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THE CLERK: All rise.

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THE COURT: Good morning,
please be seated.

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MS. PARCELLI: Good morning,
your Honor, for the record, Carmen
Parcelli for the Association of
Professional Flight Attendants.

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We are ready to proceed and
call our witness. So we'd call
Adam Condrick.

12

Your Honor, may I approach?

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THE COURT: Yes. Thank you.

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ADAM E. CONDRICK,
called as a witness, having been
first duly sworn was examined
and testified as follows:

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MS. PARCELLI: Your Honor,
before we begin, I've just handed
you a copy of the corrected

21 declaration of Mr. Condrick. If I
22 could just explain briefly the
23 nature of the correction.

24 It concerns paragraph 10 in
25 Mr. Condrick's declaration, which,

2

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2 as he'll explain further, reflects
3 or is supposed to reflect APFA's
4 final proposal to the company with
5 respect to retirement benefits.
6 And when Mr. Condrick asked me to
7 advise him as to what the
8 association's final proposal was,
9 initially I incorrectly advised him
10 as to the terms of that and that
11 was in his original declaration.

12 So that error was discovered
13 and so it now reflects
14 appropriately the APFA's final
15 proposal. So it was an error on

16 the part of counsel and not of
17 course any mistake on the part of
18 Mr. Condrick.

19 THE COURT: Is this now
20 Exhibit 300-A, I would assume?

21 MS. PARCELLI: We didn't mark
22 it as such but probably should.

23 THE COURT: All right. All
24 right, proceed.

25 MS. PARCELLI: The declaration

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2 of Mr. Condrick is 300, APFA 300.

3 THE COURT: Again, I guess the
4 original is 300.

5 MS. PARCELLI: 300-A.

6 THE COURT: I think that's
7 what we've been doing as a general
8 matter because a couple of these
9 have been swapped out over time.

10 MS. PARCELLI: That would be

11 300-A.

12 DIRECT EXAMINATION

13 BY MS. PARCELLI:

14 Q. Mr. Condrick, could you please
15 state and spell your name for the record.

16 A. Adam Edward Condrick,
17 C-o-n-d-r-i-c-k.

18 Q. By whom are you employed, Mr.
19 Condrick?

20 A. The Segal Company.

21 Q. What does your work involve?

22 A. I'm an actuary and benefit
23 consultant on defined benefit plans.

24 Q. And how long have you been
25 doing this work at Segal?

4

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2 A. About 25 years.

3 Q. Are you what's known as an
4 enrolled actuary?

5 A. Yes, I am.

6 Q. And what does that mean to be
7 an enrolled actuary?

8 A. It means that I have passed
9 the exams required and the experience
10 requirement to be approved by the joint
11 board to sign documents for the
12 government on behalf of the plans.

13 Q. And when did you become an
14 enrolled actuary?

15 A. May of 2003.

16 Q. Are you also a member of the
17 American Academy of Actuaries?

18 A. Yes.

19 Q. And what does it mean to be a
20 member of the American Academy?

21 A. It means that I agreed to
22 follow the rules, regulations, the
23 standards of practice and codes of
24 conduct under the actual profession.

25 Q. And can you just briefly

1

2 describe your career at Segal and your
3 educational background?

4 A. I graduated from Penn State
5 with a BS in mathematics with a natural
6 science option in 1987. Went to work
7 directly for The Segal Company, have
8 worked my way up through the company on
9 since then.

10 Q.

11 MS. PARCELLI: Your Honor, at
12 this time we'd like to proffer Mr.
13 Condrick as an expert as a pension
14 actuary.

15 THE COURT: Any objection?

16 MR. HARRIS: No objection.

17 THE COURT: All right.

18 Q. And Mr. Condrick, have you
19 prepared a declaration in connection with
20 the section 1113 proceedings?

21 A. Yes.

22 Q. And do you have that
23 declaration in front of you now marked as
24 APFA Exhibit 300-A?

25 A. Yes.

6

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2 Q. Good, good. And do you adopt
3 and incorporate your declaration as your
4 testimony here today?

5 A. Yes.

6 Q. Now, generally, what has your
7 role been with respect to the APFA and
8 the section 1113 proposal received from
9 American Airlines?

10 A. To review the information
11 provided by Towers and American and
12 assisting the APFA in any responses or
13 potential counterproposals.

14 Q. And can you generally explain
15 for us what the difference is between
16 what's known as a defined benefit plan
17 and a defined contribution plan?

18 A. The basic difference is on a
19 defined benefit plan the amount that you

20 will receive at retirement is defined
21 according to the plan document and is
22 responsible, the payment or the money
23 required to pay for those benefits is the
24 responsibility of the plan sponsor. With
25 a defined contribution plan,

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2 contributions are made to a fund that is
3 attached to an individual and the amount
4 of any benefit payable at that retirement
5 will depend on what amount of money is in
6 the account at that retirement.

7 Q. And what kind of plan or plans
8 does American currently have for flight
9 attendants?

10 A. They have a defined benefit
11 plan and my understanding is they also
12 have an employee only contributory DC
13 plan.

14 Q. As you understand it, what is

15 American Airlines' current proposal to
16 the APFA with respect to retirement
17 benefits for flight attendants?

18 A. My understanding is that the
19 defined benefit plan will be frozen, I
20 guess it was frozen as of November, and
21 on top of that for accruals going forward
22 will be a DC plan which is a company
23 match of any employee contribution up to
24 a maximum of 5.5 percent.

25 Q. So under the American

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2 proposal, a flight attendant would need
3 to make a full contribution of 35.5
4 percent of earnings in order to receive
5 the full employer match; is that correct?

6 A. Yes.

7 Q. Okay. And so what would
8 happen if a flight attendant had only
9 contributed 3 percent of earnings, say,

10 under American's proposal?

