IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES STEPHENS, ET AL.,	)	
	)	
Plaintiffs,	)	**Civil Action No. 07-1264 (RMC)**
	)	
vs.	)	
	)	**FOURTH AMENDED**
US AIRWAYS GROUP, INC., ET AL.,	)	**CLASS ACTION COMPLAINT**
	)	
Defendants.	)	

I. Introduction

1. Plaintiffs James C. Stephens ("Mr. J.C. Stephens") and Richard Mahoney ("Mr. Mahoney") (collectively "Plaintiffs"), by and through their undersigned attorneys, file this Fourth Amended Class Action Complaint on behalf of themselves and all others similarly situated, against Pension Benefit Guaranty Corporation ("PBGC" or "Defendant") as successor-in-interest to the Retirement Income Plan for Pilots of U.S. Air Inc. (the "Plan") and current trustee of the Plan.

2. Pursuant to the Employee Retirement and Income Security Act ("ERISA"), 29 U.S.C. §§ 1001-1169, Plaintiffs and all others similarly situated seek to enforce their rights under the Plan as it was written. Instead of following the express language of the Plan, U.S. Airways Group, Inc. ("U.S. Airways") reached an *ultra vires* "oral understanding" with certain members of the Airline Pilots Association ("ALPA") that was never incorporated into the Plan. U.S. Airways applied this "oral understanding" to modify the unambiguous terms of the Plan so as to allow U.S. Air[1] to withhold lump-sum payments for 45 days rather than distribute the lump-sum payments on the first day of the month coinciding with or following the Normal Retirement Date (as defined below), or, for early retirees, the elected date of retirement as required by the Plan.

[1] For ease of reference, "U.S. Air," as used in the remainder of the Complaint, includes both U.S. Airways Group, Inc. and The Retirement Income Plan for Pilots of U.S. Air Inc.

(The date on which benefits, in accordance with the Plan, were to actually commence, is referred to as the "Actual Retirement Date"). As a result of these actions, the lump-sum benefits as paid were not the actuarial equivalent to the annuity option under the Plan.

3. This action seeks restitution to Plaintiffs and members of the Class (defined below) ("Class Members") from PBGC of the actuarial equivalent of the annuity option as required by the Plan.

II. Jurisdiction and Venue

4. This action, brought under 29 U.S.C. § 1132(a)(1)(B), seeks monetary damages, and, pursuant to 29 U.S.C. § 1132(a)(3), seeks equitable relief. Plaintiffs and all others similarly situated also seek the recovery of all reasonable costs of litigation and attorneys' fees pursuant to 29 U.S.C. § 1132(g) and 29 U.S.C. § 1303(f)(3).

5. This Court has subject matter jurisdiction over this action pursuant to 29 U.S.C. § 1132(e)(1) and 28 U.S.C. § 1331.

6. Venue is proper and has been established in this District pursuant to 29 U.S.C. § 1132(e)(2) and/or pursuant to 28 U.S.C. § 1391.

III. Parties

7. Plaintiff James C. Stephens is a resident of Houston, Texas, and at all times relevant hereto, was an Employee as defined by 29 U.S.C. § 1002(5). Mr. J.C. Stephens was also a Participant of the Plan as defined by the Plan and 29 U. S.C. § 1002(7).

8. Plaintiff Richard Mahoney is a resident of Cornelius, North Carolina and, at all times relevant hereto, was an Employee as defined by 29 U.S.C. § 1002(5). Mr. Mahoney was also a Participant of the Plan as defined by the Plan and 29 U.S.C. § 1002(7).

9. Defendant Pension Benefit Guaranty Corporation is a federal corporation created by ERISA, 29 U.S.C. §1302. The Plan terminated on March 31, 2003, and, on that same date, PBGC assumed responsibility of the Plan and became trustee of the Plan.

IV. Class Action Allegations

10. Plaintiffs bring this action pursuant to Fed. R. Civ. P. 23(a), 23(b)(2) and 23(b)(3) as a class of persons (the "Class") defined as:

> 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).

11. Members of the Class are so numerous that joinder is impracticable. Plaintiffs allege that 686 lump-sum payments were made without interest between February 28, 1997, and March 31, 2003, by U.S. Airways PBGC during the relevant class period.

