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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 11-15463(SHL)

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In the Matter of:

AMR CORPORATION,

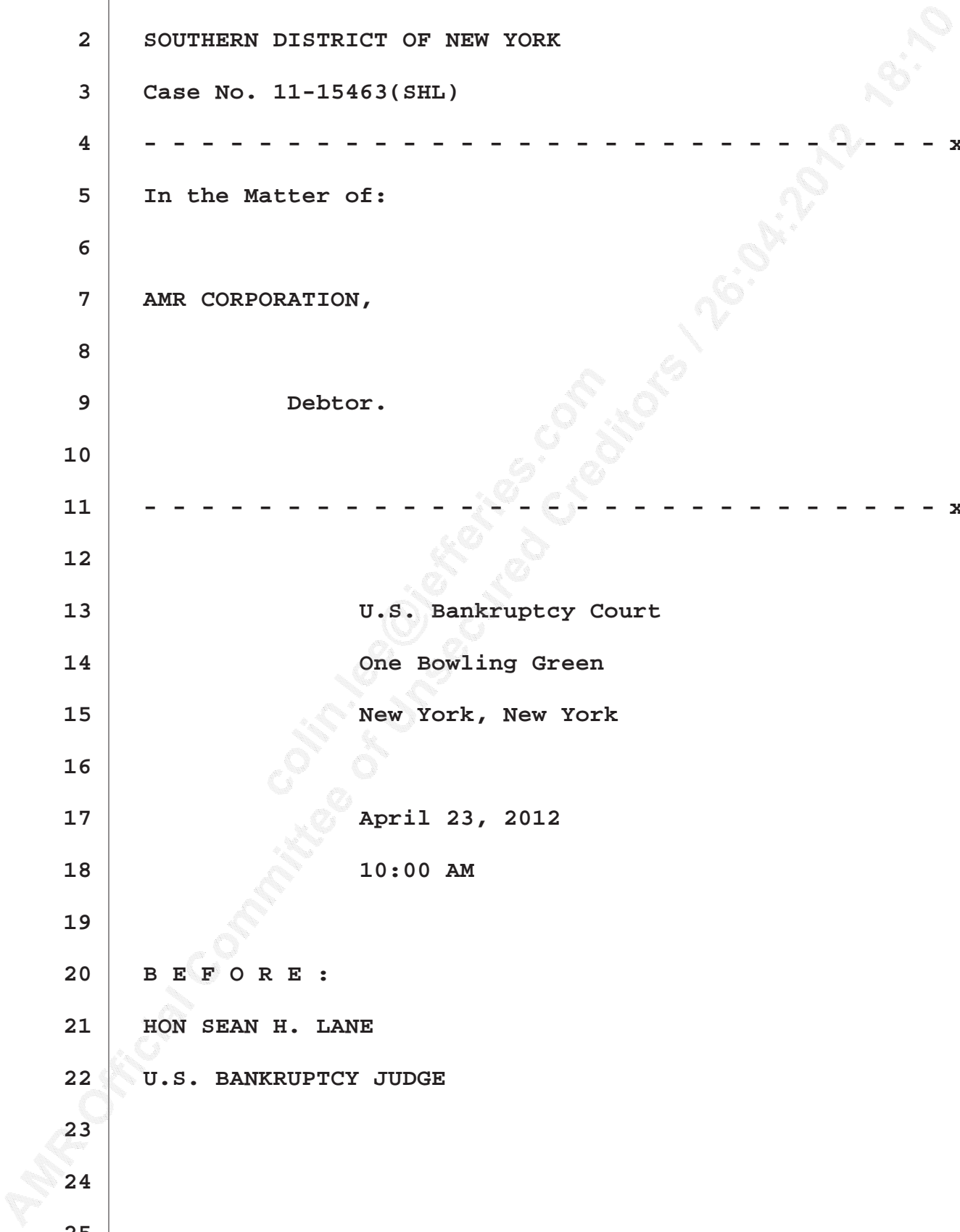
Debtor.

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U.S. Bankruptcy Court
One Bowling Green
New York, New York

April 23, 2012
10:00 AM

B E F O R E :
HON SEAN H. LANE
U.S. BANKRUPTCY JUDGE



1 TRIAL RE: Doc. #2035 Motion to Reject - Motion of Debtors
2 for Entry of Order Pursuant to U.S.C. 1113 Authorizing
3 Debtors to Reject Collective Bargaining Agreements

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Transcribed by: Dawn South, Sherri L. Breach, and William
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AMR Official Committee of Unsecured Creditors / 26:04:2012 18:10
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P R O C E E D I N G S

THE COURT: Good morning, please be seated. Good morning.

UNIDENTIFIED SPEAKER: Good morning, Your Honor.

THE COURT: Perhaps it makes sense -- well first, are there any preliminary matters to address before we proceed with the main order of business which is the hearing --

UNIDENTIFIED SPEAKER: I don't believe so, Your Honor.

THE COURT: All right. Let's get appearances from any counsel that expect to be heard this morning and this afternoon.

MR. MILLER: Yes, Your Honor, Harvey Miller and Steve Karotkin, Larry Baer, Weil, Gotchal & Manges on behalf of the debtors together with Paul Hastings.

MR. GALLAGHER: Your Honor, for the debtor, American Airlines from Paul Hastings law firm, Jack Gallagher, Scott Flicker, and Mark Pollack will also be speaking today.

Thank you.

MS. LEVINE: Good morning, Your Honor, for the Transport Workers Union of America, the TWU, Sharon Levine, Jason Teele, Jack Sherwood, and if I could introduce our general counsel, David Rosin (ph).

1 Thank you.

2 THE COURT: All right, as you identify people who
3 are going to speak just if those people would pop up so the
4 court reporters who are operating ECRO can identify who's
5 going to be speaking.

6 MR. JAMES: Thank you, Your Honor. Edgar James
7 for the Allied Pilots Association, David Dean for the Allied
8 Pilots Association, and Kathy Krieger who was here once
9 before for the Allied Pilots Association.

10 Thank you, Your Honor.

11 MR. CLAYMAN: Your Honor, Robert Clayman for the
12 Association of Professional Flight Attendants from
13 Guerrieri, Clayman, Bartos & Parcelli. With me is Carmen
14 Parcelli and also Paul Knuff from the firm as well.

15 Thank you.

16 MR. GOFFMAN: Good morning, Your Honor --

17 THE COURT: It's a very polite crowd.

18 MR. GOFFMAN: -- Jay Goffman and Jack Butler,
19 Skadden, Arps on behalf of the unsecured creditors
20 committee.

21 MS. NEVILLE: Good morning, Your Honor, Carole
22 Neville, SNR Denton for the PBGC, and with me is Gary
23 Meyerhoff of my firm, and Suzanne Kelly from PBGC.

24 THE COURT: All right. Good morning to you all.

25 MR. MILLER: Good morning, Your Honor, again,

1 Harvey Miller.

2 Today is a momentous day, Your Honor, it's
3 Shakespeare's birthday and from the looks of things we're
4 about to start a Shakespearean epic.

5 My role really today, Your Honor, is perfunctory
6 to introduce Mr. Gallagher who will be presenting the
7 debtor's case.

8 THE COURT: All right, thank you.

9 MR. GALLAGHER: Good morning, Your Honor.

10 THE COURT: Good morning.

11 MR. GALLAGHER: For the record I'm Jack Gallagher
12 Of Paul Hastings, special labor counsel to the debtors
13 representing American Airlines.

14 In American's view, Your Honor, this hearing the
15 is the single most important step to date in this bankruptcy
16 case. Indeed in our view the outcome of this hearing will
17 determine the course of this entire reorganization.

18 So for that reason, Your Honor, I'm pleased to
19 start this morning with some good news.

20 On Friday the Transport Workers Union, which
21 represents more than 24,000 employees of American under
22 seven collective bargaining agreements, told us that they
23 will send out the company's last proposal to their members
24 for a vote on whether to accept that offer as their new
25 agreement. We won't know the outcome of that proceeding

1 this week, Your Honor, we will before we reconvene for the
2 reminding of this proceeding.

3 In the meantime our understanding, Your Honor, is
4 that TWU will participate in this week's hearing, but the
5 company will reserve any evidence relating specifically to
6 bargaining with the TWU for our rebuttal case. We
7 understand that the TWU will do likewise, and that should
8 substantially expedite this week's part of the hearing, Your
9 Honor.

10 THE COURT: All right.

11 MR. GALLAGHER: Two housekeeping item, Your Honor,
12 before I get further.

13 First for those who are not aware of the case
14 management order and the scheduling procedures agreed to my
15 the parties we have filed our entire direct case in writing
16 in advance. Many pages of sworn declarations and exhibit in
17 addition to the briefs which explain our position on the
18 issues, and I presume that Your Honor has been doing some
19 reading.

20 Since we have the burden of proof, Your Honor, we
21 needed to be sure to provide you with evidence addressing
22 each of the elements of Section 1113.

23 The unions have not yet filed their written
24 responses pursuant to agreement, so as we start here today
25 we don't know for certain exactly what evidence or issues

1 the unions will be disputing.

2 So in accord with the scheduling order we will be
3 tendering our major witnesses to adopt their declarations on
4 the witness stand, briefly summarize their direct testimony,
5 and be available for cross-examination, and we hope to
6 conclude that process quickly and efficiently, Your Honor,
7 certainly we hope and expect it will be concluded this week,
8 and then after a two-week break the unions will return to
9 present their direct case after which the debtors will have
10 the opportunity to present a rebuttal case.

11 So what I'm going to try to do here this morning,
12 Your Honor, is to give you an overview, to bring together in
13 one place the debtor's position and the evidence we will
14 present on the major issues before the Court as we perceive
15 them.

16 I stress at the outset, Your Honor, that I welcome
17 any questions you may have along the way, because our goal
18 is to facilitate the Court's understanding of the issues.

19 This is a very complex industry as I'm sure Your
20 Honor has become aware, and if you're not aware yet you
21 certainly will be shortly, these are very complex labor
22 agreements, among the longest and most complicated I've
23 dealt with in many years practicing labor law.

24 As we have also discussed before with the Court,
25 Your Honor, there's a lot of jargon in this case, even apart

1 from the Railroad Labor Act jargon, the airline industry and
2 the contracts are loaded with their own unique jargon.

3 Now we learned last Friday that Your Honor is a
4 pretty quick study on the Railroad Labor Act jargon and we
5 will try to be clear, but if we lapse into too much jargon
6 or at any point there's a term you don't understand by all
7 means tell us and we'll be happy to try to explain it.

8 THE COURT: No, I appreciate that. Having spent
9 some time in the government before going on the bench
10 there's a commitment to jargon in that arena as well so I'll
11 make sure to ask.

12 MR. GALLAGHER: Okay. My second housekeeping
13 item, Your Honor, is the treatment of confidential
14 information.

15 American has filed redacted versions of our
16 documents in the public file because they contain
17 confidential business information, especially on the
18 business side of the case. All parties and the Court have
19 received the unredacted versions with the confidential
20 information identified as such.

21 So the way we propose to handle it in our direct
22 case that we will not ask a witness a direct question that
23 involves confidential information. If it becomes necessary
24 to discuss it from the witness stand our hope is to be able
25 to do it by reference to the pages or paragraphs or exhibit

1 numbers where the information is found without actually
2 reciting the information aloud. We think that's a workable
3 and efficient way to deal with confidential information
4 which might come up, Your Honor.

5 We've had discusses with union counsel about the
6 subject and they've agreed to respect the confidentiality of
7 the information, but have not yet agreed to any specific
8 protocols for doing so, and we respect their right to cross-
9 examine our witnesses and not to tell us in advance the
10 subjects of their cross-examination, but we know that the
11 Court is aware that Section 1113 expressly recognizes the
12 need for some sensitive business data to remain confidential
13 and I expect that we'll be able to work through that.

14 THE COURT: I trust I will hear objections to the
15 extent that anyone is concerned that a question or an answer
16 is about to stumble upon some information that is deemed
17 confidential.

18 MR. GALLAGHER: We'll certainly try very hard to
19 do that, Your Honor, and to avoid any disagreement about it.

20 Moving away from housekeeping, Your Honor, I want
21 to make three observations before I get to the merits.

22 And the first is that no one wins an 1113
23 proceeding.

24 Section 1113 creates a very unique kind of
25 litigation where the goal is not victory in court, but an

1 amicable settlement, and that is our goal, Your Honor. We
2 are not seeking a win over our unions or our employees. We
3 recognize that we are all on the same team and no one wins
4 in this case unless everyone wins.

5 We want very much to restore American Airlines to
6 its rightful place in the airline industry as a successful
7 competitor, able to provide tens of thousands of jobs --
8 good jobs for many decades to come.

9 Despite months of negotiations however we have not
10 been able to convince our union leaders of the need for the
11 cost reductions we have proposed. We think we've clearly
12 shown them that the need is real and the proposals are
13 necessary, but they are either not convinced at the
14 leadership level or not able to muster the votes they need
15 to get an agreement ratified.

16 So in this hearing, Your Honor, we will set forth
17 our evidence on the record to subject it to the tests --
18 stress tests of litigation in the rules of evidence first in
19 order to convince the Court, but also to convince the
20 doubters on the union side that our need is real and that
21 our proposals are indeed fair and equitable.

22 American is asking you to find that our evidence
23 satisfies the requirements set forth in Section 1113, and I
24 group those into five parts, Your Honor.

25 First that our financial crisis is real and our

1 proposals are necessary for the successful reorganization of
2 the company. That is the heart of Section 1113, Your Honor.
3 And the Second Circuit told us in Kerry (ph) Transportation
4 that what that requires the Court to do is to look into the
5 debtor's ultimate future and estimating what the debtor
6 needs to attain financial health. I call that the business
7 case, Your Honor, which -- and we will focus on that first.
8 And that part of the case is global, applies to all of the
9 unions equally.

10 Second, Your Honor, our proposals must assure that
11 all creditors, the debtor, and all of the affected parties
12 are treated fairly and equitably, and that the balance of
13 equities favor rejection.

14 Now the Supreme Court made clear in Bildisco, Your
15 Honor, that that balancing of equities is not free wheeling
16 but is focused on how the equities relate to the success of
17 the reorganization. And the Second Circuit told us in Royal
18 Composing Room that it is the total package of the debtor's
19 proposals that must be measured, not each item separately.

20 The third requirement, Your Honor, is that the
21 company has provided the unions with such relevant
22 information as is necessary to evaluate the proposals. We
23 will show Your Honor that we have done so.

24 Fourth, that the company has bargained in good
25 faith over its proposals. We have done so.

1 And fifth, that the unions have rejected the
2 company's proposals without good cause. And the Second
3 Circuit in Maxwell Newspapers made clear, Your Honor, that
4 that good cause is objective, not subjective, and must focus
5 on the needs of the debtor's reorganization.

6 So these last four factors, Your Honor, I call the
7 labor case because they focus on traditional labor matters,
8 the proposals, and the collective bargaining process.

9 Now the Court will ultimately enter findings on
10 each of these elements, which of course are legally
11 significant, but they're not only legally significant to us,
12 Your Honor, they're important because we hope in the course
13 of presenting our evidence and the Court's findings that the
14 evidence and the findings will help us to finally convince
15 our employees and their leaders to reach consensual
16 agreements with American that will be ratified by their
17 members.

18 That may sound simple, Your Honor, but these
19 parties have negotiated for more than four years for new
20 agreements, including the past three months during the new
21 circumstances of bankruptcy. The company has repeatedly
22 cited to the unions much of the same evidence that we will
23 be putting before this Court.

24 And I don't say this to point fingers, Your Honor,
25 American Airlines believes that it has the best employees in

1 the airline industry, bar none, so we are not in any way
2 suggesting that it is their fault that we are in bankruptcy.
3 Because for purposes of reorganization it really doesn't
4 matter whose fault it was that brought us here. Section
5 1113 is forward looking. The key question is going forward
6 what is necessary for a successful reorganization?

7 Congress clearly recognized that a restructured
8 business is better than a liquidated business, and a
9 restructured job is better than no job at all.

10 So while fault doesn't matter, Your Honor, what
11 does matter are the basic economics of our business that
12 American has the highest labor costs in an intensely
13 competitive industry.

14 American is the only legacy carrier that has not
15 restructured and consistently loses large amounts of money.
16 It's that simple, Your Honor, that's why we're here. We
17 need to fix this business, put it back on track for a
18 successful future for all of our stakeholders.

19 My second general observation, Your Honor, is
20 about shared burden. We all know that restructuring is
21 usually painful. Section 1113 makes clear that the real
22 question is how to structure an equitable allocation of the
23 burden of that restructuring.

24 Now, American's unsecured creditors, Your Honor,
25 lent more than \$2.5 billion to these debtors and they're

1 unlikely to receive any cash in return. Many of American's
2 vendors and lessors have already agreed to reduce terms or
3 accepted rejection of their contracts. The remainder will
4 be addressed shortly in the course of this proceeding.

5 American's former CEO has left the company, and
6 the company is in the process of reducing management ranks
7 by at least 15 percent. We have already eliminated four
8 senior officer positions and additional reductions will be
9 coming before the end of this hearing.

10 American has 20,000 non-union employees, Your
11 Honor, about 30 percent of our total U.S. workforce, and we
12 have announced, Your Honor, that those total cost reductions
13 for those non-union groups will be the same 20 percent
14 reduction of direct labor costs that American has proposed
15 to each union.

16 Now our non-union employees, Your Honor, are in
17 three major groups. The largest is our what's called at
18 American the agent's reservations and planner group, ARP,
19 you may hear that jargon, in other carriers they are called
20 passenger service agents. They are gate agents, ticket
21 agents, and reservations reps primarily. There are 10,000
22 of them. And the other 10,000 are about 7,500 management
23 professionals and about 2500 support staff in management.

24 So when I talk about non-union employees globally,
25 Your Honor, those are the 20,000 people I'm speaking of,

1 about 30 percent of the workforce. So I wouldn't want the
2 Court to think for a minute that this restructuring is only
3 about union represented employees. The non-union folks,
4 including management up to the most senior levels will share
5 the pain.

6 For the management and support staff American has
7 targeted \$165 million per year in labor cost reductions.
8 For the ARP group \$95 million per year. And for both
9 groups, Your Honor, those reductions will come in two main
10 ways. Head count reductions will be one part, and the
11 second part will be reducing employee benefits and putting
12 all of those employees on the very same benefit programs we
13 are proposing to our unions. A universal set of benefit
14 programs across all employee groups at the company.

15 Last week American announced the elimination of
16 1200 agent positions over the next few months, the closing
17 of a reservation center, and the restructuring of
18 reservations positions.

19 So the restructuring has already begun, Your
20 Honor, as to the non-union employees and management up to
21 the most senior levels.

22 I say all of that, Your Honor, to make clear that
23 American is not targeting our union represented employees
24 alone for cost reductions. That's unlike many other debtors
25 in Chapter 11. This proceeding is not the first thing that

1 American did to reduce costs and restructure. It is among
2 the last on a very long list.

3 So while there is necessarily some sacrifice in a
4 reorganization, Your Honor, there would be much more
5 suffering and sacrifice if we don't get this reorganization
6 right.

7 A great American labor leader, Walter Reuther who
8 was the president of the United Auto Workers Union for many
9 years said, "That the greatest job security an employee can
10 have is a financially strong company." We could not agree
11 more.

12 My last observation, Your Honor, is to try to
13 convey a sense of urgency. American Airlines has lost
14 \$10 billion over the last ten years. Last week the company
15 announced a first quarter loss of \$248 million, excluding
16 reorganization and special items. That's about \$80 million
17 a month, Your Honor, for regular operations.

18 So this is a huge enterprise. It will require
19 huge efforts to turn it around. We are now five months into
20 this reorganization process, but we have not yet been able
21 to address the single largest cost problem that we have.

22 Your Honor, the history of the airline industry is
23 littered with the shells of a once great airlines that
24 simply didn't adapt. Pam American, TWA, many others. Some
25 of them went through bankruptcy multiple times, but never

1 found the right solution. We don't want to join them, Your
2 Honor, we are confident that our unions and our employees
3 and our creditors don't want that either, we must find the
4 right solution.

5 So we hope for a consensual agreement, Your Honor,
6 but in the absence of a consensual agreement we ask that you
7 grant our motion to reject, because we must move on.

8 It's our obligation under the Bankruptcy Code to
9 make this reorganization successful for the benefit of all
10 of our stakeholders, not only our creditors, but most
11 importantly our 74,000 employees around the world.

12 With that, Your Honor, I want to turn to the
13 merits of the evidence that we will present.

14 Our first witness will be Daniel Kasper, an expert
15 on the economics of the airline industry, and he will
16 testify about competition in the airline industry.

17 I do want to clarify some terms, Your Honor, I
18 will try to avoid using the word major to describe an
19 airline because it can be very confusing.

20 Southwest Airlines today is the largest domestic
21 U.S. air carrier, it is certainly a major airline, but
22 Southwest operates on a very different business model than
23 most of the other large carriers.

24 The larger carriers other than Southwest usually
25 operate a large network of flights feeding into a hub city

1 where passengers can connect to many other cities. Carriers
2 which operate this in case are sometimes called network
3 carriers, sometimes called legacy carriers, because most of
4 them were around before deregulation. And there used to be
5 dozens, Your Honor, but we're now down to only four. United
6 Airlines, Delta Airlines, American Airlines, and U.S.
7 Airways. And I rank them that way by the size of their
8 operations.

9 And Southwest is different, Your Honor, to very
10 briefly describe it. They offer point to point service
11 rather than connecting service. They keep costs low by high
12 utilization of their aircraft and their personnel. They
13 operate only one type of aircraft, which gives them a huge
14 savings in training of pilots. Their schedule calls for an
15 aircraft to turn around and leave a city 20 minutes after it
16 arrives. No time to wait for connecting passengers or bags
17 or flights that have been delayed.

18 As a result Southwest has much lower total costs
19 for its operations, and that enables it to pay its employees
20 very well because it has all these other cost advantages
21 that the legacy network carriers do not have.

22 For these reasons Southwest is the prototype for
23 another category of airlines that are network carriers and
24 recollects it's a group we call in the industry the low cost
25 carriers, or the LCCs, and that's because their most

1 demonstrable characteristic, Your Honor, is markedly lower
2 operating cost -- total operating cost than the network or
3 legacy carriers. Because they have lower costs they can
4 still be profitable at the lower fares they set to attract
5 customers because they're in many cases the newcomers, the
6 new kids on the block.

7 Like Southwest they are growing. They have many
8 aircraft on order. Sometimes they don't succeed, Your
9 Honor, but when they go out of business they are replaced by
10 another start up.

11 American is not the first of the legacy carriers
12 to go through Chapter 11, Your Honor, and this is very
13 telling. Every other major network carrier has been through
14 Chapter 11. American is the last.

15 By now the dramatic change in the economics of the
16 airline industry is evident, and since airline deregulation
17 this industry has become intensely competitive. We don't
18 really expect any dispute about that.

19 That intense competition and price transparency
20 via the internet makes it very difficult for an airline to
21 control its prices and its revenue stream, because
22 especially in the domestic markets carriers have learned --
23 American has learned that they must match the prices set by
24 the lowest fare carrier in a particular market. It's a
25 basic economic proposition, Your Honor, that in an intensely

1 competitive industry no company can survive if its costs are
2 materially higher than those of its competitors, and that's
3 where American Airlines is today.

4 How did we get here, what has changed over the
5 last ten years? Six things, Your Honor.

6 First the rise of the low cost carriers that I've
7 mentioned. Those low cost carriers now serve 49 of the 50
8 largest domestic routes served by American. That's up from
9 25 in 1998. The low cost carriers are now expanding beyond
10 domestic routes. Spirit Airlines is operating into the
11 Caribbean and Latin America, places where American had
12 traditionally enjoyed a revenue premium in the past.

13 Apart from the rise of the low cost carriers
14 prices are now 100 percent transparent with the spread of
15 the internet. Anyone in the world with access to the
16 internet can now find the lowest airfare available between
17 any two points very easily, and fare wars have become
18 common.

19 Excuse me. Third, Your Honor, the events of the
20 past decade have rocked the airline industry. Excuse me.

21 The first of course and most notorious the events
22 of September 11th, 2001. We at American will never forget,
23 Your Honor, that the tragic loss of life that day included
24 our passengers and colleagues aboard two American Airlines
25 airplanes. Those events of course led to dramatically

1 increase in security, added costs and reduced demands, and
2 our industry suffered billions in losses as a result.

3 As if that weren't enough trauma to inflict on the
4 industry, Your Honor, those events were followed by wars in
5 Iraq and Afghanistan, and we also had epidemics, tsunamis,
6 other natural disasters, capped off by a recession.

7 These are the external events that routinely
8 strike this industry and which every business in this
9 industry must be prepared and financially able to endure and
10 rebound from. Our revenues go down when these events
11 happen, Your Honor, our costs generally do not.

12 The fourth major event in the past decade is the
13 dramatic increase in volatility in the price of fuel. Began
14 to rise rapidly with the onset of the Iraq war in 2003.
15 These remain volatile ever since, is today well over \$100 a
16 barrel.

17 The fuel price spike has had a disproportionate
18 impact on American, Your Honor, because our weekend
19 financial condition over the past ten years prevented
20 American from reinvesting and renewing its fleet for many
21 years so that we ended up with an aging and fuel inefficient
22 fleet.

23 Now we've taken steps in the past year to address
24 that with a very large and significant new aircraft order.
25 I believe it's entirely financed by the manufacturers, Your

1 Honor, which would market factors that enabled us to proceed
2 with it, but it's a burden we've had to live with and will
3 live with until the new aircraft come on line.

4 The second reason why fuel has had a
5 disproportionate impact is that American is required to use
6 small regional jets, less than 50 seats in its regional
7 airline operations which are conducted under contract by
8 regional air carriers. Those smaller regional jets are not
9 fuel efficient, they have higher unit cost than the larger
10 regional jets used by our competitors.

11 The fifth factor, Your Honor, is that American's
12 major competitors have restructured in bankruptcy. U.S.
13 Airways went into bankruptcy in 2002, came out in early 2004
14 I believe, but went back in again in late 2004.

15 United Airlines did it differently, Your Honor,
16 they also went in in 2002, but rather than come out and go
17 back in they stayed in bankruptcy for more than three years,
18 and they filed not one, but two 1113 motions. They did an
19 initial round of 1113 cost reductions in 2003, it proved
20 insufficient, Your Honor, and they went back again for a
21 second round of cost reductions.

22 Delta and Northwest held out a little bit longer,
23 Your Honor, they both filed for bankruptcy in this Court in
24 September of 2005 and emerged in the spring of 2007.

25 The one common factor, Your Honor, is that in

1 bankruptcy these airlines all achieved relief from their
2 high labor costs and the contractual constraints on their
3 operations.

4 Now American was also in financial distress during
5 part of this time. In 2003, Your Honor, American managed to
6 avoid bankruptcy by negotiated labor cost reductions with
7 our unions, the very parties who are present here today.
8 And we were all hopeful, Your Honor, that that would be
9 sufficient, but it turned out, Your Honor, that the cost
10 reductions obtained by American in 2003 were much lower than
11 the relief our competitors obtained in their bankruptcy
12 proceedings, and that is a major part of the cost problem
13 and the difference between American and its competitors
14 today.

15 The sixth factor, Your Honor, is mergers. In the
16 fall of 2008 Delta closed on its acquisition of Northwest
17 Airlines and that was fully consummated in 2010. So
18 Northwest Airlines is now gone and Delta Airlines is much,
19 much larger and stronger as a result.

20 Subsequent to that in 2010 United and Continental
21 announced their merger, and that merger has now progressed,
22 Your Honor, to the point where just last month the
23 Continental name was eliminated from the airline market
24 place. So that merged organization now appears for
25 marketing and public purposes as United Airlines. They are

1 still operating internally as two separate operating units
2 because their labor contracts have not yet been integrated
3 and their seniority lists have not yet by integrated, but
4 for marketing and ticketing and revenue generation purposes
5 they're all on the UA code for United Airlines. And as a
6 result of that, Your Honor, United Airlines today is the
7 largest carrier in the world. Delta is second. American is
8 third, but in terms of domestic passenger traffic, American
9 has slipped to fourth.

10 So Mr. Kasper's declaration addresses all of these
11 issues, Your Honor, and after addressing the intensity of
12 competition and the structure of the industry Mr. Kasper
13 will discuss American's relative decline in recent years in
14 relationship to the legacy carriers that used to be our peer
15 group. All of those other carriers, Your Honor, were
16 profitable last year, but American lost more than
17 \$1 billion.

18 Mr. Kasper will identify the one factor that most
19 explains this increasing gap in financial performance. We
20 know that it's not our non-labor costs because they are in
21 line with the rest of the industry. We know, Your Honor,
22 that it is our -- that we currently have the highest labor
23 cost in the industry and that's an absolutely untenable
24 position.

25 Our second witness, Your Honor, is Jerrold Glass,

1 an expert on collective bargaining and airline labor
2 contract terms. Mr. Glass was the senior vice president of
3 U.S. Airways throughout their first and second bankruptcies.
4 Has been an airline industry contract analyst for more than
5 30 years.

6 He will testify that American's labor contracts
7 have among the highest costs, and most especially important,
8 Your Honor, the lowest productivity in the airline industry.

9 He will also testify that American's medical and
10 retirement benefits are the most generous in the airline
11 industry today.

12 And based on his experience in the U.S. Airways
13 bankruptcies and his review in detail of the other airline's
14 bankruptcies, he will testify that the most common mistake
15 the other carriers made was to settle for less than they
16 ultimately needed, which made for multiple rounds of labor
17 contract concessions at U.S. Airways, United, Delta, and
18 Northwest.

19 Our next business case witness, Your Honor, is
20 Beverly Goulet, who's American's chief restructuring
21 officer, and Ms. Goulet will testify about American's
22 financial performance.

23 In 2000 American was the largest passenger airline
24 in the world and earned reasonable profits; no longer.
25 American has been consistently losing money while the others

1 have returned a profitability.

2 All of those years of losses, Your Honor, had
3 consequences. The major -- two major ones were the
4 inability to reinvest in our business; under investment,
5 while our competitors invested heavily.

6 And secondly, Your Honor, American had to borrow
7 heavily to fund our losses. As of the end of 2011 American
8 and AMR had adjusted net debt of \$16.8 billion, and that is
9 what brought us to this Court, Your Honor.

10 On the cost side of the equation by 2009 American
11 became the carrier with the highest overall unit cost;
12 highest in the industry. But since we know that our non-
13 labor costs are competitive we know that it is labor cost
14 that makes the difference.

15 Ms. Goulet will demonstrate to Your Honor that
16 American has reduced its labor costs outside of bankruptcy
17 over the past ten years as much as humanly possible. Over
18 the past ten years American has reduced its budgeted costs
19 for items other than its collective bargaining agreements by
20 \$4.75 billion per year. So that we think, Your Honor,
21 confirms that we have a labor cost problem.

22 We also, Your Honor, have a revenue problem. On
23 the revenue side of the equation American's former size
24 advantage has been overtaken by the merged network
25 competitors who are now much larger.

1 In the past, Your Honor, the size of our network,
2 the attractiveness of our hub cities attracted a greater
3 share of high value customers. First-class passengers and
4 those who seek the amenities that American could offer, but
5 most importantly schedule and convenient.

6 American's capacity has shrunk relative to what
7 were other network carriers since 2003. And last year our
8 passenger revenue per seat mile lagged behind United,
9 Continental's, and Delta's.

10 So in response to all of these problems and
11 issues, Your Honor, American has developed a business plan
12 for its restructuring, and Ms. Goulet will testify about the
13 development of that business plan, as well Mr. Virasb Vahidi
14 who's American's senior vice president and chief commercial
15 officer, and they will explain to your court that this
16 business plan addresses both revenues and costs.

17 The financial metrics of the plan were determined
18 in consultation with American's financial advisor,
19 Rothschild & Company. One of our expert witnesses will be
20 Mr. David Resnick of Rothschild who will testify about those
21 capital market metrics.

22 Certain details of the revenue plan were
23 determined by American in consultation with another
24 independent advisor, McKinsey & Company. The head of
25 McKinsey's aviation practice, Alex Dichter, will be another

1 of our expert witnesses.

2 These witnesses, Your Honor, will tell you that
3 the business plan contemplates approximately \$1 billion per
4 year of increased revenue, revenue enhancement achieved
5 through growth and expansion, not only to renew our fleet
6 but to make it larger, a larger network, including a larger
7 number of aircraft, larger number of flights, larger number
8 of wide-body aircraft, increased focus on our hub markets,
9 expansion of our international markets, expanded use of code
10 sharing with other airlines, and expanded use of large
11 regional jets.

12 Now there's very good news in this part of the
13 plan, Your Honor, because it will create more jobs as it
14 comes on line over time. As the Court can undoubtedly
15 understand new aircraft take -- there is a long lead time on
16 the addition of new aircraft.

17 These significant fleet improvements and new
18 aircraft will aid fuel efficiency and support the growth of
19 revenue, because a newer fleet will enable us to better
20 attract customers and right sizing the fleet, the right mix
21 of regional jets with main line aircraft will enable
22 American to match supply with demand.

23 And our business plan also contemplates targeted
24 investments in American's brand and product needed to keep
25 pace and to catch up renewing our facilities to serve our

1 customers better.

2 Now one focal point, Your Honor, on the revenue
3 side is an item which you will hear a lot about in this
4 proceeding called the pilot scope clause. A scope clause,
5 Your Honor, is Section 1 or Article 1 of the pilot
6 collective bargaining agreement.

7 In the old days it was simple, Your Honor, it said
8 the pilots will fly the company's airplanes, but these
9 clauses have become as competition has increased and
10 business plans they have become far more complicated, these
11 contract provisions have become much more lengthy and
12 complicated. It now -- they now say not only what our
13 pilots will do, but what your company will not do. They are
14 loaded with restrictions on the company's ability to make
15 business decisions for business reasons, and I will focus on
16 just two of those restrictions, Your Honor, which I'm sure
17 you will hear more about in this proceeding.

18 The first has to do with regional airline flying.
19 The pilot agreement limits how much flying can be done under
20 American's name and American's code, the AA code in the
21 airline industry by regional carriers under contract to
22 American.

23 The scope clause specifically provides for the
24 size, seating capacity, and maximum gross take off weight of
25 regional airplanes that can be flown.

1 In particular, Your Honor, American Airlines today
2 is limited in the size of any regional airplane that can fly
3 with its code at 50 seats, with one exception for 47
4 specific aircraft which can be flown up to 70 seats, but
5 that exception is limited to specific airplanes. If one of
6 those is retired the exception does not expand, it
7 decreases.

8 Not only does the pilot scope clause limit the
9 size of regional jets, it limits what routes they can fly
10 and it limits the number of regional jets.

11 While we have lived with these restrictions, Your
12 Honor, under the current agreement, other airlines have been
13 introducing larger regional jets, and they have become very
14 popular with the flying public, and that is where we face a
15 severe disadvantage. Our competitors can operate hundreds
16 of regional jets with up to 76 seats while American cannot.

17 THE COURT: Let me ask you a question about that,
18 because in the absence of having papers from the other sides
19 here, what's the genesis for the restriction in terms of
20 what interests are being protected by having this -- these
21 limitations?

22 MR. GALLAGHER: Well, I'm probably not the best
23 advocate for the pilot's viewpoint on that, Your Honor, but
24 they would say it's preserving their job so that we don't
25 transfer what they perceive to be their work down to be done

1 by lower cost regional airline pilots.

2 THE COURT: That's what I suspected, but --

3 MR. GALLAGHER: Uh-huh.

4 THE COURT: Thank you.

5 MR. GALLAGHER: I'm sure counsel for the pilots
6 would be much more eloquent on that point.

7 But U.S. Airways, Your Honor, under their contract
8 today can operate 212 aircraft from 51 to 76 seats, and 153
9 aircraft from 76 seats to 90 seats.

10 Now those larger aircraft have become much more
11 popular with the flying public in part because they can be
12 operated in two classes of service. They're physically
13 larger and therefore more comfortable, but that two classes
14 of service of course is important to attracting business
15 passengers and attracting higher fares.

16 So the smaller RJ's, Your Honor, have become
17 uneconomic in light of fuel prices and also in light of
18 customer preference.

19 Now the pilot scope clause is the largest
20 restriction on regional airline flying, but at American the
21 TWU agreement also has caps on the number of available seat
22 miles, that's the unit measure -- one of the unit measures
23 in the airline industry, so there's a restriction in the TWU
24 agreement that is also -- the company has proposed to
25 eliminate on regional flying.

1 Apart from regional carrier flying, Your Honor,
2 the other scope clause issue with the pilots is called code
3 sharing. Code sharing is exactly what it sounds like. It's
4 when one airline puts its code -- in American's case the AA
5 code -- on flights actually operated by another carrier.
6 That code has practical significance, Your Honor, in the
7 computer reservation systems which now dominate this
8 industry, in its marketing specially.

9 Having our code on it is a marketing device to
10 expand the scope of a network to areas where we don't fly
11 directly and where it's not economically feasible for us to
12 fly directly.

13 For example, we have a code share with Alaska
14 Airlines, and that code share -- Alaska Airlines is
15 headquartered and based in Seattle and flies to many points
16 beyond Seattle, not only in Alaska, but throughout the
17 northwest United States. American Airlines can and does fly
18 from Dallas and Chicago to Seattle, but we don't fly to all
19 of those beyond points in Alaska and throughout the
20 northwest that Alaska Airlines flies.

21 By putting our code on Alaska Airlines flights for
22 code sharing we can sell a ticket to a passenger in Waco,
23 Texas, who wants to fly from there to Dallas to Seattle to
24 some beyond point. If we did not have a code share with
25 Alaska that showed those flights as on the American system,

1 that passenger when they looked would not find us serving
2 their destination in the computer reservation system, but
3 they would find someone else and be much more likely to
4 ticket on that other airline, and that's how code sharing
5 works.

6 Now when they were much smaller than American
7 throughout most of the last decade, Northwest and Delta all
8 -- and Continental -- all had code sharing agreements with
9 each other, and they used that code sharing to extend the
10 reach of their networks and offer their passengers more non-
11 stop frequencies to more destinations in markets they could
12 not afford to serve themselves.

13 Now because of their mergers they have become much
14 larger, and because they're larger they're far less reliant
15 on code sharing to expand their networks.

16 Now it's turned in the other direction. Now
17 American is smaller. Now we are where they were. Now we
18 need code sharing to compete with their scale. And with the
19 restrictions in our pilot agreement we are unable to do
20 that.

21 So those are the two major scope clause issues,
22 Your Honor. There are others, but those are certainly the
23 most significant.