11 A. American would only match 3
12 percent.

13 Q. And you used the word freeze
14 the pension plan. Can you just explain
15 what that term freeze the pension plan
16 means?

17 A. The freeze of the defined
18 benefit plan means that the amount of
19 benefit that you have accrued to date
20 that will be payable at normal retirement
21 age will not change on into the future.

22 Q. And so what's the impact then
23 in terms of what would be the future
24 rules if accrual if the plan was not
25 frozen?

9

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2 A. Can you restate the question.

3 Q. Sure. In a freeze, once a
4 pension plan is freezed, what is the

5 implication of that for what would have
6 been the future accruals under the
7 defined benefit pension plan?

8 A. There will be no future
9 accruals.

10 Q. Thank you. Now, can I direct
11 your attention to paragraph 7 in your
12 declaration and particularly the chart
13 that appears at the bottom of that
14 paragraph.

15 A. Yes.

16 Q. Do you have it? So can you
17 explain, please, what is it that this
18 chart shows?

19 A. This chart shows projected
20 yearly benefits of three hypothetical or
21 sample flight attendants based on the
22 demographic information shown on the left
23 and what their benefit would have
24 projected to be under the current defined
25 benefit plan at ages, assuming retirement

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2 age of 60 or 65.

3 Q. And so what information was
4 used to generate the yearly benefit
5 amounts that appear in the chart?

6 A. We used the plan provisions of
7 the defined benefit plan, the age and
8 service as shown, the pay as shown,
9 projected them forward with the salary
10 scale assumption as shown in Tower
11 Watson's 2011 valuation report and
12 determined what benefit would be payable
13 at either age 60 or 65.

14 Q. How were the three examples
15 for flight attendants that appear here
16 selected?

17 A. We chose the age 51 and 17
18 years of service originally as that's
19 basically the average age of service from
20 the 2011 valuation. We then, to provide
21 a book end, chose two people, one who was
22 older and closer to retirement and one

23 who was relatively younger and has more
24 years to accumulate benefits.

25 Q. And the example -- I'm sorry.

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2 Were the examples selected by you?

3 A. Yes.

4 Q. And these examples assume

5 certain rates of pay, correct?

6 A. Yes.

7 Q. And how were those rates of

8 pay determined?

9 A. The actual rates of pay here
10 were determined as provided by APFA. We
11 did look at the 51 and 17 to see if that
12 seemed to be a reasonable pay for a
13 specific example at those ages.

14 Q. And when you did that look,
15 what did you conclude?

16 A. It was reasonable.

17 Q. Now, I believe you testified

18 that you are aware that flight attendants
19 currently have a defined contribution
20 plan to which they're able to contribute
21 their own money, correct?

22 A. Yes.

23 Q. Now, does this chart reflect
24 those savings amounts that might have
25 gone into that plan?

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2 A. No. This is only a chart of
3 benefits for the defined benefit plan
4 that's payable by the employer.

5 Q. Now directing your attention
6 to paragraph 8 in your declaration and
7 then again particularly to the charts
8 that appear there. Now, can you explain
9 what these two charts in your declaration
10 are showing?

11 A. These charts are showing for
12 the same examples the amount of benefit

13 payable at 60 or 65 under what would have
14 been the current defined benefit plan and
15 what is under the proposed American plan
16 that would be provided by employer
17 contributions and the amount of benefit,
18 yearly benefit that would be lost by
19 these sample flight attendants at each of
20 the assumed retirement ages and we showed
21 them at a 5 percent return on the DC plan
22 and a 7 percent return on the DC plan.

23 Q. So let's just look for a
24 moment at the age 51, 17 years of service
25 example. Do you see that?

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2 A. Yes.

3 Q. So in the first chart it
4 indicates that the current benefit that
5 that participant would receive is 23,984
6 dollars; is that correct?

7 A. That is correct.

8 Q. And then your calculation is
9 that under American's proposed
10 replacement plan that same individual
11 with that service profile would receive
12 14,810 dollars?

13 A. That's correct.

14 Q. And this again is a retirement
15 age 60, right?

16 A. Correct.

17 Q. And so the lost benefit you
18 calculated would be 9,174 dollars,
19 correct?

20 A. That's correct.

21 Q. And that is an annual figure?

22 A. Yes.

23 Q. And so the chart works the
24 same way for all the examples, correct?

25 A. Yes.

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2 Q. Now I believe you testified

3 that it's American's proposal to have a
4 5.5 percent employer matching
5 contribution on the 401(k) plan; is that
6 correct?

7 A. Yes.

8 Q. So in order for a plane to
9 receive the full employer match, is it
10 true that he or she would need to
11 contribute 5.5 percent of earnings?

12 A. Yes.

13 Q. So does the charts in
14 paragraph 8, do they reflect a full 5.5
15 percent contribution from the flight --
16 I'm sorry.

17 Do the charts, are they
18 predicated on a full 5.5 employer match
19 from American?

20 A. Yes.

21 Q. But do the charts reflect the
22 5.5 contribution from the flight
23 attendants?

24 A. No.

25 Q. Okay, and why isn't that 5.5

1
2 contribution from the flight attendants
3 reflected in the chart?

4 A. The purpose of the chart was
5 just to show the amount of benefits lost
6 from what American Airlines would have
7 provided before to what they may provide
8 now.

9 Q. Okay. So when you use the
10 term benefit in the chart, that's
11 referring to the retirement benefit as
12 supplied by American, the employer,
13 correct, not the employee's own savings?

14 A. Yes.

15 THE COURT: Does this assume
16 any matching at all in the numbers
17 that you have in here?

18 THE WITNESS: The benefits do
19 not assume anything. But by
20 implication to have the 5.5 percent
21 the employee would have to

22 contribute that amount.