12. The claims of Mr. J.C. Stephens and Mr. Mahoney are typical of the claims of the Class.

13. There are questions of law and/or fact common to the Class.

14. Plaintiffs will fairly and adequately protect and represent the interests of the Class and are represented by counsel who are experienced and competent in the prosecution of class action litigation.

15. There are questions of law and/or fact common to all Class Members which predominate over any questions affecting only individual Class Members, including but not limited to the following:

a. Whether U.S. Air intentionally, unnecessarily and/or improperly delayed the distribution of lump-sum payments;

b. Whether the lump-sum payments as distributed are the actuarial equivalent to the annuity;

c. Whether the Summary Plan Description is inaccurate or misleading;

d. Whether the Plaintiffs and Class Members are entitled to equitable relief, including but not limited to restitution; and

e. Whether any Plan assets have directly or indirectly inured to PBGC's benefit as a result of implementation of the oral understanding.

16. The prosecution of separate actions by individual members of the Class creates the potential for inconsistent or varying adjudications and incompatible standards of conduct for the PBGC.

17. Class action treatment is a superior method for the fair and efficient adjudication of this controversy. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the necessary duplication of evidence, effort, and expense that numerous individual actions require.

V. Factual Background

18. Upon information and belief, from 1990 through March 31, 2003, the Plan remained in force and effect without substantial change as to any Plan language relevant to this action. On March 31, 2003, the Plan was terminated and PBGC was appointed trustee of the Plan.

19. The Plan provided for the payment of a defined pension benefit. The Plan further provided that a Participant may elect to receive the defined benefit fully or partially through a lump-sum payment.

20. Pursuant to § 4.3 of the Plan, all retirement distributions (including any lump-sum payments) were to be made "commencing on the first day of the month coinciding with or next

following [the] Normal Retirement Date." The Normal Retirement Date was defined by the Plan "as the date on which the Participant attains his 60th Birthday."

21. Alternatively, pursuant to § 5.1 of the Plan, a Participant entering into early retirement may elect "to begin receiving this retirement income on the first day of any month between the date he retires from the employ of the Employer and his Normal Retirement Date."

22. Thus, under the terms of the Plan, lump-sum payments were to be made on the Actual Retirement Date, that is, the first day of the month coinciding with or following the Normal Retirement Date (or, alternatively, for Participants electing early retirement, on the first day of any month elected by the Participant between the date he retires from the employ of the Employer and his Normal Retirement Date).

Plaintiff James C. Stephens

23. On October 16, 1996, Mr. J.C. Stephens informed U.S. Airways that he wished to begin receiving his retirement benefits on December 1, 1996. He delivered to U.S. Airways his retirement package, which included his election to have his defined benefit distributed as a single lump-sum payment.

24. On November 26, 1996, upon U.S. Airway's request, Mr. J.C. Stephens sent U.S. Airways a letter, drafted in accordance with its instructions, verifying his intention to retire and receive benefits commencing on December 1, 1996.

25. Mr. J.C. Stephens reached his Normal Retirement Date — his 60th birthday — on November 25, 1996.

26. The defined benefit expressed as a lump-sum for Mr. J.C. Stephens was $488,477.22.

27. Mr. J.C. Stephens was eligible for and elected to receive his defined benefit by way of a single lump-sum payment.

28. Pursuant to the terms of the Plan, Mr. J.C. Stephens was entitled to receive his lump-sum payment on December 1, 1996.

29. U.S. Air failed to issue payment to Mr. J.C. Stephens on December 1, 1996.

30. Mr. J.C. Stephens received his lump-sum payment on January 14, 1997, approximately 45 days after his actual Retirement Date.