24 Returning to the business plan, Your Honor. Apart
25 from revenue the business plan contemplates a total economic

1 change in the position of this airline each year of
2 \$3.1 billion. \$1 billion of that is forecast to come
3 through revenue enhancements, \$2.1 billion through cost
4 reductions. Of that \$2.1 billion in cost reductions 600
5 million per year is projected in non-labor cost reductions,
6 and these are items that were not obtainable or available to
7 American outside of bankruptcy, but in bankruptcy through
8 renegotiating leases and similar agreements and
9 restructuring our debt we project to attain \$600 million in
10 non-labor cost reductions per year. We also project
11 \$1.5 billion in labor cost reductions.

12 For purposes of bargaining across the bargaining
13 table, Your Honor, we have -- our business model produces
14 the six-year average cost reductions. In order to attain
15 our goal of \$1.5 billion over the course -- six-year course
16 of the business plan, that's 1.5 billion steady state at the
17 end. On year over year basis averaging over six years it's
18 1.25 billion, and that's what we've been speaking of with
19 the unions across the bargaining table. And that 1.25
20 billion is divided up into 260 million, that I've already
21 mentioned, from our non-union employees, and 990 million
22 from our union represented employees under collective
23 bargaining agreements.

24 That's our business case, Your Honor, those are
25 the needs that we project and the solutions American has

1 devised to a successful future.

2 Follow that, Your Honor, American will present its
3 labor case.

4 Mr. Jeff Brundage, the senior vice president of
5 human resources at American will testify about American's
6 proposals, the bargaining process, our information sharing
7 with the unions.

8 American tried to determine the most fair and
9 equitable way, Your Honor, to achieve the necessary labor
10 cost reductions, and the allocation it came up with is very
11 simple, 20 percent across the board for all groups from
12 senior management on down.

13 The Second Circuit in Kerry Transportation said
14 that we are not -- "A debtor is not always required to do it
15 that way, but that where all employees sacrifice to the same
16 degree it is self-evident that that is fair and equitable."

17 That kind of a pro rata reduction was used in the
18 second restructuring at United and at Delta on the premise
19 that the unions had agreed previously to other changes that
20 had them in relative parity, vis-à-vis, market conditions.

21 At American, Your Honor, the way the unions ended
22 up after the 2003 negotiations, their relative position,
23 vis-à-vis, each other in terms of their contract terms, they
24 all agreed to that, and having agreed to that in terms of
25 relative parity the company concluded that the fairest way

1 to address it going forward was to suggest -- propose 20
2 percent reductions for everyone.

3 American could have, Your Honor, tried to go in
4 and say, well, 24 percent for the pilots and 16 percent for
5 the flight attendants, but had we tried to do that kind of
6 variation we thought it would open Pandora's box, because
7 whatever formula we tried to use in lieu of across the board
8 would surely engender complaint of discriminatory treatment.

9 Now the most -- the group singly most affected by
10 the decision to go pro rata are the management employees,
11 Your Honor, because the company's evidence will show that
12 the management employees are below market while the union
13 employees have been and continue to be at or above market.

14 THE COURT: When you say below market do you mean
15 number of employees, costs, or both?

16 MR. GALLAGHER: Both. We have skinned down the
17 staff, Your Honor, and we have not kept up with competitive
18 wage and benefit -- wage levels for management.

19 So having determined how to allocate the proposed
20 cost reductions American had to turn to structuring its
21 proposals, and American made an important decision at the
22 outset, Your Honor, and that was to try to protect
23 compensation, protect base pay rates, and that's in mark
24 contrast to what happened in the other airline bankruptcies
25 where the -- in other airline bankruptcies the direct

1 reductions in compensation were all larger than the
2 compensation reductions the American employees took in 2003.

3 And not only did we try to protect the base pay
4 rate, Your Honor, we also included in our proposals
5 provisions for future increases for each of the five out-
6 years after the first year of our business plan, future
7 increases of 1.5 percent per year.

8 We focused on protecting compensation, Your Honor,
9 because American's goal is to achieve permanent,
10 sustainable, structural changes in our benefits and our work
11 rules.

12 The 2003 changes, Your Honor, were focused in the
13 other direction. Much more on compensation and much less on
14 benefits and work rules.

15 So we tried to protect base wage rates, there are
16 some compensation items that are affected, but they are
17 incidental premiums not base rates.

18 Turning to benefits, Your Honor. The changes we
19 are proposing in employer benefits constitute 50 percent,
20 half of the total cost reductions which American is seeking.
21 Very important numbers. And the reason for that, Your
22 Honor, is simple, American's employee benefit costs today
23 are the highest in the airline industry. On a unit cost
24 basis they are 54 percent higher than the average of the
25 other large network carriers, and 195 percent higher than

1 the average of the low cost carriers.

2 It's rather self-evident, Your Honor, that no
3 company can survive that kind of a cost disadvantage.

4 American's employees today contribute far less to
5 the cost of providing their health care coverage than their
6 counterparts at any other airline. And unlike all of the
7 other large network carriers, American today still offers
8 most of its employees both a defined benefit pension plan
9 and company paid retiree medical benefits. Those benefits
10 are unsustainable, Your Honor, and are part of the reason
11 we're here.

12 On pensions American has proposed to freeze the
13 defined benefit plans. That is a major change from the
14 company's opening proposals, Your Honor. Initially American
15 proposed to terminate the pension plans. During a course of
16 bargaining American elected to change its position and say,
17 okay, we will live with the defined benefit plans on a
18 frozen basis.

19 Most significantly, Your Honor, the impact of that
20 decision is to keep more than a \$4 billion liability on our
21 balance sheet.

22 Now there's a special wrinkle on the issue of
23 freeze versus termination for pilots, Your Honor.
24 American's proposal still includes the ability to seek pilot
25 pension plan termination for their defined benefit plan if

1 the parties cannot secure relief from the federal
2 government. The parties are working cooperatively to secure
3 a regulatory solution to what we call the lump sum issue.

4 Absent that relief, Your Honor, upon emergence
5 from bankruptcy the lump sum feature of the pilot defined
6 benefit plan would make available to literally thousands of
7 pilots very sizable lump sums in excess of \$1 million upon
8 their retirement. Those -- that bulge of retirements dues
9 to the lump sums, Your Honor, would have debilitating
10 operating consequences.

11 We hope that there will never be a need to get
12 into this issue before Your Honor, but if that lump sum
13 feature remains the company would seek termination of the
14 pilot's defined benefit plan.

15 THE COURT: Do you have any sense of how long
16 it'll take to reach an ultimate conclusion on that issue?

17 MR. GALLAGHER: I do not, Your Honor. Other
18 counsel are handling that issue directly. I can simply say
19 that we are hopeful and we are working cooperatively both
20 with the pilots union and the PBGC in an effort to find a
21 solution that works for everyone.

22 Assuming that all of the defined benefit plans are
23 frozen, Your Honor, the company's proposal is to replace
24 them with a defined contribution plan, and for all groups
25 other than pilots, Your Honor, the company's proposal is to

1 make a 5.5 percent matching contribution. Every employee
2 would be automatically enrolled at the three percent level.
3 So unless they voluntarily opt out of the DC plan entirely
4 they would contribute 3 percent, the company would
5 contribute at least 3 percent, and the company would match
6 any additional employee contributions up to a maximum of 5.5
7 percent.

8 For pilots the contribution -- defined
9 contribution plan would be different. It would be a 13.5
10 percent fixed DC plan contribution.

11 Turning to the subject of medical benefits, Your
12 Honor. Let me preface my remarks by saying that nothing I
13 say in this proceeding relates to current retirees. Current
14 retirees are not being addressed at all in this proceeding
15 as the Court is aware, their benefits are not subject to
16 Section 1113, they are subject to Section 1114. There will
17 presumably be a separate subsequent proceeding to address
18 the benefits of current retirees. So when I talk about
19 retiree medical benefits I am speaking about future
20 retirees, current employees who retire in the future.

21 For active employees then, Your Honor, and future
22 retirees American currently is suffering from the same
23 problem that affects our entire economy. Health care costs
24 have been a major problem. Rapid escalation of health care
25 costs has plagued all employers in recent years.

1 American's employees currently pay from 8 percent
2 for the flight attendants to I believe it's 13 percent for
3 the pilots, and 19 percent for the TWU of the cost of their
4 medical benefits. All are substantially lower than the
5 employee cost sharing at other airlines and other major
6 employers.

7 So American has proposed to increase that cost
8 sharing percentage to 21 percent for all employee groups.

9 We have proposed three options for employees to
10 choose from for their medical plans.

11 The first option would be contractual set forth
12 and bound by the collective bargaining agreement. That
13 would be the standard option. We could not change those
14 terms unilaterally. Once agreed to they would remain in
15 place until the next round of collective bargaining resulted
16 in changes.

17 The other two plans would be at the employee
18 option to go to a core option or a value option, each of
19 which is tailored for individual employees who may -- whose
20 personal circumstances may not -- may lead them to conclude
21 they don't need either the cost or the scope of coverage
22 that would be provided under the standard option.

23 Now in response to counter-proposals and
24 discussions with the unions American has changed the design
25 of these medical plans during the course of bargaining,

1 accepting some of the union ideas.

2 So that's for active employees we have three
3 options with 21 percent cost sharing. That applies to the
4 standard and core options only, Your Honor.

5 For future retirees American proposes to match or
6 exceed what the vast majority of our competitors do, and
7 that is to rely on Medicare.

8 Now beyond relying on Medicare American proposes
9 to guarantee access for all of our retirees to a medical
10 plan. The company will insure that there is a plan
11 available, but it would be at employee cost rather than the
12 company cost.

13 And that in a nutshell is where we are on
14 benefits, Your Honor. So compensation is not really at
15 issue. Benefits are hugely expensive, but broken down into
16 relatively defined categories.

17 The more difficult issues, Your Honor, are in work
18 rules or productivity, and that's where American's work
19 rules -- American's proposals focus.

20 The work rules quite simply, Your Honor, determine
21 how many people we need to operate our flight schedule to
22 maintain our airplanes on any given day. And quite simply,
23 Your Honor, American has far more employees than its
24 competitors do to do the same amount of work.

25 Now we have said to the unions from the outset,

1 Your Honor, that we have flexibility on how to get there.
2 As illustrated by our agreement to change from the
3 termination to the freeze of the defined benefit plan or
4 change the medical plan as long as we can secure the cost
5 levels we need we are very flexible on how to get there.

6 In discussions with the unions across the
7 bargaining table we have had extensive discussions about the
8 proposals the company has made, and in response to APA the
9 company has adjusted the terms in the valuation of its
10 proposals to APA by about \$30 million per year to their
11 credit.

12 For APFA they suggested that we change the
13 assumptions on certain costing items and we did so, as a
14 result of which we were able to withdraw a work rule
15 proposal relating to duty rigs, which is union found
16 specially onerous.

17 So there is flexibility on our part about how to
18 get there, Your Honor, but I will briefly illustrate the
19 work rules we're talking about for these groups.

20 Pilot work rules are among the most complex in any
21 industry. In part that's due to the nature of the business
22 where pilots are flown all over the country and all over the
23 world and are gone for extended periods of time in some
24 cases and are subject to interruptions due to weather events
25 and mechanical events so that things do not always go as

1 scheduled and there has to be ways to account for that.

2 So part of the complexity arises from the nature
3 of the business, but another part derives from the fact that
4 these contracts have evolved over 60 years, much of which
5 was prior to deregulation, born in another era. Our
6 competitors have shed most of those vestiges of the
7 deregulated era; we have not.

8 I'm going to illustrate for Your Honor with only
9 three examples about pilots.

10 The first is what's called the schedule maximum,
11 and we have a very similar issue, but because of they work
12 in a similar environment from a scheduling standpoint a lot
13 of the work rules are similar for pilots and flight
14 attendants.

15 The schedule maximum today, Your Honor, is
16 currently American can schedule its pilots to work a maximum
17 of 78 credit hours per month, but with an average systemwide
18 of 75. So there may be a few outliers that actually go up
19 to 78, but the average must be 75.

20 At United Airlines the comparable maximum is 95
21 maximum hours.

22 As a result of that our pilots work far less than
23 their industry peers, and we must pay a greater number of
24 pilots to do the same amount of work.

25 Apart from the schedule maximum, Your Honor,

1 another common issue between pilots and flight attendants is
2 the bidding system. The current system results in American
3 often having more pilots than it would otherwise need.

4 A word Your Honor will hear repeatedly in the
5 course of discussion is reserves. Reserves are pilots who
6 are on duty in a month, but they do not have a fixed
7 assigned flight schedule for the month. Their assignment is
8 to sit on reserve for a certain number of days each month to
9 be available to fill in for a pilot who calls in sick, for a
10 pilot who misses his connection or his schedule because of a
11 mechanical delay or a weather delay. So reserves are the
12 back-up pilots who substitute when the originally scheduled
13 pilot is unavailable for any particular reason.

14 For the bidding system, Your Honor, American has
15 proposed a what's called preferential bidding, it's a new
16 generation of computerized bidding for their monthly
17 schedules, which allows the pilots to specify what
18 preferences they have, and those preferences are honored in
19 seniority order. Whether they want trips to a certain
20 location, trips of a certain length, trips on a certain day,
21 trips in the morning or trips in the evening, their
22 preferences would be honored in seniority order just as
23 their schedules are awarded in seniority order.

24 But with the new system, Your Honor, preplanned
25 absences such as schedule of vacations and scheduled

1 training would be blocked out beforehand so pilots wouldn't
2 be scheduled for flights during those days.

3 Under the current system even though we may know
4 that a pilot has a vacation or a training event next month
5 he bids for and is awarded a flight schedule and then he
6 drops those trips and they have to be covered by a reserve.

7 It's a very inefficient process, but the
8 scheduling system overall is very flexible from the
9 standpoint of the employees. They very frequently are able
10 to drop trips that were on the schedule they were awarded
11 and pick up other trips if they choose to do so.

12 Apart from schedule maximum and the bidding
13 system, Your Honor, a third major issue with the pilots is
14 sick leave.

15 American Airlines has a unique problem with pilot
16 sick leave. It is much higher than at all airlines. It is
17 by far the highest among the network carriers.

18 It surprised me to learn, Your Honor, that the
19 average pilot at American is paid more than one month's six
20 pay each year. By the end of February of 2012, just two
21 months into this year, more than half of our pilots had
22 already taken some sick leave, and pilot sick leave alone,
23 Your Honor, costs American Airlines almost \$100 million per
24 year.

25 So American seeks to change the current system to

1 require the kind of accountability for sick leave that is
2 common in American industry.

3 We have no doubt, Your Honor, that we know our
4 pilots are very professional and none of them would actually
5 fly if they were indeed sick. We don't expect that to
6 change.

7 So those are three of the major examples of
8 pilots.

9 For flight attendants the same general problem
10 exists, Your Honor.

11 Our labor costs are among the highest among the
12 legacy carriers and our productivity is among the lowest.

13 The schedule maximum and preferential bidding
14 systems issues are the same as for pilots as is the sick
15 leave and other work rules.

16 I'm going to defer discussion of the TWU's work
17 rules, Your Honor, but I will say that we have had
18 constructive discussions with the TWU about alternative (sic)
19 ways to get cost savings with reduced job loss; a positive
20 outcome for both sides. And if our proposals are accepted
21 in the upcoming vote there'll be substantially fewer jobs
22 lost than under our opening proposal.

23 So those are the company's proposals, Your Honor,
24 and what has been the union response? We'll defer on the
25 TWU in the hope that we have agreements there, but for APA,

1 Your Honor, we've heard significant resistance to changes in
2 our pilot scope clause and made little progress on work
3 rules. Instead, Your Honor, we have heard a lot of
4 complaints back about valuation, that we are not valuing
5 things properly and we are not giving them sufficient credit
6 for the cost that they would save.

7 All I can say in response to that, Your Honor, is
8 that we use the same analysts, the same methods, and
9 computer models to cost out the union proposals that we use
10 to cost out the company proposals and to brief our senior
11 management. So if there's an error in them we're eager to
12 know about it and we're eager to fix it, but many of the
13 differences are not about mathematical errors or
14 computation, they're about assumptions as to future conduct,
15 behavior changes in response to new rules for scheduling or
16 for sick leave.

17 Now as I mentioned for APFA we agreed to change
18 some of the assumptions and withdraw a proposal, but to give
19 you an example of a valuation issue the pilots want full
20 credit in year one for changes such as preferential bidding
21 which can't be implemented that quickly, which require a
22 long lead time for computer programming, testing, trial
23 runs. So it would probably be close to the end of the first
24 year before it can be implemented. We give them credit --
25 full credit in the following years, but they say it's not

1 our fault you can't do it that quickly, give us dollar
2 credit. We think that would be funny money, Your Honor, we
3 don't think that's what our analysis should be about.

4 That may seem like a minor example, Your Honor,
5 but it drives significant valuation differences. At bottom
6 however these are the kinds of issues that are usually
7 resolved when both parties are at the bargaining table and
8 want them to be resolved, but here they are being held out
9 by the unions as barriers to an agreement.

10 For APFA, Your Honor, it's not only different,
11 it's unfortunately worse. We have unfortunately received
12 only total resistance on almost everything, including
13 failures and refusals to meet for weeks on end. They have
14 valuation disputes, Your Honor, but we think they are of the
15 same weak character and not well founded.

16 Turning to the subject of information sharing,
17 Your Honor. Since 2003 every month American senior
18 management has a meeting with union leaders and their
19 financial advisors and we share with them the same financial
20 information package that goes monthly to American Airlines'
21 board of directors, and we discuss with them any trends or
22 developments and answer any questions.

23 Every single month since 2003 during all the years
24 when we've accumulated \$10 billion of debt -- excuse me --
25 10 billion of losses and \$16 billion of debt. It is not

1 that they have been unaware of our financial condition.

2 We continued that open books approach since
3 beginning this 1113 process.

4 On February 1st the company convened a meeting of
5 all of the unions and their advisors at which Mr. Horton,
6 our CEO spoke, Ms. Goulet explained the business plan, and
7 Mr. Brundage and his team shared the company's proposals.

8 The very next day the company held meetings for
9 the union leaders and their financial advisors explaining
10 the costing models to the extent that any of the newer
11 advisors were unfamiliar how those models worked, answering
12 questions and providing details.

13 The next day the company held another briefing for
14 the same advisors explaining the computer models that were
15 used to develop the business plan, the revenue model, the
16 labor cost model, inputs into the company's budgeting
17 systems that result in the business plan.

18 Since those initial meetings, apart from the
19 bargaining table discussions, American's management has had
20 17 separate meetings with the unions professional advisors
21 where they got to meet with company subject matter experts
22 to respond to their questions about the business plan, about
23 the revenue estimates, about the medical benefits, about the
24 pension plan issues. We have responded positively to every
25 request for a meeting, and some of those meeting were at our

1 other initiative.

2 Apart from those in-person meetings, Your Honor,
3 we set up an electronic data room -- actually it was
4 initially set up for use in our relationship with the UCC
5 and their professionals -- and we extended the same system
6 to the unions and their counsel and their professional
7 advisors where we would post documents on that system, and
8 we posted all of the information that we shared in the early
9 meetings, and we received more than 500 separate requests
10 subsequent to February 1st from the unions, and we posted
11 responses on this electronic data room.

12 Our responses to date, Your Honor, have included
13 more than 30,000 pages of documents, or as my younger
14 colleagues prefer to refer to it, more than 1,000 megabytes
15 of data.

16 That brings me, Your Honor, to the question of
17 sharing the upside.

18 We had a profit sharing plan in our 2003
19 agreements, but that plan had a threshold, it did not
20 trigger or pay out for the benefit of employees until it
21 reached a \$500 million profit level. Unfortunately, Your
22 Honor, since 2003 we never reached that level and there was
23 no payout.

24 So American has proposed, Your Honor, to replace
25 that with a new plan that would start paying out to

1 employees at the first dollar of profits and would pay 15
2 percent of profits for the benefit of our employees, divided
3 pro rata to W-2 earnings.

4 There are two key elements of a profit sharing
5 plan, Your Honor. The first is the first word, profits. We
6 would be delighted to have profits and to share them. But
7 the second of course is that it's contingent. If we do
8 better the employees share. We did put in an exhibit, Your
9 Honor, Exhibit 131A which shows the projected payouts if
10 American attains its business plan objectives. The payouts
11 without average more --

12 UNIDENTIFIED SPEAKER: Jack?

13 MR. GALLAGHER: Excuse me. Oh, yes, that exhibit
14 is confidential. But the payouts would average more than
15 \$300 million per year if American attains the projections in
16 its business plan.

17 That positive scenario of course would give our
18 employees back about one quarter of the labor cost
19 reductions we're seeking. But more protectively for the
20 company it does not impose fixed costs which would burden
21 the company if any one of the business risks we face in this
22 industry causes us to fall short of our business plan.

23 So I have run a little longer than expected, Your
24 Honor, and I apologize for that, but in conclusion the
25 Second Circuit has told us that one of the measures of a

1 successful reorganization is the likelihood -- or avoiding
2 the likelihood that the company would have to return to the
3 Bankruptcy Court again in the foreseeable future.

4 Unfortunately many airlines have done just that.

5 Our evidence will show that this airline simply
6 cannot survive long term without the level of labor cost
7 reductions we have proposed. That is a basic economic fact
8 of life.

9 It would be very tempting, Your Honor, to settle
10 for less than we need. Mr. Glass describes the history of
11 carriers which did just that, but they had to go back again
12 and again for more labor cost reductions.

13 We do not want to emerge from this proceeding so
14 weak that we are highly likely to return to Bankruptcy Court
15 in the future. That is not a successful reorganization,
16 Your Honor. The successful reorganization that Section 1113
17 contemplates requires difficult decisions now in order to
18 preserve this enterprise so that it can repay its creditors
19 and provide very good jobs for thousands of employees for
20 many years to come.

21 Thank you, Your Honor.

22 THE COURT: Thank you.

23 MR. JAMES: Your Honor, my name is Edgar James, I
24 represent the pilots at American Airlines and have for more
25 years than I care to remember.

1 The -- as you know I have with me Kathy Krieger
2 who argued the first motion, we're preserving our position
3 on that one.

4 I'm embarrassed to say I was one of the authors of
5 the treatise you had in front of you and I wrote the chapter
6 on major minor since 1990.

7 David Dean is here, he'll be handling the scope.

8 Because I've been in bargaining and working with
9 our board I've not been focusing on this for the period of
10 time that opposing counsel has, so the past two weeks I've
11 put my head in this case, and we divided up subject matter
12 areas.

13 There are other attorneys who are helping us, I
14 just want to introduce them. One is Phil Agusti who you met
15 before is our bankruptcy counsel at Steptoe & Johnson. It
16 was Mr. Agusti who represented the pensions in the other
17 bankruptcies in United, Northwest, and Delta, and first took
18 a look at this plan and said, look, this plan is almost
19 fully funded, there no excuse for terminating this plan, and
20 said we should freeze. So we got out ahead of everyone and
21 went to treasury and IRS and said, is there a way to save
22 this plan and deal with this lump sum option? I believe we
23 were ahead of everyone.

24 The incredible push back American got, they
25 changed their mind not because they were being gracious to

1 us, but what happens if you terminate a plan there are
2 different funding assumptions that the PBGC uses and an
3 unsecured claim just explodes. They use a corporate bond
4 rate as opposed to I think it's 8.25 percent they're
5 permitted to use. So they face universal opposition from
6 the UCC and from the PBGC rightly saying don't terminate
7 this plan. We've been working on that for some time.

8 Other attorneys, Chuck Hariston (ph) is probably
9 reading Sports Illustrated in an overflow room, he couldn't
10 get in here. He's here from the Allied Pilots, and Chuck
11 has been working on the medical cost thing which is a whole
12 separate \$50 million dispute we have with American Airlines.

13 And then two other attorneys in the room, Darron
14 Delmont (ph) and Danny Rosenthal (ph) have been helping out
15 with the case.

16 The president of the union is here, is Dave Bates
17 sitting in the back, he's pilloried in their brief
18 ironically because the company would say that he's one of
19 the people since taking office who's desperately been trying
20 to get an agreement with American Airlines and moderate the
21 level of discourse that went on for the years prior to his
22 taking office.

23 I'm not going to talk to you about pilots and what
24 they do for the airline, you know what they do for the
25 airline. I do want to say that -- and it's probably true of

1 unionized employees generally because of the way seniority
2 works and the disparities, particularly in flight attendants
3 and the pilots, you begin at very, very low rates as a
4 pilot. You pay your own medical, it's -- you know, it's a
5 very low wage. And there is quite a difference between the
6 lowest paid and the highest paid.

7 So these employees and pilots in particular, and
8 I'm sure Rob Clayman will say the same for the flight
9 attendants, you can't leave the airline. And American
10 pilots, we've got probably more ex-military than any airline
11 in the industry, but even after being in the military the
12 average expectancy of a pilot with American is 32 years,
13 that's based on a projected return of about age 63. So
14 we're going to go through five management changes.

15 And I just want to say, Your Honor, that if
16 there's one group that has a deep vested interest in a
17 successful business plan and a turn around of this company
18 it's those groups, but particularly the pilots. They're
19 tied to this airline, they can't leave.

20 I want to ask your indulgence for one moment on
21 how we got where we are today. It's more in the company's
22 declarations than it is in Mr. Gallagher's presentation, but
23 in 2003 everybody post 911, and to suggest that we need to
24 build a business plan that could sustain that kind of attack
25 we know no company can sustain that kind of attack. What

1 happened in 911 drove the industry, it just cratered.

2 In 2003 we agreed to engage in concessionary talks
3 with the company. I can speak for the pilots, we took a 23
4 percent pay decrease, that puts us back right now, we're
5 back in 1992 pay rates. The -- there was a \$660 million
6 give over five years. At the end of that -- and there's a
7 couple people in the room that lives through it. I can look
8 around the room and see who was there. Right as we voted on
9 the 606 million the company on April 15th, the very day we
10 ratified the agreement, filed with the SEC statements
11 indicating that they had funded executive comp plans that
12 had never been disclosed.

13 Now they didn't have to disclose to us, but it was
14 a toxic issue in the airline. Employees were upset, certain
15 unions said they were going to pull back their
16 ratifications, they wouldn't go ahead with the bankruptcy
17 cuts, Congress -- several congressmen from Texas convened a
18 meeting with the company and we worked around the clock for
19 several days talking about how to resolve this. The CEO
20 resigned, a new exec came in. We negotiated an agreement
21 with the company on executive compensation and it was
22 drafted by one of the American executives in the room here
23 today, and it said -- it was -- the head of the union -- the
24 pilots union said, look, we can't control your share
25 compensation, that's going to be up to the institutional

1 shareholder services or the rating agencies and the board of
2 directors, but cash, we want an agreement that you won't rob
3 the bank and take more than 200 percent of what you can get
4 under a certain cash compensation executive comp program.

5 The company agreed to that limitation.

6 The following two years were years of great hope,
7 2004, 2005. The company brought in Baine (ph) Consulting
8 two of the people who are reading Sports Illustrated in the
9 other room, Mickey Malursky (ph) and Larry Rosolow (ph) that
10 were here, they spend a year working with Baine and the
11 company on the -- coming up with a common methodology and
12 how we cost out the pilot contracts. We had intractable
13 disputes in 2003 about how to value that contract, and the
14 idea was let's get that behind us and know how we value an
15 agreement.

16 The second purpose of the exercise was to look at
17 best in industry for every metric in the pilot contract.
18 And the area where we had problems was productivity, we knew
19 it. So the pilots union, God bless them, went out in
20 December of 2005 and had road shows and said, look, we need
21 to be more productive, here's best in class, here's where we
22 are, and the presentation they took on the road is very
23 similar to the one Mr. Kasper is going to give. The growth
24 of low cost carriers, the effective internet pricing.

25 I just looked at it the other day and it's largely

1 on all fours of what's happened in the industry, and we're
2 saying look, this company can't sustain, it needs to make
3 some changes so we're prepared to work with our pilots to
4 try and say, look, we got to go back and do something about
5 work rules. That's the end of 2005.

6 We sent out a DVD with the same thing to every
7 pilot. Two weeks after we did that the company announced
8 they're paying out another huge executive compensation
9 payment. They took 100 million out, it was called the
10 performance unit plan, they -- it's based on a three-year
11 measurement period that has nothing do with the company
12 metrics, it has to do with their stock -- relative stock
13 fluctuation, these are the other companies, it's not
14 something the shareholders vote on, it's designed such that
15 it didn't trigger the New York Stock Exchange rule requiring
16 a vote, but they lost \$2.8 billion in the measurement period
17 that gave them 100 million in executive comp. The following
18 year it gave them 185.6 million in executive comp.

19 Your Honor, what it did is it destroyed the
20 culture of this airline for years. What happened is every
21 moderate in the pilots was thrown out of office, committee
22 people and officers. So for '07, '08, and '09 things were
23 stalled out on our side.

24 When we raised this -- I took it to arbitration
25 and we prevailed in arbitration. The arbitrator said, look,

1 pull it back or I'm going to issue this ruling. They pulled
2 it back and they changed the way they're going to do it, but
3 the execs -- one of the execs said to the -- one of the
4 unions, he said, get over it it's a round error, and the
5 other one was we'd be better off in bankruptcy, look at what
6 Tilton (hp) got coming out of United.

7 Well, that's one of the great scandals that every
8 investment banker will tell you about. He took almost \$40
9 million coming out of bankruptcy.

10 So the executive comp created an incredibly toxic
11 environment at American Airlines, and I'm just speaking
12 about the -- I'm speaking about the pilots, but I'm sure the
13 other unions share it. And when Mr. Gallagher says, the
14 500 million threshold that had to be met before any employee
15 got profit sharing at American Airlines, well these pup
16 payments came off the top. You never got down to that
17 500 million because it wasn't off the top. Before you even
18 got to looking at the 500 million it was taken out.

19 The -- in 2010 we had an election change, David
20 Bates came into office, and the first thing he did was
21 reengage with the company and say, look, we want to work
22 together, we want to work cooperatively.

23 In 2011, Your Honor, we worked very hard,
24 particularly in the latter months of 2011, trying to reach
25 an agreement with the company. And one of the parapneumonic

1 problems that the unions will complain about in front of you
2 is we're not talking about what's in our collective
3 bargaining agreement versus what's in the term sheet.
4 Everybody has moved off those.

5 Mr. Gallagher talks about preferential bid, they
6 want it. We've agreed to it. The flight attendants have
7 agreed to it.

8 He talks about the RJ's, we can't get above 50
9 seats, we agreed to go to Delta, he's saying 76 was the
10 highest in the industry he cited, we've agreed to do that.

11 I just want to say the -- we're not arguing over
12 whether the company is in economic trouble, we're not
13 arguing whether our contracts are market competitive, we're
14 arguing about whether your term sheet is necessary, whether
15 your business plan makes sense, whether the term sheet is
16 necessary, whether the items in your term sheet make sense,
17 and we moved on a tremendous number of those.

18 We have two parapneumonic problems. One is they
19 want roughly a billion from us in two different ways. One
20 in terms of scope changes, which is subcontracting, and the
21 other is cost savings, and we're pushing back on that. The
22 other is just tremendous valuation disputes.

23 And I don't want to get down into the weeds,
24 Mr. Gallagher just started to suggest that we had a joint
25 valuation model, and you'll hear a lot about that.

1 Our argument is that the company hasn't met each
2 and every one of the tests for the invocation of an 1113
3 order. And I have a slightly different formulation, Your
4 Honor, of those criteria, and most courts cited Second
5 Circuit, Third Circuit cited God bless a woman, a judge out
6 of Minnesota in an early bankruptcy immediately after 1113
7 in Bildisco set out the criteria that virtually everyone is
8 adopted. Said here are the 11 tests, and they said, "The
9 company has the burden of persuasion on each of these." And
10 as of the last, the balance of equities, that was kept
11 drawing forward from Bildisco and remains in place, but it
12 said, "There the company has a heightened standard of proof.
13 The company must show by clear and convincing evidence that
14 the case clearly favors rejection."

15 If I can just do a short run through of the
16 criteria, Your Honor, and then tell you where we have
17 problems. The first five talk about --

18 THE COURT: Listen, since I have the benefit of
19 your papers let me ask you, are you saying I should adopt a
20 test that's different than what the Second Circuit has said?

21 MR. JAMES: No, it's the same. It's the same.
22 Virtually everybody has adopted -- the citation --

23 THE COURT: Well, but that's why I'm asking when
24 you use the --

25 MR. JAMES: No --

1 THE COURT: -- word virtually --

2 MR. JAMES: -- no.

3 THE COURT: -- that sort of begs the question, so.

4 MR. JAMES: No. No. It's -- I think the --
5 that's judge articulated -- took 1113 and pulled it apart.
6 Everybody said, yes, that's the paradigm we had to work with
7 or the matrix we had to work with.

8 THE COURT: When you say yes you include the
9 Second Circuit in that group?

10 MR. JAMES: Yes.

11 THE COURT: All right.

12 MR. JAMES: The first five talk about what must
13 occur before the filing, in this case it's March 27th, and
14 that the Court must evaluate the last term sheet before the
15 filing, and that is the term sheet dated March 21st in our
16 case, and it is American Airlines Exhibit 918.

17 The second they must prove that it's based on the
18 most complete reliable information available at the time,
19 and they should be looking at reasonable alternatives in
20 constructing that information.

21 The third is it has to seek only those necessary
22 modifications in the employees benefits and protections that
23 are necessary. They have to show that the overall amount is
24 necessary, and if the unions made a counter-proposal they
25 have to show that the challenged term is necessary.

1 Now, you know, necessary -- there hasn't been a
2 lot of litigation over necessary and there certainly hasn't
3 been in the airline industry. In the big airline matters
4 you had Northwest, the flight attendants didn't ever contest
5 it, it was stipulated, they just said it was necessary.
6 That didn't go up to the Second Circuit -- the Southern
7 District in New York, the Second Circuit. It came up in a
8 couple smaller cases, Masaba (ph) and Comair where there was
9 DIP financing driving it. So you'll see not much discussion
10 particularly in the airline cases of how you wrap your head
11 around necessary.

12 I will say that Senator Packwood in drafting 1113
13 has said and the courts cite, he used the word necessary
14 twice to say, "It's something other than helpful, because if
15 it were helpful everything -- everything cut would be
16 helpful." The -- it's not standing off eminent liquidation,
17 but it's something more than helpful to the plan.

18 The fourth is that the treatment of all creditors
19 must be fair and equitable. Mr. Gallagher has talked about
20 that.

21 The fifth they provided information relevant to
22 evaluate the proposals.

23 And the sixth or seventh have to do with what must
24 occur after the proposal and before the commencement of the
25 hearing. And that's confer in good faith, no take it or

1 leave it.

2 Now in one of the declarations that we get from
3 the company they say our rhetoric is completely unhelpful,
4 we didn't adopt the take it or leave it. Well, we beg to
5 differ having watched it. It's -- the company has never
6 negotiated off the 370-. They said, 370- is the absolute
7 amount we have to have, and we would say the company has
8 been quite rigid on how they want to build it at 370-.

9 The final statutory requirements are general and
10 apply to the entirety of the record. The company must prove
11 the union refused to accept its term sheet without good
12 cause. And Mr. Gallagher says it's objective good cause,
13 fine. It's just the union may have a number of legitimate
14 reasons for refusing to accept the Section 1113 proposal,
15 and one of them is if there's another business plan, if the
16 company hasn't looked at other ways to come up with a
17 business plan that don't require the kind of cuts the union
18 should have good cause reason to say we're not going to go
19 along with the term sheet.

20 Then the company proves by clear and convincing
21 evidence that the balance of equities favors it.

22 Here we have a -- here we have a business plan,
23 other than the company's paid witnesses you're going to find
24 few will say this business plan makes sense and is going to
25 succeed. Every analyst says consolidation is what has to

1 occur.

2 Mr. Gallagher says this airline needs heft, it
3 needs to grow. Everybody knows -- or I don't know, it's the
4 old saying judges don't live in caves.

5 U.S. Air has talked to American Airlines. Were
6 U.S. Air and American to combine it'd be the biggest airline
7 in the world. It'd be the biggest on the east coast, the
8 biggest in the Midwest, probably third on the west coast.

9 This stand alone plan no one has confidence in.
10 Mr. Horton himself has said, I'll explore consolidation
11 after I get through this 1113 process and I get this -- you
12 know, I'm on the other side.

13 There's a great rush to get to the 100 million a
14 month that I've heard several appearances here that the
15 company is losing. They are losing that if you assume they
16 went 1113 and you divide 12 into 1.25, that they're taking
17 100 million out of us, but yet when we asked them, have you
18 looked at -- have you looked at any other business plan,
19 have you looked at any other combination with another
20 carrier? What we get back is no, said they haven't looked
21 at it.

22 Your Honor, I think that's like asking the
23 pentagon if they have a contingency plan for the attack or
24 Iran or attack by Iran, I just don't believe it, but it is
25 what it is. They have not looked at another possibility of

1 a combination with a carrier.

2 Now why do they do this? The company believes
3 that they'll get their 1113, and I submit there's good
4 reason for them to think based on the other bankruptcies
5 that this is just a matter of driving over the speed bumps
6 to get to meet us on the other side.

7 At the end of this hearing, Your Honor, we think
8 we will have made the case -- well, or American will not
9 have made its case that they need to impose these 1113
10 terms. They have not -- they have failed to consider
11 consolidation. It's not based on the most complete reliable
12 information, number one, because they fail to consider
13 consolidation.

14 Number two, it's not necessary. You've got
15 another business plan out there that makes these cuts not
16 necessary.

17 Now we know from their own internal documents
18 their board presentation in November to their board of
19 directors, their presentation to the PBGC in March of this
20 year, they say, hey, if we were to mark these employee
21 groups, these unionized groups to market here's the number.
22 That's not the number they're seeking in this term sheet,
23 it's way north of that number. And when the unions -- they
24 did meet with U.S. Air and said, what do you want? And
25 basically what U.S. Air said, we want mark you to market.

1 We said fine, mark us to market. What do you need? We need
2 productivity. We'll give you the productivity. Scope, what
3 do you need? We gave them the scope. But it's
4 significantly different than this term sheet. And all three
5 unions signed contingent term sheets said if you're ever
6 able to get on the playing field we'll take the cuts, we'll
7 take deep cuts that mark us to market, because frankly two
8 things have gone on, one, it's not as painful, and two, we
9 believe in a combination, it's going occur, the only
10 question is when it occurs.