23 Q. So what if a flight attendant
24 only contributed say, 3 percent of pay to
25 the 401(k) plan, what effect would that

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1
2 have on the benefit calculations that
3 you've done here in paragraph 8?

4 A. The lost benefits would be
5 greater.

6 Q. Now, the charts in paragraph
7 8, they assume a 5 percent or a 7 percent
8 return on investments in the defined
9 contribution plan, correct?

10 A. Yes.

11 Q. And so who came up with that 5
12 and 7 percent, those figures?

13 A. I did.

14 Q. And why did you choose 5 and 7
15 percent?

16 A. I believe they were reasonable

17 approximation of what a DC plan would
18 return, one, if it was invested
19 relatively conservatively, which was the
20 5 percent, and one if it was a more 60/40
21 mix.

22 Q. I know you wouldn't consider
23 it reasonable, but, you know, say you had
24 chosen 3 percent, how would that affect
25 the analysis that you presented here?

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2 A. The lost benefit would be
3 greater.

4 Q. Okay. And, again, I know it
5 wasn't what you determined reasonable,
6 but what if you had assumed a 9 percent
7 return, what effect would that have on
8 the analysis?

9 A. The lost benefits would be
10 lower.

11 Q. Now, moving on, if I can

12 direct you to paragraph 9 and the charts
13 contained there.

14 Can you please explain what's
15 conveyed in this chart?

16 A. This was an attempt to show
17 what the lost benefits are in a practical
18 sense to a flight attendant and equating
19 the lost annual benefit in the number of
20 additional years they would have to work
21 and contribute under the DC plan to make
22 up the benefit that they would have lost
23 at that assumed retirement age of 60 or
24 65.

25 Q. But again, these charts don't

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2 reflect the money that flight attendants
3 would actually put towards a defined
4 contribution plan; is that correct?

5 A. That is correct.

6 Q. It's just showing the employer

7 benefit, correct?

8 A. Yes.

9 Q. Now, if we can move on to
10 paragraph 10 and the charts contained
11 there. Now, the heading of the chart
12 says "AMR proposal versus APFA proposal."
13 Can you explain what that means here?

14 A. The AMR proposal is the
15 proposal outlined before in paragraph 7
16 through 9 of the freeze to the defined
17 benefit plan and the 5.5 percent defined
18 contribution plan matching, and the lost
19 benefits under the AMR proposal are the
20 same as shown previously. The APFA
21 proposals, my understanding of the latest
22 offer or proposal from the flight
23 attendants to AMR it is an age related DC
24 formula which would be 4 percent flight
25 attendants under age 40, 7 percent for

2 flight attendants between 40 and 49, and
3 9.9 percent for flight attendants 50 and
4 older.

5 Q. And so what is the chart
6 intended then to set forth or convey?

7 A. It's just to show the
8 difference between the two and that even
9 under the proposal the flight attendants
10 still have lost benefits. It does make
11 up some more, which is the goal of the
12 plan, for those older because they're
13 closer to retirement and have less
14 opportunity to make up the lost benefits.

15 Q. Okay. And so you mentioned
16 that it was age weighted. So what
17 significance does that have in terms of
18 how the, how the benefit is configured?

19 A. It's geared towards a higher
20 contribution rate to the older employees
21 because they have less time to accumulate
22 money in the DC plan and it's just to try
23 to make their benefits closing to what
24 they would have had.

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MS. PARCELLI: I pass the

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2 witness.

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THE COURT: Cross examination.

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MR. HARRIS: Your Honor,

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Stephen Harris for American

6

Airlines.

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THE COURT: Good morning.

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MR. HARRIS: Good morning.

9

CROSS EXAMINATION

10

BY MR. HARRIS:

11

Q. Good morning, Mr. Condrick.

12

A. Good morning.

13

Q. Ms. Parcelli asked you about

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the 5 and the 7 percent interest rate set

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forth in your declaration model, correct?

16

A. Yes.

17

Q. And you believe that there's

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other reasonable rates of return that you

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could have selected, some higher, some

20 lower, correct?

21 A. Yes.

22 Q. And had you picked a higher
23 rate of return, I believe you testified
24 in response to Ms. Parcelli's question,
25 that it would have decreased the lost

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2 benefit, correct?

3 A. Yes.

4 Q. And still is within the range
5 of reason, correct?

6 A. Yes.

7 Q. And had you done that, that
8 also would show that a flight attendant
9 had to work fewer years in order to make
10 up what you've termed the lost benefit,
11 correct?

12 A. Yes.

13 Q. And I heard you testify that
14 in calculating the lost benefits you

15 compared only the flight attendants
16 employer derived defined benefit benefit
17 with the matching contribution the
18 employee would receive under American
19 Airlines' proposed defined contribution
20 plan; is that correct?

21 A. That's correct.

22 Q. And so I also heard you
23 testify that you did not take into
24 account flight attendant contributions to
25 the defined contribution plan that would

22

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2 be made after the proposal were
3 implemented; is that correct?

4 A. That's correct.

5 Q. And were you to take into
6 account the flight attendant 5.5 percent
7 contribution, would that cause the lost
8 benefit to be less in your charts?

9 A. Yes.

10 Q. And would it cause the flight
11 attendant in your charts to have a lesser
12 number of years that they would need to
13 work in order to overcome the lost
14 benefit?

15 A. Yes, specifically to that
16 question.

17 Q. Mr. Condrick, are you aware of
18 any other section -- you're not aware of
19 any other section 1113 proceedings in
20 which an employer has proposed changes to
21 its defined benefit plan in order to
22 achieve labor cost reductions in which
23 the employees have not had a lesser
24 retirement benefit at the end of the day,
25 are you?

23

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2 A. Can you rephrase that, please.