31. Mr. J.C. Stephens contacted U.S. Air to inquire about the reasons for the delay in receiving his lump-sum payment. Rather than explaining that U.S. Air had reached an oral understanding with ALPA to allow U.S. Air an additional 45 days to distribute lump-sum payments, and that U.S. Air acted in accordance with this oral understanding, U.S. Air affirmatively created the impression that the delay was unavoidable; that it was due solely to the amount of time necessary to complete the process of calculating the amount of the lump-sum payment. However, this was not the case. To the contrary, U.S. Air was able to calculate and distribute the annuity payments (the calculation of which is not significantly more difficult or time-consuming than calculating a lump-sum payment) on the Actual Retirement Date. Upon information and belief, U.S. Air withheld lump-sum payments so as to allow the Plan to retain the funds, thereby minimizing mandatory Plan contributions and obtaining the benefits on earnings for a larger period of time than had the disbursements been made timely. Thus, U.S. Air concealed from Mr. J.C. Stephens the existence of the oral understanding as well as the true reasons for the delay in distributing his lump-sum payment.

32. On February 28, 1997, Mr. J.C. Stephens requested that U.S. Air pay him $14,740.00 representing the actuarial equivalent of the delayed lump-sum payment.

33. U.S. Air refused to pay Mr. J.C. Stephens the requested amount, asserting that it was not required to make lump-sum payments within 45 days after the Actual Retirement Date.

34. Mr. J.C. Stephens unsuccessfully requested relief from the Plan Administrator, and appealed the Plan Administrator's decision denying him relief. Mr. J.C. Stephens then appealed to the Pilots Retirement Board ("PRB").

35. The PRB, through an independent arbitrator, denied Mr. J.C. Stephens' claim on March 8, 1999, finding (1) that the Plan was silent as to whether "interest" needed to be paid; and (2) there existed an oral understanding between ALPA and U.S. Airways allowing U.S. Airways an additional 45 days to distribute lump-sum payments. The PRB's decision did not turn on facts or circumstances unique to Mr. J.C. Stephens. Rather, the rationale of the PRB's decision applied to all similarly situated pilots of U. S. Airways. Therefore, Mr. J.C. Stephens exhausted all available administrative remedies for himself as well as all members of the Class.

Plaintiff Richard Mahoney

36. On or about January 8, 1999, Mr. Mahoney informed U.S. Air that he wished to begin receiving his retirement benefits on April 1, 1999, and sent U.S. Air his retirement package, which included his election to receive his defined benefit through a single lump-sum payment.

37. Mr. Mahoney reached his Normal Retirement Age his 60th birthday on March 2, 1999.

38. The defined benefit expressed as a lump-sum for Mr. Mahoney was $672,162.79.

39. Mr. Mahoney was eligible for and elected to receive his defined benefit by way of a single lump-sum payment.

40. Pursuant to the terms of the Plan, Mr. Mahoney was entitled to receive this lump-sum payment on April 1, 1999.

41. U.S. Air failed to issue payment to Mr. Mahoney on April 1, 1999.

42. At the time, Mr. Mahoney was led to believe that his payment was delayed due to the amount of time it took to calculate the lump-sum payment and the volume of persons retiring at or near the time of his retirement. At all times relevant hereto, Mr. Mahoney was unaware of the existence of the alleged "oral understanding" or the true reasons for the withholding of his lump-sum payment.

43. Mr. Mahoney received his lump-sum payment on or about May 14, 1999, approximately 45 days after his Actual Retirement Date. Mr. Mahoney was not paid the actuarial equivalent of the annuity option available under the Plan.

44. Mr. Mahoney exhausted his administrative remedies vicariously through Mr. J.C. Stephens. In any event, use of the administrative remedies would have been futile given that the rationale of the PRB's decision with respect to Mr. J.C. Stephens' claim would apply equally to Mr. Mahoney' s claim as well.

COUNT I
Enforcement of Rights Under the Plan
Pursuant to ERISA § 502(a)(1)(B)

45. Paragraphs 1-44 are incorporated by reference as if fully set forth herein.

46. As it was written, the Plan required U.S. Air to make lump-sum payments to Plaintiffs and the Class Members on their Actual Retirement Date.

47. Rather than comply with the terms of the Plan as it was written, U.S. Air adopted, adhered to, implemented and relied upon an oral understanding contrary to the written terms of the Plan.

48. As applied by U.S. Air, this oral understanding effectively amended the Plan and, as such, U.S. Air withheld lump-sum payments up to 45 days past the Actual Retirement Date.

49. U.S. Air violated the Plan through its illegal adoption of, adherence to, implementation of and reliance upon an oral understanding, which, as applied, was contrary to

the unambiguous terms of the Plan as written in that it enabled U.S. Air to consistently withhold lump-sum payments up to 45 days past the Actual Retirement Date.