11 The third thing is we don't believe the company's
12 proposal is fair and equitable. They are asking \$1 billion
13 from the pilots. Now they say -- and I see Mr. Selzer (ph)
14 is here from Alpa (ph). In Northwest he got up and said
15 they're not giving us any credit for scope. And the
16 company's response is, well, nobody got credit for scope in
17 those bankruptcies, which is true, but we're saying, look,
18 you're going to subcontract out our flying, you get about
19 760 million more dollars and it doesn't -- it's not taking
20 into account in any respect with -- with respect to the
21 pilots, we got a problem with that.

22 The idea that this business plan -- this business
23 plan is a labor business plan, that's what's driving it.
24 It's -- about one-third of the total money they're getting
25 is coming from us. It's -- it's the 370- plus the scope

1 changes, and they think they can sub it out to other
2 companies at cheaper rates. So we don't think it's fair and
3 equitable.

4 Finally we think we have good cause to reject it,
5 and that's because the company stubbornly refuses to
6 consider any other alternative in their stand-alone business
7 plan, and again to underline that one, you're going to find
8 very few people other than the people they're paying to get
9 on the stand who say this business plan has a reasonable
10 chance of success. It's a place holder.

11 What people -- everyone believes is going to occur
12 is they're going to get out of this bankruptcy and they'll
13 consolidate with another company, and there are very few
14 choices out there. With U.S. Air they become number one.

15 With the employees these mergers are painful to
16 employees, Your Honor, we have to go through seniority
17 mergers. They're not something this union has ever
18 advocated or wanted to get involved in because they're
19 incredibly painful, but we see no other choice if this
20 company is going to succeed. No other group Your Honor
21 wants to see this company succeed more than us. They'll be
22 gone in three or four or five years. Our people will be
23 here for an entire lifetime.

24 We're not trying to rob the bank and get a short
25 term keep our compensation in a short term and get a company

1 that's limping along. We've got to get a successful company
2 and we believe the only way to do that is to take some pain
3 and do a merger with another company and cut us to market.
4 We're willing to do that.

5 In fact one of the things you'll hear in the -- I
6 said at the beginning and I'll say it again, we've moved
7 toward them on most every issue. We're not talking this set
8 piece warfare of the contract versus what we need, that's
9 not what this debate is, it's where we left the table before
10 bankruptcy, and before bankruptcy they were asking, I don't
11 know, 100 million from us, after bankruptcy it went to 370-.

12 The -- in one of the affidavits they said, well,
13 you're talking a period of December and January. What
14 changed? The economy didn't improve, fuel prices didn't
15 fall, and the other carriers we know what's going on at
16 United and Continental, their pay rates are going up, they
17 didn't come up as fast as we thought.

18 Well, I'm just saying there's some fundamental
19 disconnect here that the world fundamentally changed between
20 the prefiling and the post filing.

21 But I'm not willing to fight that battle. I know
22 what they think and we think we know where we are,
23 vis-à-vis, other airline pilot contracts in the industry.
24 We're willing to go there. We did it with U.S. Air, and
25 what we set up in that contingent deal, Your Honor, was

1 look, you're always going to have valuation disputes, but
2 they come up in two contexts. One when you have parties
3 battling as we are, it's not the happiest of relationships.
4 It's very hard to resolve those. What we did there is say
5 let's just go to a neutral, and it's the same neutral that
6 comes up with every company, an arbitrator said look, we
7 just want a fair person to say listen to the dispute and you
8 resolve it on very short order because that's how we'll get
9 those valuation disputes resolved.

10 Your Honor, at the end of the day we believe
11 American cannot show its satisfied the statutory
12 requirements. That doesn't mean they can't restructure, it
13 means they should go back and reconsider more reasonable and
14 realistic alternative business plans that should have been
15 explored from the outset. A consolidation that results in a
16 stronger and more available airlines.

17 American's pilots have made enormous sacrifices,
18 but the company shouldn't be allowed to impose 1113 for
19 ultimately meaningless concessions in the service of a plan
20 nobody believes in.

21 And they're going to go on and on and I'm not a
22 bankruptcy lawyer, I don't live in your world, I don't live
23 in most of their world, they have exclusivity, I understand
24 that, but there are alternatives out there that don't
25 require these kind of draconian cuts, and nobody has a

1 better and higher interest in a long-term business plan than
2 the pilots at American Airlines.

3 THE COURT: And in your view I can consider all
4 this in the context of 1113 because as you just said the
5 debtors have exclusivity at the moment.

6 MR. JAMES: But we believe that it's not -- that's
7 not based on the best and most complete information, their
8 proposals. We believe the union has good cause not to
9 accept it in view of the idea there is another alternative
10 out there.

11 We're not -- I'm not trying to get in a world of
12 battling exclusivity, I'm just saying under 1113 it does
13 play into it.

14 THE COURT: All right.

15 MR. JAMES: Thank you, Your Honor.

16 THE COURT: Thank you.

17 MR. CLAYMAN: Good morning, Your Honor, Robert
18 Clayman for the Association of Professional Flight
19 Attendants. And just to mention again with me is Carmen
20 Parcelli and in the back of the room is Paul Knupp.

21 I'd like to start by just providing a little bit
22 of background as to the starting point as to where we are
23 right now, and I think you can't do that without having some
24 appreciation for who the flight attendants are and what are
25 their -- what's their make up and how long they have been

1 working for the company and what is their pay. Those are
2 all statistics in a way, but you cannot through statistics
3 convey the amount of devotion that the flight attendants
4 have to their jobs and the energies that they have to expend
5 every day to provide the service that they do.

6 Having said that I think it's important to know
7 that there are 17,000 flight attendants that APFA
8 represents, that they're average age is 51, and their
9 average salary is \$45,000. They have worked for the company
10 on average for more than 20 years. Many are well into their
11 50's as I said, and their 60's, and they're still working.

12 I think that Mr. Gallagher gave a little bit of
13 short shrift to what happened back in 2003.

14 The very name of the agreement that was reached at
15 that time was called the restructuring participation
16 agreement. Labor all but in form went through a bankruptcy.
17 It was out of court. And American came to each of the
18 unions and said, we need X amount of money to avoid a
19 bankruptcy, and each of the unions in the course of two
20 weeks agreed to those amounts. Exactly what American said
21 it needed. And that was not easy. These cuts for the
22 flight attendants represented 30 percent -- excuse me -- of
23 their collective bargaining agreements. A lot of it came in
24 the form of income, in the form of vacation and in sick, and
25 in other areas of their contract.

1 And in order to preserve their health benefits and
2 the cost of those benefits they were willing to make
3 sacrifices in other areas to come up to the number that the
4 company said it needed, which was \$340 million a year on
5 average.

6 It should be noted that that's an average starting
7 in 2003. It went up by 2008 to over \$500 million, and it's
8 there -- that's where we are today.

9 So for the last four years the flight attendants
10 have been contributing and continue to contribute in excess
11 of \$500 million and in excess of 30 percent of their
12 contracts.

13 Now when you look at this what has been the impact
14 just on wages, just on a flight attendant's income? To get
15 back -- for a flight attendant to get back to the wage level
16 that he or she was at in 2003 would require a ten percent
17 increase. So they are ten percent behind in actual dollars
18 nine years later. If you take into account inflation in
19 real dollars they are 30 percent behind their income than
20 they were in 2003.

21 Now I think the starting point, because it
22 requires a higher standard than the other elements of 1113,
23 is really the balance of the equities, which as Mr. James
24 said requires clear and convincing evidence, more than a
25 mere preponderance of the evidence, clear and convincing

1 evidence that the balance of the equities favors rejection.

2 Now one of the controlling questions in balancing
3 those equities is whether the hardships imposed on employees
4 are outweighed by a reasonable expectation of a successful
5 reorganization.

6 Now, I think it is quite informative, because
7 balancing the equities is obviously somewhat of an abstract
8 notion, but curiously at the beginning of this case at least
9 the company evidenced some understanding of what that meant
10 when you take into account, when you have to consider the
11 impact of change upon employees, and they made that apparent
12 in their first stay motion when they sought relief to pay
13 prepetition wages. And in that motion this is what they
14 said in paragraph 42.

15 "The employees are vital to the continued
16 operation of the debtor's business and to their successful
17 reorganization. Any delay in paying prepetition employee
18 obligations will adversely impact the debtor's relationship
19 with their employees and could irreparably impair the
20 employee's moral, dedication, confidence, and cooperation.

21 Because many of the employees interact with the
22 debtor's customers on whose continued support and loyalty
23 the debtors rely, the employees support for their debtor's
24 reorganization efforts is critical to the success of those
25 efforts."

1 And in the next paragraph it went on to say:

2 "Absent an order granting the relief requested the
3 employees also will suffer undue hardship, and in many
4 instances serious financial difficulties as the amounts in
5 question are needed" --

6 THE COURT: I'm familiar with --

7 MR. CLAYMAN: Okay. I'm sorry, I was just --

8 THE COURT: -- that.

9 MR. CLAYMAN: Yes.

10 THE COURT: Again, I think you had everybody hello
11 on that point. I don't think anyone --

12 MR. CLAYMAN: Okay.

13 THE COURT: -- disagrees with that, but I have a
14 very particular inquiry here, so I need people to talk about
15 the factors that they relate to --

16 MR. CLAYMAN: Yes, I just --

17 THE COURT: -- what I have in front of me. Again,
18 I understand.

19 MR. CLAYMAN: I appreciate it, Your Honor.

20 THE COURT: I understand, but we could be here
21 for --

22 MR. CLAYMAN: No, I don't --

23 THE COURT: -- for a very, very long time.

24 MR. CLAYMAN: I just think that --

25 THE COURT: And --

1 MR. CLAYMAN: Well --

2 THE COURT: No, I agree with you, it's important,
3 and I certainly recognize that and I think anybody -- I
4 don't think there's really anybody to dispute it, so.

5 MR. CLAYMAN: Thank you, Your Honor.

6 I just think what's interesting is that in that
7 case what was at risk was one month's worth of salary, and
8 what is happening here today is the company is in fact
9 asking for far, far more than just that.

10 What we're looking at in terms of the impact on a
11 flight attendant's income, his take home or her take home
12 pay is another cut of 16.9 percent.

13 Now much adieu is made of the claim that the
14 company has been very careful in not cutting base wages,
15 which is really in this case sort of an empty gesture. Why?
16 First of all in the case of the flight attendants some two
17 and a half percent of a reduction in wages will take place
18 directly to compensation, and there will be other increases
19 to the cost of health care, to the cost of pensions, and in
20 terms of vacation and sick time.

21 All of those together directly affect a flight
22 attendant's disposable income, and that impact is close to
23 17 percent on top of what they have already suffered.

24 So when you put that together with the 30 percent
25 in real dollars reduction you're now looking at a demand by

1 the company that flight attendants should survive on half of
2 what they had in 2003. That is not only unreasonable, but
3 clearly inequitable, and clearly imposes the kind of
4 hardship that the code contemplates should not happen.

5 Now, I think it's important, very important in
6 this case because we sit in a very unique situation unlike
7 any other bankruptcy. There has been no other bankruptcy
8 where you could look at the day before the filing and see a
9 world and what existed in terms of collective bargaining and
10 the company's needs and what they claim they needed and what
11 they claim today.

12 Let me just say that necessary is not a term that
13 was coined by the Bankruptcy Code. It is a term that is
14 very much on the minds of every company whenever they're
15 trying to determine how best to become a successful company.
16 There is absolutely no doubt about that.

17 And the people who sit here today were in the same
18 positions they are now, and at that time they came to a
19 decision as to what was necessary. And I think it's
20 important to understand exactly what we're talking about and
21 to quantify what we're talking about. And first let's look
22 at the landscape that existed before the filing.

23 Now, Mr. Gallagher recounted a decade worth of
24 airline history. That history was obviously very apparent
25 to the people that sit here today, to the senior management

1 that sits here today in the months that preceded the
2 bankruptcy and obviously in the years that preceded the
3 bankruptcy. Those same executives include Tom Horton and
4 Ms. Bella Goren and Jeffrey Brundage, who's the head of
5 labor relations, as well as Ms. Goulet.

6 So the executives -- those were the executives.
7 And what was their strategy for success prepetition? It was
8 called the cornerstone strategy, a strategy that would focus
9 on five hub cities of New York and Miami, Chicago and
10 Dallas, and Los Angeles. That strategy was developed in
11 September of 2009 and it was the strategy that they
12 continued to adhere to prepetition.

13 In July they had the wherewithal to place the
14 largest aircraft order in aviation history of worth
15 \$13 billion. They had at that time approximately \$4.8
16 billion in cash.

17 And what was the status of bargaining at that
18 point? In the prior eight months the company had made
19 comprehensive proposals to every union, and in two cases
20 involving TWU they that had reached tentative agreements.
21 When? In late October and mid November, literally days
22 before the filing.

23 So at that point it had determined what was
24 necessary. It had determined at that point that what was
25 necessary was would be an exchange of costs and savings

1 through these agreements, many of which would require or
2 would provide for productivity improvements, but on a net
3 basis based on their own documents it netted out to be a
4 \$110 million annual increase in their labor costs;
5 \$110 million annual increase in their costs.

6 So let's look at November 29th and what has
7 happened since. The executives are the same, with the
8 exception of Mr. Arpi (ph) who has -- Mr. Horton has now --
9 is not only the president of the company, he's now the CEO,
10 but Mr. Brundage and Ms. Goulet and Ms. Goren are all there.
11 The strategy the same, cornerstone strategy. The order,
12 13 billion, same order. The cash on date of filing was
13 4.8 billion, it has increased substantially since then.

14 Now what about the change in the economy or the
15 competitive environment that Mr. Gallagher described? That
16 was ten years in the making and they cannot point to a
17 single event that was cataclysmic or any way out of the
18 ordinary or it departed from the trends that had existed for
19 those many years.

20 So what happens in bankruptcy? They quote
21 "recalibrate" their need. And so they go from \$110 million
22 in costs, increasing their costs to \$1.25 billion in sales.

23 Now how does that happen? How does that happen
24 when you're supposed to under 1113 carefully calibrate your
25 need to have some sense of purpose and understanding as to

1 the effect that your demands may have upon your employees?
2 It is if the company went to the employees and told them on
3 one day that they would be getting \$110 bonus payment and
4 then the next day the employee came in -- came in -- the
5 employees came in and were told, we're sorry, but you owe us
6 \$1,250. That is how radical a shift we're talking about.

7 It's a revolutionary change in terms of what has
8 happened, and it really raises cause for suspicious or
9 suspect. It makes the claim on its face patently suspect,
10 when you swing one day from a plus 110- to a negative \$1.25
11 billion.

12 Now it's made even more inexplicable, this swing,
13 this wide departure by the fact that they have now gone into
14 bankruptcy and they have resources and avenues by which they
15 can achieve even greater savings. You've heard
16 Mr. Gallagher say that they can get \$600 million in non-
17 labor savings. That didn't exist -- that did not exist
18 according to the company prepetition. These are additional
19 savings.

20 So what changed? The question is really you have
21 to look at what changed? And the only thing that changed --
22 excuse me, Your Honor -- what changed was the filing of a
23 piece of paper under chapter -- that was a petition for
24 Chapter 11 protection. And what it is now doing is it's no
25 longer looking at what is necessary. This is perceived by

1 the company, with all due respect, as an opportunity to
2 achieve what it wants, and it's using bankruptcy in the very
3 way that 1113 was intended to prevent.

4 It was intended to prohibit companies from
5 treating Chapter 11 as an excuse to pillage a collective
6 bargaining agreement, and it was used -- it was intended to
7 prevent a company from seeking excessive -- excessive
8 changes to collective bargaining agreements and then be
9 unwilling to move off of that demand.

10 We are still -- at February 1st we were at
11 \$230 million for the flight attendants, we are still at
12 \$230 million for the flight attendants, and the company has
13 told us repeatedly in no uncertain terms, it will always be
14 \$230 million. And 1113 was intended to prevent employees
15 (sic) from using bankruptcy protection as an opportunity to
16 convert collective bargaining from a process of give and
17 take to one of take it or leave it.

18 So the question remains, you've got this I think
19 something that should raise some concern about the swing,
20 but the question is still, how do you measure necessary?
21 What is the appropriate standard that should be applied in
22 this case to determine the true range of reasonableness in
23 this particular matter?

24 So what we would suggest is for the company to do
25 what it is doing for every other stakeholder, and that is

1 simply to look at the market, to look at its competitors, to
2 look at the labor costs that are being borne by its primary
3 -- by the airlines with which it competes. That approach
4 has been endorsed by the unsecured creditor' committee.
5 They too believe that American should be asking only for
6 market-based collective bargaining agreements. And as I
7 will point out later, that is exactly our position in these
8 negotiations, Your Honor.

9 THE COURT: Well, let me ask you a question.
10 You're asking -- you're talking about what should happen at
11 the end of the day. What I have in front of me is a motion
12 to reject which has its own standard. If I reject the
13 contracts as requested I -- it's not my job to impose
14 anything, the parties go back.

15 MR. CLAYMAN: Understood.

16 THE COURT: I mean that's one of the reasons why
17 courts also hope that the parties can negotiate rather than
18 have a Court decide this, because ultimately you have to
19 negotiate anyway.

20 So if you're talking about the end game I need you
21 to focus on what the status quo is now, because that's
22 really what --

23 MR. CLAYMAN: Yes.

24 THE COURT: -- what I'm -- what I'm obliged by --

25 MR. CLAYMAN: Right.

1 THE COURT: -- the law that Congress has written
2 to do.

3 MR. CLAYMAN: Absolutely, Your Honor, and I'm
4 trying to -- I'm sorry if I'm not quite saying that.

5 THE COURT: No, I understand your point that you
6 have a suspicious about the ask --

7 MR. CLAYMAN: Right.

8 THE COURT: -- and you've worked it into the
9 formula, but you were beginning the segway into what really
10 the deal should look like, and that's -- that's not my job.

11 MR. CLAYMAN: No, it's not, I would -- of course,
12 Your Honor. But I think what is your job is to determine
13 whether the proposal is necessary, and that's kind of --
14 again, you have to look at what the company requires. But
15 what we're saying here is what the company requires is no
16 more than what it's demanding from any other stakeholder.
17 That what the company should have had in its proposal is no
18 more than a market-based collective bargaining agreement.
19 That is really the level of necessary that it should be
20 seeking.

21 And what we will show and the evidence will show
22 is they are seeking far, far in excess of a market-based
23 collective bargaining agreement.

24 So the standard of necessary ties in to what I'm
25 saying here about market-based collective bargaining

1 agreements.

2 And what's interesting is not only does the UCC
3 agree with that approach, that that is what should be the
4 objective of an 1113, but American has agreed with that
5 approach right up until March 8th of this year, only six
6 weeks ago. And what I'm saying is that the company for at
7 least the last two years has adopted a methodology by which
8 it can determine and has determined whether or not the costs
9 of each labor group separately -- not collectively -- each
10 one separately, because we all stand or fall on our own
11 situations here -- and they have a methodology that they've
12 applied repeatedly, and just very briefly just simply take a
13 contract from another carrier and you superimpose it upon
14 your workforce and make a determination of whether that
15 contract would cost you more money or would it save you
16 money, and they do that with multitude of airlines, major
17 networks actually, and they come to a number and they come
18 to a number for each -- for each party, for each group, the
19 flight attendants, the pilots, et cetera.

20 That methodology the first time we saw it was
21 January of 2010. One of their documents is as Mr. James
22 mentioned was a board presentation in November -- in
23 November of 2011. Weeks -- I don't know whether it was
24 days, there's no date on it, all it just says is November,
25 but in any event they applied that methodology in the most

1 detailed way that I have seen in any of their documents.
2 And what it showed was that there would be -- that they
3 would be at market within a matter of a year or two, and
4 then over time they would become increasingly above market
5 -- I mean actually the market would be more expensive than
6 what they would have. They would be saving money over time
7 just through the evolution. And this analysis, Your Honor,
8 included the proposals that they had on the table for each
9 of the unions at that time. This was right in the days
10 before the bankruptcy.

11 And then again in March of -- Mr. James again said
12 this -- in March of 2012, six weeks ago, they again did the
13 same analysis to the PBGC, except as the evidence will show
14 they left off the page that showed that convergence would
15 occur over time and they only looked -- provided the
16 analysis for 2011 or '12 I think, but it stopped at that
17 point.

18 So I think that when we're looking at all of this
19 and we're looking at this methodology how does it play for
20 the flight attendants? How does that particular methodology
21 in November -- let's look at November.

22 Our analysis using that November analysis shows
23 that the flight attendants -- shows that the flight
24 attendants are at market base -- market-based levels and
25 will -- are either they're now or will be this year. They

1 will be -- their contract will be market-based. That is the
2 expenses of that agreement are competitive.

3 Now the question then becomes why would we, APFA,
4 agree to bargain with the company if we already had a
5 market-based agreement? And the fact is, Your Honor, we
6 recognized that there are certain areas of our agreement
7 that are outliers, that are distinguishable from our peers,
8 and even though the totality of our costs are clearly
9 competitive we were willing and are willing to address those
10 areas.

11 Specifically we've agreed to a freeze of our
12 pension. We've agreed to pay substantially more in terms of
13 active medical. We've agreed to the termination of retiree
14 health benefits and that the monies that have been
15 contributed to date would be placed in a VEBA for the
16 benefit of future retirees. And finally we have agreed to
17 virtually all of the productivity improvements the company
18 has sought. We have agreed in essence to increase the
19 schedule max to the level that the company has proposed.
20 And we've agreed to the preferential bidding system that
21 Mr. Gallagher described.

22 So we're not sitting here deaf, dumb, and blind as
23 to what is going around -- going on around us, we have
24 addressed the major elements of their need on a competitive
25 basis.

1 So that's I think quite clear as to what that has
2 happened.

3 Now in contrast what does \$230 million do if
4 that's taken out of our agreement? It would push the flight
5 attendants 30 percent below market, which makes -- that is
6 an incredible percentage. But what makes it equally
7 astonishing is that there's absolutely, as I said, no other
8 constituency who's being asked to sacrifice as much.

9 And a fair and equitable standard requires some
10 uniformity, some semblance of proportionality, and when you
11 push one group below market rates by that kind of percentage
12 you have basically destroyed the concept of fair and
13 equitable as should be applied in this case.

14 Now again, fair and equitable. What makes this
15 case so different is that American Airlines, a subsidiary of
16 AMR, which is also in bankruptcy as one of the debtors, is
17 American Eagle.

18 What is the approach that management at American
19 Eagle is taking to the changes that it has deemed necessary?
20 They're based on the competition, they are tied to other
21 airlines. Is exactly what we are saying the company should
22 have done for us, and by going beyond necessary, beyond
23 market rates they have overreached by a magnitude of almost
24 \$230 million.

25 Now what's curious -- let me just go back to

1 methodology for one moment and just say that you can go
2 through what I think is somewhere around 6,000 pages of
3 exhibits and you will not find a single example of the
4 company applying the methodology which they lived with and
5 used repeatedly in the years prior to this bankruptcy and in
6 the months afterward. There's not a single exhibit that
7 reflects that methodology. And there's not a single exhibit
8 in evidence that reflects the fact that they're using mark
9 to market approach for the American Eagle employees.

10 So then the question become, Your Honor, is okay,
11 they're not doing it mark it to market, they're
12 overreaching, they must have some basis for why they're
13 asking for \$230 million. And what they're saying is that
14 they're business plan alone is -- justifies an ask of
15 \$1.25 billion from labor.

16 Now what you have to look at when you see a
17 business plan that demands so much, that's so
18 disproportionately greater than anyone else's sacrifice, you
19 know, what does that business plan look like, what is the
20 validity to some extent of that business plan? Is it
21 something that is achievable? And I would suggest, Your
22 Honor, that the business plan that they have put before us
23 is incomplete and is based on a number of groundless
24 assumptions. And I don't say that lightly.

25 First of all, the unsecured creditors' committee

1 has had this plan before them for three months and they have
2 yet to endorse it. Despite that we are the only
3 constituency who are being asked to contribute, to invest
4 now in a plan that the UCC cannot get behind.

5 So when you're looking at a business plan it
6 cannot be simply based on hopeful wishes or mere
7 possibilities. And again --

8 THE COURT: Let me ask --

9 MR. CLAYMAN: Yes.

10 THE COURT: -- how much longer you have? I'm just
11 trying to figure out for purposes of scheduling, and I know
12 there are other parties that still want to be heard.

13 MR. CLAYMAN: I would say ten minutes -- ten --

14 THE COURT: All right, I'm going to keep you to
15 that.

16 MR. CLAYMAN: Okay. Can I come back later?

17 (Laughter)

18 MR. CLAYMAN: So the business plan is not
19 complete. And why isn't it complete? It relies in large
20 part as Mr. Gallagher says on expanding its regional
21 network, yet the plan and the company has yet to identify
22 where that regional lift with come from, the types of planes
23 it will use, or the costs of acquiring that kind of
24 operation. They don't know that yet, that has yet to be
25 defined, that's a huge gaping hole in their plan.

1 Now what is probably most -- or two other points
2 that are most disturbing about this business plan. They
3 rely -- the company's business plan relies heavily on
4 expanding code share relationships with existing partners or
5 entering into new agreements with other partners.

6 There is not a shred of evidence, Your Honor, in
7 the pile of evidence that they've provided to you, not one
8 piece of evidence that indicates that they have any reason
9 to believe that Alaska Airlines, as Mr. Gallagher pointed
10 out, or any other airline would be willing to enter into the
11 kind of code share relationship that the plan is predicated
12 upon. It is pure speculation.

13 But most disturbing, Your Honor -- most disturbing
14 is that this is a business plan that assumes tremendous
15 growth over a six-year period. It assumes that American
16 will grow by upwards of 40 percent over the term of -- over
17 that six-year term. It will in essence grow over those
18 years to become something almost the size by 2017 almost as
19 large as one of the network carriers, but it's going to take
20 six years, and a lot of that is backloaded.

21 So the question is what happens in that six-year
22 period? Well, American is trying to catch up.

23 What is the assumption of the plan as to what
24 Delta and United will do, who I'm sure these people would
25 recognize -- manager would recognize are very able

1 competitors? The assumption of the plan is that there will
2 be no -- no competitive response; none. That they will
3 continue to grow these airlines as they would have grown in
4 the absence of the company's growth plans. That is an
5 incredible assumption in light of what has been described
6 repeatedly in their papers as a highly, highly competitive
7 industry.

8 So how are the employees supposed to basically get
9 behind a plan that is predicated upon assumption that is --
10 really assumes -- I mean put in one way -- that these other
11 airlines are going to declare and observe a six-year
12 holiday?

13 THE COURT: But are you saying that in your view
14 things are going to be worse? And if things are going to be
15 worse I'm wondering how it justifies sort of a status quo
16 view. So maybe you can explain that for me.

17 MR. CLAYMAN: Well, Your Honor, we're not saying
18 that it requires a status quo view, we have put a number of
19 -- a lot of money on the table in this regard, but what
20 we're saying is that this business plan doesn't work, that
21 this is a problematic business plan, and you have to look at
22 that very carefully to see whether or not it justifies the
23 depth of concessions.

24 I am not suggesting that -- this is not a matter
25 of tinkering, Your Honor, this is a very, very fundamental

1 error in the plan.

2 THE COURT: But my question is, if you say the
3 business plan is overly optimistic and won't generate the
4 additional revenues that you're talking about I'm wondering
5 how that justifies saying that in the context of this 1113
6 proceeding that what's been asked for is too much.

7 MR. CLAYMAN: I think, Your Honor -- I think what
8 it goes to is that you cannot -- they've put a business plan
9 on the table, this is a plan that they are predicating their
10 ask on.

11 I don't -- I am not suggesting that by any stretch
12 of the imagination that they need more, but what it does
13 suggest is that this is not a plan that's viable, that they
14 have to go back and find a plan that satisfies not only the
15 economic realities of the marketplace, but more reasonably
16 -- as is more reasonably calibrated to a market-based
17 collective bargaining agreement.

18 Can that be done? I think Mr. James eluded to
19 that, and in my closing remarks I'll talk to that as well.

20 THE COURT: All right.

21 MR. CLAYMAN: So I think the argument has been
22 made that when you're looking at the most complete and
23 reliable information that you're supposed to make a proposal
24 on every company would look to what are the options here,
25 what alternatives do we have that may provide a better plan

1 than the one we're proposing? A plan that is not predicated
2 on no competitive response from United and Delta. One that
3 does not presuppose code sharing agreements with parties you
4 have yet to get any kind of backing from.

5 And I think that the reality is -- and this
6 company recognizes that consolidation -- put aside for the
7 moment U.S. Air -- consolidation is what is going to happen.
8 One of their team has described it as inevitable.

9 So the question is, what plan are we really being
10 asked to contribute to? Is it this plan, is this a
11 transitory plan that is just a prelude to a plan of
12 consolidation? But in any event it was incumbent upon this
13 management to consider that option. They want to be and
14 they understand that they don't have the market power that
15 Delta and United have because of the size of their network,
16 they want to get to that point. The issue is they don't
17 have six years to get there. And the only way they can get
18 there and succeed is through consolidation.

19 And so I would say that when you look at what has
20 happened with U.S. Air and you see what it has done in the
21 few weeks that it had to talk to us, to the labor groups and
22 reach term sheet agreements that are predicated or
23 contingent upon a transaction with American, what you see is
24 a market-based collective bargaining agreement. That was
25 the premise of those negotiations. There is someone out

1 there who is willing to abide by that standard.

2 Now, just to make it absolutely clear from this
3 record as to how much the company has considered
4 consolidation. They were asked a question and this is the
5 response that we got, it's one sentence:

6 "AA did not undertake any analysis of potential
7 mergers as part of developing the business plan underlying
8 its current labor proposals."

9 That has tragic repercussions here -- or could
10 have tragic repercussions by forcing employees to take
11 exorbitant, excessive, unnecessary cuts when this
12 opportunity, a valid, viable opportunity exists and they
13 have not even looked at it, they have not even considered
14 it. It also provides as Mr. James says good cause for the
15 unions to reject the proposals that are on the table.

16 So, Your Honor, I will not conclude with
17 summarizing my opening statement, but I think all of these
18 factors and many others that will come out in the week that
19 we will have to present evidence, this is just I think some
20 of the highlights in a way, the most important points and
21 deficiencies in the company's case.

22 So with that, Your Honor, we would urge you to
23 deny the motion to reject and ultimately we will obviously
24 renew that position at the end of this case when our briefs
25 are due.

1 THE COURT: Thank you.

2 MR. CLAYMAN: Thank you very much.

3 MS. LEVINE: Briefly, no pad, no notebook.

4 Your Honor, Sharon Levin, Lowenstein Sandler, I'm
5 here with Jason Teele and Jack Sherwood.

6 If it please the Court I'd like to introduce my
7 co-counsel, Mark Richards, from Phillips Richards, and
8 importantly I'd like to introduce to the Court Mr. Jim
9 Little, the TWU's international president.

10 THE COURT: All right, thank you.

11 MR. LITTLE: Good afternoon, Your Honor.

12 THE COURT: Good afternoon.

13 MS. LEVINE: Your Honor, the TWU represents the
14 most workers here at American and at Eagle. We're the union
15 that gave over 620 million yearly in concessions since 2003,
16 our employees turn the planes every day despite the --
17 despite the stress caused by those concessions and despite
18 the added turmoil caused by the Chapter 11 case.

19 We represent a workforce working under seven of
20 American's nine collective bargaining agreements, and
21 unfortunately we find ourselves in the unique difficult
22 situation in that we stand to lose 9,000 jobs, a full one-
23 third of our represented workforce is at risk not through
24 restructuring reductions, but through outsourcing of jobs,
25 including as far away as China, and candidly with savings

1 that neither we nor experts fully understand.

2 American made sweeping demands for huge Section
3 1113 concessions. These concessions are real and will
4 change the lives of our members and their families
5 permanently.

6 And despite the fact that we consensually gave
7 American large concessions that saved the airline in 2003
8 the TWU has been trying to negotiate constructively to
9 preserve our member's contract rights, including jobs over
10 the past three months.

11 Since American made its initial 1113 demands the
12 TWU has been negotiating each of our seven contracts, we've
13 been in Dallas, we've been working tirelessly, literally day
14 and night under very difficult circumstances to negotiate
15 and chip away at the grim invasive difficult asks that are
16 being demanded by American under their 1113 demands. In
17 fact even now we still have people in Dallas working through
18 and trying to better certain issues on American's last
19 offer, and this is despite the fact, Your Honor, that at the
20 time of the filing we actually had a TA out for vote and we
21 were there on another TA, both of which American
22 unilaterally rescinded at the time of the filing.

23 TWU president, Jim Little, made a personal
24 commitment to his members that the TWU would do its absolute
25 best to mitigate and negotiate off of American's 1113

1 demands, he further assured his members that at the
2 conclusion of the negotiating process, but before letting a
3 bankruptcy court, which we understand is not a labor
4 tribunal, the TWU members fates that they could make that
5 decision for themselves.

6 We are taking out for vote the company's last best
7 offer and intend to let our members decide for themselves
8 with their families and with the people that are most
9 important to them in their lives this important decision.

10 The vote whether yes or no is perhaps the most
11 important personal decision they have been asked to make
12 affecting their careers, their homes, their families, their
13 health insurance, their pensions, their retirement, the
14 structure of their neighborhoods and their communities, and
15 the jobs they've held for decades and many had hoped to hold
16 for decades to come.

17 But in the event the members vote no on any of
18 these seven contracts, Your Honor, which vote is designed to
19 happen before the opening of our direct case under Your
20 Honor's timeline, we will vigorously present our case and
21 all of our defenses to the debtor's motion before the Court.

22 Beyond the staggering number of layoffs and
23 crippling erosion of benefits and pay are the faces of real
24 working Americans. These dedicated workers built an
25 airline, saved that airline starting in 2003, and now risk

1 their very livelihood and perhaps more.

2 For our members this is not -- this is not a
3 number of investments, this is not one of many contracts,
4 they are all in and this is everything.

5 So until we receive our members voting results we
6 reserve all of our rights under 1113 and intend to assure
7 our members that at the appropriate time if necessary we
8 intend to fully oppose the motion, defend their rights,
9 including addressing the 1113 criteria, and importantly some
10 of the issues surrounding exclusivity that Your Honor eluded
11 to earlier.

12 Thank you.

13 THE COURT: All right, thank you.

14 I obviously don't know what the proposal is that's
15 out and I don't want to know, but I do take it as a helpful
16 sign that people are still talking and that's really all I
17 can take from it, so I'm happy to hear that.

18 MS. NEVILLE: Good afternoon, Your Honor, Carole
19 Neville from SNR Denton on behalf of the PBGC, and we're
20 here with Gary Meyerhoff of my firm.

21 I promised Your Honor the other day that I'd be
22 very brief and very focused, and I live by my promise.

23 The PBGC is a federal agency that guarantees the
24 payment of pension benefits up to a certain statutory limit,
25 and the debtor has four plans that are covered by this

1 insurance under ERISA, three of which are provided for in
2 the collective bargaining agreements and are the subject of
3 this motion.

4 Now you've heard Mr. Gallagher say several times
5 that the debtors intend to freeze the plans, which means
6 essentially that they would be maintained by the company at
7 the level of accrued benefits as of the freeze date. But
8 the plans -- but the debtor's motion says that it intends to
9 eliminate the obligation to maintain the plans under the
10 collective bargaining agreement, something more than a
11 simple freeze requires.

12 And in addition the record is full of allegations
13 about the cost of the pension, which indicate that the
14 debtors are at least preserving their rights to go down a
15 different path.

16 You also heard that there's an issue with respect
17 to the pilots pension plan that the PBGC is involved in.

18 For those reasons the PBGC is going to participate
19 in these proceedings on a very limited and focused basis to
20 insure that the debtor does maintain its promise to keep the
21 plans and so that the record is accurate.

22 We've been working with the debtors before the
23 beginning of these proceedings and we intend to work
24 throughout the proceedings to get our points across and
25 settled.

1 THE COURT: All right, thank you.

2 MS. NEVILLE: Thank you.

3 THE COURT: I will throw this out for
4 consideration. To the extent that there are concerns about
5 -- if you're essentially minding the shop as to what the
6 evidence is that comes in on various issues that relate to
7 these plans certainly parties could consider other vehicles
8 like stipulations to address some of those concerns, which
9 would allow you to not have to sweat some of the individual
10 testimony, but I'll leave it to your professional creativity
11 as to whether you can work something out here.

12 MS. NEVILLE: Thank you, Your Honor. Actually
13 Mr. Meyerhoff has figured out a little scheme for that
14 purpose.

15 THE COURT: All right. Thank you.

16 MR. BUTLER: Your Honor, good afternoon, for the
17 record Jack Butler together with my partner Jay Goffman and
18 our other colleagues at Skadden, Arps. We are committee
19 counsel for the official committee of unsecured creditors
20 which was formed by the United States Trustee in this
21 district on December 5th of last year.

22 Our client, acting through its labor subcommittee,
23 which we'll discuss in a moment, has authorized us as
24 committee counsel to make this opening statement in general
25 support of the debtor's Section 1113 motion.

1 As committee counsel we act on behalf of the
2 committee as an entity, and the committee's position and
3 this statement should not necessarily be attributed to any
4 committee member in its individual capacity, each of which
5 is represented by other counsel in that capacity.

6 On January 12th of this year the creditors'
7 committee acted in accordance with its fiduciary
8 responsibilities to protect the interest of all unsecured
9 creditors, and in accordance with Article 3.2 of its bylaws
10 which were adopted on December 22nd last year by all nine of
11 its members when it formed a labor subcommittee.

12 The creditors' committee delegated to the labor
13 subcommittee the responsibility to evaluate the nine
14 collective bargaining agreements between American Airlines,
15 Inc. and the APA, APFA, and TWU, including the Section 1113
16 process then being planned by the debtor.

17 The labor subcommittee, which is comprised of all
18 of the committee members other than the three labor
19 organizations that are Section 1113 parties in this
20 contested hearing, has met on seven occasions over the last
21 three months and deliberated for more than 18 hours in those
22 meetings regarding American Airlines' Section 1113 process.

23 The labor subcommittee has received constructive
24 and thorough presentations in advocacy from American as well
25 as from the three labor organizations, including detailed

1 presentations from two of them.

2 The committee professionals have examined the
3 debtor's Section 1113 proposals and information record,
4 pursued numerous information requests, and explored the
5 extent to which consensual agreements could be achieved
6 earlier rather than later in these Chapter 11 cases.

7 While the creditors' committee has worked
8 diligently to foster consensus among its diverse membership
9 whenever possible and its nine members generally work
10 collegially together, in respect to the Section 1113
11 contested hearing the formation and operation of the labor
12 subcommittee was and continues to be entirely proper and
13 necessary.