3 Q. Are you aware of any section
4 1113 proceedings, bankruptcy proceedings,

5 in which an employer has proposed changes
6 to its defined benefit plan to save labor
7 costs --

8 MS. PARCELLI: Objection.

9 Q. -- and not resulted in a
10 lesser -- that have not resulted in a
11 lesser benefit to employees?

12 MS. PARCELLI: Objection.

13 THE COURT: What's the
14 objection?

15 MS. PARCELLI: Lack of
16 foundation.

17 MR. HARRIS: He either is or
18 isn't.

19 THE COURT: You might need to
20 ask one question before you ask
21 that question.

22 Q. Mr. Condrick, are you aware of
23 what other employers in 1113 proceedings
24 have proposed with respect to retirement
25 plan changes?

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2 A. No.

3 Q. I'd like to talk about the
4 defined contribution plan match
5 alternatives that you model in your
6 declaration. You originally filed a
7 declaration in this case on or about May
8 3rd; is that correct?

9 A. Yes.

10 Q. And in that declaration you
11 model the defined contribution plan match
12 alternative that was different from that
13 proposed by American Airlines, correct?

14 A. Yes.

15 Q. And in that original
16 declaration, as I understand it, you
17 model a match rate of 5.5 percent for
18 flight attendants who were under the age
19 of 40, a 6.75 percent match rate for
20 flight attendants between the ages of 40
21 and 49, and 9.9 percent match rate for
22 flight attendants 50 and over, correct?

23 A. Yes.

24 Q. And in your new declaration
25 you model a different defined

25

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2 contribution match alternative, correct?

3 A. Yes.

4 Q. And in the new formula that
5 you model it lowers, lowers the match
6 rate from 5.5 percent to 4 percent for
7 those flight attendants who are under the
8 age of 40, correct?

9 A. Yes.

10 MR. HARRIS: Your Honor, may I
11 approach?

12 THE COURT: Certainly.

13 Q. Mr. Condrick, I'm going to
14 hand you a document. Can you take a
15 moment and familiarize yourself with that
16 document.

17 A. Yes.

18 Q. Are you familiar with this

19 document?

20 A. Yes.

21 Q. Can you describe for the
22 record briefly what this document is?

23 A. This document is basically the
24 same thing that's in the declaration with
25 just in a different format and it

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2 includes the prior, no, it includes the
3 current paragraph 10 APFA proposal.

4 Q. And did you prepare this
5 document?

6 A. Yes.

7 MR. HARRIS: Your Honor, at
8 this time I'd like to move American
9 Airlines Exhibit 1728 into
10 evidence.

11 THE COURT: Any objection?

12 MS. PARCELLI: No objection.

13 THE COURT: All right, it's

14 received.

15 Q. Mr. Condrick, I think you
16 testified that this document contains the
17 same projections that you discuss in your
18 new declaration; is that correct?

19 A. Yes.

20 Q. And under the new, under the
21 modeling in your new declaration, new
22 hire flight attendants would receive a
23 match of 5.5 percent even if they were
24 under 40; is that correct?

25 A. Yes, but I'm not concerned --

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2 I'm not positive that it's a match under
3 the APFA proposal.

4 Q. New hire flight attendants
5 would receive 5.5 percent?

6 A. Oh, I'm sorry, that's my
7 understanding, yes.

8 Q. Even if they're under the age

9 of 40, correct?

10 A. That's my understanding.

11 Q. Okay. And the reason -- so
12 under the proposal that you model in your
13 new declaration, new hire flight
14 attendants under the age of 40 are going
15 to receive a higher match than incumbent
16 flight attendants under the age of 40,
17 correct?

18 A. That was my understanding.

19 Q. And the reason that you
20 modeled the 5.5 percent for the under 40
21 flight attendants in your original
22 declaration what rather than the 4
23 percent match rate that's set forth in
24 your new declaration, is because you
25 didn't believe that it was fair to the

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2 incumbent flight attendants for them to

3 receive a lesser match than new hire

4 flight attendants who were also under 40,
5 correct?

6 A. That is not correct. It was
7 not my decision to show either of them.
8 It was directed by APFA.

9 Q. Did APFA tell you they
10 believed it was unfair for flight
11 attendants who were incumbent flight
12 attendants under the age of 40 to receive
13 a 4 percent match whereas new hire flight
14 attendants would receive a 5.5 percent
15 match?

16 A. Yes, that's my recollection.

17 Q. The defined contribution plan
18 match that you model in your new
19 declaration actually would cost American
20 Airlines more money per year than the
21 defined contribution plan proposal that
22 American made to the APFA; is that
23 correct?

24 A. Yes.

25 Q. In fact, it would cost

1
2 American Airlines an extra 21 million
3 dollars per year, or 126 million dollars
4 over the six-year period at issue,
5 correct?

6 A. Yes.

7 Q. And it's your understanding
8 that American's defined contribution
9 proposal would reduce direct labor costs
10 by approximately 42 million dollars a
11 year in economic savings, correct?

12 A. Yes.

13 Q. In modeling your proposals,
14 the APFA's attorneys directed you to
15 quote, unquote, eat into half of that
16 economic cost reduction, correct?

17 A. Yes.

18 Q. And you've not modeled any
19 scenario in your declaration, have you,
20 that would achieve an offsetting 126
21 million dollars of labor cost reductions?

22 A. Correct.

23 MR. HARRIS: I have no further
24 questions.

25 THE COURT: Redirect.

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2 Counsel, you want a minute?

3 MS. PARCELLI: No. We have no
4 redirect. Thank you.

5 THE COURT: You are excused
6 and I assume you want to move into
7 evidence the corrected declaration
8 given the question I'll accept into
9 evidence the prior declaration as
10 we've been accepting them in any
11 event and I don't believe there are
12 any exhibits.

