class of similarly situated pilots whose lump sum benefits payments had been delayed. The district court dismissed the complaint for lack of subject matter jurisdiction, and the plaintiffs appealed. *See Stephens v. Ret. Income Plan for Pilots of U.S. Air, Inc. (Stephens I)*, 464 F.3d 606 (6th Cir. 2006). The Sixth Circuit narrowed the claims and remanded the case to the district court for further proceeding. When the Plan subsequently terminated in 2003 due to US Airway's bankruptcy, plaintiffs substituted the Pension Benefit Guaranty Corporation ("PBGC"), a federal agency and the statutory trustee of the terminated plan, as a defendant. Consequently, the Ohio court transferred the matter to the U.S. District Court for the District of Columbia in 2007.

After the transfer, consideration of class certification was deferred in order to first resolve the PBGC's legal objections to Plaintiffs' claims. In 2010, the D.C. District Court granted summary judgment in PBGC's favor. *Stephens v. US Airways Grp. (Stephens II)*, 696 F.Supp. 2d 84 (D.D.C 2010). The pilots again appealed, and the D.C. Circuit Court affirmed in part and reversed in part, again narrowing the pilots' claims. The court concluded that because "U.S. Airways accurately calculated plaintiffs' lump sums to be the actuarial equivalent of the annuity option as of the annuity start date, the lump sum payment does not violate § 1054(c)(3)." *Stephens v. US Airways Grp. (Stephens III)*, 644 F.3d 437, 440 (D.C. Cir. 2011); *id.* at 444 (Henderson, J., dissenting in part). The Court reasoned that ERISA and IRS regulations permitted some delay in payment for administrative necessity. The Court also concluded, however, that ERISA did not permit an uncompensated delay in payment for an "unreasonable" amount of time, and that the summary judgment record did not support a delay of 45 days. The

Court remanded the case to the district court for a determination on a full record of how much delay was “reasonable.” *Id.* at 441–42.

On remand, the Class Representatives asserted a class of pilots who retired from January 1, 1990 to December 31, 2003. The Court denied the motion for class certification. To address one of the Court’s objections to the Class, the plaintiffs then amended their motion to reduce the class to those pilots who retired from February 28, 1999 to March 2003 (when the Plan was terminated) and who elected to receive their benefits as a lump sum. This is the current class.

The district court also denied the motion to certify this reduced class, holding Captain Stephens did not present a claim typical of the claims of the putative class. *Stephens v. US Airways Grp. (Stephens IV)*, 908 F.2d 10 (D.D.C. 2012). The court noted that only Stephens had exhausted his administrative remedies under the Plan before bringing suit, and all pilots were required to exhaust their administrative remedies. *Id.* at 14.

After the district court denied Plaintiffs’ second motion for class certification, and in order to obtain a final appealable judgment, Stephens settled his individual claim with PBGC and Mahoney agreed to dismissal without prejudice. The district court then entered a final judgment dismissing the action on April 3, 2013, and the Plaintiffs again appealed to the D.C. Circuit. *Stephens v. Pension Benefit Guaranty Corporation (Stephens V)*, No. 13-5129 (D.C. Cir. June 24, 2014). The Circuit Court reversed the district court, holding that the class members were not required to exhaust administrative remedies before bringing their claims in court because they sought enforcement of ERISA’s substantive guarantees rather than contractual rights. *Id.* at \*2.

As a result of the various appellate decisions, the only remaining unresolved issue was: What period of delay, if any, would have been administratively necessary, and thus reasonable?

The Plaintiffs contended that no delay was reasonable, while Defendants contended that a 45-day delay was reasonable.