14 As Your Honor's order in this case indicates this
15 -- the committee also has standing to be heard in this
16 Section 1113 hearing. This was explicitly recognized in the
17 stipulation and order which we refer to as the pretrial
18 order at docket number 2121 to which is debtor, the labor
19 organizations, the PBGC, and the committee all stipulated
20 and agreed that the committee is a Section 1113 party, and
21 the pretrial order specifically spells out the wide scope of
22 the committees' permitted participation in this contested
23 hearing.

24 With that being said, Your Honor, how does the
25 committee see its role in this contested hearing primarily

1 litigated between employer and employee about the two-prong
2 relief being sought by American Airlines?

3 First, American seeks the rejection of nine
4 collective bargaining agreements at issue, assuming that no
5 consensual deals can be reached before Your Honor's required
6 rule in early June.

7 And second, American seeks to establish a new
8 status quo under the Railroad Labor Act asking Your Honor
9 for the authority to implement and perform under the terms
10 of the Section 1113 proposals proffered by the debtors and
11 to take all the actions necessary to effectuate those
12 proposals.

13 The order that the debtors filed proposed in the
14 case seeks both prongs of that relief.

15 How should the committee address that and how can
16 we be most effective for our constituencies, our
17 stakeholders to whom we owe fiduciary duties, and how can we
18 be of aid to this Court?

19 As a threshold matter we make several observations
20 to Your Honor.

21 First, litigation pursuant to Section 1113 of the
22 code can be the single most divisive thing that occurs in
23 Chapter 11.

24 In the airline industry context action under
25 Section 1113 is the only instance in which Congress has

1 authorized abrogation of a collective bargaining agreement
2 outside of the context of the Railroad Labor Act and without
3 its intended protections.

4 The committee recognizes that the current
5 proceedings before this Court are a cause of great concern
6 for the labor organizations and for their members. The
7 committee also recognizes the remarkable and essential
8 contributions by the 20,000 or so non-union AMR employees
9 and the 55,000 men and women represented by these three
10 labor organizations that they're making for the current
11 stabilization and future prosperity of American Airlines.

12 None of us should forget the fact that this launch
13 of this case however difficult has gone remarkably well, and
14 it's gone remarkably well because of the efforts of all of
15 the people at American.

16 Now speaking personally for a minute, Your Honor,
17 as a member of Americans' Advantage program since 1986 and
18 having accumulated almost four million miles on American in
19 those decades of flight and having taken dozens of flights
20 over the last couple of months on American I have to tell
21 Your Honor that I've witnessed even now, even in these
22 difficult times the professionalism, integrity, and
23 intensity of effort by Americans' employees.

24 As committee counsel we've also had the privilege
25 of observing important, insightful, and thoughtful

1 contributions of these labor organizations and the
2 committees' work, notwithstanding their understandable
3 disagree with the committees' position in this particular
4 instance.

5 And while the Court must apply the law to the
6 facts, and Your Honor I think correctly has identified and
7 we're going to come back to it, that the threshold issue on
8 the first prong is the status quo that exists today, the
9 collective bargaining agreements in existence at the moment,
10 not what's being negotiated, not the what ifs and what might
11 bes, but the current status quo, and we recognize that Your
12 Honor has to apply the law to the facts.

13 I think Your Honor recognizes the fiduciary such
14 as the committee also must carry out our responsibilities to
15 do what's in the best interest of unsecured creditors, but
16 none of us should lose sight of the human element in this
17 process.

18 Second observation, Your Honor. While the
19 pretrial order gives the committee wide latitude in
20 connection with the scope of involvement in this hearing,
21 the committee believes it best serves the interests of
22 general unsecured creditors and it best aids this Court and
23 this trial record for the committee to generally follow
24 guidelines that are actually enunciated in a different
25 decision, the Adelphi case by Drain in this district.

1 In that opinion after concluding that Section 1113
2 doesn't appear to restrict the standing of the creditors'
3 committee and that the term of interested parties in Section
4 1113 actually confer a broader grant of standing under
5 Section 1109, which on its face specifically authorizes the
6 involvement of the creditors' committee, Judge Drain that
7 the official committees' role in Section 1113 "should
8 logically be focused on the investigation and consideration
9 of whether the debtor's decision to reject a collective
10 bargaining agreement is the proper course of action."

11 Essentially Judge Drain's guidance was that we
12 focus on Mr. Gallagher business case more than the labor
13 case.

14 Here the committee plans to participate in these
15 proceedings consistent with its role as monitor of the
16 debtor's exercise of its business judgment expressing its
17 view and presenting limited evidence if necessary on whether
18 the abrogation of the collective bargaining agreements is
19 necessary to the debtor's successful reorganization, and by
20 the abrogation of those contracts we're speaking, Your
21 Honor, of the status quo that exist today in the volumes
22 you've been given, not the what ifs and what might bes, and
23 whether the debtor exercises appropriate business judgment
24 in reaching that conclusion.

25 A third observation, Your Honor. In considering

1 the debtor's actions with respect to labor in the Section
2 1113 contested hearing the committees' analysis has been
3 grounded in certain defining principals which it shared with
4 the Court in prior filings and which some of the counsel in
5 their opening arguments -- in opening statements have
6 referred to.

7 Early in these Chapter 11 cases the committee
8 observed that its principal focus would be forward looking
9 -- forward looking towards the debtor's transformation into
10 a profitable and sustainable global airline that will
11 justify the requisite level of balanced and shared sacrifice
12 among its stakeholders.

13 As Mr. Gallagher acknowledged in his opening
14 statement, we should not ignore when Your Honor considers
15 the issue of shared sacrifice, the general unsecured
16 creditors are not likely to have their debt claims repaid in
17 cash in full, but instead mostly satisfied in equity of the
18 reorganized company. That is not what they bargained for
19 and that is likely the outcome here.

20 The committee has elaborated its views in the
21 nature of these Chapter 11 cases in the committees'
22 objectives in prior filings made in this court most recently
23 in connection with the pending PSA litigation to enjoin the
24 debtors from modifying benefits for certain non-represented
25 employees. And I'll not go through those statements, Your

1 Honor has had those in pleadings and has read those and
2 understands the committees' position, but it's important to
3 say on this record that these objectives and the debtor's
4 feasible and timely reorganization cannot be achieved, it
5 simply cannot be achieved if all of the elements of its
6 revenue and expense structure aren't aligned with their
7 principal competitors on a timely basis.

8 This imperative have clear implications for those
9 employees currently represented by labor organizations where
10 Section 1113 of Bankruptcy Code applies.

11 Given that the creditors' committee believes, and
12 we will participate in these proceedings and we believe we
13 will help convince Your Honor that the evidence presented in
14 this case will demonstrate that five months have passed
15 since these cases were filed and for consensual resolution
16 has been reached that results in market-based collective
17 bargaining agreements.

18 As a result the debtors have no alternative but
19 the seek to demonstrate their good faith compliance with the
20 stair step requirements of Section 1113 as it relates to the
21 current status quo, the contracts that are before you in the
22 evidence binders that Your Honor has.

23 In terms of timing, another important comment,
24 Your Honor. We must recognize that the pretrial order
25 stipulated to by all the Section 1113 parties established a

1 firm schedule for resolution of this phase of the Chapter 11
2 cases -- this phase of the Chapter 11 cases by the first
3 week of June 2012.

4 The committee acknowledges and appreciates the
5 cooperation of the debtor in deferring several of the
6 statutory protection that is were afforded to it in order to
7 create a process where there remains the opportunity for
8 consensus before the Court must rule on the merits of the
9 litigation. And we're seeing today in some of the
10 announcements made in court today some support for the
11 schedule Your Honor authorized here, including the periods
12 of time that will follow this week of the affirmative case
13 in order so that discussions can continue among the parties.

14 And while the committee remains optimistic that
15 many of the CBAs at issue here can be resolved consensually
16 in the coming weeks, the committee remains completely
17 committed to the stipulated timetable that must result in a
18 definitive ruling by this Court in early June as a matter of
19 statutory requirement.

20 And the rational, Your Honor, for this position is
21 simple. Putting aside the question of strategic
22 alternatives for a moment, the committee supports the
23 debtor's business judgment in pursuing a robust, stand-alone
24 business plan on a path that could leave to an early
25 emergence and against which strategic alternatives can be

1 vetted before any reorganization plan is formulated or
2 prosecuted.

3 As Mr. Gallagher acknowledged in his opening
4 statement, one of the six of his game changers in the
5 airline industry is merger and consolidation, and that
6 clearly is going to be examined here, but we also need to
7 understand that Section 1113, this trial as emotional and
8 difficult and complex as it is, it is not an end point in
9 these cases, it's rather the next necessary step towards
10 formulation of the debtor's stand-alone plan, including the
11 labor costs that will be contained in it, and it's essential
12 that this part of the case reach its conclusion on the
13 timetable set forth in the pretrial order so that we can get
14 about the business of the balance of the case, which again
15 during which many of these other issues, some of which have
16 been brought up in the record today, have to be vetted.

17 Mr. Gallagher also noted, and I'll just briefly
18 comment on the fact that observers of Section 1113 and
19 people who come to these hearings, people in the overflow
20 courtrooms and often the media who report on them fail to
21 understand that there are no clear winners or losers in this
22 litigation, and they fail to understand that this is not an
23 end point.

24 We know from other cases that debtors that lose
25 their initial Section 1113 applications fix whatever the

1 affirmity may be and successfully pursue a follow on
2 application. The batting average is way north of 900
3 percent when you hook at all the Section 1113 litigation
4 across the country. And CBAs that are abrogated by Section
5 1113 relief must be renegotiated under non-bankruptcy law.
6 In this case the Railroad Labor Act. And this are few
7 Chapter 11 debtors that are able to emerge from Chapter 11
8 without consensual labor agreements.

9 So there's much for the debtors, the creditors'
10 committee, and other key stakeholders, including the labor
11 organizations to consider in the coming months, but it would
12 be a mistake, Your Honor, to lose sight of what must be
13 accomplished in this contested hearing or confuse it with
14 the work that lies ahead in formulating a consensual plan of
15 reorganization.

16 Your Honor, it's the committee's believe that its
17 role here is not to intervene in each litigation of each
18 stair step requirement of Section 1113, i.e. mostly
19 Mr. Gallagher's labor case. Even if we chose to ignore
20 Judge Drain's non-binding guidance or perhaps even your
21 admonition at some future point in the trial, we can't
22 imagine that this Court could or would give much credence or
23 evidentiary weight to our expert's views or our client's
24 views about what has or has not transpired at the bargaining
25 table or what with respect to several of the other -- or

1 what occurred with respect to several of the other stair
2 step elements of Section 1113.

3 However, the committee is well-qualified and
4 competent to weigh in on whether abrogation of American
5 Airlines' existing collective bargaining agreements is
6 justified by the evidentiary record on a business level.

7 The committee believes the record that has been
8 filed to date and the additional evidence that will be
9 adduced in this hearing will demonstrate that American
10 Airlines has met its burden of proof and that any of the
11 collective bargaining agreements that have not been
12 consensually modified, the current status quo, must be
13 abrogated.

14 Following the completion of the evidentiary record
15 and with respect to those CBAs that are still at issue the
16 committee reserves its right to address in its closing
17 argument the second prong of the relief sought by the
18 debtors, i.e., the imposition of modified terms of
19 employment which will in turn become the new status quo as
20 negotiations in the Railroad Labor Act resume.

21 By supporting the debtor's view that these
22 contracts must be abrogated and that the debtor is
23 exercising reasonable business judgment in that respect it
24 does not mean that the committee is required to or does
25 endorse every element of the debtor's proposed business plan

1 or that the evidentiary scale that Your Honor has to apply
2 need weigh any more heavily in the debtor's favor than
3 what's required by law to prevail here.

4 Nor I should point out, Your Honor, based on some
5 of the argument this morning, is American than required in
6 it's section 1113 motion to prove quote "that it will
7 ultimately achieve rehabilitation." End quote. As
8 discussed and told us by the Second Circuit both in the
9 Howard's Express, Inc. and in the Northwest Airlines Corp.
10 decisions in reviewing what has to occur and noting that the
11 employer has the burden of proving it proposals are
12 necessary, but not that it will ultimately work.

13 Your Honor, one final observation. It's essential
14 to note that the Court's pretrial order limits the use of
15 the record in this contested hearing for any other purpose
16 in the Court's consideration of the debtor's section --
17 request for Section 11 (sic) relief. I bring that up
18 because of some of the colloquy that's happened even on the
19 record this morning and some of the concerns expressed by
20 other parties in this case. Because that order, Your Honor,
21 at -- at paragraph 8, an order that was stipulated to by the
22 debtors and the other Section 1113 parties makes it clear
23 "that no party in this contested hearing need consider this
24 record to be a mini plan confirmation hearing or a mini
25 pension termination proceeding or any other kind of judgment

1 about what the debtor's business plan or prospects would be
2 outside of the four corners of this litigation and for the
3 particularized purpose of the Section 1113 trial."

4 The debtors has also amended many of the original
5 declarations filed in the contested hearing such that the
6 evidence we proffer has been constructively and helpfully
7 clarified and limited to Section 1113 parameters and no
8 more.

9 For that reason, Your Honor, much of what we
10 thought we might have to do as a committee in this case we
11 don't believe we have to do, and we may be much quieter --
12 maybe Your Honor will appreciate that -- but much quieter
13 than we thought we might have had to be prior to the order
14 being entered and prior to the evidentiary record being
15 amended for this case.

16 For that reason, among the others explained
17 earlier, Your Honor, the committee is not required to and
18 has not analyzed the debtor's evidentiary record from any
19 perspective or based on any other section of the Bankruptcy
20 Code other than Section 1113.

21 So in closing, Your Honor, following substantial
22 due diligence and participation in this Section 1113 process
23 it is the committees' belief that American has compiled an
24 evidentiary record that will be sufficient for this Court to
25 determine that abrogation of the collective bargaining

1 agreements, those -- the status quo as exists today is
2 necessary for its reorganization.

3 And Your Honor we'll be back to the Court in our
4 closing to address the second prong, that is the debtor's
5 imposition request at the conclusion of the hearing.

6 Thank you, Your Honor.

7 THE COURT: Okay, thank you.

8 MR. JAMES: Your Honor, can I have five seconds?

9 THE COURT: This is a slippery slope we're going
10 down. This is just openings. We're going to be -- all
11 spend a lot of time together, so I'm not sure that five
12 seconds now is going help. So if it's really key, so I'll
13 leave that use of capital to your professional judgment.

14 (Laughter)

15 THE COURT: So --

16 MR. GALLAGHER: Your Honor, if I may take two and
17 a half of those seconds.

18 (Laughter)

19 THE COURT: See I told you it was a slippery
20 slope.

21 MR. GALLAGHER: I am -- this is Jack Gallagher
22 again for the record, Your Honor.

23 I am advised that I misspoke in my opening. The
24 new aircraft orders are not entirely financed by the
25 manufacturers, only approximately one-half of them are

1 financed to date.

2 THE COURT: All right. Thank you.

3 MR. GALLAGHER: Thank you.

4 MR. JAMES: Your Honor, just one statement was
5 made that fundamentally gets us off track. The question
6 isn't whether the status quo is sustainable or whether
7 rejection is necessary, the question is whether the
8 proposals are necessary. It's a fundamentally different way
9 of looking at this.

10 THE COURT: All right. Thank you.

11 All right. Is there any other party? I can't
12 think of any, but I'll ask anyway that is -- intends on
13 presents opening?

14 All right. So it is now five to 1:00. We can
15 start with witness testimony at 2 o'clock.

16 (Recess at 12:54 p.m.)

17 THE COURT: Good afternoon. Please be seated.

18 All right. Call your first witness.

19 MR. GALLAGHER: Thank you, Your Honor. Our first
20 witness will be Mr. Daniel Kasper, and the examination of
21 Mr. Kasper will be handled my -- by my partner, Scott
22 Flicker.

23 THE COURT: Good afternoon.

24 MR. KASPER: Good afternoon, Your Honor.

25 THE COURT: If you would swear the witness.

1 THE CLERK: Raise your right hand.

2 (Witness Sworn)

3 DIRECT EXAMINATION

4 BY MR. FLICKER:

5 Q Sir, can you state your name for the record?

6 A Daniel M. Kasper.

7 MR. FLICKER: Your Honor, a housekeeping matter.

8 I -- you should have in front of you, as the witness does,
9 and opposing counsel as well, a notebook that consists of
10 Mr. Kasper's written declaration, direct testimony. And the
11 way we have done this is that all of the exhibits that this
12 witness is sponsoring are actually embedded in the
13 declaration, but we have reproduced those exhibits behind
14 tabs in the book you have in front of you.

15 THE COURT: All right.

16 MR. FLICKER: And so when we refer to different
17 exhibits, we may refer to those tabs.

18 THE COURT: All right. And I believe it's a --
19 this is what the binder looks like?

20 MR. FLICKER: Yes, sir.

21 THE COURT: All right. It's the one I got this
22 morning. Thank you.

23 BY MR. FLICKER:

24 Q Now, Mr. Kasper, I would like you to -- behind Tab 1 of
25 the notebook that I give you, open up to your -- your CV,

1 which is toward the end after Page 116.

2 A Yes. I have that.

3 Q Sir, what is your present position?

4 A I am the senior consultant at Compass Lexecon in the
5 Boston, Massachusetts office.

6 Q And the CV that you have in front of you as part of
7 your Exhibit 1, is this accurate as to your current and
8 previous professional experience and writings?

9 A Yes, it is.

10 Q And other positions?

11 A Correct.

12 Q Well, for the Court, can you just briefly summarize
13 your -- your professional experience?

14 A I'm happy to. I have been at Compass Lexecon since
15 March of last year. For the prior fourteen years I was at
16 the firm called LECG, formally the Law and Economics
17 Consultant Group. Both at Compass Lexecon and LECG my
18 responsibilities at LECG, I was the head of the
19 transportation practice and with primary responsibility and
20 most of my activity in the areas of airline economics,
21 operations, finance.

22 I have -- prior to -- prior to joining LECG, I was
23 a partner in and chairman of the transportation industry
24 practice at Coopers and Lybrand Consulting and, again, my
25 areas of responsibility were transportation, and my own

1 personal practice concentrated largely in and around the
2 airline and aerospace industries.

3 Prior to that, for a period of about ten years I
4 was vice-president at Harborage House, which was a
5 management consulting firm in Boston that was acquired by
6 Coopers and Lybrand Consulting. At -- at Harborage House I
7 was vice-president and, again, in charge of the
8 transportation practice, concentrating again primarily in
9 the airline and aerospace industries as well as some surface
10 transportation.

11 From 1979 to 1983, I served at the United States
12 Civil Aeronautics Board, which Your Honor may recall was the
13 regulatory agency that, up until 1985 when it went out of
14 business as a result of the Airline Deregulation Act, was
15 the economic regulator of the U.S. airline industry as well
16 as international airline operations. I served briefly as
17 the executive assistant to vice-chairman of the Civil
18 Aeronautics Board, Elizabeth Bailey (ph), and then for most
19 of the period there I served as the director of the Bureau
20 of International Aviation, which was the bureau responsible
21 for international aviation rates, charges, entry,
22 international negotiations of air service agreements.

23 In 1993, sort of between Harborage House and
24 Coopers and Lybrand Consulting I was appointed as one of
25 fifteen voting members to a body called the U.S. National

1 Airline Commission, chaired by former Virginia Governor
2 Gerry Baliles. We were -- the members were appointed by
3 executive branch, the president and the leadership of the
4 congress, and we were charged with responsibility for
5 evaluating the problems that were then plaguing this
6 industry, which seems to have a series of recurrent crises
7 -- this was one precipitated by the first Gulf War -- and to
8 make recommendations to the president, congress about
9 changes in government policy that might be beneficial to
10 help the industry out of a crisis.

11 Prior to my tenure at the Civil Aeronautics Board,
12 I taught first at the University of Southern California
13 Graduate School of Business and, subsequently, at the
14 Harvard Business School. Both places, my teaching involved
15 what at the time we called regulated industries, which were
16 sort of the law and economics of -- of regulated industries,
17 including specifically the airline industry.

18 Q Okay. And do you hold any post-graduate degrees?

19 A I do.

20 Q What are those?

21 A I have a juris doctorate and a masters in business
22 administration, both from the University of Chicago.

23 Q And have you previously testified in -- in court as an
24 expert on airline economics?

25 A Yes, I have.

1 Q Approximately how many times?

2 A Several dozen.

3 Q Does that include any Section 1113 cases?

4 A Yes, it does.

5 Q And how many airline 1113 cases have you testified in
6 on this topic?

7 A I believe four. I testified in United bankruptcy. I
8 testified in US Airways, II. I testified in Delta and
9 Northwest.

10 Q And you retain -- been retained as an expert witness by
11 American Airlines in this case?

12 A I have.

13 Q And what is the scope of your assignment? And if you
14 would like I could refer you to Paragraph 4 of Tab 1 in your
15 book, Page 2.

16 A Well, the basic -- I don't need to defer that. I think
17 the basic scope of my assignment was to provide an
18 evaluation of American Airlines position in the airline
19 industry, both in terms and the state of the airline
20 industry today, how American got where it -- it did, and
21 what its competitive position and prospects are.

22 MR. FLICKER: Your Honor, I would like to proffer
23 Mr. Kasper as an expert witness on -- on the topics of
24 airline industry economics and competition, the current
25 state of the airline industry, and of American, including

1 American's current and prospective competitive positions.

2 THE COURT: All right. Any objections?

3 MR. DEAN: No objection, Your Honor.

4 THE COURT: All right. He is so admitted.

5 MR. FLICKER: Thank you, Your Honor.

6 BY MR. FLICKER:

7 Q Now you prepared written testimony in this matter. Is
8 that right, Mr. Kasper?

9 A Yes, I have.

10 Q And is that written testimony reflected behind Tab 1 of
11 the book in front of you?

12 A That is correct.

13 Q And that's marked American Airlines Exhibit 1. And
14 what about the Tabs 2 through 80 in the book in front of you

15 --

16 A Yeah.

17 Q -- are those exhibits that you prepared and sponsor as
18 part of your testimony?

19 A Yes, they are.

20 Q And there are two, what we call Errata sheets in the
21 back. What do those -- without summarizing the contents of
22 those, what was the reason why errata were put in here?

23 A There were a couple of minor corrections to several
24 exhibits, two of the exhibits, I believe.

25 Q Okay, sir. Do you adopt what is behind Tab 1,

1 including the exhibits through Tab 80 and the errata as your
2 testimony in this matter?

3 A I do.

4 Q Okay.

5 MR. FLICKER: Your Honor, I would like to offer
6 this material into evidence. My understanding is that
7 there's -- there's no pending objection as to the written
8 testimony or exhibits for this witness.

9 THE COURT: Is that correct?

10 MR. DEAN: That's correct, Your Honor.

11 THE COURT: All right. Then I will accept this as
12 this witness's -- as Exhibit 1 as this witness's direct
13 testimony, and I understand there is no objection to the
14 admission of Exhibits 2 through 80 for purposes of the
15 Debtors' case, correct?

16 MR. DEAN: Correct, Your Honor.

17 THE COURT: All right. Then I will accept those
18 exhibits as well.

19 (Debtors' Exhibit Numbers 1 through 80 were admitted)

20 THE COURT: Let me just tell folks, generally,
21 I've done a lot of reading and I expect to do a lot more
22 reading as the case goes on.

23 To the extent you want me to rely on something
24 that's specifically in an exhibit, you're going to have to
25 draw my attention to it given the volume of exhibits and the

1 volume of each of some of the individual exhibits. So there
2 are several ways to do that: One is obviously through a
3 witness and, certainly, if you've done it in direct
4 testimony that will suffice. But you can also do it through
5 cross. You can do it through redirect, and if it doesn't
6 come up and you want it to be something that I consider,
7 particularly just specific portions of it, you can also do
8 it in argument -- in closing argument.

9 So -- but if it -- if an exhibit falls in the
10 forest without anyone being there; that is, it's not
11 mentioned by direct testimony, cross-examination or
12 argument, it is likely to escape my serious notice. I may
13 have read it, but I don't know that I'll spend a lot of time
14 contemplating it if you don't bring it to my attention.

15 MR. FLICKER: Thank you, Your Honor.

16 With that in mind and -- and following the
17 statement that Mr. Gallagher made at the beginning, I would
18 like to spend a little bit of time summarizing some points
19 of this witness's testimony, not all of it, to be able to
20 draw your attention to certain elements in the direct.

21 THE COURT: All right. And for all of these
22 witnesses I've -- I've read the written direct, so you can
23 -- you can do that in the context of -- of knowing that I've
24 done that.

25 MR. FLICKER: Yes, Your Honor. And if at any time

1 you feel like we've covered something and you want us to
2 move on, let me know. I'm going to try to do this quickly
3 without speaking too quickly.

4 THE COURT: All right.

5 BY MR. FLICKER:

6 Q Now, Mr. Kasper, when you talk about the current state
7 of the airline industry in your -- in your written direct,
8 you begin with a discussion of deregulation in 1978. What
9 about deregulation in 1978 triggered changes to the airline
10 industry, if any?

11 A I appreciate the fact that Your Honor has read it. I
12 will try to be brief. But if I -- if I'm unclear or skip
13 something, please don't hesitate to interrupt me.

14 I mean, in essence, the big thing deregulation did
15 was, as the name suggests, eliminate the legal barriers to
16 entry and to remove the government's ability to control
17 fares. Those are the two fundamental entry and exit into
18 the airline business, or those two fundamental drivers of
19 the business. Once those were removed, new airlines could
20 come into business and airlines were free to set their fares
21 as they thought the market dictated without requiring prior
22 approval of -- of a government body, in this case the Civil
23 Aeronautics Board.

24 Those two things resulted in a series of very
25 major sort of earth-shattering changes over a period of time

1 in the industry.

2 Q Okay. And -- and among those major changes, was one
3 the rise of what we've heard referred to already as the LCC
4 or the low cost carrier?

5 A That is correct.

6 Q All right. You have some maps in your report, Exhibits
7 2 and 3, which we can project on the screen. That may be
8 the easiest way to see the two of them together.

9 I'm just going to ask you, when you look at these
10 two maps if you could tell me what you're depicting in -- in
11 Exhibits 2 and 3.

12 A Right. I think these are pretty self-explanatory.
13 Basically, the color-coding, which is indicated in the box,
14 shows the percentage of domestic passengers, and we refer to
15 these as O&D passengers. Your Honor, I'll just say this
16 once. It's a pretty basic concept. That just measures the
17 passengers from where they start to where they go in the
18 end, even if they make a connection. So it avoids double
19 counting of passengers.

20 And what this chart shows is that in 1990 there
21 were only three states -- Texas, Oklahoma and New Mexico --
22 where low cost carriers' services were available to
23 somewhere between seventy-five and a hundred percent of the
24 passengers flying on those routes. Six other states, more
25 or less adjacent to Texas, had between twenty-five and fifty

1 percent of the passengers flying in those states with access
2 to low cost carrier service.

3 This is simply an indication that even though the
4 industry had been deregulated for twelve years at that
5 point, low cost carriers had not yet become a significant
6 factor. And, indeed, the former president -- the past
7 president of the Airline Pilots Association subsequently
8 said in the 1990s, low cost carriers were a nuance. By the
9 time that you got to early 2000s they were a serious threat
10 to the established carriers.

11 And I think that -- if you look at Exhibit 3, you
12 can pretty much see what he was -- what Dwayne Worth was
13 pointing at here in the map on the right. I mean, you can
14 see much more and this wasn't like -- I want to make clear
15 this is not intended to be political coloring. This is
16 simply economic coloring.

17 (Laughter)

18 A And you can see much darker shades with a much higher
19 level of exposure to low cost carrier competition.

20 Q We've heard reference, at least in the opening, to the
21 concept of "price transparency" and you mention that in your
22 testimony as well. Just to set the stage, what is "price
23 transparency" in the context --

24 A Well --

25 Q -- of your opinion?

1 A What "price transparency" refers to is the fact that
2 with the advent of the internet and internet search engines,
3 suddenly any -- anybody with a couple of key strokes could
4 search fares quickly and inexpensively and find out what the
5 lowest fare available was. This was a huge boom for low
6 cost carriers because they could avoid -- for people who
7 were really price sensitive and could use the internet, they
8 didn't have to spend a lot of advertising. People would
9 find them.

10 And what this did was -- previously with the
11 legacy carriers, they had fairly complicated fare
12 structures. To -- to get comparison shopping you either had
13 to go on the phone to a travel agent or call the airlines
14 individually and it was a -- the search costs were fairly
15 burdensome. And so it made it easier and possible for
16 legacy carriers to maintain fare structures that were higher
17 than passengers could get from low cost carriers if they
18 could find the low cost carriers.

19 The combination of the spread of low cost carriers
20 and the ease of finding low fares had a dramatic effect on
21 prices; that is to say, brought down prices pretty
22 dramatically.

23 Q And you refer to the concept of the legacy carrier. I
24 think we heard that mentioned a little bit. But what do you
25 mean by that?

1 A Well, legacy carrier simply means -- in this context
2 it's United, American, Delta, and US Airways; that is,
3 they're legacy in the sense that they predated deregulation
4 and they also happen to be the surviving large network
5 carriers, as we refer to them. So if I say "legacy" I'm --
6 I mean large network carriers.

7 Q Okay. And you referred to the impact of price
8 transparencies and the rise of the LCCs as having, I think
9 you said a fairly dramatic impact on pricing. Have you done
10 any analysis of the impact on pricing in this industry?

11 A Yes, I have.

12 Q All right. Let's turn to Tab 4 if we can in your book,
13 and tell us what this shows.

14 A This exhibit shows what airline industry analysts
15 called yield, which is simply a measure of the -- of the
16 price obtained by an airline per revenue passenger miles.
17 So it's measured in cents per revenue passenger mile.

18 And what this shows is that if you look in 1979,
19 and these fares, by the way, are real so, in other words,
20 they're inflation-adjusted. So the 29.38 cents in 1979 and
21 the 15.82 cents here are all calculated on the same 2011
22 dollar. So it's -- it's real apples to apples comparison
23 here.

24 And as you can see, basically, in terms -- in real
25 terms the yield, which is to say what -- what the airlines

1 got in cents per revenue passenger mile is basically cut in
2 half over this period between 1979 and the end of 2011.

3 Q All right. And -- and let's think about one of the
4 input prices that an airline -- or input costs that an
5 airline faces, which is jet fuel. Is jet fuel a significant
6 operating cost for any airline?

7 A Yes. Jet fuel constitutes typically about a third of
8 the cost of an airline.

9 Q Okay. And have you analyzed jet fuel prices during the
10 -- toward the post-deregulation period?

11 A Yes.

12 Q All right. And if I direct you to, if you don't mind,
13 Tab 78 of your book, what does this show us?

14 A What Tab 78 shows is, again, jet fuel prices -- once
15 again in real terms, inflation-adjusted -- going back, in
16 this case to 1990 and up through the most recent available
17 in the first quarter of 2012, this year. And, essentially,
18 what you can see here is -- is that fuel prices were
19 basically pretty flat throughout the 1990s up until almost
20 2003. They were up and down a little bit, but they were
21 essentially between about 1990 and 2000, essentially, at a
22 dollar or less a gallon.

23 Beginning in about 2003, the fuel prices began a
24 pretty rapid escalation. In fact, you can see they started
25 up earlier in 2002 which, basically, corresponded with the

1 threat and then the outbreak of hostilities in -- in Iraq
2 and have continued up at a very dramatic pace so that,
3 essentially, the price of jet fuel in real terms has tripled
4 between 2003 and the present.

5 Q And you did -- you dropped a, I see a dotted line down
6 to 2003 with a little flag on there. What -- why did you
7 choose to drop a divider line at that 2003 period?

8 A Well, as just a -- in the context of this proceeding,
9 the last contract negotiated between the three unions -- the
10 APA, the APFA and TWU -- were negotiated to take effect in
11 2003. So just to give a point of reference to those
12 agreements --

13 Q Okay. So --

14 A -- where they fell on this timeline.

15 Q Thank you.

16 So we -- we see average yields, prices going down.
17 We see fuel prices coming up. Can an air carrier control
18 the price of jet fuel?

19 A Unfortunately for them, no.

20 Q And have you --

21 A All they -- I should --

22 Q Go ahead.

23 A That was -- they cannot control the price of fuel.
24 What they can do is they can -- they can try to hedge, which
25 is basically a bet. If -- if you win the bet, prices go up.

1 You've won the hedge. If prices don't go up, then you've
2 bought insurance. You paid money out of pocket and to no
3 avail. And when the prices start going up, then the price
4 of hedges start going up as well because the other side of
5 the hedge trade knows that.

6 The other thing airlines can do, which they've
7 been quite good at, is try to reduce the fuel conception by
8 a variety of means from the way they -- they taxi, changes
9 in -- in flight operations to try to -- to reduce fuel burn,
10 and also shifting to more fuel efficient equipment, if they
11 can afford to do so.

12 Q Have you looked at American Airlines operating costs in
13 the most recent reported period?

14 A Yes.

15 Q Okay. Let me direct you to Tab 41. I believe you had
16 mentioned that you understood that fuels are approximately a
17 third of the operating costs of an airline and that --
18 what's the -- what was American Airlines largest
19 controllable cost in 2011?

20 A Well, in the terminology used in the industry, the
21 largest controllable cost is the labor costs because between
22 the company and its employee groups, that -- that is a cost
23 that they can control through negotiations.

24 Q Okay. But in this case the ability to control the
25 labor costs turns on the ability to negotiate or alter a

1 collective bargaining agreement?

2 A Correct. Again, in -- in large measure the company's
3 can adjust the way they use personnel and so forth. But big
4 changes are going to come as a result of changes in the
5 agreement, wages rules, work rules.

6 Q Now in your -- your written testimony you discuss the
7 impacts of September 11 and other, what you refer to as
8 external shocks over the past decades. Why are those
9 factors relevant to the competitive landscape that you're
10 describing here?

11 A Well, I think -- they're -- they're important because
12 unlike almost any other industry, maybe any other industry
13 that I can think of, the airlines are uniquely vulnerable to
14 exogenous events. We've seen a number of those, such as
15 9/11 which had a huge and dramatic impact on demand. It
16 just dropped demand, so it wiped out a huge amount of
17 traffic in a very short period of time. Likewise, shortly
18 after that with the outbreak of hostilities, fuel prices
19 jumped up.

20 So these events can come in sort of from out of
21 the blue and -- and adversely affect carriers in ways that
22 are very difficult to anticipate and very difficult to
23 respond to, particularly for carriers that are financially
24 less than strong.

25 Q I -- and I think we heard in the opening someone state,

1 I think quite correctly, that we have not seen an event like
2 September 11, 2001, and hopefully never will again. But
3 were there other factors that you looked at post 9/11 that
4 you think have a significant impact on the economics of the
5 airline industry?

6 A Well, there were a number of events, like the SARS
7 outbreak, which had -- again, with the fear of SARS and bird
8 flu, that had a very noticeable effect on demand,
9 particularly between the United States and Asia, which was a
10 rapidly growing market, and losing traffic there meant
11 substantial reductions in revenue. So these things come
12 along.

13 And, again, you know, they -- what's interesting
14 here in a number of these, like SARS, it doesn't affect all
15 carriers equally. The low cost carriers, who tend to be --
16 have tended to be primarily domestic carriers, were largely
17 unaffected by that. The results really hit the legacy or
18 the network carriers more strongly because they operate in
19 international markets. Likewise the outbreak of hostilities
20 had a much bigger impact on international traffic than it
21 did on domestic traffic.

22 So it's really to point out -- you know, and it's
23 not complaining. It's just pointing out that there are
24 vulnerabilities that the carriers have that can affect their
25 economics pretty severely.

1 Q And as you said, asymmetrically as between LCCs and
2 large network carriers?

3 A Sometimes asymmetrically as well.

4 Q Okay. And have you actually analyzed or evaluated how
5 the events of the last decade or so have affected the legacy
6 carriers versus the LCCs?

7 A Yes.

8 Q Okay. Let me direct your attention to Tab 7 and just
9 ask you if you can describe what that depicts for us.

10 A Well, I suppose it's probably more accurate to say that
11 -- that this is how they -- the carriers performed over that
12 period, some of which is due to the factors we discussed,
13 some of which is due to other factors which we will discuss.

14 Q Okay.

15 A But, basically, what this exhibit shows is that, again,
16 for two periods -- the period 1993 to 2000 on the left and
17 the period 2000 to -- 2001 to 2011 on the right, the
18 vertical axis shows operating profits above the line,
19 operating losses below the line, and the -- it's grouped --
20 I'm sorry. The bars are -- the darker bars are 2001 to
21 2011.

22 What it shows is that for -- legacy carriers had a
23 very good decade in 2000 -- in 1993, large network carriers
24 had a very good decade in 1993 to 2000 where they generated
25 almost \$48 billion in operating profits. They had a

1 disastrous following decade, 2001 to 2011 where they lost
2 about \$30 billion. To the point of differential impacts and
3 ability to deal with these different and challenging
4 economic conditions, you can see that the low cost carriers
5 earned operating profits. In fact, their operating profits
6 increased at a time when the legacy carrier profits were
7 going down.

8 So for a variety of reasons they were able to
9 stand up better to these adverse economic circumstances.

10 Q So we see differential impacts. There's also a larger
11 magnitude of profits in the LCC column during the last
12 decade than there were in the preceding decade. Is there
13 anything else that accounts for the increased magnitude of
14 operating profits between the LCC bars on the left and the
15 right?

16 A Right. I think if we think back to the earlier Exhibit
17 3 where you see the spread of -- of the rapid expansion of
18 low cost carriers, there were more of them. They were
19 flying more, doing more, carrying more passengers and,
20 therefore, generating more revenues and profits.

21 Q Now you've elected to discuss the wave of bankruptcies
22 that have occurred in the airline industry, and I'll direct
23 you to your Tab 8 chart there.

24 A Yes.

25 Q Now this does not show all airline bankruptcies since

1 1982, does it?

2 A No. That would have probably taken several pages.

3 Q Okay. Well, I guess just first, then, are -- did you
4 elect to focus on any particular segment of the industry in
5 this list that you've created?

6 A Right. This -- this list is a -- is what I'm calling
7 large network carriers, which are pre-deregulation or legacy
8 carriers that existed prior to deregulation and then what
9 happened to them after deregulation.

10 Q Okay. Well, what about the LCC groups? Have there
11 been LCC groups that have come into existence and gone out
12 of business during this period of time?

13 A There have been a large number of low cost carriers or
14 carriers that wanted to be low cost carriers that have come
15 into business, have been unsuccessful and have gone out of
16 business. But it's sort of -- I was telling somebody the
17 other day, it's sort of like the Sorcerer's Apprentice.
18 They just keep coming and just keep coming. It doesn't seem
19 to make any difference whether some of them go out of
20 business. There -- there always seems to be another one pop
21 out.