13 MS. PARCELLI: There are not.
14 So if we could move 300-A.

15 THE COURT: Any objection?

16 MR. HARRIS: No objection,

17 your Honor.

18 THE COURT: Let me ask what
19 the parties' understanding is and
20 maybe I just made an assumption I
21 shouldn't, as to prior
22 declarations, whether they're to be
23 moved in or not. We've been
24 labeling things, say, 300, 300-A.
25 I would think to the extent there

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2 are changes that are relevant
3 they'll be brought up in cross and
4 whatever is relevant is relevant
5 and has been testified to and we
6 don't need the extra declaration,
7 but I shouldn't make such
8 assumptions, is there an
9 understanding as to that?

10 MS. PARCELLI: I haven't given
11 the matter any thought, your Honor.

12 MR. FLICKER: Our view is that
13 corrected declarations are the
14 declarations that are to go in
15 evidence. The prior declarations
16 think of them like cross
17 examination material.

18 THE COURT: I think that's a
19 wise way to go. Since we just
20 brought it up, if somebody has some
21 brilliant ideas to the contrary let
22 me know after a break, bunch I
23 think we don't need to have
24 multiple declarations in the
25 record. Just 300-A is going in and

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2 it's admitted. All right. Next
3 witness.

4 MR. CLAYMAN: Your Honor,
5 Robert Clayman for the Association
6 of Professional Flight Attendants.

7 At this time we'd like to call
8 Daniel Akins.

9 DANIEL AKINS,
10 called as a witness, having been
11 first duly sworn, was examined
12 and testified as follows:

13 MR. CLAYMAN: Your Honor,
14 before I begin, I think it's going
15 to be necessary at the end of Mr.
16 Akins' testimony to have about, I
17 have ten questions that I need to
18 ask him without, that are
19 privileged questions and really
20 call into issue or require him to
21 base his answers on redacted
22 information. So I just wanted to
23 advise you of that.

24 THE COURT: My inclination is
25 to do everything that's public and

2 then hold the confidential stuff
3 till then because obviously your
4 confidential questions may lead to
5 confidential cross. So if we cabin
6 it off then we can do it a little
7 bit more efficiently. So why don't
8 we leave those till the regular
9 cross and we can do that, again,
10 unless that does some violence to
11 your presentation.

12 MR. CLAYMAN: That's fine.

13 MR. FLICKER: Mr. Clayman did
14 discuss this proposal with us.
15 It's fine with the debtors.

16 I also advised Mr. Clayman
17 that we'll have two attorneys
18 splitting the cross of Mr. Akins.
19 I'll try to handle the objections
20 on direct so there's not too many
21 people popping up on that.

22 THE COURT: That's fine.

23 Thank you.

24 DIRECT EXAMINATION

25 BY MR. CLAYMAN:

1

2 Q. Could you please state your
3 name for the record?

4 A. Daniel W. Akins, A-k-i-n-s.

5 Q. And where are you currently
6 employed?

7 A. I own my own firm, Akins &
8 Associates.

9 Q. And before we begin, in front
10 of you is APFA Exhibit 700. Do you see
11 that?

12 A. Yes.

13 Q. Is that the declaration that
14 you submitted in this case?

15 A. Yes.

16 Q. What is Akins & Associates?

17 A. It's a small consulting firm,
18 transportation consulting.

19 Q. And could you just briefly
20 explain what your professional history

21 and position currently?

22 A. Sure. I'm almost 30 years now
23 in the consulting business, air
24 transportation mostly, I've done some
25 rail work and mostly what I do is I apply

35

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2 economic theories, statistical analysis
3 to financial and operational data from
4 transportation industries.

5 Q. And who have your clients been
6 over those years?

7 A. A wide range of clients. I've
8 worked for manufacturers such as Boeing,
9 airframe manufacturers such as Boeing,
10 McDonnell Douglas, airports, including
11 MWAA, which is the Metropolitan
12 Washington Airports Authority, State of
13 Virginia, Jacksonville Metropolitan
14 Airport. I've worked for vendors such as
15 Sky Chefs, and a number of labor unions.

16 Q. Have you ever served as an
17 advisor or consultant to an unsecured
18 creditors' committee?

19 A. Yes.

20 Q. And which airline was that?

21 A. Sun Country.

22 Q. In the course of your work,
23 have you from time to time evaluated
24 airline business plans?

25 A. Yes.

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1

2 Q. And have you done that both
3 inside and outside of bankruptcies?

4 A. Yes.

5 Q. And have you also in the
6 course of your work been required to
7 value collective bargaining agreements in
8 the airline industry?

9 A. Yes.

10 Q. And who have your clients been

11 in those cases?

12 A. A wide variety of clients, a
13 number of airlines, including Canadian
14 airlines, pilots and flight attendant
15 groups including Association of
16 Professional Flight Attendants at
17 American, almost all the labor groups at
18 Southwest. I used to work at ALPA, Air
19 Line Pilots Association. I've worked
20 with dispatch groups, ramp, maintenance,
21 mechanics, etc.

22 Q. What other bankruptcies with
23 regard to your work as an airline
24 economist in assessing business plans,
25 what bankruptcy cases have you been

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1

2 involved in?

3 A. In the airline business?

4 Q. Yes.

5 A. Right now I'm currently

6 involved in global aviation holdings
7 bankruptcy. Prior to that, US Airways,
8 United, Hawaiian, aloha, Northwest,
9 Mesaba.

10 Q. And have you been previously
11 qualified as an expert as an airline
12 industry economist and analyst in other
13 bankruptcy or other court proceedings?