After remand, the PBGC and Class Counsel negotiated and agreed to the proposed settlement. In the meantime, Stephens and Mahoney developed personal issues that did not allow them to continue the obligations of class representatives, and Captain John Davis agreed to substitute for them as the Class Representative. After being informed of the settlement, the district court certified the class

**3. What are the terms of the settlement?**

Pursuant to the Settlement Agreement, the PBGC: (1) will pay \$5,250,000.00 into a Settlement Fund (the “Settlement Fund”), which will fund individual payments to Class Members who claim their portion of the proceeds and do not opt-out, (2) attorneys’ fees and Costs, and (3) settlement administration costs. Within ten business days after entry of the preliminary approval order, the PBGC will disburse \$25,000.00 of the Settlement Fund to the Settlement Administrator for settlement administration costs associated with providing the Class with notice of the Settlement. Upon final approval, an additional \$25,000.00 from the Settlement Fund will be available for further settlement administration costs. Only actual expenses for settlement administration costs will be deducted from the Settlement Fund, and the Settlement Administrator has agreed to a \$75,000 cap for all settlement administration costs.

**4. Is the amount of the proposed settlement fair, reasonable, and adequate?**

PBGC has agreed to pay \$5,250,000 to settle this matter, which will cover attorneys’ fees, administrative costs, and distribution of the Net Proceeds to the Class Members. Class Counsel and the Class Representative believe the Net Proceeds will fairly and adequately compensate Class Members for their damages. If, instead, this case proceeded to litigation, the

time until class members would obtain relief for their damages would be substantially delayed. Even if the Class prevails at trial, that verdict might be appealed, resulting in even further delay to the final resolution of the case, and the time at which class members would receive any compensation.

Furthermore, there is risk in continuing with the litigation. The case involves highly-contested, novel claims which have been developed and litigated over the course of many years. If this case continues to be litigated, the risks concerning the contested factual and legal issues of liability, and the restitution available, are extensive.

For all members of the Class, the total of lump sum payments was \$577,646,448. Interest on this amount for 45 days at 6% simple interest (provided in the Plan) is \$4,263,002. For 15 days interest, the total is \$1,424,334. The other element of Class damages is pre-judgment interest, the award of which is within the Court's discretion. Plaintiffs contended that six percent was the appropriate measure of prejudgment interest, but courts frequently use percentages such as treasury rates, which would be lower. At four percent compounded annually, the total for prejudgment interest for the entire class for 45 days was approximately \$3,000,000. At six percent, the figure was approximately \$6,000,000. Due to the long pendency of the case, prejudgment interest is the predominant single element of the damages. The award of prejudgment interest is within the Court's discretion, and no interest could be added.

The maximum recovery with the most favorable assumptions to the Class was approximately \$10,000,000. The proposed settlement is more than 50% of the maximum recovery for the entire class with a maximum award of prejudgment interest.

For settlement purposes, the Plaintiffs had to consider the risk that not all assumptions would be resolved in their favor. So, for example, the DC Circuit opinion suggested that the

summary judgment record supported an administrative delay of 30 days, which would, at six percent prejudgment interest, reduce the class damages, including prejudgment interest, to a little more than \$3,000,000. If prejudgment interest of four percent were used, it reduces those total class damages to approximately \$2,500,000, one-half of the settlement amount.

It's been finally determined in this matter that the Class is *not* entitled to the recovery of attorney's fees, which means that any recovery is reduced by a reasonable attorney's fee. The total recovery cannot, therefore, be legally supplemented with a recovery of attorney's fees. Reasonable attorney's fees can only be paid from the Settlement Fund.

To summarize, the Net Proceeds to the Class for a recovery based on 15 days at prejudgment interest of four percent and a reasonable award of attorney's fees would be \$1,000,000 to \$1,500,000. The Net Proceeds to the Class of the proposed settlement is more than twice this amount.

##### **5. What is the plan of allocation?**

Starting with the pilot's lump sum payment, and multiplying by the number of days of delay in payment (usually 45 days) at six percent simple annual interest, a damages figure is calculated for each individual member of the Class. Six percent is prescribed in the Plan. The damages figure is then increased by the number of days from the date of the lump sum payment to December 31, 2014, at six percent, compounded annually. This latter calculation is designed to account for prejudgment interest. The resulting figure is the numerator for a fraction in which the denominator is the sum of these figures for all members of the Class. That fraction is then applied to the Net Proceeds (settlement proceeds less attorney's fee and expenses) to calculate each Class Member's share of the settlement.