22 Q And -- and what is the impact of this new entry of LCCs
23 on a legacy carrier that might be operating or servicing a
24 particular route, whether it's a new carrier or an existing
25 LCC that comes into existence?

1 A Well, the effect of low cost carriers has been widely
2 measured in a variety of studies, some by the Department of
3 Transportation, others by individual economists and what's
4 quite clear is that when a low cost carrier first enters a
5 new route, it has a dramatic effect in lowering average
6 fares. So it's -- if a low cost carrier enters a route,
7 average fares will predictably drop by a large percentage.

8 Q Okay. Looking at the bankruptcies -- and why don't we
9 focus on the ones just since 2000 here. What, in your
10 opinion, accounts for the -- what looks like a wave of
11 bankruptcies beginning in 2001?

12 A Well, I think the prime mover in -- in the bankruptcies
13 following most of the bankruptcies, maybe all of them
14 following 2001 was the tremendous drop in traffic following
15 9/11. The system was shut down for three or four days and
16 Washington D.C. was shut down longer than that. It took a
17 long time to spool back up. Passengers, traffic was really
18 spooked by the -- by the terrorist attacks. In fact, it
19 wasn't until just last year that traffic levels actually
20 returned to the pre-2001 level. So it had a huge dampening
21 effect on demand.

22 Also, fuel prices, as I indicate in the previous
23 chart, had started to go up putting added pressure on the
24 airlines. And one other thing that affects this group
25 that's shown in this particular exhibit is that there -- the

1 collective bargaining -- the 1990s had been a very strong
2 growth period for these carriers, and towards the end of
3 that period into early 2000s, the unions had bargained very
4 successfully for very attractive collective bargaining
5 agreements arguing, quite correctly, that the airlines were
6 generating record profits.

7 Unfortunately, those contracts went into place and
8 were almost immediately followed by a -- a recession driven
9 by the 9/11 in air traffic followed by an economic downturn
10 which further dampened that, and as a result the legacy
11 carriers simply had a cost structure that they couldn't
12 begin to support given the reduced levels of traffic and --
13 and the yields that they could get, the revenues they could
14 generate.

15 Q Now American does not show up on -- on this list until
16 2011. In other words, American Airlines is not one of the
17 major network carriers that went in in this wave that we're
18 talking about. Why not?

19 A Well, as -- as several -- several -- counsel for the
20 unions had indicated in opening statements, American and its
21 unions negotiated concessionary agreement that took effect
22 in 2003 that was literally signed under the very high
23 probability that American would have to file for bankruptcy.
24 So that actually was, I think, fairly described as the
25 precipitating cause for that negotiation and -- and the

1 resulting concessions.

2 The other thing I should point out, you mentioned
3 legacy carriers filing after 2000. Continental did not file
4 after 2000. But as you can see, Continental actually filed
5 twice before that, once in 1983 and again in 1990, and then
6 subsequently I believe it was 2005 Continental engaged in
7 negotiations with its unions and -- and got concessionary
8 agreements as well.

9 Q So this is a widespread phenomenon as to all of the
10 major networking --

11 A Yeah. American was really the last of the pre-
12 deregulate -- surviving pre-deregulation carriers to file
13 Chapter 11.

14 Q All right. The other currently surviving major network
15 carriers, did they emerge from their bankruptcies before or
16 after American negotiated its consensual deals with its
17 unions?

18 A They all emerged afterwards. American did its deal, I
19 believe take effect in 2003. US Airways had gone in in
20 2002, but that was the bankruptcy that has been accurately
21 described as -- as being insufficient to get them the relief
22 they needed, so they -- they went in again in 2004. All of
23 the other carriers emerged -- US Airways and others emerged
24 after that agreement.

25 Q I see. And one more industry-wide competitive event.

1 We have seen a wave of consolidations and mergers among
2 major network carriers. What, from an economic standpoint,
3 is driving those combinations?

4 A Well, I think there are probably a couple of things.
5 One is that if you think back to prior to -- think back ten
6 years, American was the largest carrier in the world,
7 certainly the largest carrier in the United States, measured
8 in both cases in terms of revenue. And the other carriers
9 tended to measure themselves, their ability to compete they
10 looked at American and said, you know, American has a big
11 scope of operations and, you know, we're having a hard time
12 competing with that.

13 And that was one of the things that lead carriers
14 like Continental, Delta and Northwest to engage in very
15 extensive code sharing that -- that allowed them to expand
16 their networks by adding more destinations, putting their
17 codes on the flights of these other carriers. So that was a
18 competitive response to American's advantage in -- in
19 network scope, if you will.

20 And I think following the -- following the
21 emergence from bankruptcy, Northwest and Delta clearly felt
22 that there were -- that they could put together a much more
23 competitive network and realize some savings and synergies,
24 as well as getting their big network in place. And,
25 subsequently, United and Continental reached the same

1 conclusion.

2 Q But all those carriers did so after emerging from
3 bankruptcy; is that correct?

4 A That is correct.

5 Q Was there any relationship between the timing of doing
6 their consolidations after having emerged from Chapter 11?

7 A Well, I -- I know at least in the case of -- of Delta,
8 which had been -- US Airways had made and approached Delta
9 and -- while Delta was in bankruptcy. Delta's management
10 and ultimately its creditors' group decided and made clear
11 that they prefer -- they -- they felt it made more sense to
12 emerge as a standalone carrier before engaging in that
13 activity, the merger activity. And once they did, it -- it
14 moved fairly quickly.

15 Q Now have you -- you mentioned that American was number
16 one as recently as the year 2000. What has -- what has
17 happened as of today?

18 A They are fifth in terms of revenues worldwide and they
19 are fourth in the U.S. in terms of traffic.

20 Q Now have you examined American's profitability over
21 this -- that decade period that we've just discussed?

22 A Yes, I have.

23 Q All right. Let me direct your attention to Exhibit 9,
24 please. What is this chart depicting?

25 A This chart looks at AMR's net margins for the period

1 2011 -- 2003, excuse me, through 2011. The gray bars below
2 the line are negative numbers. The lines above the bar are
3 obviously positive numbers. The red dotted line is the
4 average for that 2003 to 2011 period. And as you can see,
5 the company's net margin for the entire period was a
6 negative 3.6 percent.

7 Q And if you could turn to Exhibit 12 in your book. Can
8 you tell me what that document depicts?

9 A This is a chart that takes exactly the same period, but
10 instead of looking at its net margin, it looks at its net
11 profit or loss. In other words, instead of percentages,
12 it's now translated to dollars. And, again, you see the
13 same pattern starting in 2003, improving, three negative
14 years, then moving positive slightly in 2006, a little more
15 in 2007, and then a drop down in the following years, 2008
16 and 9. It looked 2010 was -- was a nice bounce back, but in
17 2011 the company lost over a billion dollars.

18 Q And the 2010 bounce back, was that a positive -- a
19 positive result in terms of net profit or --

20 A No. It --

21 Q -- a loss?

22 A -- was a negative in both terms of margin and profit.

23 Q What's the cumulative loss that you're depicting here
24 in -- during this period?

25 A I believe it was about 6.6 billion.

1 Q 6.6 billion?

2 A Billion.

3 Q Billion. Okay. And you said -- you count from 2003
4 forward. Why did you select that as your starting point?

5 A Well, again, that was the -- the issue in this case as
6 -- as I understand it has to do with whether there --
7 whether there's going to be changes in the union contracts,
8 and that was the last time the -- that was the period in
9 which the contract was last negotiated.

10 Q Okay.

11 A The new contract in effect took -- took effect.

12 Q And this may be a good place to -- to make this point,
13 but in providing or evaluating company data for American or
14 the industry, are you using any non-public or inside
15 information to do so?

16 A No. I'm sorry. I should have indicated that at the
17 outset. All of the analysis and all of the data I use in
18 this analysis is based on public source data. Most of it is
19 data that the carriers are required to file with the United
20 States Department of Transportation, which is referred to as
21 Form 41 data. Others rely on SEC filings and a few other
22 public sources.

23 Q So the 6.6 billion in losses since 2003, the source of
24 that is SEC filings?

25 A Correct.

1 Q Okay. And have you evaluated how American has fared
2 against the rest of the industry?

3 A I have looked at that comparison. Yes.

4 Q Okay. Let's take a look at the chart on 11, if you
5 would, and tell me what that depicts?

6 A Well, 11 -- Exhibit 11 looks at the -- going back to
7 2007 and it compares American, which is the red bar, with
8 the combination of the other large network carriers --
9 Delta, US Airways, Northwest, Continental, United -- just
10 some of the more independent carriers in that period, and
11 then the third -- the white bar is the -- for the low cost
12 carriers. And, again, we're looking at net margins.

13 And so what this shows is American's performance
14 in relation to these other groups of carriers. And as you
15 can see, in 2007 it -- it had a small positive net margin,
16 smaller than both the other legacy carriers -- large network
17 carriers in the LCCs. In 2008, everybody went below the
18 line. American slightly better, but highly negative still,
19 but they were better than the other large networks, and the
20 LCCs, very slightly negative.

21 Q All right. Mr. Kasper, when I -- you had talked about
22 how in 2010 there was, what you said slight improvement. Do
23 you see that?

24 A Yes.

25 Q How did American's performance in 2010 and then 2011

1 compare to these other industry sectors that you evaluated?

2 A Well, in 2010, as you can see, the other carriers, the
3 large network carriers and the LCCs both improved their
4 performance, the other large network carriers, very
5 substantially from a negative 4.4 to a positive 4.5 percent
6 margin. American did improve its margins, but it was still
7 negative 1.8. And then the following year, 2011, American
8 went negative to 4.4 whereas the large network carriers and
9 the LCCs remained positive, although down somewhat from
10 2010.

11 Q So while the other segments went positive and made
12 money, American continued to lose?

13 A That is correct.

14 Q All right. And these are combined margins. Did you
15 look at how American's net margins compared to individual
16 carriers at all?

17 A Yes.

18 Q All right. Let's take a look at Tab 10, and what does
19 that show us?

20 A Tab 10 looks at the net margins for the year 2011 for a
21 number of low cost carriers plus all of the other large
22 network carriers. And as you can see, Spirit and Allegiant,
23 both very, very low cost carriers had the highest margins.

24 Q And what about Southwest and Jet Blue, they are also
25 low cost --

1 A Southwest --

2 Q -- carriers?

3 A -- and Jet Blue, both low cost carriers also had
4 positive margins. US Airways was positive, the smallest of
5 these carriers, and American was negative 4.4.

6 Q All right. So in the interest of time, unless I ask
7 you let's not break out each of the individual bars --

8 A Okay.

9 Q -- and just give me the overall and, of course, if the
10 Court has questions we'll answer those. But does this chart
11 show that among the competitors that you've selected that
12 American was the only airline to lose money in 2011?

13 A That's correct.

14 Q All right. Have you analyzed factors that explain
15 American's declining competitive position as you've laid it
16 out here?

17 A Yes, I have.

18 Q Okay. And what, in your opinion, accounts for
19 American's relative negative performance here?

20 A Well, there's -- there are several factors on it. I
21 don't think it's fair to say there's one factor. American
22 has, I think, a significant cost problem. They have a --
23 they have a -- particularly a labor cost problem. They have
24 a revenue problem. They have a -- they have a revenue
25 premium problem that their revenue premium is actually

1 declining.

2 So as I'm sure the Court recognizes, the key to be
3 a profitable airline is not the absolutely level of cost and
4 the absolutely level of revenues. It's the margin. It's
5 the difference between the two. And American has the -- is
6 in the unfortunate position of having its costs coming up
7 and its revenue premium; that is, the -- its revenue coming
8 down and -- unit revenues and that is hurting their
9 performance.

10 Q All right. So if you have a revenue -- an environment
11 in which American's revenues are falling and it -- you say
12 it has a cost problem. Have you analyzed American's costs
13 compared to say the LCCs?

14 A Yes, I have.

15 Q All right. Let's look at Tab 15, please. Perhaps here
16 you could just focus us on the conclusion of the analysis
17 that's reflected on Exhibit 15.

18 A Sure. Just -- what this chart shows is -- is the
19 standard measure of unit costs in the airline industry,
20 which in this case is --

21 Q It's 15.

22 A Am I on the --

23 Q No. On 15. I just want to make sure --

24 A Yeah.

25 Q -- we're all there.

1 A Yes. We're on 15. Correct.

2 And this is a measure of unit costs. In this
3 case, stage length adjusted, cost per available seat mile,
4 which is CASM, and the ex-fuel is simply excluding fuel,
5 which is the standard way these CASMs are looked at.

6 Q All right. So you're taking -- you're taking the
7 largest cost out --

8 A Single cost element out.

9 Q -- fuel --

10 A For all of the carriers.

11 Q All right. So -- and you're leaving everything else
12 and you're -- you're looking at something called a cost per
13 available seat mile. Maybe this is one of those jargon
14 moments where --

15 A Right.

16 Q -- if you could just briefly explain what a cost --

17 A Sure.

18 Q -- per available seat mile is.

19 A Perhaps the standard measure of capacity or output in
20 some sense in the -- in airlines is available seat miles.
21 They fly planes and available seat mile is one seat flown
22 one mile. So if a hundred-seat -- if a hundred-seat
23 airplane flies ten miles, that's 1,000 available seat miles.
24 So carriers generate, you know, billions of -- of available
25 seat miles.

1 The -- that is the denominator. The numerator is
2 the cost excluding fuel, divided it by the number of
3 available seat miles. So it measures the unit cost of
4 producing one seat mile. And as you can see, compared to
5 low cost carriers, Southwest is about seventy percent -- I
6 mean -- excuse me -- American is about seventy percent
7 higher than the average of the low cost carriers who are
8 shown in the right on the bar.

9 Q Okay. And just very briefly, you've done something
10 called "stage length adjusting" here. Can you explain what
11 "stage length adjusting" is?

12 A Correct. The stage length adjusting, again, is a very
13 standard technique used in the industry to reflect the fact
14 that not all airlines fly their flights the same length.
15 And if you fly -- typically, if you fly a flight longer,
16 though you're spreading those fixed costs out over a greater
17 number of miles and that would tend to reduce -- for
18 carriers that fly longer stage lengths, it would make their
19 costs lower than a carrier that flew shorter stage lengths.

20 So, for example, Southwest flies relatively short
21 stage lengths. United flies the longest. If you compared
22 Southwest CASM to United's CASM, Southwest's would be lower,
23 but if you stage length adjust it to say what would
24 Southwest's costs be if they flew the same average stage
25 length as United, Southwest's costs would be much lower

1 because there's a cost curve that goes down. So this is
2 simply to -- to make an apples to apples comparison
3 comparing with the same length of flight.

4 Q And have you analyzed the breadth of LCC competition as
5 it affects American, not just the industry as a whole?

6 A Correct.

7 Q All right. Let's --

8 A I have.

9 Q -- take a look at Tab 16. What is that showing us?

10 A Tab 16 is just a graphic depiction of the number of
11 routes that are -- have been entered by low cost carriers
12 since 2003 at American's hubs and what American used to call
13 focus cities. We're referring to the nearest former focus
14 cities since that terminology is no longer in use.

15 And as this map, I think, makes abundantly clear,
16 American's hubs and its former focus cities have experienced
17 a substantial amount of -- of new entry, something on the
18 order of 300, if memory serves me correctly.

19 Q Now is this phenomenon of LCC entry on American's
20 routes confined to just, you know, the smaller markets on
21 American's routes?

22 A No. In fact, it -- you know, it covers -- covers their
23 -- some of their most important routes.

24 Q All right. Let's take a look at Tab 17. What analysis
25 does this reflect of yours?

1 A It -- Exhibit 17 looks at the largest fifty routes of
2 American, it's top fifty domestic city pairs, and the gray
3 bars show the number of city pairs where American faces low
4 cost carriers competition. And as you can see, if you start
5 at the right end there they have forty-nine of the fifty top
6 cities they already face low cost carrier competition and
7 that's up from thirty-nine in 2003.

8 Q Okay. And how -- how broad across the entire American
9 system is this saturation of low cost carrier options? Have
10 you looked at that --

11 A Yes.

12 Q -- question? All right. Let me direct you to Tab 22,
13 if I could.

14 A Another -- and I think probably more comprehensive way
15 that we've looked at it is to look at the percentage of
16 American's passengers that have accessed LCC options for
17 their travel. In other words, what percentage of American's
18 customers could fly on a low cost carrier. And as you can
19 see, the far right number, the gray bars tells you the --
20 tell you the percentages. And it's -- so it's by the end of
21 2011 about seventy-eight percent of all American passengers
22 had the option of flying a low cost carrier and that's up
23 from about sixty-five percent in 2003 and thirty-seven
24 percent in 1998.

25 Q And -- and what is the impact of anything on America's

1 fares or fare yields of the -- this level of LCC competition
2 on the American route structure?

3 A Well, this makes American perhaps if not the most, but
4 certainly one of the top two legacy carriers in terms of
5 their exposure to low cost carrier competition by this
6 measure. And as I mentioned earlier, when low cost carriers
7 come onto a route, the average fares go down. They -- and
8 the average fares of the legacy carriers or the network
9 carriers serving those routes go down. So this says -- this
10 says that American faces very strong pressure on its prices
11 as a result of the widespread penetration of its route
12 system by low cost carriers.

13 Q And have you actually studied and depicted that
14 phenomenon?

15 A I have.

16 Q Let me direct you to Exhibit 23. What is this showing
17 us?

18 A What -- what this shows in the gray bars is the
19 inflation adjusted or real average one-way fares that --
20 that American generated going back to 1998. And the redline
21 cutting through it is the fuel price in real terms.

22 Now the -- basically, what this fare level
23 reflects is a combination of the yield, which we saw was
24 declining, and the average trip length which has been going
25 up somewhat. But even with the increase in the average trip

1 length, you can see that fares have essentially been flat.
2 In fact, they're a little bit lower in 2011, the average
3 fare, than the average fare was in 2003. Meanwhile, the
4 fuel prices have gone up from -- that's on the right-hand
5 axis -- a little over a dollar a gallon up to about three by
6 the end of the period.

7 Q Okay. So you've got the fares and you say in real
8 terms the fares have been flat; is that correct?

9 A Correct.

10 Q And then you have that -- your horizontal dotted line
11 is the last time that the unionized labor contracts were
12 negotiated?

13 A Correct.

14 Q Which is, you testified, one of the input costs or
15 large input costs for this carrier; is that right?

16 A About thirty percent.

17 Q Okay. And the -- then the fuel price line is the
18 redline that's going from -- going up and that's another of
19 the large --

20 A Roughly a third. Yeah.

21 Q -- the large input costs?

22 A Correct.

23 Q Okay. Now do you have any reason to believe that the
24 phenomenon of the competitive impacts on -- on -- of LCCs on
25 American's systems is going to abate?

1 A I don't think -- I don't think there's any real relief
2 in sight right now.

3 Q And -- and what factors did you consider in terms of
4 considering future LCC competition?

5 A Well, there's several, but one that stands out
6 immediately in the case of American is that American's
7 primary hub, it's largest hub is in Dallas, Fort Worth.
8 Southwest, the largest and most -- the largest of the low
9 cost carriers in the world is also headquartered in Dallas.
10 It's base of operations is Love Field. Love Field is
11 subject until 2014 to restrictions which prevent Southwest
12 from serving more than about six or seven states adjacent to
13 Texas.

14 Those restrictions, in something called the right
15 amendment, lapse in 2014 and at that point Southwest will be
16 free to institute service from Love Field in competition
17 with American services on routes that heretofore American
18 has not had to face competition from Southwest.

19 Q And have you analyzed the amount of -- of American
20 Airlines revenue that would be exposed to this kind of
21 competition?

22 A Yes, I have.

23 Q And approximately how much, if you recall?

24 A It's about -- a little under \$800 million last year in
25 revenues generated on the top twenty-eight routes that

1 American serves out of DFW that do not have low cost carrier
2 competition on them now, number one; and, number two, where
3 Southwest is already serving at both Dallas at Love Field
4 and at the -- at the end point. So, for example, the
5 largest one is Orange County. Southwest serves Orange
6 County. It serves Love Field. It just doesn't connect the
7 two. When the right amendment is lifted, I would be very
8 surprised not to see Southwest serving that route as well as
9 a number of others here.

10 Q And how much annual revenue, if you know, would that --
11 just that one piece of service exposed to LCC competition?

12 A That would -- Orange County itself is \$63 million in
13 2011.

14 Q Okay. And you're referring to an analysis here that's
15 Exhibit 24?

16 A I am.

17 Q Okay. Now is this -- is this LCC competition issue
18 solely a Southwest Airlines issue?

19 A No, it is not.

20 Q What makes you say that?

21 A Well, a couple of things. One, if you actually look at
22 the growth in low cost carriers, more of the growth and
23 entry into American's markets actually in the last several
24 years has come from carriers, low cost carriers other than
25 Southwest. You have a number of very strong carriers,

1 including Jet Blue, which has been very prominent.

2 In addition, you have carriers like Spirit, which
3 is a very low cost carrier that has established a big base
4 of operations in Fort Lauderdale which is about twenty miles
5 up the road from the Miami hub of American, and they've
6 added substantial amount of service out of there,
7 particularly into the Central America, Latin America,
8 Caribbean markets that used to be more or less American's
9 preserve.

10 Q So this is not solely an issue of domestic routes for
11 American?

12 A No, it is not.

13 Q Okay. And if I can direct you to Tab 25A, which is a
14 corrected exhibit, what does that depict for us? And, first
15 of all, why was there a corrected version of this exhibit
16 put in the record?

17 A We left off one line on the chart.

18 Q Okay.

19 A So we had to add the line.

20 Q One route?

21 A One route.

22 Q And was it a route from the 2003 period, do you know?

23 A I believe it was. Yes.

24 Q Okay. And what does this -- what is these two maps
25 depicting for us?

1 A Again, this shows over two time periods, 2003 and 2012,
2 the schedule for the second quarter. The -- each line
3 depicts a route to the Caribbean/Latin America that it --
4 was served by LCCs in each period. And as you can see, the
5 -- in 2003 there aren't very many lines. It was a fairly
6 lightly served, very lightly served by LCCs.

7 But by 2012, you can see that there was
8 substantially greater penetration of these markets by low
9 cost carriers, and I mentioned specifically Spirit. You can
10 see in South Florida there that concentration of blue with a
11 lot of lines radiate -- radiating out from that on the
12 right. You can barely make out the other blue lines.
13 That's Fort Lauderdale.

14 Q Now are all of the lines on your lower chart in 2012,
15 all of those lines routes that are currently being served
16 today or do some pop in and out of existence?

17 A These are routes that, as the footnotes indicated,
18 where at least one LCC operated eight or more departures
19 during a month in that year. Some of these routes are
20 seasonal routes because these are seasonal markets. So if I
21 had to draw a line somewhere, that was the line we drew.

22 Q Okay. So is it fair to say that since 2003 when
23 American last negotiated its labor contracts with the
24 unions, that the world for American has changed when it
25 comes to LCC competition?

1 A Yes.

2 Q Okay.

3 A They face more intense competition.

4 Q What about the preserve of long haul international
5 routes, which -- is that something that has typically been a
6 preserve for network carriers?

7 A It has. Freddy Laker (ph) many years ago made a run at
8 it and lasted for, I don't know, three or four years and
9 subsequently it has -- it has been much -- there's been much
10 less low cost entry, not none, but less. So it's been a
11 more protected market, a better market for legacy network
12 carriers.

13 Q Is there any phenomenon that you see in the competitive
14 landscape that is going to have, in your view, an impact on
15 the competition for long haul international markets?

16 A Yes.

17 Q What's that?

18 A We've had an extensive amount of entry by new carriers;
19 that is, carriers that weren't even in existence in 2003.
20 Carriers such as Emirates, which is a carrier based, as its
21 name suggested, in the middle east. It has already
22 accumulated a huge fleet, has orders so that -- for another
23 I think 150 airplanes. It's going to have a fleet of 400 in
24 the not too distant future and is widely projected to become
25 the largest airline in the world in a reasonably short

1 period of time.

2 There are a handful of other airlines that, again,
3 have done that. They've come into these long haul markets
4 and are competing now directly with American and other U.S.
5 airlines for international traffic. And it's not just the
6 point to point non-stop traffic. They're -- they're flowing
7 their traffic over Dubai, in the case of Emirates, to
8 destinations throughout Asia and the middle east, routes
9 that had been where U.S. carriers and their alliance
10 partners have -- have been providing a lot of service.

11 Q So -- well, give us a sense of magnitude of an entity
12 like Emirates compared to a large network carrier like
13 American Airlines. Are they even on the same scale in terms
14 of their size?

15 A Well, if you look at right now Emirates has got a
16 smaller fleet, but their -- their fleet is all wide-bodied
17 airplanes. So they're generating huge amounts of capacity
18 flying long haul international routes. So they look
19 different than American, but they are rapid -- much more --
20 they are rapidly growing and, you know, by capacity measures
21 are going to be the largest airline in the world, as I
22 indicated, some time in the not too distant future by most
23 accounts.

24 THE COURT: All right. Counsel, I -- I don't mean
25 to interrupt your examination, but I'm just wondering how

1 long you're going to be. I do have the benefit of the
2 direct testimony here.

3 MR. FLICKER: Yes.

4 THE COURT: And I just want to get a sense of what
5 the timing of how we're going to be able to fit folks in --

6 MR. FLICKER: Right.

7 THE COURT: -- this week.

8 MR. FLICKER: Well, I am hopeful that I can finish
9 my direct examination in about fifteen minutes, and I'm
10 going to see if I can cut some things out to do that.

11 THE COURT: All right.

12 MR. FLICKER: Thank you.

13 BY MR. FLICKER:

14 Q Looking at the rise of LCC carriers on American's
15 network, is this an issue that's unique to American among
16 the major carriers?

17 A No, it is not.

18 Q All right. Given the incursion on its network of the
19 LCCs and the fact that these major network carriers can't
20 match the cost structure of the LCCs, how does a major
21 network carrier compete with these low cost carrier
22 airlines?

23 A basically, what low costs -- what legacy carriers,
24 network carriers do, and the ones that have done it
25 successfully are doing this, is that they have to get --

1 they won't get their costs as low as low cost carriers. Low
2 cost carriers have a different operating model. Southwest
3 runs a single fleet type, no pilot -- you know, the pilot
4 training costs are very reduced, no hub connections, that
5 simplifies things greatly.

6 Low cost carriers -- in other words legacies
7 aren't going to match that. What they have to do is get
8 their cost as low as they can to deliver the kind of
9 services that they want to deliver, which are the large
10 network services connections, flights to many points,
11 different types of airplanes, mixed fleets, and they have to
12 make those costs as low as possible. So one thing is to get
13 their costs down.

14 The second thing is to improve the product because
15 one of the ways that network carriers drive the margins up
16 is not only holding costs down, but bringing in higher
17 revenues. Instead of raise average fares, they need to go
18 after travelers that are willing to pay more money. These
19 are business travelers, frequent travelers who fly a lot,
20 value the convenience and the service provided by large
21 network carriers, schedule frequency, number of
22 destinations.

23 So airlines need to work on the number of
24 destinations, the frequencies they have., and then they have
25 to improve the product in terms of the physical product, the

1 aircraft themselves, the airport facilities, you know,
2 things like lie flat beds for long haul international.

3 All of those things tend to draw passengers who
4 are willing to pay more, driving up the average fares, in
5 ways low cost carriers can't because they don't offer those
6 premium services.

7 So the game is make your margins work, hold your
8 costs down as low as you can for what you do and then try to
9 attract passengers to drive your margins up.

10 Q Well, you've referred to the concept of fare premium in
11 your -- in your written direct. What is -- what is that
12 concept intended to capture?

13 A Well, the fare premium is -- as we use the term,
14 measures the difference between the average fare charged by
15 a legacy carrier, say American, and the low cost carrier
16 serving the same route. So you want to -- that is a measure
17 of how much more, on average, people are willing to pay to
18 fly on American. And that difference is referred to as the
19 fare premium.

20 Q Okay. And that's on the revenue side, so given the
21 cost differentials, how important is it to a major network
22 carrier to be able to have a large fare premium compared to
23 LCCs?

24 A Well, it's critical because -- because you know from
25 the get go you're -- you're doing more things, you're doing

1 different things, you're doing more expensive things. Your
2 costs are going to be higher.

3 Q All right.

4 A So it's essential to have a revenue premium --

5 Q And --

6 A -- and a strong one.

7 Q -- what's been happening to American's fare premium
8 versus the LCCs in this 2003 to current time period?

9 A It has unfortunately been declining.

10 Q Okay. And I'll direct you to Exhibit 32. If you just
11 can tell us what the magnitude of the decline is reflected
12 there.

13 A Right. What this says -- let me just pick a year, the
14 year in which American had the highest fare premium. The
15 vertical axis is the fare premium versus LCCs serving the
16 same route. They had a fare premium of almost twenty-four
17 percent in 2004. As you can see by 2 -- by the year ending
18 2011, third quarter, that's down to 15.8 percent.

19 Q And have you analyzed how American's fare premium is
20 fairing compared to the other large network carriers it
21 competes with?

22 A I have.

23 Q Okay. Let me draw your attention to Exhibit 33. What
24 is this showing us?

25 A Well, this exhibit looks, again, at the -- compares

1 American on the right, the far right, to the other carriers
2 shown on the horizontal axis. And so you -- over two time
3 periods: 2005 is the white bar on the left; 2010 -- or 2011,
4 excuse me, is the bar -- shaded bar on the right.

5 As you can see, except for Delta, the other
6 carriers have also suffered some decline, although a much
7 more modest decline in fare premiums. But, still, United is
8 almost twenty-six percent. Delta's up to twenty-three-and-
9 a-half. US Airways is off a little bit to 20.6 percent, and
10 American has dropped from the twenty-two percent premium in
11 2005 to a 15.8 percent premium in 2011. So they've clearly
12 had a deterioration well beyond anything it's -- their peers
13 have experienced.

14 Q Okay. And -- and why is it important to compare them
15 to their peers and not just to the LCCs on this metric?

16 A Well, it's important, I think, for a number of reasons.
17 One, it -- it's showing, you know, that it affects your
18 revenues, but it also affects, in this case, it -- by
19 driving down the -- or losing these revenues it -- it
20 suggests that they are competitively losing traffic to these
21 other carriers. In other words, that their legacy peers are
22 drawing traffic away from American that American needs to
23 hold up its fare premium, business travelers, high value
24 travelers.

25 Q All right. And -- and given that we don't have a lot

1 of time and that I want to summarize this. But what, in
2 your opinion, accounts for the fact that American is losing
3 these types of customers to the other major network carriers
4 as reflected in this chart?

5 A I think the consensus is, in my view, that -- that they
6 have a product problem, that increasingly the in-flight
7 product is not as -- as competitive as it once was.

8 Q Can you break that down because you talked about these
9 passengers wanting schedule frequency, network scope and
10 produce quality. And --

11 A I was starting with the product quality, which is the
12 -- you know, the quality of the product -- in flight product
13 itself, the seats the cabin interiors, the clubs, the -- and
14 the things like that that go with it. That's one.

15 In addition, you have questions that -- the other
16 thing that really drives business travelers strongly is
17 schedule. Business travelers put a high -- typically put a
18 high value on schedule frequency because that gives them a
19 lot more flexibility in travel if a meeting gets canceled or
20 it breaks early they can catch a flight and -- and that's
21 valuable to them and they're willing to pay more for that.

22 They also value the size of the network because
23 they can go more places on a carrier, and that's true for
24 individual travelers. It's very important for the corporate
25 travel market, which is quite important in the premium

1 section of the business.

2 And, basically, what happens is these are
3 corporate customers, Your Honor, that come in and -- and ask
4 airlines for proposals. And one important way they compare
5 an American to a United or a Delta is how many destinations
6 that I want to go to do you serve. And if American now has
7 a much smaller scope of network than these other carriers,
8 it starts that bidding process in a big hole because it
9 can't provide what the other carriers can in terms of
10 service.

11 Q Well, if your view is that American is falling behind
12 in terms of schedule frequency, not getting enough flights
13 into the market, have you analyzed or looked at what
14 accounts for the difference between American and the other
15 large network carriers in terms of being able to get more
16 schedule frequency --

17 A Yes, I have.

18 Q -- into -- and what is that?

19 A The -- American has -- has a huge gap in its fleet. If
20 you look at its fleet it goes from fifty seat RJs to 140
21 seat MDADs. That's a huge gap in there and it makes it very
22 difficult to provide economic service as frequently as you
23 would like in -- in a number of markets where they're not
24 big enough to support high frequency service throughout the
25 day by 140-seat airplanes.

1 Q You would be flying large jets with a lot of empty
2 seats if you did that?

3 A That's -- you would be flying large jets with a lot of
4 empty seats, and they may be too big or they may have
5 business travelers in the smaller markets. Business
6 travelers, one of the things you can do with a large RJ,
7 regional jet, is put premium seating in. So United, for
8 example, has first class seating as well as what they call
9 something economy --

10 Q Economy plus.

11 A -- economy plus which is more leg room in economy, and
12 then they have economy seats which are the most compact
13 seated. So they get fewer seats on the airplane, but they
14 can generate a lot more revenue and -- and all of the other
15 carriers have far more large RJs than American. They all
16 configure their airplanes with premium seating, which
17 enables them to generate greater revenues, but also to
18 attract business travelers and to -- by filling that fifty
19 to 140-seat gap with seventy -- seventy-six or eighty-eight-
20 seat airplanes, are able then to offer a more competitive
21 schedule pattern than American, which -- so it's kind of a
22 triple whammy if you don't have those airplanes. You get
23 hit three ways.

24 Q And in your opinion is it -- is it -- is that
25 phenomenon actually driving passenger revenue away from

1 American --

2 A I think that's --

3 Q -- at that premium level?

4 A -- one of the factors.

5 Q Okay. Well, is American's predicament solely a revenue
6 story?

7 A No.

8 Q Okay. You talked about cost disadvantages. Have you
9 looked at house -- significant labor costs disadvantage
10 American faces in terms of the overall costs of --

11 A Yes, I have.

12 Q -- this operation? All right. And what are you --
13 first of all, what's -- what is your overall conclusion
14 about American's relative labor cost compared to the
15 industry?

16 A Well, almost by any metric you use, maybe by any metric
17 you use, American's labor costs are either the highest or
18 the second highest in the industry. They're a high labor
19 cost carrier.

20 Q And you -- you've looked at this more than one way?

21 A I have.

22 Q Okay. Well, let's look at one of those ways. Look at
23 42 and explain what this chart is showing us.

24 A Exhibit 42 -- I've already explained what an available
25 seat mile is. What this chart shows is the labor costs per

1 available seat mile for this array of US Airlines. And you
2 can see it's the -- I won't go through each of the bars
3 individually, but American is obviously the bar on the left
4 at 4.25 cents per available seat mile. The average of the
5 other large network carriers is the red line. They're at
6 3.43 cents. The average of the low cost carriers is 2.38
7 cents.

8 So in the boxes I showed what the percentage
9 difference is. And so you can see American's labor costs
10 per available seat mile is about twenty-four percent higher
11 than the average of the other legacy carriers or large
12 network carriers, and it's about seventy-nine percent higher
13 than the costs for the LCCs.

14 Q And just focusing now on the other major network
15 carriers, this chart suggests that the other major network
16 carriers have been able to control their labor costs more
17 successfully than American. Is that in your opinion
18 correct?

19 A Correct.

20 Q All right. If you could turn to Exhibit 44 and tell me
21 what that chart is depicting.

22 A Yes. What this chart shows -- again, this chart shows
23 American across the horizontal axis, American and the
24 other three large network carriers. And it shows the change
25 in labor CASM, labor costs per available seat mile, between

1 the year 2002 and the year 2011. So -- and as you can see,
2 2002, of course, was the year before the concessionary
3 agreements that we've heard about today between American and
4 its unions.

5 As you can see, all of the carriers experienced a
6 decline, significant reductions in labor costs per available
7 seat mile. But the other carriers enjoyed substantially
8 larger reductions in their unit labor costs over this period
9 than American. The red line is the average of the other
10 large network carriers at a negative twenty-one percent and
11 change. So it's a -- American is not quite -- it's almost
12 twice as much, I should say, as American as a reduction over
13 that same period in time of their unit labor costs.

14 Q And does -- does this chart suggest that the other
15 carriers have been successful in lowering their labor costs
16 more than American during this period of time?

17 A I think it -- that's exactly what it demonstrates.

18 Q All right. In the interest of time we're not going to
19 break out the individual charts on this, but we've looked at
20 overall labor costs. Have you also looked at labor costs
21 for any of the unionized labor groups that are parties to
22 this proceeding?

23 A Yes. I've done that for both pilots and flight
24 attendants.

25 Q Okay. And -- and why not for the TWU groups?

1 A The -- it -- what pilots and flight attendants do is
2 very standard across the airlines. What the groupings
3 within the TWU and those trades and crafts that they cover
4 are not as reliably reported in the DOT data, so it -- I was
5 not comfortable that that would be a good basis for
6 comparison.

7 Q All right. And -- and what does your analysis --
8 without referring to any chart -- show as to the American's
9 comparative labor costs for the pilot labor group?

10 A The pilot labor costs, it shows the pilot labor costs
11 are -- are higher than those of its competitors --

12 Q And what about --

13 A -- and likewise for --

14 Q -- the flight attendants?

15 A -- the flight attendants.

16 Q Same thing?

17 A Same thing.

18 Q Okay. In your opinion, just from the standpoint of
19 competing with the network carriers and the LCCs, does
20 American need reductions in its direct unionized labor
21 costs?

22 A Yes, it does, in my opinion.

23 MR. FLICKER: Okay, Your Honor. I'll pass the
24 witness at this point.

25 Thank you, sir.

1 THE COURT: All right. Cross-examination.

2 MS. PARCELLI: Your Honor, good afternoon. Again,
3 my name is Carmen Parcelli with the law firm, Guerrieri,
4 Clayman, Bartos & Parcelli and counsel to the Association of
5 Professional Attendants.

6 CROSS-EXAMINATION

7 BY MS. PARCELLI:

8 Q And good afternoon, Mr. Kasper.

9 A Ms. Parcelli.

10 Q Yes.

11 Now, Mr. Kasper, are you aware that on February
12 1st of this year American made its initial proposals under
13 Section 1113 to its three unions, APA, APFA, TWU?

14 A I'll take your word on the date. I'm aware those
15 proposals were made.

16 Q Okay. Have you reviewed any of those initial Section
17 1113 proposals?

18 A I looked at the -- I looked quickly at the initial term
19 sheets, but I think review is probably too strong.

20 Q Okay. So you simply looked them over quickly?

21 A Correct.

22 Q And are you aware that American has revised some of its
23 initial Section 1113 proposals?

24 A That is my understanding.

25 Q Okay. But have you reviewed any of the revised

1 proposals?