14 A. Yes.

15 Q. And what court proceedings has
16 that been the case?

17 A. In bankruptcy, in this court
18 with Northwest.

19 Q. In any other bankruptcies?

20 A. Yes, in Mesaba, aloha,
21 Hawaiian, US Air.

22 Q. And have you been qualified as
23 an expert in the valuation of airline
24 labor agreements in other bankruptcies or
25 proceedings?

1

2 A. Yes.

3 Q. In which?

4 A. The same ones.

5 MR. CLAYMAN: At this time I'd

6 like to proffer Mr. Akins as an

7 expert in industry economics and

8 analysis as well as in evaluation

9 of airline labor agreements.

10 THE COURT: Any objection?

11 MR. FLICKER: No objection,

12 your Honor.

13 THE COURT: All right,

14 proceed.

15 Q. Now, you said I think that you

16 are currently engaged by APFA?

17 A. Yes.

18 Q. And when did you most recently

19 become engaged with APFA?

20 A. I've been engaged with APFA on

21 and off for about 20 years. The most

22 recent engagement was the section 6

23 negotiations with American Airlines

24 starting in about 2008.

25 Q. And have you been involved in

39

1

2 those negotiations up until the

3 bankruptcy?

4 A. Yes.

5 Q. And following the bankruptcy,

6 were you retained for any other -- well

7 let me go back.

8 What work were you performing

9 prepetition for APFA?

10 A. Contract cost valuation.

11 Q. And following the bankruptcy

12 are filing, did you continue to do that

13 kind of work for APFA?

14 A. Yes.

15 Q. Did you do any other work for

16 APFA?

17 A. Yes.

18 Q. What kind of work would that

19 be?

20 A. I started evaluating the
21 company's business plan, the 1113 asks,
22 I've attended unsecured creditors'
23 committee meetings on behalf of APFA.

24 Q. And you have undertaken an
25 analysis of American's business plan?

40

1

2 A. Yes.

3 Q. And how did you go about doing
4 that?

5 A. Well I attended a few meetings
6 early February in which American gave
7 kind of an overview of the business plan
8 and its objectives, as well as some of
9 the bases for the plan and starting on
10 February 3rd, I actually got a live Excel
11 spreadsheet that was the actual model for
12 the business plan.

13 Q. What did you do with that

14 model? Did you review it, or --

15 A. Yes, I know from past
16 experience that American views three or
17 four big components to drive its business
18 plan and I reviewed those components
19 within that model initially.

20 Q. And what are those components?

21 A. One is fuel price, one is the
22 GDP drivers that drive demand, and the
23 other one is the capacity.

24 Q. And other than looking at the
25 business plan itself, did you do anything

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1

2 else to assess the plan?

3 A. Well, in this context I was
4 trying to assess the plan as it derives
5 the 113 ask, so it was a different
6 component than just looking at the
7 business plan itself, but also trying to
8 understand how it was developed, what it

9 was based on, and so there's sort of an
10 objective look at it to see what the
11 drivers are, what the outcomes are, and
12 then put it in context of other
13 bankruptcy business plans that I've
14 reviewed.

15 Q. Did you also block at the
16 business plan from the perspective of its
17 viability?

18 A. Yes.

19 Q. And how did you come to assess
20 that?

21 A. Looking at the forecasts that
22 they relied on and trying to analyze what
23 types of markets American was trying to
24 deploy their growth in and how they were
25 trying to address some of the issues that

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1

2 they wanted to achieve through their

3 business plan, such as retention of high

4 value business customers.

5 Q. And in assessing the business
6 plan, did you consider the industry as a
7 whole in terms of the viability of this
8 particular plan?

9 A. Yes. The context of the
10 industry is really important to
11 understand whether the business plan is
12 achievable, as well as past business
13 plans that I've reviewed to see how they
14 were achieved.

15 Q. Now, in working for APFA and
16 in the assignment that you're now
17 undertaking, have you reached, have you
18 also analyzed or assessed American's
19 financial condition and its operations
20 prior to the filing of the bankruptcy?

21 A. Yes.

22 Q. And how did you go about doing
23 that?

24 A. Well, there are a number of
25 sources that an analyst such as myself

1
2 can use. Most of it is public data.
3 Prior to filing there wasn't any access
4 to the data room, because there wasn't
5 any private data to review. So it was
6 mostly from SEC filings and filings at
7 the DOT.

8 Q. Did you come to an opinion or
9 conclusion as to what caused American's
10 financial predicament prior to its
11 filing?

12 A. Yes.

13 Q. And what was your conclusion
14 in that regard?

15 A. My conclusion was that unlike
16 other carriers that restructured after
17 9/11 and other carriers that went through
18 the fuel price crisis in 2008 and the
19 economic crisis in 2009, that the
20 industry had changed to the detriment of
21 American which was once the largest
22 carrier in the world, and it changed

23 rapidly and the events are still
24 unfolding as we sit here, and that its
25 two largest competitors consolidated and

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1
2 made American's once superior network
3 relatively weaker.

4 Q. Just very briefly who are
5 those two competitors you're referring
6 to?

7 A. United Airlines and Delta.

8 Q. And approximately how much
9 larger are they now than American?

10 A. As a result of their mergers
11 with Northwest and Continental, United
12 and Delta are approximately 50 percent
13 larger than American in almost every
14 respect.

15 Q. At one point American was the
16 largest carrier?

17 A. Yes, for seven years through

18 2008 when Delta bought Continental, merge
19 had the largest network, was the largest
20 carrier.

21 Q. It was only on the merger of
22 Delta and Northwest that that position
23 changed?

24 A. Right, it pushed them to
25 number 2 and then United and Northwest --

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1
2 United and Continental became the biggest
3 and pushed Delta to number 2 and American
4 to a distant third.

5 Q. Could you explain the effect
6 of a network airline's relative size on
7 its revenue and its pricing power and
8 revenue share?