Any unclaimed funds will be distributed to claimants based on the same ratios, unless the total of unclaimed funds is less than \$25,000, in which the unclaimed funds will be donated to a 503(c) charity chosen by the Class Representative.

**6. Why are some pilots not included in the settlement?**

Pilots who took a lifetime annuity are not part of the Class. In addition, there are pilots who retired prior to the class period who opted for lump sum retirement payments who also experienced delays in payments without interest compensation. These pilots are not part of the Class and will not share in the settlement proceeds. The suit filed in 2000 included these pilots, but the Court denied the motion for certification of that class. Class counsel filed on behalf of a smaller class in order to address the Court's concerns, and that is the settlement class that has been certified. The pilots who are not included involved claims where the pilots retired more than three years or more prior to the filing of the *Stephens'* lawsuit. Accordingly, those pilots had legal obstacles based on the statute of limitations and laches. If these pilots have a viable claim, the release in this matter will not affect their claim

**7. What are my options?**

First, you may **accept** the settlement and if the other conditions of the settlement are met, you will receive a monetary distribution from the settlement fund. The principal conditions are that fewer than 60 pilots opt-out and the Court finds that the terms of the settlement are "fair, adequate, and reasonable." For a detailed discussion of the conditions, you should review the Settlement Agreement and the Motion for Preliminary Approval of the Proposed Settlement.

To accept these funds, you will be required to release forever your claims against the PBGC and the Plan. Class Counsel negotiated a release that is limited to former US Airways pilots that retired between February 28, 1997, to March 31, 2003, and elected to receive a lump

sum payment as a full or partial distribution of their retirement benefits and is also limited to causes of action arising from the delayed payment of the lump sum retirement benefit due on the date of retirement (or alternatively, for early retirees, the date on which they elected to begin receiving their retirement income). The Settlement Agreement does not apply to retired US Airways pilots that retired prior to February 28, 1997. Upon Final Approval, as defined in the Settlement Agreement, the Class will have released the “Released Parties” from the “Released Rights,” all as defined in the Settlement Agreement. All claims by class members who have not opted-out of the Settlement Agreement will be resolved upon Final Approval of the Settlement Agreement.

Second, you may **reject** the settlement and opt-out of the Class. You will not receive any monetary compensation from the Settlement Fund, and your share will be distributed to others who do not accept the settlement. You will retain any right you have to pursue your claims. You should be advised, however, that the claims may be time-barred or subject to other defenses, and are small in amount and old which could make it difficult for you to find a lawyer willing to represent you on an economic basis.

Third, you may **do nothing**. In this case, your share will eventually be distributed to others and you will receive no compensation for your claims. Your claims against PBGC and the Plan will be released if you do nothing.

Regardless of the choice you make, you can consult with a lawyer to advise you independent of the Class and you can file any objections you have to the settlement. The Court will consider all objections and responses to those objections.

**8. How much will I get if I choose to accept the settlement?**

Your share of the Settlement Fund is based on the amount of your lump sum, the delay in the payment from your Benefit Commencement Date (generally, 45 days for the first day of the month following your retirement, usually your 60<sup>th</sup> birthday unless you took early retirement). The last factor in the plan of allocation is how long ago you retired. In general, the larger your lump sum distribution and/or the earlier your retirement, the greater your share. Please review the plan of allocation. The amount you will receive is also related to the amount of Net Proceeds. The settlement amount of \$5,250,000 will be reduced by attorney's fees to be determined by the Court and certain costs. We estimate the Net Proceeds to be \$3,100,000 to \$3,600,000 depending on deductions for costs and attorneys' fees.

**9. What is the basis for the attorneys' fees?**

Class counsel began his representation of the putative class in November 2006. Another firm referred the matter after previous counsel who filed the original action could not continue. Class counsel was a partner in Nickens, Keeton, Lawless, Farrell & Flack ("NKLFF"), a litigation specialty law firm in Houston, Texas. NKLFF continued its representation of the putative class through December 2010 when McGuireWoods merged with the firm's lawyers and acquired this matter. During that four-year period, NKLFF incurred expenses of nearly \$50,000 and recorded professional time for the matter at their regular hourly rates valued at \$490,673, a total of 1,255 hours. McGuireWoods, through September 30, 2014, has incurred additional expenses approaching \$20,000 and unbilled professional time of 2,852 hours. At regular hourly rates, the value of professional time recorded on the McGuireWoods file is \$1,475,987. The total professional time for the two firms on this matter is nearly \$2 million and their expenses will exceed \$75,000.