2 A No.

3 Q Okay. Now are you aware that the unions have made
4 counter-proposals to American under Section 1113?

5 A I assumed that was the case. I have not seen them.

6 Q Okay. So you have not reviewed any counter-proposals?

7 A That is correct.

8 Q Now if I could refer you to Page 101 in your report.

9 MR. FLICKER: Are you referring to Exhibit 1,
10 Counsel?

11 MS. PARCELLI: Oh, yes. I'm sorry, the report
12 being Exhibit 1.

13 BY MS. PARCELLI:

14 Q So are you there with me, Mr. Kasper?

15 A Yes, I am.

16 Q Okay. So on Page 101 in your report there's a section
17 heading and it states, "American also needs greater
18 flexibility in other aspects of its CBAs that restrict the
19 company's ability to enhance its revenues and/or impose
20 unnecessary costs." Are you with me?

21 A I am.

22 Q Okay. So now if you turn one more page to Paragraph
23 121, this paragraph deals with some sections of the flight
24 attendant contract, does it not?

25 A Correct.

1 Q Okay. And you stated that the collective bargaining
2 agreement that American has with its flight attendants
3 requires that the company equip each 777 with a rest area
4 for flight attendants on the passenger deck?

5 A Correct.

6 Q Which you say then cuts down on the seating capacity of
7 the aircraft, correct?

8 A Correct.

9 Q Okay. DO you know whether American's Section 1113
10 proposal to APFA has sought to change this provision of the
11 contract?

12 A I don't.

13 Q Now in Paragraph 121 you also maintain that the flight
14 attendant CBA is inefficient because senior flight
15 attendants can trade nearly all, you say, of their trips
16 while remaining in employment with American. Is that
17 correctly stated?

18 A Well, that's -- that's a rough approximation.

19 Q I'm trying to summarize and move.

20 A Understood. Understood.

21 Q Okay. So are you aware that the APFA has agreed in
22 negotiations to a minimum number of hours worked by a flight
23 attendant in order to maintain employment?

24 A No.

25 Q You're not aware of that? Now is it true that you have

1 not been involved in the Section 1113 negotiations between
2 American and its unions?

3 A Thankfully, yes.

4 Q Now did you perform any valuation of the terms
5 contained in any of the Section 1113 proposals that American
6 has made?

7 A I have not been asked to do that and have not done so.

8 Q Okay. Have you reviewed any costing done by American
9 of its Section 1113 proposals?

10 A I have not.

11 Q And just for completeness, did you perform any
12 valuation of the terms contained in any counter-proposals
13 that the unions made to American?

14 A No.

15 Q Okay. A little louder, sir.

16 A No.

17 Q Thank you.

18 Now are you offering an opinion as to the
19 necessity for successful reorganization of any of the
20 specific terms contained in America's Section 1113 proposals
21 to its unions?

22 A No. I am not.

23 Q And is it true that you have no opinion as to whether
24 any Section 1113 counter-proposals made by any of the unions
25 would be sufficient to permit American to successfully

1 reorganize?

2 A Since I haven't reviewed them, I don't.

3 Q Fair enough.

4 Now, Mr. Kasper, is it your understanding that
5 American has developed a business plan that it calls the
6 plan for success?

7 A Yes.

8 Q Okay. And is it also your understanding that
9 American's business plan basically exists as a computer
10 model consisting of a series of spreadsheets?

11 A Well, it's my understanding there is what I would call
12 a business plan, and then that -- the details of it are
13 reflected in spreadsheets and that's how the various
14 financial aspects of it are calculated.

15 Q Okay. Have you reviewed any of those spreadsheets?

16 A I have not.

17 Q Okay. And then to the extent that you have knowledge
18 regarding American's business plan, what is that knowledge
19 based on?

20 A Well, I -- I did review what I would call a high level
21 summary of the plan as well as the descriptions of the plan
22 contained in declarations by American company witnesses. So
23 I am familiar with it at the thirty-thousand-foot level, but
24 certainly not at -- in the detail level.

25 Q Okay. And I'm sorry. When you say descriptions, what

1 kind of description was it that you reviewed?

2 A The description of the plan.

3 Q The business plan.

4 A Well, I think it was described in Ms. Goulet's test --
5 in Ms. Goulet's declarations and also Mr. Vahidi, I believe
6 I'm pronouncing that correctly.

7 Q And you haven't reviewed any other documents that
8 pertain --

9 A I believe I also --

10 Q -- to the plan?

11 A -- saw a slide presentation or a presentation that was
12 made to probably the unions and the creditors' committee.
13 But, again, this -- these were high level. They were not --
14 I did not see the spreadsheet model.

15 Q And when you saw -- I'm sorry. When you say you saw a
16 presentation, did you saw -- see the presentation delivered
17 or you're looking at the slide deck --

18 A Slides.

19 Q -- after the fact?

20 A Slide decks afterwards.

21 Q Okay. Thank you. And do you recall how long that
22 slide deck was?

23 A I don't -- I don't recall it being -- it didn't strike
24 me as that long, fifteen, twenty pages tops.

25 Q But are you aware from your thirty-thousand-foot view

1 that American has targeted a specific amount of revenue
2 generation as -- as part of its business plan?

3 A Correct.

4 Q Okay. And you also understand from your vantage that
5 American has targeted a specific amount of labor cost
6 reductions?

7 A And other cost reductions, yes.

8 Q And those are part of the business plan?

9 A Correct.

10 Q Now have you performed any analysis as to whether the
11 revenue targets in American's business plan are obtainable?

12 A I have not.

13 Q Okay. And have you performed any analysis as to
14 whether the specific amount of labor cost reductions that
15 are targeted in the business plan are necessary for American
16 to obtain in order to be competitive?

17 A I have not.

18 Q And it's fair to say it was not your charge to review
19 the business plan; is that correct?

20 A Thank you. That is correct.

21 Q Okay. Now if I can refer you, please, to pages --
22 really it starts at Page 3 and continues on through Page 7
23 of your declaration, which is Exhibit 1. Set forth in those
24 pages are your summary of opinions. Is that correct?

25 A Correct.

1 Q Okay. And if I could turn your attention to Page 6,
2 please, and, specifically, the final bullet point that
3 appears on that page.

4 A Yes.

5 Q Are you with me?

6 A I am.

7 Q Great. And I know it's a little lengthy, but if you
8 wouldn't mind just reading that final bullet point.

9 A That final bullet. Sure.

10 Q Yes. Thank you.

11 A "Simply put, in today's highly competitive airline
12 industry, American cannot increase its revenues enough to
13 offset its higher costs. Thus, to restore financial
14 viability, the company must both reduce its costs and
15 enhance its revenues. In order to do so, the company needs,
16 among other things, the flexibility to deploy more large
17 regional jets to cost effectively match supply of capacity
18 to customer demand and to enter into expanded and/or
19 additional code share agreements with other domestic
20 carriers. Unless American is able to lower its costs,
21 enhance its revenues and thereby restore its margins to
22 economically viable levels, the company faces the prospect
23 of a self-perpetuating spiral of increasing losses and
24 growing inability to make the capital investments required
25 to remain competitive with higher performing airlines.

1 Without such changes American will be unable to reorganize
2 successfully."

3 Q Okay. So, Mr. Kasper, you reached your opinion that's
4 set forth in the paragraph you just read that American
5 cannot increase its revenues enough to offset its higher
6 costs. You reached that without evaluating American's
7 business plan in depth, did you not?

8 A Correct.

9 Q And you also reached the opinion stated in that
10 paragraph as to what American must do to "restore financial
11 viability" without evaluating, again, American's business
12 plan in depth; is that correct?

13 A You mean as to whether the plan would do that?

14 Q As to what American must do to restore its financial
15 viability --

16 A Correct.

17 Q -- without evaluating the business plan?

18 A I think I testified I did -- I did not review and was
19 not asked to review the business plan. So this is my
20 independent view as to what American needs to do independent
21 of the business plan.

22 Q Okay.

23 A And it -- I'm not offering an opinion on whether the
24 business plan does it or not.

25 Q It was a yes or no question, sir.

1 So you also reached your opinion regarding what
2 the company needs without reviewing in depth American's
3 Section 1113 proposals to its unions; is that correct?

4 A That is correct.

5 Q And you reached your opinion regarding what the company
6 needs without reviewing any counter-proposals made by any of
7 the unions; is that correct?

8 A Correct.

9 Q Now you state, do you not, that American must reduce
10 its costs, correct?

11 A Yes.

12 Q But it is also correct that you do not offer an opinion
13 in your expert report as to the specific amount of cost
14 reductions, either labor or non-labor, that American would
15 need to reorganize successfully; is --

16 A That is correct.

17 Q -- that correct?

18 Now, Mr. Kasper, in your expert report you highlight
19 competition from low cost carriers as one of the competitive
20 challenges that American faces; is that fair?

21 A I do.

22 Q Okay. Can you please identify those carriers currently
23 in the airline industry who should, in your view, be
24 classified as low cost carriers?

25 A Well, I -- I think I have a footnote in here that lists

1 the ones that -- that we use, but I think at the current
2 crop of carriers, of course, Southwest, Jet Blue come to
3 mind, Allegiant, Spirit, I'm sure I'm leaving out one or
4 two. But those would be the major ones.

5 Q Frontier?

6 A Frontier -- Frontier is in a funny position right now.
7 I mean, they hold themselves out as a -- their strategy is
8 clearly to be a low cost carrier. They publicly announced
9 that they're modeling themselves after very low cost
10 carriers like Spirit and Allegiant. So at least
11 aspirationally they would be a low cost carrier.

12 Q Okay. But you -- include them as a low cost carriers
13 in the charts in your expert report, do you not?

14 A Well, I do, but, remember, a lot of these charts are
15 historic. So I've gone back and there are a lot of airlines
16 in there that are -- may not even exist anymore and others
17 that may have changed their business models.

18 Q Okay.

19 A But I -- I would aspirationally, at least, put Frontier
20 in that group. Yes.

21 Q Okay. And you mentioned Spirit, right?

22 A I did.

23 Q And Allegiant you got, right?

24 A Correct.

25 Q And how about Virgin American? Is that --

1 A Virgin American. I did not mention them.

2 Q And Sun Country?

3 A Sun Country.

4 Q Okay. And any others that are currently operating?

5 A None that I can think of.

6 Q Okay. Now is it correct that among the LCCs that
7 you've just identified Southwest is significantly larger
8 than any of the others?

9 A That's fair.

10 Q Okay. And let's take it in terms of total available
11 seat miles, would you agree that Southwest is larger in
12 terms of ASMs than all of the other LCs that -- LCCs that
13 you mentioned in combination. Is that correct?

14 A I believe that's correct. Yes.

15 Q Okay. And isn't it true that Southwest now carries the
16 most passengers domestically of any U.S. airline?

17 A That is correct.

18 Q And hasn't that been true since 19 -- I'm sorry --
19 2003?

20 A Yes.

21 Q Okay. And Southwest currently serves approximately
22 seventy-two destinations; isn't that right?

23 A That's what their website says.

24 Q Okay. Now if I could direct your attention to your
25 Exhibit 7. I believe you gave some testimony regarding this

1 exhibit in your direct.

2 A Yes.

3 Q So as indicated in your footnote, Southwest is among
4 the LCCs that are charted in this Exhibit 7, correct?

5 A Yes.

6 Q But isn't it true that Southwest would make up the vast
7 majority of what is shown for the LCCs in this chart?

8 A They would certainly, in 1993 to 2000, have -- have
9 been the eight-hundred-pound gorilla in that group. They
10 would still be the largest, by a fair margin, in 2000 -- for
11 the 2001 through 2011 period, although perhaps less so than
12 the prior period.

13 Q If you took out Southwest, the chart would look
14 dramatically different, would it not?

15 A Yes, although if you took out Southwest then I think --
16 my view is that some of those other LCCs that are in there
17 would be a lot larger than they are today.

18 Q Now referring your attention to Exhibit 22 --

19 THE COURT: Your Honor --

20 THE WITNESS: Yes.

21 MR. GOFFMAN: -- could I ask what is operating the
22 -- to turn them on for the exhibit that --

23 THE COURT: That would be helpful if you don't
24 have a problem doing that. Good idea. I think we're on 7.

25 MS. PARCELLI: Yeah. Exhibit --

1 THE COURT: Oh, did you just move to 22?

2 MS. PARCELLI: -- 22 if we could.

3 THE COURT: All right. You're there faster than I
4 am.

5 MS. PARCELLI: It's --

6 THE COURT: Thank you.

7 MR. GOFFMAN: That's why she's in that seat, Your
8 Honor.

9 THE COURT: It's always good to have somebody who
10 is moving along quicker than you are.

11 All right. Proceed, Counsel.

12 MS. PARCELLI: Thank you.

13 BY MS. PARCELLI:

14 Q So, Mr. Kasper, I believe you testified regarding this
15 chart on direct, and I just wanted to clarify with you,
16 you've broken the chart into two time periods with the
17 dotted line; is that correct?

18 A Correct.

19 Q Okay. And the first time period spans from 1998 to
20 2002, correct, a five-year period?

21 A That's correct.

22 Q Okay. And when we look at the increase in the -- well,
23 I should have started with this. You're showing domestic
24 OND passengers that are traveling with LCC options, correct?

25 A Correct.

1 Q And I think you explained what that meant on your
2 direct, correct?

3 A Yes, I did.

4 Q So back to the five-year time span at the beginning of
5 the chart, between 1998 and 2002 we have an increase of
6 twenty-four points, do we not, in the percentages?

7 A Correct.

8 Q Okay. But then moving to the second time period in the
9 chart, that's 2003 to third quarter 2011, correct?

10 A Correct.

11 Q And that's a nine-year span of time, right?

12 A Correct.

13 Q Then we have, in 2003 to third quarter 2012, we have a
14 twelve-point increase in the percentages; is that correct?

15 A Third quarter 2011, yes, that's correct.

16 Q Thanks for the clarification.

17 Now turning your attention to the note at the
18 bottom in Exhibit 22 and, specifically, to the last sentence
19 in that note, you list a number of LCCs?

20 A Correct.

21 Q And I know you've mentioned that LCCs have come and
22 gone, but of the ones that have gone, what is it ATA down
23 here --

24 A ATA is gone.

25 Q National --

1 A National.

2 Q -- is gone.

3 A Vanguard.

4 Q Access Air is gone.

5 A Pro-Air.

6 Q East Wind, right?

7 A East Wind.

8 Q Air South is gone. Midway is --

9 A Midway is gone.

10 Q -- gone. And these are companies that failed and went
11 out of business, correct?

12 A Yes. With the -- Reno was acquired by American.

13 Q Yeah.

14 A The others have failed and gone out of business.

15 Q And then I think also elsewhere in other exhibits you
16 make mention of Independence Air and Sky Bus, so those are
17 another two that have failed and gone out of business,
18 right?

19 A Correct.

20 Q Okay. So I take it that none of these carriers
21 currently pose a competitive challenge to American?

22 A Not that we know of.

23 Q All right.

24 A But they do come back sometimes with the same name, so.

25 Q My apologies for skipping around a bit, but I am trying

1 to expedite. If I could ask you to turn to Exhibit 16. I
2 believe you also testified about this on direct.

3 A Yes.

4 Q And I heard that you explained your methodology that's
5 set forth in the note that this chart includes LCCs that
6 operated at least twelve departures or -- domestic or eight
7 international in at least one month in July of -- well, July
8 2011 through December 2012, correct?

9 A Correct.

10 Q Okay. So this would include, though, if a carrier
11 started a route and then after, you know, say three, four
12 months decided it wasn't working out and pulled out of that
13 route, correct?

14 A It could. Yes.

15 Q Okay. Do you know how many of those kind of routes
16 would be reflected in the chart?

17 A No. I would have to -- I don't know of that off the
18 top of my head, if any.

19 (Pause)

20 Q Now you provide in your report labor cost analysis and
21 I believe you provided testimony about that on direct,
22 correct?

23 A I did.

24 Q And several of your graphs and charts provide a labor
25 CASM analysis; isn't that correct?

1 A That's correct.

2 Q And did you explain on direct what labor CASM was? I
3 believe you --

4 A I believe --

5 Q Not in --

6 A I did. I'm happy to do it again if you would like.

7 Q Yeah. Briefly.

8 A You've heard it before. Labor CASM is simply the labor
9 costs divided by the available seat mile. So -- for an
10 airline. So that's the labor costs per available seat mile.

11 Q Okay. And you're using labor CASM to make comparisons
12 regarding employee contribute -- compensation across
13 carriers; is that correct?

14 A Employee costs, not compensation.

15 Q Okay.

16 A On a unit cost basis.

17 Q Okay. And in your view is labor CASM an appropriate
18 metric to use when making such comparisons?

19 A Well, I think it is one of several that -- that can be
20 used. None is perfect, but -- but if you use several, as
21 I've done, I think you get a -- you get a very good fix on
22 labor costs.

23 Q Okay. And many of the graphs that are presented in the
24 sections of your report that relate to labor cost analysis,
25 they include LCCs in the group of comparators that you're

1 using to assess the labor costs at American, correct?

2 A Correct.

3 Q Okay. And those charts include Southwest as an LCC,
4 correct?

5 A They do.

6 Q Okay. Now isn't it true, with the exception of
7 Southwest, that the current crop of LCCs haven't really been
8 in business for very long relative to the other carriers
9 that are operating? Is that fair to say?

10 A Well, I mean, I suppose considering the fact that all
11 of the four surviving legacy carriers go back to 1935 or --
12 in US Air's -- '38, US Air's case a little bit later, yeah.
13 I suppose that's right. You --

14 Q Yeah. And Southwest itself dates back to 1969, I
15 believe, right?

16 A Correct.

17 Q Whereas in contrast a carrier like Jet Blue, they
18 started operations around 2000?

19 A Yeah.

20 Q Is that correct?

21 A 1999.

22 Q Okay. Now isn't it true that a younger carrier will
23 not have employees with extended years of service who are
24 then sort of at the top rate in pay scales; isn't that true?

25 A That's very typically true.

1 Q But as a carrier continues on in its existence,
2 they'll, you know, inevitably be more employees that appear
3 at the top of the pay scale. Is that your experience?

4 A Normally, that is -- you know, if the carrier survives
5 and stays in business that's what you would expect.

6 Q Now other charts in your labor cost analysis section of
7 your report, they're just limited to the large network
8 carriers. You've done that analysis, correct?

9 A I've done both. Yes.

10 Q Okay. And you did not include Southwest when you do an
11 analysis that relates to large network carriers; is that
12 correct?

13 A Well, I -- they're -- there's a mix. I mean, I -- I
14 have Southwest on some charts with large network carriers
15 and not others, so.

16 Q Now if I could refer you to Exhibit 50.

17 A Yes.

18 Q Yeah. Now we spoke earlier about the size of Southwest
19 relative to the other existing LCCs. Do you recall?

20 A Yes.

21 Q Okay. So referring to your Exhibit 50, this is a chart
22 that's comparing labor costs among the carriers, correct?

23 A Correct.

24 Q Okay. And when you give the LCC average, you see that
25 lower bar that cuts across the chart?

1 A I do.

2 Q Okay. So when you give that LCC average, that's just a
3 simple average, am I right, of the labor costs for each of
4 the LCCs that you've included?

5 A That is correct.

6 Q Now would that average be different -- would it -- or
7 that average would be different, wouldn't it, if it were
8 weighted in some way to account for the size of Southwest
9 relative to the other LCCs; isn't that true?

10 A It would be different, but in my view it would be
11 significantly less meaningful.

12 Q Okay. But it could be weighted either by available
13 seat miles; is that one way?

14 A There -- yeah. There are a large number of ways that
15 it could be weighted.

16 Q Or head count. Is that another way --

17 A Or head count.

18 Q -- you could weight it?

19 A I don't believe those are appropriate, but, yes. One
20 could do that.

21 Q Now could I ask you, please, to turn to Exhibit 58.

22 A Yes.

23 Q Now this is a chart that reflects costs per flight
24 attendant as of the third quarter of 2011; is that right?

25 A Correct.

1 Q Okay. And this is a comparison across several
2 carriers, correct?

3 A Yes.

4 Q Okay. Now can you just explain when you use the term
5 "costs" in the caption of this exhibit, what are you
6 referring to? What does that include?

7 A Well, this -- this refers to the way the data are
8 reported by the U.S. airlines in Form 41, USDOT Form 41.
9 And in this case what the cost include are -- are wages,
10 benefits, payroll taxes and called employee expenses, which
11 would be things like hotels and per diems.

12 Q Okay. Hotels, per diems, any other kind of those
13 incidental expenses, do you believe?

14 A Incidental expenses.

15 Q Okay. Now directing your attention to the second bar
16 in the graph from the right, the one that says
17 "Southwest/Air Tran" --

18 A Correct.

19 Q Do you see where I'm referring to? Now the way you've
20 described here Southwest/Air Tran, is that a reflection of
21 the fact that those two carriers have merged?

22 A Yes. They have recently, as you know, merged, and so
23 that is a reflection of that fact. Ditto for United and
24 Continental.

25 Q Okay. We'll get there. But those two carriers,

1 Southwest and Air Tran, they're not yet integrated
2 operationally; is that true?

3 A That is correct.

4 Q Okay. So the flight attendants of those two carriers
5 are still covered by two separate collective bargaining
6 agreements, correct?

7 A Correct.

8 Q Okay. And Southwest has higher flight attendant costs
9 under its agreement than Air Tran does; is that --

10 A Correct.

11 Q -- correct?

12 A Yes, it is.

13 Q Okay. And I believe if you look down in the note, the
14 very last couple of lines of it, you do break them out
15 individually and the note gives the costs for Southwest as
16 88.1, correct?

17 A That is correct.

18 Q and the cost for Air Tran are 37.0, correct?

19 A That is correct.

20 Q Okay. But it's the combined Southwest/Air Tran costs
21 that are given in the bar graph portion of the chart?

22 A Correct.

23 Q And that's given as a weighted average, is it not?

24 A It is.

25 Q Okay. It's weighted by, do you know what?

1 A I believe it's weighted by head count.

2 Q Okay. So here you have done a weighted average?

3 A Correct.

4 Q Okay. Now if you had graphed Southwest separately its
5 costs would have appeared as higher than those appearing for
6 American in your chart, correct?

7 A Correct.

8 Q Now let's look at the third bar on the right of the
9 chart where you have United/Continental. Do you see that?

10 A Yes.

11 Q Okay. And, again, you've grouped them together as a
12 reflection that those carriers have merged, right?

13 A Correct.

14 Q But, again, they're not integrated operationally at
15 this point. They're not flying as a single unit, correct?

16 A Correct.

17 Q And, again, their flight attendants are still covered
18 by two separate collective bargaining agreements, correct?

19 A Yes, they are.

20 Q And Continental has higher flight attendant costs under
21 its agreement than does United, correct?

22 A I believe that's correct. Yes.

23 Q Okay. And, again, down in your note you do separate
24 them and you give the cost for United as 70.3 and the cost
25 for Continental are 89.7, correct?

1 A Correct.

2 Q Okay. And then the combined is given in the chart and,
3 again, it's a weighted average, correct?

4 A Correct.

5 Q Okay. Now if you had graphed Continental separately,
6 its costs would have appeared higher than those appearing
7 for American, correct?

8 A Correct.

9 Q Okay. And Continental's costs separately are the
10 highest in the industry, are they not?

11 A That appears to be the case. Yes.

12 (Pause)

13 Q Now you gave some testimony on direct regarding
14 Emirates and I believe you referred to aircraft orders that
15 they had placed. Am I --

16 A Correct.

17 Q -- correct? Do you know when those planes will be
18 coming to Emirates?

19 A I don't have the specific delivery schedule in front of
20 me. I know they're spread out from -- you know, they're
21 being delivered over a period of time from present on.

22 Q I mean, are we talking about maybe the next five years,
23 something like that? Is that your understanding?

24 A Well, it's a large order so it could be spread out over
25 -- it could be more years than that.

1 Q Okay. But they will be growing; is that correct?

2 A Correct.

3 Q And they are not standing still, are they?

4 A No, they aren't.

5 Q Now I believe you gave some testimony during your
6 direct regarding the timing between the bankruptcies of
7 Delta and Northwest Airlines and then their eventual merger.
8 Do you recall that?

9 A Correct.

10 Q Was any of that contained in your expert report?

11 A No. I don't believe it was.

12 Q And you indicated that those two carriers had code-
13 shared before they eventually merged; is that correct?

14 A Correct.

15 Q And that was a fairly extensive code-share relationship
16 in your view as these things go?

17 A Quite extensive. Yes.

18 Q Okay.

19 (Pause)

20 Q But is it fair to say that they didn't think their
21 code-sharing relationship was sufficient and that they
22 should take a further step and merge?

23 A I don't know. That's an -- that's an interesting
24 question. They obviously felt at the end of the day that a
25 merger would give them more things in their particular

1 circumstances than a code-share did.

2 On the other hand, they actually used that code-
3 share successfully for a number of years to compete with
4 carriers like American that had a bigger network than they
5 did.

6 Q And directing your attention back to your curriculum
7 vitae, which appears as Appendix A in your Exhibit 1, your
8 report,

9 A Yes.

10 Q And if I can refer you to (iv) in your curriculum
11 vitae.

12 A Yes.

13 Q You give a list of a number of arbitration proceedings
14 that you've been involved in, correct?

15 A Correct.

16 Q And down at the bottom of this page, (iv), do you see
17 Northwest Airlines, Inc. v. Association of Flight
18 Attendants?

19 A Correct.

20 Q Okay. And you gave expert testimony in that matter?

21 A I did.

22 Q And was the subject of that arbitration valuing certain
23 contract terms among -- that were reached by the pilots
24 there?

25 A I -- as I recall that -- that was an issue that had

1 been raised by the flight attendants. Yes.

2 Q And there was a debate and dispute over how those
3 contract terms had been valued as between the company and
4 its pilots, correct?

5 A I don't have a strong recollection, but -- but I
6 believe that was the case.

7 MS. PARCELLI: Nothing further of this witness.

8 THE COURT: All right.

9 Since it's four o'clock let me ask what the
10 schedule looks like. I ask because if we need to stay later
11 than six, then I need to make arrangements for various folks
12 and let them know that.

13 So how much is left on cross-examination in total?

14 MR. DEAN: I'm expecting a relatively short cross-
15 examination, fifteen or twenty minutes, Your Honor.

16 THE COURT: All right.

17 MR. SHERWOOD: And, Your Honor, I might have five
18 or ten minutes for the cross.

19 THE COURT: All right.

20 MR. GOFFMAN: We aren't expecting to cross this
21 witness.

22 THE COURT: All right. And how long would you
23 expect redirect to be?

24 MR. FLICKER: So far, at this point, I'm -- I'm
25 not intending any redirect. I'll reserve it, but I'm --

1 THE COURT: All right. All right. And then
2 what's our intention as to the second witness of the day?
3 Start that witness, I would assume.

4 MR. GALLAGHER: That would be our preference, Your
5 Honor, but --

6 THE COURT: Yeah.

7 MR. GALLAGHER: -- subject to --

8 THE COURT: Oh, no. No. I --

9 MR. GALLAGHER: -- the wishes of the Court.

10 THE COURT: -- I think that that's -- that's what
11 we should do. So if -- if -- how long would you expect --
12 I'm just trying to figure out what the -- what the game plan
13 is, to get through the direct and then as much of the cross
14 as we can until six and then break?

15 MR. GALLAGHER: That would be great, Your Honor.

16 THE COURT: All right.

17 MR. GALLAGHER: Your Honor, may we informally take
18 a bio break while --

19 THE COURT: Sure.

20 MR. GALLAGHER: -- the witness is testifying?

21 THE COURT: Why don't we do that? It's five to
22 four. Let's say five after four.

23 MR. GALLAGHER: Okay. Thank you.

24 THE COURT: Thank you.

25 (Recess at 3:54 p.m.)

1 THE CLERK: All rise.

2 THE COURT: Please be seated.

3 Proceed, Counsel.

4 MR. DEAN: Good afternoon, Your Honor. I am David
5 Dean on behalf of the Allied Pilots Association.

6 CROSS-EXAMINATION

7 BY MR. DEAN:

8 Q Mr. Kasper, good afternoon.

9 A Mr. Dean.

10 Q I'm going to ask you just a few questions. They are
11 going to be about AMR's 1113 proposals, which I understand
12 that you did not spend a lot of time with. I'm going to be
13 focusing in particular on their proposals concerning scope
14 which you did address in your declaration and there --
15 therefore I'm going to go into it a little bit.

16 Just to be sure we're on the same page, talking
17 the same language, scope clause in airline collective
18 bargaining agreement defines the scope of the work that's
19 covered by the agreement?

20 A Correct.

21 Q It's the one limit on the company's ability to
22 outsource work?

23 A I don't know about "the," but it is a limit on it.

24 Yes.

25 Q Sort of the principle limit?

1 A That's a fair characterization.

2 Q Okay. And, therefore, it is one of the principle or
3 the principle clause in the collective bargaining agreement?

4 A It's certainly -- I think your -- your clients and
5 other pilot groups that I've dealt with certainly believe
6 that to be the case. yes.

7 Q Okay. Reasonably believe that because it doesn't
8 really matter what you're paid to fly if, in fact, the
9 company is free to outsource that flying rather than have
10 you do it?

11 A Yeah. It -- I'm having a little trouble, Mr. Dean,
12 with the -- with the concept of outsourcing. And let me
13 just explain briefly and then we --

14 Q Sure.

15 A -- I think we can move on.

16 Q Okay.

17 A The premise of the argument seems to be that the --
18 that I understand the pilots often make is that this flying,
19 if it weren't done by the -- say American Eagle or regional,
20 it would be done by mainline pilots. I don't believe that
21 is generally the case.

22 Q Is it sometimes the case?

23 A It might be, but I think much more often than not it is
24 flying that the -- that the airline otherwise would not do
25 because it couldn't afford to do it. And what you call

1 outsourcing I would call as a way for airlines to generate
2 flying, not to deprive their pilots of jobs, but to -- to
3 create traffic that ultimately puts traffic on the planes
4 that the mainline pilots are flying.

5 Q Okay. Would you agree that there has been a trend over
6 the last decade in which flying that was being done by
7 mainline carriers has been outsourced to regional carriers?

8 A There has been more flying done by regional carriers,
9 but that -- that's not -- I mean, that's true -- that goes
10 back forty, fifty years.

11 Q That -- that flying that was being done by the mainline
12 is now being done by --

13 A Correct.

14 Q -- regionals?

15 A Changes in --

16 Q Okay.

17 A -- technology, changes in economics.

18 Q Okay. All fair enough.

19 Because it is a clause of such important to the
20 pilot unions and other unions, it is often one of the most
21 closely negotiated clauses?

22 A I've not sat through those negotiations, but having
23 talked to the negotiators, I -- I think that's very fair to
24 say.

25 Q And you've testified in scope arbitrations, for example

1 between American and its pilots, over aspects of the clause?

2 A I have.

3 Q Okay. Now in this case, as I understand it, you were
4 not asked whether American Airlines' specific proposals on
5 scope were necessary to its reorganization?

6 A That is correct.

7 Q So you have no opinion on that subject?

8 A Well, I have an opinion, but I wasn't asked to render
9 it.

10 (Laughter)

11 Q Okay. You don't -- you have no expert opinion that
12 you've developed for this litigation?

13 A I would hope the opinion is expert, but it was not
14 developed for this litigation. That's fair.

15 Q I'm -- you know, I'm tempted to go into exactly what
16 study you did, but I think we should probably keep moving
17 this afternoon.

18 THE COURT: I think -- I think he's not offering
19 one, but if you ask him he'll give you one.

20 (Laughter)

21 MR. DEAN: Yeah. No. I hear you.

22 THE WITNESS: Thank you, Your Honor.

23 MR. DEAN: Then I would have to ask him about the
24 basis for it and we would be off to the races.

25 THE COURT: Yes. I -- I think that's the safe --

1 MR. DEAN: Right.

2 THE COURT: -- safe assumption.

3 MR. DEAN: That's great.

4 BY MR. DEAN:

5 Q What I would like to do is turn to Page 86 of Exhibit
6 1, your declaration, and this -- I'm going to be asking you
7 about both Pages 86 and 87, which are Exhibit 62 and 63, if
8 somebody wants to bring those up on the monitor.

9 THE COURT: Did you say 62 and 63?

10 MR. DEAN: Yes, Your Honor. And I'll also be
11 asking a little bit about the language around those charts.
12 So it might be best to just have the declaration there.

13 (Pause)

14 MR. DEAN: And I'm going to press ahead because I
15 think we have them, even though they haven't been brought up
16 --

17 THE COURT: Yeah.

18 MR. DEAN: -- on the monitor.

19 BY MR. DEAN:

20 Q Now those charts, in part, summarize your testimony
21 comparing American Airlines' current 1113 proposals on
22 scope, at least as to outsourced regional flying, with what
23 is currently happening at the other major network carriers?

24 A You're talking about Exhibit 62 and 63 both?

25 Q Yes.

1 A Yes. I believe that is correct.

2 Q Okay. They are two different ways of looking at the
3 same question?

4 A Correct.

5 Q All right. Now the first thing I want to do is just,
6 with reference to Exhibit 62, have a little bit of an apples
7 to apples discussion. You're aware that, for instance, when
8 we look at the Delta bar on the far left of Exhibit 72 --or
9 62 that the maximum number of seats that they can put on an
10 outsourced aircraft is seventy-six?

11 A There is a cap. I don't recall specifically, but I'll
12 accept seventy-six if you --

13 Q Okay.

14 A -- tell me that's what it is.

15 Q That sounds right to you. And do you know what the cap
16 is on the aircraft that can be outsourced from United? Is
17 it seventy seats?

18 A It's in that same range, seventy, seventy-six.

19 Q Okay. You're aware that a company here has proposed to
20 be able to outsource aircraft configured at eighty-eight
21 seats?

22 A I am.

23 Q Okay. Now there's a little bit of an ambiguity and I
24 want to take you back to the footnote that's on Page 85
25 where you talk about these "larger regional jets" and this

1 category of sort of larger than seventy-seat jets that
2 appears throughout the company's case here.

3 You say "includes the CRJ-900 and the NB Air 190."

4 Do you see --

5 A I'm sorry. Which --

6 Q -- the last --

7 A -- foot -- are we on Footnote 113?

8 Q That's correct. The last sentence of that footnote.

9 A Okay. Let's see. Give me a second, Mr. Dean.

10 Q Sure.

11 (Pause)

12 A Yes. I've read that.

13 Q Okay. You say in that footnote that larger than
14 seventy-seat RJs being deployed by U.S. network carriers
15 include the NB Air 190. You don't mean to imply that the NB
16 Air 190 is being outsourced by any of the major carriers, do
17 you?

18 A No. I say, deploy.

19 Q Right. So, in fact, it's being flown by the mainline
20 pilots at US Air?

21 A I believe that is correct. Yes.

22 Q Would you recognize an NB Air 190 if I showed you a
23 picture of it?

24 A I probably would.

25 Q Then I would love to do that. Let me distribute these.

1 And this will, perhaps, appropriately be called APA Exhibit
2 1.

3 A Thank you.

4 Q Is that an NB Air 190 aircraft?

5 A That's what it looks like.

6 Q I think sometimes when people think of regional
7 aircraft they conjure a different picture, and it's been one
8 of the points of contest sometimes between the company and
9 the union what nomenclature we use, regional aircrafts,
10 small jets, et cetera. I want to sort of move all that to
11 the side, use the regional jet terminology, but keep in mind
12 the kind of aircraft that we're talking about.

13 Do you know anything about the operating
14 characteristics of this aircraft referring to --

15 A Not in --

16 Q -- to its range?

17 A Not in any great detail. No.

18 Q Okay.

19 A I don't recall off the top of my head. I have them
20 somewhere in my files, but, no.

21 Q Sure. Okay.

22 But the -- you're aware that the U.S. Air mainline
23 pilots are flying this aircraft configured at eighty-eight
24 seats?

25 A Correct.

1 Q Okay. Now going back, then, to Exhibit 62, the bar
2 that you have on the right for American's proposal is
3 comparing its proposal for flying aircraft configured at
4 eighty-eight seats to these other carriers' ability to fly
5 aircraft outsourced at seventy-six seats, seventy seats, et
6 cetera, correct?

7 A Well, the 255 on the American bar would -- can include
8 anything from seventy seats up.

9 Q Okay. Which could all be eighty-eight seats if
10 American so choose under their proposal?

11 A Well, I -- again, I didn't look at their proposal so
12 I'm not sure. I don't know what the answer to that is.

13 Q Okay. Well, take a look at Footnote 116, and I'll give
14 you a minute to read that because --

15 A Okay.

16 Q -- that's where you refer to their proposal and I can
17 pass their proposal out, if you like, but I think you
18 accurately summarize it there.

19 A Yes. What I -- what I'm not clear on -- my
20 recollection is not clear on is whether all 255 could be of
21 the largest -- the eighty-eight seat variety.

22 Q Okay. Well, maybe what we should do then is go ahead
23 now and -- and refer to that proposal so that you can be
24 clear about what we're talking about. You -- throughout
25 this declaration you actually refer to the company's

1 February 1st, 2012 term sheet?

2 A Yes.

3 Q The final term sheet before the company moved for its
4 1113 relief was, in fact, a March 21st, 2012 term sheet.

5 Did you, by any chance, have an opportunity to look at that?

6 A No, I did not.

7 Q Okay. Well, American has put both these into evidence
8 and they are AA Exhibit 0914 for the February 1st term sheet
9 and AA Exhibit 0918 for the March 21st term sheet.

10 MR. DEAN: I don't have copies of those to
11 distribute. Is there a binder that the witness could use or
12 could he -- to look at those two term sheets?

13 MR. FLICKER: I'm sure that I have one.

14 MR. DEAN: If you can just -- you can either remove
15 it or --

16 THE WITNESS: I should have said yes.

17 (Laughter)

18 MR. DEAN: Yeah. No, I -- but since you referred
19 to it, I --

20 THE WITNESS: Yeah. Yeah.

21 BY MR. DEAN:

22 Q If you would then go ahead and turn to AA Exhibit 0918,
23 and I will represent to you that, in fact, over the course
24 of time between February 1st and March 12 (sic) the company
25 did not budge one inch on its scope proposal, so they are

1 identical insofar as the proposals that we're talking about
2 here.