9 A. Sure, if you look at the
10 networks that United and Delta have right
11 now, there are a number of principles,
12 economic principles that you can weigh

13 the value of networks. They include the
14 economies of scope, scale and density,
15 which are fancy terms to say they've got
16 more cities connected to their city
17 pairs, they're denser, which attracts
18 business customers in particular markets,
19 and they have the advantages of scale
20 because they're bigger and their hubs
21 operate more efficiently with large
22 scale.

23 Q. What effect does an airline's
24 size have on its ability to attract local
25 passengers?

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2 A. Well, again, the economies of
3 density are really the second principle I
4 mentioned, which are the abilities for
5 business customers to ride the local
6 airline or the hubbed airline to more
7 places nonstop than competitors who are

8 connecting and the history has shown that
9 there are very few hubs that can survive
10 with two hub carriers for that reason and
11 that one seems to collect more than the
12 business passengers, like in Chicago
13 where United has a preference and it's
14 larger.

15 In areas where American is
16 larger, such as Dallas and Miami,
17 businesses prefer the nonstop network
18 that American operates out of those two
19 places.

20 Q. And one last question on this
21 point. How does an airline's size effect
22 passengers who are connecting and not
23 originating at a particular city?

24 A. Well there's sort of two
25 dimensions to size. If you're really big

3 Seattle, there's a limited amount of
4 travel that they can do in Alaska, but if
5 you've got a big network, where you can
6 operate gateways to international cities
7 or multiple connections to smaller cities
8 through various hubs, it gives the
9 carrier a strength in attracting high
10 value customers.

11 Q. Can you just briefly describe
12 what has changed in the last five years
13 with regard to airline networks and
14 particularly American's?

15 A. Sure. I think it's really
16 important in the context of this
17 bankruptcy to understand that the
18 industry's changed very rapidly in the
19 past five years.

20 There have been a few large
21 external shocks. And I mentioned the
22 2008 price increase that caught the
23 airline industry off guard, as well as
24 the economic collapse I think caught
25 everybody off guard.

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2 Combined with a fundamental
3 restructuring that I believe is one step
4 away from sort of the final maturity of
5 the US domestic airline business with
6 three big carriers.

7 The two big carriers right now
8 are Delta and United and those mergers
9 took place between 2008 and today, and
10 they're sort of fresh mergers. The
11 synergies that they anticipated are
12 ongoing, they're building.

13 And so the industry before
14 2008 had six network carriers, a number
15 of small LCCs, which are carriers like
16 Southwest and JetBlue that offer more
17 leisure types of, types of travel
18 opportunities, and then niche carriers
19 which I would describe as Alaska or
20 Frontier which operate in a really narrow

21 sort of scope and have a following from
22 their home towns.

23 And that, that industry
24 structure fundamentally affects the
25 context of this bankruptcy.

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2 Now this is a relatively
3 healthy industry at this point. When the
4 other carriers are structured, including
5 American, outside of bankruptcy, it was a
6 very unhealthy industry. And part of
7 that health is in due -- is in part due
8 to the fact that the two largest network
9 competitors of American have merged and
10 have joint synergies of a billion, \$2
11 billion a year as a result of the
12 synergies. Those synergies develop off
13 of the fact that they're actually
14 stealing high value customers from weaker
15 networks like American's.

16 Q. Now, can we just for a moment
17 turn to, in your declaration table 1
18 which is on I believe page 5 of your APFA
19 Exhibit 700. In this chart, does this --
20 is it intended to capture the size
21 differences between American and United
22 and Delta?

23 A. Yes. And I think the point
24 here is not a network structure issue,
25 it's a sizing issue. That five years ago

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1
2 American would have been the largest and
3 Delta/United would have trailed American.
4 And American's pricing was stronger. In
5 fact, the strongest among the three and
6 now it's the weakest among the three.

7 Q. It has the weakest pricing
8 power you're saying?

9 A. Yes, as shown by unit revenue
10 performance.

11 Q. And indicative of that, in
12 chart 2, what does that represent on the
13 next page?

14 A. Well, it's really important to
15 understand, again, the current context
16 after 2008 and what the industry did
17 after consolidation began with American's
18 two largest network competitors. And I
19 think up until 2008, again, we had six
20 large or relatively large network
21 competitors. The big 3 were United,
22 Delta and American. All had about equal
23 pricing power. All had equal shares
24 roughly, American being slightly bigger.

25 And up until 2008, American

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1
2 actually had as a result of its larger
3 network, a little bit more pricing power
4 than its competitors.

5 Once 2008 hit, again, most of

6 the losses were attributable in the
7 airline business to the fuel price shock.
8 American's performance, its net earnings
9 on a margin basis started deteriorating
10 pretty dramatically, I believe the only
11 explanation for that is the weaker
12 network position that American was in and
13 the losses of high value customers within
14 that network to the better positioned
15 networks.

16 Q. Let's just look at the chart
17 for a moment. Now when you say it's the
18 relative margin, on the I guess the Y
19 axis which shows the percentages, what
20 are those percentages?

21 A. Those represent the gap
22 between American, between American's net
23 income margin versus its competitors' net
24 income margin. So any time that line,
25 say before 2007, is above zero percent,

1

2 that means American is actually doing
3 better on a net margin basis than its
4 competitors. Any time it's below the
5 zero point, say after 2008, it means that
6 American's performance is relatively
7 worse than its competitors.

8 Q. So looking at 2009, which is
9 the year following the Delta merger, it
10 shows the red line hitting about a
11 negative 5 percent?

12 A. Right.

13 Q. And for every percentage point
14 gap in revenue, or in net margin, what
15 does that represent for American in
16 dollars?