Counsel for the putative class prosecuted this matter on a contingency basis with no assurances of a recovery. The matter has pended during that representation for eight years. There was extensive document exchanges, a limited number of depositions, expert witnesses, extensive motion practice and, of course, three appeals. The professional time expended was necessary and the rates are reasonable and customary for the lawyers involved. Counsel has had no compensation and has advanced expenses of nearly \$70,000.

Customarily in matters of this nature, the fee would be based on the value of professional time plus a multiplier that can double or triple that amount. The customary approach is not practical in this matter. Class counsel will ask the Court to award a reasonable attorney's fee within its discretion of at least \$1.5 million and no more than \$2.0 million plus \$75,000 in expenses, which amount is less than the hourly rate. In addition, counsel requests an allocation of no more than \$75,000 from the settlement proceeds for administrative expenses. The Net Proceeds to the Class would then be between \$3,100,000 and \$3,600,000, based on these requests and the Court's exercise of its discretion.

**10. Why was Captain Davis substituted for Captain Stephens and Captain Mahoney?**

Class representatives Captains Stephens and Mahoney provided exemplary support during the long pendency of this matter, but for independent personal reasons, neither is able to continue to perform the obligations of the class representative. Neither objects to the terms of the settlement, but is unable to review the settlement and attest to the fairness of the settlement because of personal matters that demand his full attention at this time.

Fortunately, Captain John Davis has accepted their request to substitute for them. Captain Davis has stellar qualifications for the role of Class Representative. The late substitution of Captain Davis for Captains Stephens and Mahoney will require the Court to consider Captain Davis' qualifications and commitment and recertify the Class with him as the Class Representative. PBGC does not object to the substitution and Plaintiff requests the Court to recertify the Class with Captain Davis as the Class Representative.

**11. How do I make my choice?**

Attached to this Notice is an Election Form. You must fill in your name, the last four digits of your social security number or your retirement date for purposes of identification, mark the appropriate box and return to the Settlement Administrator in the envelope provided. You should include any objections you wish to have the Court consider.

**12. When will I receive my check?**

Our best estimate is late in the first quarter of 2015 or no later than the second quarter for those who respond immediately. Please review the schedule attached to the Motion for Preliminary Approval.

If you opt-out or if you have not responded within one year from the Final Approval, your share of the Settlement Fund will be forfeited and distributed to others that did respond, or if less than \$25,000, to an appropriate charity chosen by the Class Representative.

In addition to this Notice, information about the settlement will be posted on the internet at \_\_\_\_\_[website]\_\_\_\_\_ or you may contact the Settlement Administrator at \_\_\_\_\_[phone number]\_\_\_\_\_.

**Please fill out the Election Form and return to the Settlement Administrator at your earliest convenience.**

**Exhibit 1**

**Election Form**

My name is \_\_\_\_\_, and the last four digits of my social security number are \_\_\_\_\_ or my retirement date (my 60<sup>th</sup> birthday) was \_\_\_\_\_. I am a retired US Airways Pilot who received a lump sum retirement benefit during the period from February 28, 1997, to March 31, 2003. I have reviewed the Settlement Agreement and other materials mailed to me or posted on the internet at [website address here].

(please check one of the following boxes)

**I accept the Settlement and the payment of my percentage of the Net Proceeds. I agree to release the Defendants of any claims as set forth in the Settlement Agreement.**

**I do not accept the Settlement and choose to opt out from the claim. I understand that I will not receive any payment from the Net Proceeds.**

I understand that I can consult a lawyer of my choosing and at my sole expense to advise me of my individual rights. I have the following objections to the Settlement and wish the Court to consider the following (please write in your objections below):

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