3 MR. FLICKER: Can you tell us where we're looking
4 here?

5 MR. DEAN: Yes. Sure.

6 MR. FLICKER: Your Honor, I just want to make sure
7 the record is clear. If we're looking at 918, that is not
8 the current proposal in the 1113 case. So --

9 MR. DEAN: That is -- is that the proposal that
10 was current when you filed your 1113 motion?

11 MR. FLICKER: It is not the proposal that was
12 submit -- it's not the current proposal that was in effect
13 and provided to the union at the time of the hearing, which
14 I understand is the legal standard.

15 MR. DEAN: Okay. Well, we -- I think we differ on
16 the legal standard. Our understanding is that the proposal
17 that is relevant here is the proposal that they made and
18 negotiated --

19 THE COURT: How --

20 MR. DEAN: -- about with the union.

21 THE COURT: How -- I'm trying to understand why
22 that would be. I mean, there's -- there's been discussion
23 about people introducing evidence as to prior proposals in
24 -- in connection with the standard that I'm supposed to go
25 through. But, I mean, we could do this all day if we wanted

1 to go through every proposal and back and forth, and I -- I
2 don't know that that's really contemplated.

3 So what -- is there a material difference in -- in
4 regards to the questioning here, whether we're talking about
5 this proposal of March or we're talking about the subsequent
6 proposal?

7 MR. DEAN: There may be, Your Honor. The proposal
8 from March, I think, because, frankly, we have not focused
9 on that in the briefing since we don't believe that's the
10 relevant proposal --

11 THE COURT: But I don't have any --

12 MR. DEAN: -- for Your Honor.

13 THE COURT: -- briefing yet, so --

14 MR. DEAN: Right.

15 THE COURT: -- I mean, I'm not -- I'm not sure --
16 it's pretty clear that to the extent one side or another
17 wants to rely on different proposals it will be very quick
18 to see if -- if one sides highlight one proposal, somebody
19 else will highlight another proposal.

20 So if we're going to talk about it, we might as
21 well just get them all out at once if we're talking about a
22 particular term. So maybe somebody can proffer what the
23 relevant term is and then you can ask your question as -- as
24 you deem fit.

25 MR. DEAN: Okay.

1 MR. GALLAGHER: Your Honor --

2 MR. DEAN: I -- I just -- absolutely, if that's
3 the way Your Honor would like to proceed. My
4 understanding, and I can bring the people that -- who have
5 done that legal research up -- but was that precisely so
6 that you didn't get involved in a proposal that we would
7 hand today to the company or they would hand back that --

8 THE COURT: Well, I'm not -- I'm not asking the
9 question. You're asking the question.

10 MR. DEAN: Right.

11 THE COURT: Shouldn't you have asked about a
12 particular proposal. I'm not saying --

13 MR. DEAN: Yes.

14 THE COURT: -- you're not entitled to do that.
15 But I'm saying as soon as you do that, somebody else is
16 going to highlight another proposal. So I'm trying to cut
17 this off so we don't have warring things back and forth and
18 that way you can ask whatever question you want to ask and
19 we'll all talk later about why something is relevant or not
20 relevant.

21 So I'm not -- I'm just trying to not get bogged
22 down in the details of discussions about, well, we think
23 this proposal is relevant. Just tell me what the numbers
24 are and the different proposals that have been raised and
25 then you can ask your question.

1 MR. DEAN: Okay.

2 MR. GALLAGHER: Your Honor, if I may briefly, Jack
3 Gallagher again for the debtors.

4 I don't want to speak to this particular exhibit.
5 Mr. Flicker will handle that. But I do want to address the
6 broader point that Mr. Dean made about what proposals are at
7 issue in this proceeding.

8 Section --

9 THE COURT: Well, let -- let me do this. I don't
10 want to get bogged down with a witness on the stand about
11 what's relevant and what's not relevant. We can do that
12 when we don't have a witness on the stand either before or
13 after the trial day.

14 So why don't we just do this? I'll give you a
15 little bit of latitude to go where you want to go with this
16 proposal and we can -- we can -- we can talk about it later.
17 I'm just -- I'm just loathed to have a witness sitting on
18 the stand. And perhaps it's the former having done jury
19 trials. I'm just -- I'm just loathed to have extensive
20 colloquy about the legal issues. We'll be talking about
21 those for some time. And if we open the Pandora's box we
22 may never finish this witness.

23 So --

24 MR. DEAN: Understood.

25 THE COURT: So -- so go ahead. If there's an

1 objection, there can be an objection. We'll take it -- take
2 it from there.

3 MR. DEAN: Just to simplify what I would like to
4 do in light of Your Honor's views is to ask the witness
5 about the proposal; that he, in fact, agreed and that it's
6 the basis for the chart I'm asking him about.

7 THE COURT: That's fine.

8 MR. FLICKER: All right. Then the only objection,
9 and I'll make sure it's clear for the record, is that from
10 the debtors' position that's not the current 1113 proposal.

11 THE COURT: Fair enough.

12 MR. FLICKER: Thank you.

13 MR. DEAN: That's going to be Exhibit 0914 in the
14 book that you have in front of you.

15 BY MR. DEAN:

16 Q And if you flip to Page 6 of 7 of that exhibit you
17 will see the section on scope.

18 A I have it.

19 Q Great.

20 THE COURT: Did you say 6 of 7?

21 MR. DEAN: Page 6 of 7 in AA Exhibit 0914.

22 THE WITNESS: Paragraph 1(b)?

23 MR. DEAN: Yes.

24 THE WITNESS: Yes. I have it.

25 BY MR. DEAN:

1 Q Now having refreshed yourself on that --

2 A I have.

3 Q Okay. The proposal on the basis of which you created
4 this chart was that American could fly up to 255 eighty-
5 eight seat aircraft?

6 A That is what this 1(b) appears to provide or permit.

7 Q Okay. And that's how you described it in Footnote 116
8 of your declaration?

9 A All right. With -- well, without -- with no limit.
10 Yeah.

11 Q Okay.

12 A I think Footnote 116 is a little more ambiguous, but --
13 but I accept that that's what the agreement -- the proposal
14 appears to provide.

15 Q Okay. Except that it doesn't provide that they can fly
16 a maximum of 255, does it?

17 A That is not what the language says.

18 Q What does it say?

19 A It says, "the greater of 255 or fifty percent of the
20 total number of mainline aircraft."

21 Q And do you know roughly what American's number of
22 mainline aircraft is?

23 A I believe it is a little bit north of 600.

24 Q Okay. So fifty percent of that would be over 300?

25 A That would.

1 Q So --

2 THE COURT: What was the last -- would be --

3 MR. DEAN: Would be over 300.

4 THE COURT: Okay.

5 BY MR. DEAN:

6 Q So if this bar were to represent actually what American
7 was proposing that it be allowed to do, it should, in fact,
8 go up over the top of the chart at 300?

9 MR. FLICKER: Only an objection to the term what
10 American is proposing to allow to do.

11 THE COURT: Fair enough.

12 THE WITNESS: If -- if the number were 300, it
13 would be a taller bar. Yes.

14 BY MR. DEAN:

15 Q It would be off the top of the chart?

16 A Well, it would be at the top of the chart anyway.
17 There's 300 on the left-hand axis.

18 Q Right. But it would be over 300 that they were asking
19 for in the --

20 THE COURT: I --

21 MR. DEAN: -- exhibit that you're --

22 THE COURT: I think I got the point.

23 (Laughter)

24 MR. DEAN: Thank you, Your Honor.

25 BY MR. DEAN:

1 Q Now let me ask you, you have an average line here of
2 173 for the other large network carriers?

3 A Correct.

4 Q That -- that is also just a straight average?

5 A I believe it is. Yes.

6 Q And can you explain to me why the straight average was
7 a better way to do that than a weighted average?

8 A Well, because American has to compete with each of
9 these carriers. So the fact that -- each carrier has a
10 somewhat different circumstance, so the fact that one of
11 them may have more right now than another. The fact is if
12 -- US Airways, for example, has great flexibility in its
13 scope clause. I believe it's unlimited number of large RJs.
14 So it could -- it has to compete with each of these
15 airlines. They're all important competitors. Weighting is
16 -- is a reflection of what is today, not what they're
17 entitled to do and not competitively going forward, at
18 least, what's competitively critical.

19 Q I want to follow on that, but let me just address your
20 point about the US Airways scope clause. Did you review the
21 US Airways scope clause in preparation for your testimony?

22 A No, not recently.

23 Q Okay.

24 A I'm going off recollection.

25 Q Continental Airlines is still operating fenced off from

1 United Airlines, correct?

2 A Correct.

3 Q So the two pilot groups are still operating under
4 separate collective bargaining agreements?

5 A That's my understanding.

6 Q Do you know how many greater than seventy-seat aircraft
7 the Continental Airlines is allowed to outsource?

8 A I believe that they cannot outsource a seventy-seat
9 flier.

10 Q In fact, they can't outsource anything over the fifty-
11 seat flight?

12 A I believe their fifty-seats, their -- that's the
13 restriction that's applied is my understanding.

14 Q Is there any reason that Continental is not listed on
15 this chart?

16 A Well, they're part of United.

17 Q Except that they have not operationally merged with
18 United, correct?

19 A They have not operationally merged. That is correct.

20 Q The scope clause restriction that keeps them at -- from
21 being able to outsource anything greater than fifty seats,
22 was that restriction part of the 2005 -- or let me say that
23 was, in part, came out of the 2005 negotiation?

24 A I don't know. I don't recall.

25 Q Okay. But it's -- it -- it certainly continued after

1 the 2005 negotiation that you referred to earlier in your
2 testimony?

3 A That's my understanding. Yes.

4 Q Okay. And after 2005, when they went through that
5 difficult negotiation in the wake of other airlines having
6 restructured, and they came out with that restriction, going
7 forward were they a successful airline?

8 A Continental?

9 Q Yes.

10 A Continental was -- was -- did reasonably well over that
11 period certainly compared with some others.

12 Q Let's turn to Exhibit 63. This exhibit is intended to
13 represent the percentage of mainline fleets that the number
14 of regional outsourced aircraft is equal to?

15 A Let me just read the title and make sure: "Percentage
16 of Mainline Fleet Large Network Carriers, Seventy-Seat or
17 Larger RJs." Yes. It's a percentage of that. Correct.

18 Q Now I want to ask you about, again, the bar that you
19 have for American's proposal. You have put that bar at
20 thirty-six percent. Based on our review of the February 1st
21 proposal that you reference in the notes to the chart, can
22 we agree that that should be fifty percent?

23 A If it would be 300 airplanes, that would be fifty
24 percent. Yes.

25 Q Okay. So, again, that's going to bust your chart?

1 A It would raise the ceiling.

2 Q You -- in the lead in to this chart you say, "Under its
3 proposal, the proportion of large RJs in American's fleet
4 would be comparable to proportions of Delta and US Airways."
5 That was based on the thirty-six percent?

6 A Correct.

7 Q I'm going to turn very briefly to the company's
8 proposals on domestic code-sharing, and I think to be quite
9 sure that I understand that you did not review those in
10 detail?

11 A That is correct.

12 Q And you're not aware of what the pilots have proposed
13 for domestic code-sharing?

14 A No. I'm aware of what's in the agreement, but not the
15 proposals.

16 MR. DEAN: Nothing further.

17 THE COURT: All right.

18 MR. SHERWOOD: Good afternoon, Your Honor. Jack
19 Sherwood from Lowenstein Sandler for the TWU.

20 CROSS-EXAMINATION

21 BY MR. SHERWOOD:

22 Q And good afternoon, Mr. Kasper.

23 A Mr. Sandler. Mr. Sherwood, excuse me.

24 Q Mr. Kasper, one of the documents you reviewed was the
25 1113 motion itself, right?

1 A Yes. I believe I did look at that.

2 Q And you're aware that under the 1113 motion filed by
3 the debtors a substantial number of TWU jobs -- TWU jobs
4 will be lost, right?

5 A That's my understanding.

6 Q You're aware that under -- and under the terms of the
7 motion I believe the number is 6,560 jobs, but we contend
8 that it's more like 9,000, correct?

9 A I don't know what your contention is, but that was the
10 6,500 in round numbers. Yes.

11 Q And you're aware, are you not, that this job loss will
12 occur largely due to outsourced labor; is that right?

13 A That's my understanding, with outsourced maintenance.

14 Q Okay. Now in your experience when other airlines
15 outsource work, a lot of that outsourced work is performed
16 by laborers in other countries; is that right?

17 A I think that historically there has been -- some of
18 that work has shifted offshore. I think that would be fair.

19 Q And do you know what American's intentions are with
20 respect to offshore outsourcing in the context of this
21 motion?

22 A I do not.

23 Q And it's also your understanding, is it not, that
24 outsourced maintenance is not always less expensive than
25 work done by labor in-house?

1 A Well, I think the expectation would -- on the company's
2 part would be -- if it does that would be either that it
3 would be cheaper or better or both. But I -- I suspect that
4 that's not always proved to be the case.

5 Q The question was simply are there cases where
6 outsourced maintenance is not necessarily less expensive
7 than maintenance done by labor in-house, yes or no?

8 A Well, I don't know specifically, but it wouldn't
9 surprise me.

10 Q So if it -- it wouldn't surprise you that the
11 outsourced maintenance actually cost more than the work
12 that's done by the employees of the airline in-house,
13 correct?

14 A Well, I'm not saying it would -- it would in this case,
15 but it wouldn't surprise me as a general proposition if that
16 had happened.

17 Q Now in your report you performed productivity analysis
18 for both the pilots and the flight attendants, right?

19 A Yes.

20 Q And I think you testified on -- on direct that you did
21 not do productivity analysis for the seven employee groups
22 represented by the TWU, correct?

23 A I think what I testified was that I had not done cost
24 comparisons for those groups.

25 Q Did you do productivity analysis for those groups?

1 A I did not do anything that I would call a formal
2 productivity analysis for other groups.

3 Q Did you do an analysis in your report on the cost of
4 maintenance labor at American versus other airlines?

5 A No.

6 Q And have you done an analysis of whether or not the
7 loss of the 6,560 or 9,000 TWU jobs will save the airline
8 any money?

9 A I have not.

10 Q Could you turn to Exhibit 49 of your declaration, which
11 is on Page 72?

12 A Yes. I have that.

13 Q Now I believe this -- this exhibit, which is called
14 "Labor costs as a proportion of revenue," Do you see that?

15 A Yes, I do.

16 Q And this purports to show that American has the -- is
17 the highest, correct?

18 A Correct.

19 Q Now in -- when you speak of labor in that exhibit, does
20 that -- do those labor costs include both union and non-
21 union labor?

22 A Yes.

23 Q And now can you turn to Exhibit 42 on Page 65 of your
24 report?

25 A Yes.

1 Q And this is another -- another chart that's supposed to
2 support the conclusion that the labor costs at United are
3 among the highest in the industry for fiscal year ending
4 third quarter 2011, right?

5 A For American, yes.

6 Q Correct. Thank you.

7 Now in this -- in this chart does labor costs
8 include both union and non-union labor?

9 A Yes, it does.

10 Q Okay. And is it true that stage length is not factored
11 into the analysis in Exhibit 42?

12 A That is correct.

13 Q And you -- you -- I think you testified before, or
14 someone explained before, that stage length can have an
15 effect on the CASM cost per available seat -- cost per
16 available seat mile, correct?

17 A Correct.

18 Q And that's because sometimes airlines that fly longer
19 flights would have a lower CASM, correct?

20 A It -- they would have a lower reported CASM. That is
21 correct.

22 Q But that's not taken into account in Exhibit 42,
23 correct?

24 A This one takes the actual reported CASMs. It just --
25 it's not adjusted.

1 Q Correct.

2 Now let me ask you quickly about your report
3 Paragraphs 118 and 119.

4 A Yes.

5 Q Now --

6 THE COURT: What page you on, Counsel?

7 MR. SHERWOOD: Your Honor, it is 99 and 100.

8 THE COURT: Thank you.

9 BY MR. SHERWOOD:

10 Q Now these paragraphs deal with the CBAs of the TWU and
11 they relate to aircraft maintenance, right?

12 A Correct.

13 Q Okay. Now isn't it true, though, that you conclude --
14 your -- your statements in these two paragraphs are based
15 only on the analysis of Mr. Brundage, correct?

16 A This is -- as the footnote says I'm relying for this --
17 this point on Mr. Brundage. That is correct.

18 Q Okay. And it's also true that you did not do any
19 independent research yourself to verify whether or not Mr.
20 Brundage's conclusions were right or wrong, correct?

21 A Correct.

22 Q Now would you agree that laying off workers is not the
23 only way that an airline can save money on labor costs?

24 A I would agree with that as a general proposition. Yes.

25 Q And you would agree that -- that there are

1 alternatives, such as changes in work rules or reduction in
2 compensation as a means or as means to reduce labor costs,
3 correct?

4 A Those could be means to do the same -- to do that.
5 Yes.

6 Q I think on direct you spoke about a proposed merger
7 between Delta and US Air. Do you recall that testimony on
8 direct?

9 A I made reference to the fact, I believe, yes, that --
10 that US Air had made a proposal to merge with Delta.
11 Correct.

12 Q Okay. And just -- that -- that -- that testimony on
13 direct wasn't in your declaration, was it?

14 A That is correct.

15 Q Do you know whether Delta and US Air merged or not?

16 A Yes, I do know the answer to that question.

17 Q And the answer is?

18 A No.

19 Q Okay. Do you know why those discussions didn't result
20 in a successful merger?

21 A Well, I'm sure there were a number of reasons, not
22 least among them was the opposition of Delta's management
23 group and -- and, ultimately, its creditors' committee.

24 Q Do you know whether in the context of those discussions
25 there was an agreement in place concerning the integration

1 of labor groups from one airline to the other?

2 A Not that I can recall.

3 MR. FLICKER: We would object, Your Honor. This
4 is beyond the scope of direct.

5 THE COURT: Where are we going with this, Counsel?

6 MR. SHERWOOD: That was -- that was the last --

7 THE COURT: All right.

8 MR. SHERWOOD: -- question I --

9 THE COURT: Well, if it's the last question,
10 that's -- all right. That buys you an answer to that
11 question.

12 (Laughter)

13 MR. SHERWOOD: Can -- can I -- can I -- can the
14 witness just repeat the answer?

15 THE WITNESS: I said, not that I recall.

16 BY MR. SHERWOOD:

17 Q Okay. So you do not recall whether or not, in the
18 context of the Delta and US Air negotiations, there was --

19 A I don't believe there was --

20 Q -- an agreement between the labor groups.

21 A I do not believe there was.

22 Q Okay. All right. Now I just have a few questions more
23 about -- and I'm going to start with Exhibit 30.

24 MR. SHERWOOD: I don't know what page that's on,
25 Your Honor. I'll try to find it quickly.

1 (Pause)

2 THE COURT: Page 49.

3 MR. SHERWOOD: Thank you.

4 BY MR. SHERWOOD:

5 Q Now, Your Honor -- I'm sorry. Mr. Kasper, Exhibit 30,
6 that shows that both United and Delta have larger networks
7 than American; is that right?

8 A Correct.

9 Q And it compares the size of the networks presently to
10 the size of the networks in 2002, correct?

11 A That's correct.

12 Q And if you look at 2002, American was the biggest one
13 with 263 shares, correct?

14 A Yes.

15 Q And you see that -- that Delta, Northwest, United and
16 -- and Continental, on a stand-alone basis, were all behind
17 American, right?

18 A That's correct.

19 Q But due to mergers, you have United, Continental and
20 Delta now ahead of American, right?

21 A That is correct.

22 Q And I -- I believe that -- that you would agree, would
23 you not, that the Delta and United mergers created bigger
24 networks than exist presently at American, correct?

25 A I would -- I would agree with that.

1 Q And you would agree that those mergers were beneficial
2 to their -- those airlines?

3 A I think so far they've worked out reasonably well for
4 the carriers.

5 Q And is it your general belief that -- that mergers are
6 -- in the history, based on your -- your knowledge of the
7 industry that mergers have been beneficial to the parties?

8 A I think that's probably a bridge too far. No. I would
9 not agree with that as a general proposition.

10 Q Would you -- would you agree with it as a proposition
11 in the case of United Continental and Delta?

12 A I think thus far, as I said, those -- those two have --
13 they look very beneficial for those parties.

14 Q And it's your understanding, is it not, that American
15 will be competing with United and Delta in the future,
16 correct?

17 A With any luck in a successful reorganization.

18 Q And in the -- in the context of that competition, will
19 -- will it be important for American to increase its
20 network?

21 A I believe it will. Yes.

22 Q And I think you've said on -- on direct that a network
23 carrier likes a larger footprint because it enables the
24 carrier to attract highly valued business customers?

25 A That is correct.

1 Q Now would it be your understanding that a larger
2 network would enable an airline to absorb costs better than
3 a smaller network?

4 A Absorb costs. Well, I think the -- you know, I --
5 there has been no doubt that mergers have increased costs
6 and, usually, the rub on the mergers is there -- there are,
7 what an economist would call labor disynergies; that is, it
8 will tend to increase some costs, including labor costs.
9 And if the merger is going to turn out to be a win, it's
10 going to have to increase revenues more than it increased
11 costs. So -- and some mergers have run afoul of not being
12 able to do that. These last two we've talked about so far
13 seem to have overcome that hurdle. But that hasn't always
14 been the history of mergers in this business. Often, it's
15 not.

16 Q But -- but at least in the case of the United
17 Continental merger, by virtue of the merger they have been
18 able to absorb higher labor costs and be profitable?

19 A Well, but recall, that's a little bit tricky because
20 what happened is United and Continental -- well, first of
21 all, Continental had gone through two bankruptcies and a
22 negotiated concessionary agreement. United had gone through
23 a bankruptcy and had sharply reduced its labor costs through
24 the 1113 process. So both of them came together with very
25 low labor costs compared to -- to where they were before the

1 restructuring and compared to their competition.

2 So to the extent that -- that they had gone from
3 being among the -- United certainly had gone from being the
4 highest cost carrier, labor costs, to the lowest or one of
5 the lowest. You know, in that sense the -- there's a better
6 chance that -- that they could -- if they get the revenue
7 synergies that even if their costs go up somewhat, they're
8 still going to be ahead of the game. That's not the
9 situation here, I think, as we all understand.

10 Q Well, are you saying that -- that before the United
11 Continental merger, Continental had low labor costs?

12 A Well, Continental -- Continental went through two
13 bankruptcies and a negotiated concessionary agreement. They
14 were not as low as United's costs, but the two together,
15 given, you know, United's size, I think ended up with the
16 carrier that had the expectation of having reasonably good
17 costs relative to its revenue generating potential, which is
18 always the trick. It's not just low costs. It's relative
19 to their revenue generating potential.

20 Q But -- but didn't you testify earlier that, at least
21 with regard to the flight attendants, that the Continental
22 flight attendant costs were higher than those of American?

23 A Continental's flight -- by that metric, that one metric
24 their flight attendants' costs were higher.

25 Q Do you know whether -- whether the mechanics, for

1 example, at United make more or less than the mechanics at
2 American?

3 A Not off the top of my head. No.

4 Q Let me just ask, you indicated that you -- you
5 indicated that you've testified in four 1113 cases
6 previously: United, US Air II, Delta and Northwest. Do you
7 recall that?

8 A I do.

9 Q Was -- was the testimony in each of those cases on
10 behalf of the airline?

11 A It was.

12 Q So this is the fifth time you're testifying in an 1113
13 case on behalf of the airline against the unions; is that
14 right?

15 A On behalf of the airline, yes.

16 MR. SHERWOOD: I have nothing further, Your Honor.

17 THE COURT: All right.

18 MR. SHERWOOD: Thank you.

19 THE COURT: Thank you.

20 MR. GOFFMAN: Your Honor, we don't have any cross-
21 examination.

22 THE COURT: All right.

23 MR. FLICKER: I think I've got one piece of
24 redirect, Your Honor.

25 Can we bring up Exhibit 62 and 63 side by side?

1 REDIRECT EXAMINATION

2 BY MR. FLICKER:

3 Q And, Mr. Kasper, I think I'll -- I'll go ahead and
4 direct you to Page 86 of your declaration, which is where 62
5 is.

6 A Thank you.

7 Q You will recall Mr. Dean was asking you, I believe, a
8 question about where the bars on this chart would go for
9 American's proposal?

10 A Yes.

11 Q Is that correct? Now do the other airline bars on
12 these charts reflect what the scope clauses permit in the
13 collective bargaining agreements for these airlines or what
14 is their actual flying?

15 A This is actual flying.

16 Q And if you actually reflected what the scope clauses
17 would permit in the other airlines compared to American's
18 proposal, do you have a view as to whether the other bars
19 would go, as you said, off the chart?

20 A Well, several of them would go -- would go off -- up
21 substantially, maybe off the chart.

22 Q If I could refer you to Footnote 114 on Page 85. Does
23 that refresh your recollection of which ones --

24 A Yes.

25 Q -- might go off the chart? And what --

1 A It does.

2 Q -- are they?

3 A That footnote indicates that United, excluding
4 Continental, has unrestricted use of seventy-seat RJs in its
5 express operations. Delta has 255, which is what is shown.

6 Q Okay.

7 MR. FLICKER: That is all I have, Your Honor.

8 Thank you.

9 THE COURT: All right.

10 MR. DEAN: Very briefly, Your Honor.

11 RECROSS-EXAMINATION

12 BY MR. DEAN:

13 Q You note that in Footnote 114 you testified that United
14 has unrestricted use of seventy-seat RJs in its express
15 operation?

16 A That's my understanding. Yes.

17 Q And is your understanding based on the work of Jerry
18 Glass or something else?

19 A No, that isn't. I had done some previous testimony or
20 work for United on scope clause issues and I think it was
21 based on that. But I don't know whether Jerry Glass has a
22 similar number or not.

23 MR. DEAN: I think what the -- what the union will
24 do is reserve its questions on this to Jerry Glass who has
25 recently read the United scope clause.

1 THE WITNESS: Thank you.

2 THE COURT: All right.

3 MR. DEAN: Thanks.

4 THE COURT: Anything else of this witness?

5 (No verbal response)

6 THE COURT: All right. You are excused. Thank
7 you very much.

8 THE WITNESS: Thank you, Your Honor.

9 THE COURT: All right. It is five to five so we
10 can call the next witness.

11 MR. GALLAGHER: The company would call Jerrold
12 Glass, Your Honor.

13 (Pause)

14 THE COURT: All right. If you would swear the
15 witness.

16 THE CLERK: Would you please raise your right
17 hand?

18 (Witness Sworn)

19 THE CLERK: Would you please state and spell your
20 name for the record?

21 THE WITNESS: Jerrold A. Glass, spelled
22 J-E-R-R-O-L-D, last name G-L-A-S-S.

23 DIRECT EXAMINATION

24 BY MR. GALLAGHER:

25 Q Good afternoon, Mr. Glass.

1 A Good afternoon.

2 Q Where are you currently employed?

3 A I am employed at F&H Solutions Group, in Washington,
4 D.C.

5 Q And what is the business of F&H Solutions?

6 A We're a consulting firm that specializes in labor
7 relations and human resource matters on behalf of management
8 with a focus on the airline industry.

9 Q Okay. And how many employees does F&H Solutions have?

10 A We have fourteen professional staff and two support
11 staff.

12 Q And what is your position with F&H Solutions?

13 A I'm president of the company.

14 Q And how long have you been an airline consultant?

15 A I went into business for myself in September of 1989
16 and except for a brief stint at US Airways, which I'll
17 discuss, I've been doing that work since September of 1989.

18 Q And so how long have you been in the airline industry?

19 A I've been in the airline industry thirty-two years. I
20 started out for an -- working for an organization called the
21 airline industrial relations conference. It's called Air
22 Conference, and they're the labor policy organization and
23 information organization of the U.S. scheduled airlines and
24 that's a membership organization.

25 Q Okay. And is American Airlines a member -- was it a

1 member of Air Conference?

2 A Yes, it was.

3 Q Okay. And at the time you were employed there?

4 A Yes.

5 Q And what work did you do at Air Conference?

6 A I started out as director of labor relations research.
7 I ended up about midway through there becoming an executive
8 director and vice-president.

9 My work as director of labor relations research
10 involved the compilation and the comparison of collective
11 bargaining agreements among the member carriers as well as
12 other carriers. And we put together what was at that time
13 called negotiator's handbooks that would help negotiators
14 look at pay, work rule and benefit provisions as they were
15 bargaining with their respective employee groups.

16 Q And was -- were these notebooks for any particular job
17 group like pilots only?

18 A No. They were -- we did them for all major work
19 groups, pilots, flight attendants, mechanics, fleet service,
20 agents and dispatchers.

21 Q What are fleet service?

22 A Well, different airlines call -- have different titles.
23 They are sometimes referred to as ramp agents, baggage
24 handlers, although they do more than just baggage work. But
25 it's basically agents are divided, in industry jargon, in

1 what's called above the wing and below the wing. Above the
2 wing are usually station agent, gate agents, and below the
3 wing are usually the fleet service or the ramp personnel.

4 Q And the above the wing agents generally work indoors
5 and the ramp agents generally work outdoors?

6 A Correct.

7 Q Okay. Now after you left Air Conference did you
8 continue to do the same kind of analysis?

9 A After I left Air Conference I started my own business
10 at that time called J. Glass and Associates, and the
11 business, again, focused on airline labor and employee
12 relations. And we tended to focus in much more on specific
13 comparisons, specific analysis, cost comparisons and -- and
14 it was at that time that I started negotiating collective
15 bargaining agreements in the airline industry, which now
16 probably a number of about 100 different airline
17 negotiations in which I was first chair.

18 Q Well, who were your clients at J. Glass and Associates?

19 A My clients were what at that time were known as major
20 airlines, now network or legacy carriers, regional airlines,
21 cargo carriers, every -- every segment of the airline
22 industry.

23 Q All right. Were there any non-airline clients?

24 A Initially, there were not, but over time, yes. I
25 expanded into railroads and specifically represent a number

1 of commuter railroads, many of which are in the New York
2 metropolitan area. I represent eight different commuter
3 railroads and -- and my business then expanded outside of
4 transportation as well.

5 Q Okay. And does F&H Solutions do the same or similar-
6 type work to your predecessor organization, J. Glass and
7 Associates?

8 A Yes.

9 Q All right. And can you briefly summarize what that
10 work is for these various clients?

11 A We do a number of things. First and foremost, we do
12 contract negotiations where -- where myself or one of my
13 colleagues will serve as a chief negotiator. There have
14 been occasions where we have been on the negotiating
15 committee, but not served on -- as first chair, although
16 that's quite rare.

17 We also provide strategic advice to companies in
18 terms of their labor relations, specifically in terms of how
19 to reach an -- how to reach agreements. I would say that in
20 my career I'm probably most proud of the fact that I -- at
21 least I -- and I always say this, knock on wood, that I have
22 never had a strike one way or another. We've been able to
23 reach agreements without disruptions in service and that's
24 something I'm very proud of.

25 Q Uh-huh. Well, apart from negotiations do you do any

1 analysis or reporting of contract terms?

2 A We do. We do a tremendous amount of -- of contract
3 comparisons on behalf of carriers. One of my colleagues
4 also works on building labor models, cost models. While I
5 do not do costing myself, through my hundred-plus
6 negotiations I've got a -- I think a very good understanding
7 of how costing is done at the airlines and what -- what is
8 reasonable and what is not reasonable in terms of
9 assumptions.

10 Q And do you, as part of your services, evaluate the
11 impact of various contract terms or proposals of a
12 particular airline?

13 A We do. We will explain to our clients, the
14 managements, the impact on their operations of a particular
15 provision. Generally, that would be in the work rule area
16 or impact potentially agreeing to certain scope provisions.
17 And, through, you know, my thirty-plus years of experience
18 I've -- I've had the occasion where, you know, I have
19 firsthand experience with provisions that were negotiated
20 and what the impact of -- of -- of the particular provisions
21 turned out to be for a -- for an airline.

22 Q Now I want to clarify the chronology of your job
23 history, Mr. Glass. From -- did I understand from 1980 to
24 '89 you worked for Airline Industrial Relations Conference?

25 A Correct.

1 Q And from 1989 until when were you at -- a consultant?

2 A From September of 1989 until March of 2002 I was with
3 my consulting firm, and then in March of 2002 I went to US
4 Airways as the senior vice-president of employee relations.
5 My initial responsibility when I went to US Airways was to
6 work on the restructuring of the labor agreements, but about
7 three or four months into this stint I also picked up human
8 resources and then eventually was executive vice-president
9 and chief human resources officer at US Airways until --
10 until the end of September of 2005, which was the date the
11 US Airways and America West merger was closed.

12 Q And was that also the date that US Airways emerged
13 from its second bankruptcy?

14 A Yes.

15 Q So you were at US Airways through their -- both of
16 their bankruptcies in the early part of this -- of the last
17 decade?

18 A Yes, I was.

19 Q And were you the senior executive responsible for labor
20 relations issues at US Airways during that time?

21 A I was.

22 Q And responsible for all collective bargaining?

23 A Yes.

24 Q Were you personally involved in the bargaining?

25 A I was.

1 Q At all groups?

2 A No. I -- I -- I served as the chief negotiator for the
3 first three rounds of pilot negotiations. I was also in and
4 out of flight attendant and mechanic negotiations. And then
5 in the second bankruptcy, because of -- of how utterly
6 desperate the situation had become, the CEO and I elected
7 that I would not be at the table on a regular basis and I
8 over -- I had to oversee all of the negotiations which were
9 going on simultaneously. So it just would have been
10 impossible for me to be everywhere.

11 Q Did you personally negotiate the pilot scope clause at
12 US Airways?

13 A That I did.

14 Q All right. And I believe you've already testified
15 you've negotiated other airline labor agreements; is that
16 correct?

17 A That's correct.

18 Q And do you currently perform services for airlines
19 other than your representation of American here today?

20 A Yes, I do.

21 Q What services do you perform?

22 A Well, again, we -- we do collective bargaining. We do
23 comparative analysis on contract terms. If we're hired,
24 we'll do costing. We'll advise companies on operational
25 impacts of provisions. We also have been involved in

1 numerous due diligence assignments, whether there be a
2 potential merger or working for a private equity firm that
3 was interested in either acquiring an airline or making an
4 investment into an airline.

5 Q All right. What sources of information do you use in
6 doing your research and analysis in comparison?

7 A Well, of course, we use the collective bargaining
8 agreements. We use accompanying documents, letters of
9 agreement, benefit handbooks, employee policies. I also use
10 my thirty-plus years of experience which some might say is
11 good or bad, depending on who you're asking. So that's --
12 you know, that's really the bulk. And -- and, obviously, as
13 a student of this industry I'm a vociferous reader. I try
14 to read as much as possible as to what's going on, what
15 trends are -- are occurring. Even if I'm not involved in
16 the negotiation, I'll get my hands on the collective
17 bargaining agreement and try to go through it, understand
18 it, even -- even call the airline and the people I know
19 there if there's something I'm not sure of or -- or need
20 clarification on.

21 Q Okay. Have you ever been retained as a witness on
22 behalf of a union?

23 A Yes, I have.

24 Q All right. Have you ever testified as an expert
25 witness?

1 A I have.

2 Q And in -- have you testified as an expert witness in
3 this court?

4 A Yes, I have, although the Court did not look this good
5 at the time that I did that.

6 (Laughter)

7 Q And -- and that was in the Com Air bankruptcy
8 proceedings, correct, as --

9 A That --

10 Q -- part of the Delta reorganization?

11 A That is correct.

12 Q All right.

13 MR. GALLAGHER: Your Honor, at this point I would
14 tender Mr. Glass as an expert witness on the subject of
15 airline labor relations and collective bargaining, including
16 the analysis of contract -- labor contract terms.

17 THE COURT: All right. Any objection?

18 MR. JAMES: No objection.

19 THE COURT: All right. He is -- his testimony
20 will be received as an expert in those areas.

21 MR. GALLAGHER: Okay.

22 BY MR. GALLAGHER:

23 Q Mr. Glass, do you have your declaration and exhibits in
24 front of you?

25 A I do.

1 Q All right. And you did prepare and submit to the
2 Court, both an original declaration and a first and second-
3 amended declaration and 30 exhibits, along with that
4 declaration, did you not?

5 A Yes, I did.

6 Q And do you adopt and incorporate that second-amended
7 declaration and 30 exhibits as your testimony, here, today?

8 A I do.

9 MR. GALLAGHER: All right. With that, Your Honor,
10 I'm tempted to try to repeat some of the direct, but in
11 light of the hour and in light of our efforts, I will --

12 THE COURT: My thought is if you want to give it a
13 few minutes, but I think we don't need an hour on it. So,
14 if you want to get through the highlights in say, 15
15 minutes, that would be fine, but I'll leave it to you.

16 MR. GALLAGHER: I would rather pass the witness,
17 Your Honor.

18 THE COURT: All right. I won't object to that
19 either.

20 MR. GALLAGHER: Thank you.

21 MR. JAMES: Your Honor, Edgar James.

22 I just have a few questions, but Mr. Dean probably
23 has more on a separate subject matter area.

24 CROSS-EXAMINATION

25 BY MR. JAMES:

1 Q Mr. Glass, as I understand your declaration, the gist
2 of it is to say that airlines got to get the labor cost
3 reductions right when they do an 1113. You don't want to do
4 it again?

5 A That's part of the declaration, yes.

6 Q And would you disagree with Ms. Goulet, who says in her
7 declaration, that what American Airlines got from the
8 employees in 2003 was the labor cost reduction equivalent of
9 US Air, one, and the first round of 1113 at Cont- -- at
10 United? Or do you know what American got in 2003?

11 A Well, I know, generally, what they got in 2003. If
12 you're comparing -- and just so I'm sure I understand the
13 question -- you're comparing American's RPA, the
14 Restructuring Participation Agreement, to the first US
15 Airways bankruptcy. Is that --

16 Q Ms. Goulet testifies that --

17 MR. JAMES: Can I have a copy? It's right by your
18 feet.

19 BY MR. JAMES:

20 Q She says in paragraph 21: The labor cost reductions
21 which American obtained in 2003 were parallel to those US
22 Air had obtained in its first bankruptcy.

23 A You know, I don't know precisely -- maybe for some
24 groups and maybe not for some others.

25 MR. JAMES: It's paragraph 21.

1 THE COURT: Twenty-one?

2 BY MR. JAMES:

3 Q She said the labor cost reductions, which American
4 obtained at that time, were parallel to those US Air had
5 obtained in its first bankruptcy, and United was then
6 seeking from its Union represented employees, early on in
7 the bankruptcy, but you don't know?

8 A I mean it's very possible, at that moment in time, they
9 may have been about the same.

10 Q Okay.

11 A I don't think that was the case universally, but as a
12 general statement, I have no reason to disagree with that.

13 Q And why do you think that's the case universally --
14 what do you know about the 2003?

15 A At US Airways?

16 Q At American.

17 A I know that the Restructuring Participation Agreement
18 focused largely on pay, large pay reductions and reductions
19 in vacation -- you know, direct costs to the bottom line,
20 and that, generally speaking, work rules were largely
21 untouched.