50. As a result of these acts, Plaintiffs and all Class Members were damaged by being denied the prompt use and enjoyment of their full pension benefits. The PBGC, as successor-in-interest to and trustee of the Plan, has been unjustly enriched as a result of its retention of these funds.

51. Under 29 U.S.C. § 1132(a)(1)(B), Plaintiffs are entitled to the enforcement of the Plan, as written, without regard to the oral understanding that was improperly adopted and implemented. The PBGC should be compelled to pay the actuarial equivalent of the annuity option under the Plan.

COUNT II
Failure to Distribute Lump Sum Payments
As The Actuarial Equivalent To Annuities

52. Paragraphs 1-51 are incorporated by reference as if fully set forth herein.

53. Pursuant to 29 U.S.C. § 1054(c)(3) and 29 U.S.C. § 1055, and § 10.4 of the Plan (including relevant addenda to the Plan), U.S. Air had a duty to ensure that the defined benefit, when distributed as a lump-sum, was the actuarial equivalent of the annual benefit under the Plan commencing at normal retirement age, as calculated in accordance with ERISA and its implementing regulations.

54. U.S. Air breached this duty by failing to distribute the lump-sum payments for up to 45 days past the Actual Retirement Date. The lump-sum payments are calculated as the present value of the annuity as of the Actual Retirement Date. However, the lump-sum benefits were not distributed on the Actual Retirement Date. Rather, the lump-sum benefits were distributed 45 days later and thus, as distributed, the actual lump-sum payment was not the true present value of the annuity. As such, the lump-sum payment, as distributed, was not the

actuarial equivalent to the annuity.

55. Pursuant to 29 U.S.C. § 1132(a)(3), Plaintiffs and the Class are entitled to equitable relief against PBGC, as successor-in-interest to and trustee of the Plan, including, but not limited to, restitution and disgorgement.

COUNT III
Liability for Breach of Co-Fiduciary
Pursuant to ERISA § 405

56. Paragraphs 1-55 are incorporated by reference as if fully set forth herein.

57. Pursuant to 29 U.S.C. § 1104(a)(1)(A) and 29 U.S.C. § 1104(a)(1)(B), as a fiduciary of the Plan, U.S. Airways was required to act solely in the interests of and for the exclusive purpose of providing benefits to Plaintiffs and Class Members, and was required to discharge its duties with the care, skill and diligence of a prudent person in a like capacity under similar circumstances.

58. Instead, U.S. Airways deliberately, unnecessarily and/or unreasonably withheld lump-sum payments from Plaintiffs and Class Members, thereby allowing the Plan to retain the difference between the actuarial equivalent of the annuity option under the Plan and the amounts paid to Plaintiffs and Class Members. This allowed the Plan, and PBGC, to retain these excess funds.

59. PBGC had knowledge of this breach of fiduciary duty by U.S. Airways, and has not made reasonable efforts under the circumstances to remedy the breach, in violation of 29 U.S.C. § 1105(a)(3).

60. As a result of PBGC's failure to remedy the breach of fiduciary duty by U.S. Airways, Plaintiffs and the Class Members are entitled to equitable relief against PBGC including, but not limited to, restitution and disgorgement.

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, respectfully request that this Court enter an Order certifying this cause of action as a class action pursuant to Fed. R. Civ. P. 23(b)(2) and 23(b)(3), and directing that reasonable notice of this action be given to Class Members, pursuant to Fed. R. Civ. P. 23(c), and further enter a judgment against PBGC:

(i) enforcing the terms of the Plan as it was written, without regard to the oral understanding;

(ii) granting equitable relief, including but not limited to, restitution and/or disgorgement against PBGC;

(iii) awarding Plaintiffs all reasonable and necessary litigation costs and attorneys' fees as well as pre-judgment and post-judgment interest as provided by law; and

(iv) awarding such other further and different relief as the nature of the case may require or as may be deemed just, proper and equitable by this Court.

Dated: August 30, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, hereby certify that on August 30, 2012 a copy of the foregoing document was served on the following counsel by electronic filing and U.S. Mail:

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