22 Q Do you understand that American said to the pilots that
23 they wanted \$660 million a year for five years and they
24 could take it any way they want as long as they gave them
25 labor cost reductions of 660 million?

1 A Yes.

2 Q You've not reviewed in this proceeding any of the APA
3 proposals since February, have you, the 1113 counters by the
4 Union?

5 A No, that's not entirely accurate. As part of the work
6 that I did, and to try and be as thorough as possible and
7 understand what was going on, I had conversations with each
8 management negotiating committee and their finance people to
9 try and understand how they were costing out the proposals.
10 And having shared with me their cost outs of their proposals
11 and the Union's proposals, and I think in one or two
12 instances, I was shown costing of the Union's proposals by
13 the Union.

14 Q Did you do any costing on your own?

15 A No, I did not.

16 Q And when you were asked in your deposition, did you
17 look at any of APAs proposals and 1113 negotiations in
18 arriving at your opinion, you said, "I don't believe so."

19 Do you recall making that statement?

20 A If it's there, I made it.

21 Q So you didn't do any costing of APA's proposals, of the
22 company's proposals, at arriving at your opinion?

23 A No, I did not.

24 Q You talk in paragraphs 83 to 86 about the virtues of
25 pay banning. Do you recall that?

1 A If you hang on just one second and let me pull it up.

2 Q Sure.

3 THE COURT: What page are you on, counsel?

4 MR. JAMES: You know, let me check, Your Honor.
5 Paragraph 83 is on page 47.

6 THE COURT: Forty-seven.

7 THE WITNESS: Yes, I have that in front of me.

8 BY MR. JAMES:

9 Q Are you aware that AP has accepted pay banning?

10 A I believe I am, actually.

11 Q Are you aware that APA has, in fact, accepted many of
12 the items you go through in your declaration?

13 A I'm happy to know that they've accepted a number them,
14 I am.

15 Q Thank you. So am I.

16 You expressed the opinion that there are too many
17 pay bannings that American's proposing in your -- let me
18 look at your paragraph -- paragraph 86. It results in more
19 pay ban groupings than all of the comparative groups, except
20 Delta.

21 A That's correct.

22 Q Except two of those are fan of pay bannings, aren't
23 they? There are no large RJs on order or on the ground at
24 American Airlines?

25 A No, but if there were, they would be effective. And

1 since they're negotiated, I would have to consider those
2 as -- if you negotiate them and you end up with those
3 aircraft, you're obligated to pay those rates.

4 Q But are these negotiations -- this is American's term
5 sheet -- it's been in their term sheet.

6 A I'm sorry, could you --

7 Q The pay banning has been in American's -- it's
8 American's term sheet?

9 A Yes.

10 Q Okay. Let me just ask you about one statement you make
11 about -- if you look at your chart, it's Exhibit 812 on page
12 60, and if you turn to that page 60, you're looking at
13 American, the pilot monthly schedule max.

14 You see that?

15 A Yes, I do.

16 Q And on the next page you make the statement, "That's a
17 critical factor in American's low pilot productivity."

18 A Yes.

19 Q Would you say it's a main factor?

20 A Is it -- I'm sorry, what?

21 Q Is it a major factor?

22 A It's a major factor in combination with other work
23 rules. One of the critical pieces of examining work rules
24 is not just looking at one specific item, but understanding
25 the relationship between all of them.

1 Q I agree with that.

2 But Delta has lower productivity with a higher
3 max, does it not?

4 A I'm not aware of that, no.

5 Q Can you pull Kasper's Exhibit, I believe it's Kasper's
6 Exhibit 54.

7 MR. JAMES: We have extra copies of it everywhere,
8 if you need it.

9 THE COURT: I have it, thank you.

10 BY MR. JAMES:

11 Q I don't have a page number -- page 77.

12 You see this is estimated block hours per pilot?

13 A Yes, I do.

14 Q Let's take a look at this.

15 If you compare it with your prior chart where
16 Delta has 11 hours higher monthly max, on your chart 812,
17 yet their productivity is lower.

18 On Dan Kasper's chart, he has American pilots fly
19 49.6 hours; Delta flies 47.3.

20 Do you see that?

21 A I do.

22 Q And United is a 50.7 and US Air is at 50.3 --

23 A I see that.

24 Q -- despite having radically higher monthly max,
25 correct?

1 A Uh-huh.

2 Q And the point is that there are many factors that play
3 into it. It's not -- the monthly max is a --

4 A Oh, I'm sorry.

5 Q No, go ahead.

6 A No, you're correct. There are many factors, and also
7 as Mr. Kasper testified, this is one of a number of
8 measurements. Based on my knowledge of the industry, my
9 knowledge of certain of these carriers, I would take issue
10 with the numbers that were reported to DOT.

11 Q Because you think the air con data, there are
12 inconsistencies in the way airlines report?

13 A Well, there are. I mean, unfortunately, you know, this
14 is publicly available data and it's basically all people
15 have to look at, but the fact of the matter is that as this
16 is an example, I can tell you that this is -- I would tell
17 you -- not close to being accurate with respect to the
18 carriers that I have firsthand knowledge of.

19 Q Would you like to do cross-examination for some of the
20 witnesses?

21 A Mr. James, you asked me a question. I'm sorry, I just
22 answered it as best I know it.

23 Q I'm sorry.

24 Are you aware that APA has offered the company 90
25 hours, that pilots could pick up, up to 90 hours per month,

1 on a rolling 12-month average?

2 A There's a difference between picking up to 90 and being
3 scheduled to 90, so I'm not sure of which APA has proposed.
4 There's a pretty significant difference in the nomenclature
5 that you're using if it's picked up versus scheduled.

6 Q Okay. We'll go through other witnesses when the
7 company puts them, puts on their witnesses about scheduling.

8 Thank you.

9 A Thank you.

10 THE COURT: Mr. Dean?

11 CROSS-EXAMINATION

12 BY MR. DEAN:

13 Q Good afternoon, Mr. Glass.

14 A Good afternoon, Mr. Dean.

15 How are you?

16 Q I'm good.

17 How are you doing?

18 A Very well, thank you.

19 Q Before today, you've never testified on scope issues at
20 any court proceeding?

21 A That's correct.

22 Q So, you've never been qualified as an expert in court
23 on scope issues?

24 A Well, I've never been in court just on scope issues. I
25 think, as you know, I've testified numerous times in

1 interest arbitrations on scope, and I'm fairly comfortable
2 with the issue.

3 Q Your assignment from AA in this case was to compare
4 AA's February 1st, 2012, 1113 scope proposals to the clauses
5 and other major airline CPAs insofar as you were considering
6 AA scope proposals; is that right?

7 A No, not entirely.

8 Q Okay. Tell me where I'm wrong.

9 A You limited it to February 1st proposals. I've looked
10 at subsequent proposals that have been made by American in
11 the 1113 proceedings.

12 Q Did you look at their March 21st, 2012, scope
13 proposals?

14 A I did, as well as the most recent one that they
15 proposed.

16 Q Since we began a discussion of that proposal with Mr.
17 Kasper, I'm going to take a minute to go over that proposal.

18 We'll have to distribute this as ABA Exhibit 2, I
19 believe. I don't believe it's otherwise in evidence, and I
20 don't wish to concede any legal issues about its relevance
21 because our legal position remains that we're fixed, we have
22 a fixed (Indiscernible - 3:06:03) when the motion was filed
23 as to the proposals that have to be examined for necessity.

24 THE COURT: All right. We can talk about the
25 relevance later.

1 THE WITNESS: Thank you.

2 BY MR. DEAN:

3 Q Is this the subsequent scope proposal that you were
4 speaking about?

5 A Yes, it is.

6 Q Do you know when the scope proposal was made?

7 A April 17th.

8 Q And so this is a proposal that the company gave to the
9 Union on April 17th that is the one modification to its
10 March 21st, 2012, scope proposals?

11 A That's correct.

12 Q Okay. I want to hit this very briefly, but in
13 relation -- you were here a moment ago when we were talking
14 to Mr. Kasper?

15 A Yes.

16 Q Okay. And we were talking about the fact that under
17 the February 1st proposal, American would be able to fly up
18 to 50 percent of greater than 70-seat RJs outsourced;
19 correct?

20 A They would be able to have regional carriers fly 30
21 percent of the mainline fleet.

22 Q I'm talking about the February 1st proposal --

23 A Oh, yes.

24 Q -- I just wondered if you remembered that testimony?

25 A Yes, I do.

1 Q All right. So, they were limited to 50 percent for
2 greater than 70-seat RJs under the February 1st proposal?

3 A Correct.

4 Q Okay. Under this proposal, they move that to 70
5 percent?

6 A I'm confused. I apologize. I thought you were
7 focusing on 1B, the large regional.

8 Q Nope. I'm focusing on 70 or greater, which was what
9 Mr. Kasper analyzed.

10 And my question is: Under this proposal, could
11 they fly up to 70 percent of the number of aircraft in their
12 mainline fleet in aircraft that were greater than 70 seats
13 outsourced?

14 A No, I don't think that -- I don't think that -- that's
15 greater than 70?

16 Q Yes, 70 or greater.

17 A Yes, I believe that based on the reading of this, that
18 that is on interpretation.

19 Q Is it the correct interpretation in your view?

20 A Yes, in theory.

21 Q So, if American had -- currently has a fleet of 600,
22 they would be able to have a total RJ fleet of 70 percent; I
23 think that's 420 RJs?

24 A That is -- if you say it's 420 -- I don't have any
25 calculator with me, but I'll trust you on this one.

1 Q Okay. Let's assume that.

2 A Okay.

3 Q And then there's a restriction in here that says only a
4 third of those could be the Embraer 190 that we were talking
5 about before at 88 seats, so that would be 200 of those?

6 A It does not say Embraer 190 on it.

7 Q It says up to 88 seats and a maximum takeoff weight of
8 114,500?

9 A Correct, but, again, that doesn't mean it's Embraer
10 190. There are smaller regional jets that can be configured
11 with 86, 88, and even 90 seats. And an example of that
12 would be the CRJ900, which can be configured up to 88 or 90
13 seats.

14 Q Maybe my question wasn't clear. Could they fly 200
15 Embraer 190s under this proposal, outsourced?

16 A Yes, in theory, they could. It doesn't mean that
17 they're going to, but in theory, they could.

18 Q Do you think they need to?

19 A I'm not in a position to tell you what they need, but I
20 am in a position to tell you that based on my prior
21 experience, what an airline has to do to be successful is
22 match the proper gauged aircraft, meaning the right-sized
23 aircraft, to a particular market. And if a market
24 consistently can support 70 seats, they wouldn't put an 88-
25 seat in there. They would be paying for more than they

1 actually need, so that's a very important element of how
2 airline market analysis and fleet planning goes into all of
3 this, that when you're serving the number of locations that
4 an airline the size of American serves, you have to properly
5 gauge the aircraft.

6 And if you look at what the other airlines have
7 done that have the capability, the 76 seats or even 88 or
8 90, none of those airlines have done what you're saying
9 American could do because it doesn't make sense. It's not
10 the right -- you put the right aircraft in the market. If
11 you want to be a successful company, that's what you need to
12 do.

13 Q So it wouldn't make any sense to put 200 88-seat
14 aircrafts into the market as based on your judgment of what
15 other airlines have done?

16 A No, I think I testified that I'm not privy to the
17 specifics of what American's plan is, so I don't know if
18 they will or they won't. But what I'm saying is that what
19 they will do is put the right aircraft into the right
20 market.

21 And a proposal like this gives the company exactly
22 the kind of flexibility it needs to decide, because there's
23 a wide range, as you know, there's a wide range of regional
24 aircraft, and whether it's turboprop aircraft or whether
25 it's jet aircraft, depending on its performance

1 characteristics, depending on the market, depending on the
2 area of the country that's it's operating in, all of those
3 are critical factors to determining what aircraft should be
4 in what market.

5 Q Does any other airline scope clause allow the carrier
6 to outsource aircraft with a maximum takeoff weight of
7 114,500 pounds?

8 A I'm sorry, can you repeat that.

9 Q Does any other mainline carrier, any other, I think
10 we're calling them "legacy carriers" --

11 A No.

12 Q -- have a scope clause that allows it to outsource
13 aircraft with a maximum takeoff weight of 114,500 pounds?

14 A No.

15 Q Do you know, generally speaking, what the limits on
16 maximum takeoff weights on outsourced aircraft are at the
17 other network carriers?

18 A I don't off the top of my head.

19 Q Do you know what it is at US Airways?

20 A Not directly off the top of my head, but I know it's
21 not 114,000.

22 Q All right. Was it 90,000?

23 A Maybe in that vicinity, yes.

24 Q And were the other carriers less?

25 A Yes.

1 Q Now, I just want to confirm this specifically -- I
2 think we confirmed it generally -- you were not asked to
3 calculate the benefit to the company to relaxed job
4 protections for the pilots under their scope clause?

5 A That's correct.

6 Q And you were not asked to calculate the cost to the
7 American pilots of eliminating the job protections in the
8 scope clause?

9 A That's correct.

10 Q I think you testified at your deposition that generally
11 there were other people who did that; is that correct?

12 A At American, that is correct, yes.

13 Q There are other people who you believe would have
14 calculated the cost to the American pilots of the relaxed
15 scope job protections that the company is asking for?

16 A When you say "cost" I'm not exactly sure what you mean
17 by that.

18 Q I mean in terms of lost job opportunities, for example,
19 to the pilots through outsourced flying, someone at American
20 would have calculated that cost?

21 A I guess the problem is I don't see it the way that you
22 ask the question is because it's not an either/or
23 proposition. It's not -- I mean, one of the problems that
24 we've had in the last decade and one of the contributing
25 factors since the restructurings began is that there were

1 such severe limits in the ability of airlines to put the
2 right aircraft in the right market that airlines had two
3 choices. They could either try and keep market share and
4 lose millions of dollars a year on individual routes, or
5 they could pull out of them completely.

6 It would be my view that either one of those is
7 beneficial for any airline employee whatsoever because
8 either way, the company is not operating the way it could or
9 should operate in order to make money.

10 Q Do you remember my question?

11 A I do.

12 Q Did you answer that question?

13 A I think I did.

14 Q Let me -- are you saying that you don't think there's
15 somebody at American that's calculated the cost to the
16 pilots of the relaxed scope restrictions?

17 A In terms of job loss, which I think is what your
18 question was.

19 Q Any cost to the pilots from the relaxed job reductions?

20 A And maybe -- again, it's just a difference -- they're
21 calculating the savings associated with changes from their
22 proposal and they're calculating increased revenue
23 opportunities as a result of their 1113 proposals.

24 Q Are there people who will assign a cost figure in terms
25 of lost job opportunities that would affect a work group as

1 the result of a scope concession at the company?

2 A I don't think anybody at the company would be doing
3 that.

4 Q Okay. I'm --

5 A And I'm not trying to be difficult, but when you say
6 "lost job opportunities," the way I see that -- and if I'm
7 wrong, correct me -- I see that -- a lost job opportunity
8 means I'm flying one aircraft type and I could be or would
9 be flying another aircraft type that would be higher paying.

10 And if I'm not understanding that, I apologize.

11 THE COURT: Let me try this -- I think we're
12 getting bogged down in semantics.

13 I believe the question is: It's clear that
14 someone in the airline is calculating what the costs saving
15 would be for the airline, and I think what he's asking is
16 anyone taking the Union's view and said what is the cost,
17 either in personnel positions or otherwise to the Union?

18 If that's not the question, please straighten me
19 out, but I think that's the question.

20 MR. DEAN: That's the question, Your Honor.

21 THE WITNESS: And I'm not certain that I know that
22 answer.

23 BY MR. DEAN:

24 Q Well, let me -- if I may -- you were deposed last week,
25 I believe?

1 A Yes.

2 Q You took an oath and testified truthfully?

3 A Yes, I did.

4 Q I'm going to show you your deposition beginning on page
5 69, line 25, running through page 71, line 3, just so we can
6 hopefully clear this up.

7 I'm going to start reading from a question here --

8 A Got it.

9 Q -- and if you would, please, for the record, please
10 read the answers that you gave at that time.

11 A Okay.

12 THE COURT: Do you have a copy, counsel, of the
13 deposition?

14 MR. DEAN: If anybody here doesn't have them,
15 we're happy to pass them out.

16 THE COURT: Well, I'm here and I don't have one,
17 so that's why I'm asking.

18 Thank you.

19 MR. DEAN: I apologize, Your Honor.

20 THE COURT: Page 71, line 3, is that where we are?

21 //

22 BY MR. DEAN:

23 Q We're starting at page 69, line 25.

24 Again, I'm trying to get to this question of
25 assigning a cost figure in terms of lost job opportunities

1 that would affect a work group as the result of a scope
2 concession.

3 Have you ever been involved in trying to put a
4 number on that?

5 Would you read the answer, please.

6 A No, because there are experts at the companies and
7 other firms that do that quite well, and those are done.

8 Q There were experts at US Air who did that?

9 A Oh, sure.

10 Q Are there experts at American --

11 THE COURT: Can I stop this for a second. What's
12 the impeachment that we're looking for here? Because I
13 don't know that what you just read is inconsistent with what
14 was just said in testimony, so I'm just looking for
15 impeachment; otherwise, I'm not interested in deposition
16 testimony.

17 So where is the impeachment?

18 MR. DEAN: I'm introducing this for impeachment
19 because I asked him about whether there were people at the
20 company who have costed --

21 THE COURT: No, I'm asking you where in this
22 exchange is the impeachment?

23 MR. DEAN: We just read it, Your Honor.

24 Whether there are people at the company who assign
25 a cost figure --

1 THE COURT: Impeachment is when somebody says
2 something different in a deposition than when they say on
3 the stand.

4 MR. DEAN: Understood.

5 THE COURT: What did I just miss because it just
6 says --

7 MR. DEAN: He said he didn't know what job
8 opportunities were and he wasn't sure that there was anybody
9 at the company who would have done that on the stand, Your
10 Honor. That's my recollection of his testimony.

11 THE COURT: Okay. I'll take it for what it's
12 worth.

13 Are we done with this deposition then?

14 MR. DEAN: Yes.

15 THE WITNESS: Mr. Dean, do you want that back?

16 MR. DEAN: You can just keep it.

17 THE WITNESS: Okay.

18 MR. DEAN: Sorry, I'll take it back, now.

19 THE WITNESS: Okay.

20 MR. DEAN: And I will note for the record that it
21 has been a heavily contested issue between the parties
22 whether such a figure could be calculated. Whether the
23 company has done it and not produced it, it will be part of
24 the case that we will present to Your Honor.

25 THE COURT: Well, I understand that what he said

1 is -- his testimony is that he doesn't know, but, I guess
2 what you're saying in here is that he says there are people
3 at the company who are doing it; that's your impeachment in
4 terms of the contrast between the testimony here and the
5 deposition. I just want to understand what it is you're
6 introducing the deposition for.

7 MR. DEAN: Yes, Your Honor.

8 THE COURT: All right.

9 BY MR. DEAN:

10 Q Now, your assignment here, then, was to read the
11 company's proposals and compare them to other airline CBAs?

12 A Yes, that was one of the assignments.

13 Q Okay. In reading the other airline collective
14 bargaining agreements, did you read any arbitration
15 decisions construing those clauses as part of your
16 assignment?

17 A No, I did not.

18 Q And did you contact any other carrier or officials at
19 any other airlines to understand it better how those clauses
20 had been interpreted by the parties as part of your
21 assignment here?

22 A Through my normal -- excuse me -- through my normal
23 course of work with other clients, I'm sure that the subject
24 has come up over time.

25 Q But you didn't do anything additional in terms of your

1 assignment to this case?

2 A No, I did not.

3 Q American is proposing scope changes here that would
4 allow it to outsource flying on aircraft with a greater
5 maximum takeoff weight than any other major airline scope
6 clause?

7 A That's correct.

8 Q Okay. And it's proposing that it be able to outsource
9 regional aircraft configured with a number of seats that is
10 higher than any other major airline, except for US Air?

11 A That is correct -- excuse me -- yes, that's correct.

12 Q Okay. I want to clarify one thing in your declaration.
13 In paragraph 45 of your declaration, which is on page 21 --

14 A Yes.

15 Q -- and I apologize, I don't know the AA exhibit number
16 of Mr. Glass's declaration.

17 UNIDENTIFIED FEMALE VOICE: 800B.

18 MR. DEAN: 800B?

19 BY MR. DEAN:

20 Q Okay. The last bullet point in paragraph 45, you were
21 given a history at this point, I think, of collective
22 bargaining negotiations and bankruptcy; is that correct?

23 A That's correct.

24 Q Okay. And you state that further loosened restrictions
25 in the pilot's scope clause -- we're talking here about US

1 Air -- permitting 60 regional jets to be flown with between
2 90 and 97 seats as one of the relaxed restrictions that was
3 negotiated in the context of the 2004/2005 bankruptcy; is
4 that correct?

5 A That's correct.

6 Q Okay. And then you say today US Air can operate more
7 than 295 regional aircraft with more than 50 seats.

8 You're not implying that today US Airways could
9 outsource aircraft between 90 and 97 seats, are you?

10 A No, what happened is in the transition agreement, which
11 is an agreement that negotiates provisions for the two
12 different airlines in a merger --

13 Q Yes?

14 A -- what we did in that transaction is that we agreed
15 that those aircraft would be flown by mainline pilots under
16 a very long-term agreement, out to 2015 with very
17 competitive pay scales. And in exchange for bringing those
18 aircraft in-house, we obtained two additional provisions
19 that we did not have the ability to do at that time.

20 Number one, we had agreement to put the US code on
21 America West flights and we also liberalized the number of
22 seats that could be flown on a CRJ900 or equivalent aircraft
23 from up to 88 to 90 seats.

24 So what we ended up doing here is we negotiated
25 something that was good for everybody. We got additional

1 revenue through the additional seats and we expanded code
2 sharing, and in exchange, we got very competitive and long-
3 term rates for the Embraer 190 aircraft.

4 Q And US Air is successfully flying those aircraft at the
5 mainline today?

6 A They're flying them at the aircraft -- they're flying
7 them at the airline today, yes.

8 Q And they're not outsourcing any aircraft configured
9 with greater than 80 seats today?

10 A My hesitancy is I'm not sure because the Mesa aircraft,
11 which is regional aircraft flown under the old America West,
12 was configured in a single-class configuration of more than
13 80 seats. Now they're moving to a first-class
14 configuration, so that, obviously, would reduce the number
15 of seats on the plane.

16 Q Right.

17 A But that's by choice.

18 Q Let's turn, generally, to the number of outsourced
19 aircrafts at other airlines. You treat this subject, in
20 paragraph 77 of your declaration.

21 Page 43, there is a --

22 A Forty -- excuse me, page 45?

23 Q Forty-three.

24 A No, I'm looking at page 45, paragraph 77?

25 Q Yes, on the chart.

1 A Chart is on page 44.

2 Q Okay. I think I may be behind the times on your
3 second-updated declaration.

4 A Okay.

5 Q You're correct. In the second-updated declaration,
6 those page numbers are correct.

7 So, the second sentence of paragraph 77 says
8 United can operate and bolded "unlimited number of regional
9 aircraft of up to 70 seats."

10 Do you see that testimony?

11 A Yes, I do.

12 Q Okay. And, obviously, we touched on this with Mr.
13 Kasper. You cite two provisions: 1(k)10 and 1(k)22. Do
14 you remember, as you sit there, anything about those
15 provisions?

16 A No.

17 Q Let me introduce then, the United collective bargaining
18 agreement, as APA Exhibit 3.

19 And I'm going to apologize in advance because of
20 an apparent miscommunication with the debtors, I'm giving
21 you the entire Collective Bargaining Agreement, as opposed
22 to an excerpt of just the provisions I'm going to relay.

23 THE COURT: I don't want the entire Collective
24 Bargaining Agreement. So, you can read what you're going to
25 read, but don't give that to me now, because I have enough

1 problems with the collective bargaining agreements in this
2 case now without looking at the full version of the
3 collective bargaining agreements in other cases. So, I'll
4 wait until you get me the page.

5 MR. DEAN: Okay. Great.

6 BY MR. DEAN:

7 Q So I'm going to try and cut straight to the chase. If
8 you'll take a look at page 3 of the Collective Bargaining
9 Agreement --

10 A I don't have anything.

11 Q You don't have one yet?

12 A No.

13 THE COURT: My eternal gratitude. Thank you.

14 Should I mark this for purposes of -- do you want
15 to introduce it or will the testimony be sufficient?

16 MR. DEAN: We have several provisions in the
17 Collective Bargaining Agreement. We can mark them serially;
18 that will be fine.

19 So we will make this page APA Exhibit 3, which is
20 page 3 of the United Collective Bargaining Agreement.

21 THE COURT: How about we call this 3-A and if you
22 have other ones, we'll give them 3-B, 3-C, so they will
23 travel together.

24 (Plaintiff's Exhibit 3-A was marked.)

25 MR. DEAN: Thank you, Your Honor. Great.

1 THE COURT: Thank you.

2 BY MR. DEAN:

3 Q Directing your attention to the bottom of that page,
4 1(c), 1(d), number of block hours of feeder flying. Do you
5 know, as you sit here, what feeder flying is defined to be
6 under this agreement?

7 A The definitions I believe are in K. So it means flight
8 operations conducted by a feeder carrier, which is a
9 regional aircraft. I mean, just generally speaking, it
10 would be -- these would be regional -- this would be
11 regional flying.

12 Q Okay. So this regional flying would be the flying that
13 is kept at 70 seats outsource under the United agreement?

14 A That's correct.

15 Q Okay. And if you would, could you read the language
16 for that provision into the record.

17 A In each calendar year, the number of scheduled block
18 hours of feeder flying may not exceed the number of
19 scheduled block hours of company flying.

20 Q Does that provision limit the amount of outsourced
21 flying that can be done by feeder carriers?

22 A Maybe in theory it's some number depending on the size
23 of the carrier. I mean, is it infinity?

24 No.

25 Q Have you ever calculated the number?

1 A It would change every year.

2 Q Yeah, but have you ever calculated the number,
3 generally, for any year?

4 A No.

5 Q So you don't know what the limit is?

6 A No, because I don't have the block hours, but it would
7 change as the carrier grows. And so it could increase
8 rather dramatically from wherever it has been or was at the
9 time when this was negotiated.

10 Q Do you read this to limit the numbers of hours that
11 were flown the year it was negotiated or to limit it to the
12 number of hours that -- in any particular year?

13 A Well, let me see if I can answer it this way and not
14 trying -- I'm trying to get to the answer. My exhibit has
15 to do with a specific number of aircraft that are contained
16 in a Collective Bargaining Agreement. In other words, it
17 says you cannot fly more than X aircraft. And it's my
18 understanding that United does not have a number of regional
19 jets that it is limited to fly, and that's all the chart was
20 doing.

21 Q I see. So, in your view, if they were limited, for
22 instance, to 115 regional jets flying, because if they flew
23 any more, it would be too many block hours, that would be
24 irrelevant to your chart because they could buy another 150
25 and sit them down on the ground?

1 A Well, they wouldn't do that, obviously.

2 Q Right. On your chart you also note -- and this, again,
3 is the chart on page 44 -- in general, this chart shows RJ
4 allowances under the pilots' CBAs, correct?

5 A Correct.

6 Q Okay. And you've shown United as having this unlimited
7 ability to fly the -- or to own, I guess -- and outsource
8 greater than 70-seat aircraft. You have also shown 18
9 aircraft in the greater-than-70-seat category.

10 A Yeah, did you -- I'm sorry, did you say "own," that
11 shows what United owns?

12 Q I was trying to respect your distinction between the
13 fact that there's a limit on what they can fly, but there's
14 not a limit on how many they can have.

15 A Oh, okay. Got it. Yeah.

16 Q Okay. So I'm going to agree with you that there's no
17 limit on how many they can have and outsource, there's just
18 a limit on how much flying they can do.

19 A Uh-huh.

20 Q All right. But setting that aside -- and that is for
21 up to 70-seat aircraft or 51-to-70, as you put it in the
22 chart.

23 You also have a category for RJs greater than 70?

24 A That's correct; that's the old BAE146 that were flown
25 by Air Wisconsin.

1 Q You put that in the past tense?

2 A Yes.

3 Q Because they -- Air Wisconsin is no longer flying those
4 aircraft?

5 A They're gone.

6 Q Yeah?

7 A Yeah.

8 Q Right. So -- okay.

9 And there's no way that United, now, under the
10 existing scope clause, could, again, fly 18 aircraft
11 outsourced at greater than 70 seats, correct?

12 A No, I don't think that's accurate because the Q400s
13 are -- I think they're flown with 76 seats -- turboprop
14 aircraft. That's an important distinction because you had
15 mentioned earlier, in talking to Mr. Kasper about
16 Continental's provision that they're limited to 50 seats.
17 They're limited to 50 seats for turbojet, but they're not
18 limited to 50 seats for turboprop and they fly a high-
19 performance prop aircraft called the Q400, which has 76
20 seats in it, and I think they fly, I'm going to say 20 or 30
21 of those aircraft.

22 So, just when we're talking about this, I want to
23 be clear that, you know, if we're talking just on seats, and
24 not talking about jets versus props, I just want to be clear
25 so I understand I can answer your question properly.

1 Q This is a chart about jets --

2 A Okay.

3 Q -- right?

4 A Yes.

5 Q Okay. My question goes to jets.

6 A Okay. I wasn't -- I wasn't sure.

7 Q And my question was: Can United, today, fly greater-
8 than-70-seat RJs outsourced?

9 A No, they cannot.

10 Q Okay. Now, the other unlimited that you have here is
11 for Delta in the category of 50-or-less-seat aircraft, do
12 you see that?

13 A Yes, I do.

14 Q Do you know how many less-than-50-seat aircraft Delta
15 is currently flying?

16 A I want to say it's in the vicinity perhaps of maybe 300
17 plus, something like that.

18 Q 348 sound about right?

19 A Okay. There you go.

20 Q Are they increasing the number of 50-seat-and-less
21 aircraft that they're outsourcing today?

22 A No, they're -- actually, you can see from my footnote
23 there, actually, they, along with other carriers, are trying
24 to -- to the extent that they can -- cut back on the 50-seat
25 and move to the larger aircraft.

1 Q And as we sit here today, do you have any reason to
2 think that they're going to increase anytime, in the next
3 five or six years, the number of 50-seat-or-less aircraft
4 that they are using as a feeder operation?

5 A No, no, I don't expect that at all.

6 Q Okay. So that no limit has no real relevance as to
7 what you expect Delta to be doing in the next five or six
8 years?

9 A Yes, that part is correct.

10 Q You are -- we spoke a moment ago about the proposal
11 that American currently has on the table. If you were to
12 put a bar on this chart for what American is proposing in
13 its 1113 proposal, where American currently has zero, under
14 the proposal that we were discussing a moment ago, they
15 would be able to fly 420 RJs?

16 A If that's the 30 percent number, I guess so, yeah.

17 Q Note, that's the 70 percent number, because, as we
18 discussed, they are allowed under that proposal to fly 200
19 88-seats, which you said you didn't expect them to do. But
20 they would also be allowed to fly an additional 220 79-seat
21 aircraft, correct?

22 A Yes.

23 Q Okay. So that's 420 aircraft above 70 seats?

24 A That's correct.

25 Q So, if we were to put a bar on this chart to show how

1 the American's proposal compares to what's allowed under the
2 other scope clauses in the industry --

3 A Yeah.

4 Q -- we would take that zero and we would run it up to
5 the equivalent of 420, which, I guess, we can all imagine
6 where it would be?

7 A Well, I just -- just in --

8 Q There's no question pending.

9 A Oh, that was -- I -- sorry, I thought you were asking a
10 question.

11 Q Nope.

12 A Okay.

13 Q The only other carrier at this time who can outsource
14 aircraft -- well, I withdraw.

15 Okay. When you have an asterisk here, you show
16 that Delta could outsource aircraft greater than 70 seats up
17 to 120; is that correct?

18 A That's correct. It would reduce the number of 51-to-70
19 seats, which is, you know -- it's really the perfect example
20 of what I think we're trying to get to and what American's
21 proposal is, is it's about flexibility.

22 Q I understand. That actually isn't my question, and I
23 would like to go ahead and get through the questions so we
24 can get out of here today.

25 A Okay.

1 Q But you're making the point that if they did the 120,
2 they would have to reduce the 51-to-70 allowance?

3 A Correct.

4 Q Okay. And the only other carrier today that would have
5 the ability to outsource at greater than 70 would be US Air
6 and that's the 153 number?

7 A That's correct.

8 Q Okay. The 120 number is capped at 76 seats?

9 A That's correct.

10 Q Okay. So that's smaller than any of the aircraft that
11 American could fly under its proposal up to 420?

12 A Yeah, in terms of the allowance.

13 As to what they're actually flying, I don't have
14 those numbers.

15 Q Okay. I'm asking, you know, what they're allowed to
16 fly, not what they're doing.

17 A Uh-huh.

18 Q And the 153 aircraft that US Air is flying above 70,
19 we've discussed --

20 A Excuse me -- I'm sorry -- excuse me. You said they
21 were flying. That was exactly my point.

22 This is allowances; it's not what they're flying.
23 They're not the same thing.

24 Q Do you know how many they're actually flying?

25 A I believe it's in the high 80s or about 90.

1 Q And those aircraft are currently configured at 80
2 seats?

3 A They're configured at different seats right now.

4 Q Between 70 and 80?

5 A No, I think between 76 and 90.

6 As they convert, it will change to first class.

7 Q You think US Air is currently outsourcing aircraft up
8 to 90 seats?

9 A As I testified before, Mesa Airlines was flying the
10 CRJ900s with 88 seats, yes, so it was more than 80.

11 Q And is reconfiguring those into two-class
12 configurations --

13 A Correct.

14 Q -- and bringing down the number of seats?

15 A Yes.

16 Q Now, you note in your declaration at paragraph 18,
17 which, in my copy of your declaration is on page 10 -- and I
18 believe it was on the same page in the most recent version,
19 yes?

20 A I'm sorry, what paragraph.

21 Q It's paragraph 18.

22 A Yes.

23 Q You note that paragraph that American Section 1113
24 proposal on code sharing and regional flying will allow
25 American to be competitive with the comparative group, and

1 in some cases giving American an advantage over its
2 competition.

3 We've been talking about outsourcing of regional
4 flying, does American's proposal also give it an advantage
5 as to domestic and international code sharing?

6 A In some cases it does, yes.

7 Q Does it give an advantage with regard to the domestic
8 code sharing over Delta Airlines?

9 A As Delta is configured today, after its acquisition of
10 Northwest, yes.

11 Q Under the scope clause that exists at Delta?

12 A Today, yes.

13 Q Okay. And under the scope clause that exists at US
14 Airways, the proposal that American is making gives them an
15 advantage over US Airways?

16 A Yes.

17 Q What's the nature of the advantage?

18 A That American has?

19 Q Yes.

20 A Well, the current proposal allows for domestic code
21 sharing, period.

22 Q There are no restrictions or limitations on the ride as
23 proposed by American?

24 A That's correct.

25 Q What's the nature of the limitations, talking about US

1 Air because it's the one that you're the most familiar
2 with --

3 A Uh-huh.

4 Q -- what's the nature of the limitations that are
5 imposed on domestic code sharing by the US Air scope clause?

6 A Sure. There are two -- as you know, there were two
7 scope clauses at US Airways because there were two separate
8 agreements. The old America West is now referred to as US
9 Airways West. And under that code sharing agreement, the
10 West pilot contract has no restrictions at all and so --

11 Q Can I stop you, just so we don't get too far off the
12 beat.

13 A Yeah.

14 Q Is America West currently using its code?

15 A Yes, they are.

16 Q Is US Air putting the US Air code on all of the America
17 West flying?

18 A Well, there is no America West code any longer --

19 Q Right.

20 A -- but there are still code share agreements that were
21 negotiated under that prior agreement that exists.

22 Q Is it your understanding that when America West
23 Airlines flies on the US Air code, it's not subject to the
24 restrictions in the US Air agreement or US Air East?

25 A I think that's a subject of debate internally at the

1 company, as to whether they can or cannot.

2 Q So, today the company is honoring the restrictions in
3 US Air East agreement as to domestic code share --

4 A Correct.

5 Q -- with both flying by US Air West and US Air East?

6 A Correct. They're honoring both provisions.

7 Q So, would you tell us about the restrictions in the US
8 Airways East scope clause?

9 A Well, there are two pieces to it. Of course the very
10 comprehensive United code share agreement, which has
11 restrictions on it with respect to ratio of flying, hub
12 flying, and I don't need to bore anybody --

13 Q It's a long list?

14 A It's very long and it's very complex.

15 They also have a provision that allows, I think,
16 for five percent of their ASMs to also have code sharing.

17 Q So there's a limit on how much they can do?

18 A Correct.

19 Q Okay. And is there a template for any new code sharing
20 agreements?

21 A I'm sorry, I don't -- you mean at US Airways, a
22 template.

23 Q Yes. Attachment C to the Transition Agreement, does
24 that ring a bell?

25 A I'm sure it will be when you tell me. It doesn't right

1 off the top of my head, but...

2 Q Okay. Let's go ahead and mark Attachment C to the
3 Restructuring Agreement at US Air.

4 And for the record, our copies of all these things
5 that we are using are the copies that you provided to us as
6 the Collective Bargaining Agreements on which you relied on
7 preparing this, so it should look familiar to you.

8 A Okay. Good.

9 Q This is the US Airways Restructuring Agreement.

10 THE COURT: Counsel, may I ask what time --

11 MR. DEAN: This is a short one, by the way.

12 THE COURT: How much longer do you think you have?

13 MR. DEAN: Fifteen to 20 minutes, Your Honor.

14 UNIDENTIFIED FEMALE VOICE: Are we still on the
15 record?

16 THE COURT: Right now.

17 UNIDENTIFIED FEMALE VOICE: Yeah, right now. At
18 this moment.

19 THE COURT: That's fine.

20 We're off the record.

21 (Recess at 6:10 p.m.)

22 THE COURT: Tomorrow at 10:00, at which point
23 we'll finish this witness, and, hopefully, tomorrow we'll
24 get through two others.

25 If we do need to go late, my thought would be

1 Thursday would be a good day to power through, but since
2 this is day one, we might as well pace ourselves a little
3 bit.

4 Anything else?

5 All right.

6 Thank you, have a good evening.

7 (Whereupon these proceedings concluded at 6:13 p.m.)

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I, Dawn South, certify that the foregoing transcript is a true and accurate record of the proceedings.

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