17 A. In terms of a percentage
18 applied to the total revenues, about 230
19 million.

20 Q. So 5 percent would be
21 approximately?

22 A. Over a billion.

23 Q. And then you see that the,
24 from 2009 to 2010 there's a bit of a bump

25 you up, it looked likes you gained maybe

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2 even more than one percent. And then
3 there's a decline to an even lower point
4 than 2009 in 2011. Do you have any
5 explanation or opinion as to what
6 explains the up and down period here?

7 A. Well, again, there was severe
8 external shocks affecting the industry in
9 2008 and nine. And I think what happened
10 in 2010 is the US market recovered
11 somewhat and in 2011 all carriers posted
12 profits except American and I believe
13 it's the result of the impact of the
14 consolidation of United that took place
15 in 2011, which is a much bigger
16 competitor of American than Delta is
17 primarily because of the Chicago
18 bifurcated hub that American and United
19 operate. But my read on this is that the

20 consolidation of its largest competitors
21 are affecting American's ability to have
22 higher unit revenues based on its loss of
23 high value customers.

24 Q. And has United and Continental
25 completed all aspects of its merger?

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2 A. They're still working on some
3 of the bugs. They've had a switchover of
4 their IT platforms, but it's an ongoing
5 process. It's probably going to last
6 another year or so.

7 The carrier first announced
8 the merger in early 2010, got DOT and
9 Justice Department approval later that
10 year, so it's been about a year and a
11 half, but it's still moving forward as we
12 speak today and getting stronger and more
13 developed. You know, combining two
14 carriers requires a bit of optimization

15 of fleet deployment, and reallocating
16 their resources. So that's still
17 ongoing. Delta is pretty much through
18 and they're actually reporting about \$2
19 billion in net synergies as a result.

20 Q. So you're saying that United,
21 the United merger has not yet realized
22 all the synergies that it will benefit
23 from because of that merger?

24 A. Yes.

25 Q. In terms of American's

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1
2 relative position regarding unit revenue,
3 if you were to look at -- let's turn to
4 chart 3 if we can. This is a redacted
5 chart so I will not, I will ask you not
6 to refer to any of the numbers that
7 appear there. I'm just asking you that
8 over that period of time between the
9 first quarter of '09 to the first quarter

10 of 2011, did American's relative position
11 worsen during that period?

12 A. Yes.

13 Q. And in your opinion, do you
14 believe that besides obviously apart from
15 the revenue, but going back to the net
16 margin, that during this period that we
17 were focusing on, primarily from 2008 to
18 2011, that that decline was attributable
19 to American's labor costs?

20 MR. FLICKER: Objection.

21 THE COURT: What's the
22 objection?

23 MR. FLICKER: Leading. I'm
24 trying to give him some leeway
25 here, but that's quite leading.

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2 THE COURT: I'll sustain the
3 objection. Again, I want to hear
4 from the witness, not from the

5 lawyers.

6 MR. CLAYMAN: I'm sorry, your
7 Honor, I appreciate that.

8 Q. What effect do you think labor
9 costs had on American's net margin in the
10 period of 2008 to 2011?

11 A. Extremely limited. And that's
12 based on the fact that American's last
13 contractual pay raises occurred across
14 the board in 2008. So there wasn't any
15 increase in American's labor costs versus
16 its competitors.

17 In fact, there was a narrowing
18 of the gap as its competitors got pay
19 raises during this period, and so if
20 there was a labor cost gap back in 2009,
21 it shrunk going forward because its
22 competitors increased labor costs.

23 And so that's not a good
24 explanation as to why the RASM gap
25 increased and its relative position

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2 changed. I think the network story is
3 much more compelling.

4 Q. Just one other chart for a
5 moment here. Looking at chart 4, which
6 is entitled "Mainline unit cost ex-fuel
7 CASM," it's on page 9.

8 Just can you explain what that
9 title means to begin with?

10 A. It is all of American's
11 operating costs minus fuel.

12 Q. And CASM is what?

13 A. Cost per ASM.

14 Q. So you take an airline's --
15 how do you calculate CASM?

16 A. You take the costs and divide
17 it by the ASMs which are publicly
18 available, both of which are publicly
19 available.

20 Q. And you did this for the
21 carriers that are shown on this chart?

22 A. Yes, and I used American's

23 stage length adjustment methodology to do
24 it. And I did this chart because I
25 wanted to understand that American's

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1
2 claim about labor costs being higher than
3 other costs is partly attributable to
4 accounting in that the mechanics are
5 in-sourced and listed as a labor costs
6 and I wanted to make sure that we had an
7 apples-to-apples view.

8 So labor costs are one
9 component of a carrier's operation. If
10 you include all costs and exclude fuel
11 you get kind of a level playing field as
12 to what the total operating costs are of
13 a company minus its fuel.

14 And at no point in this chart
15 outside of 2003 do you see that American
16 had higher overall mainline operating
17 costs than its competitors.

18 Q. Just to go back for a moment
19 about, you said the maintenance costs at
20 American are in-sourced?

21 A. Yes. It's I think widely
22 known and it's been presented in this
23 proceeding that American's competitors
24 outsource many full, more percentage
25 points of its maintenance expense and

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1
2 that sort of stand out as a difference
3 between American and its main
4 competitors.

5 And what ends up happening
6 with that type of scenario is that when
7 other carriers outsource labor, those
8 costs don't go away, they get transferred
9 to a different accounting, a different
10 accounting ledger so that what is
11 internal labor costs, all things being
12 equal, contracted out become external

13 costs and are not part of labor and so
14 there's a -- there's a percentage of
15 American's labor cost disadvantage that's
16 solely due to the fact that the
17 accounting of those labor costs are
18 inside labor and not in a different
19 contract.

20 And this, if Delta's
21 outsourcing more and it's in contract
22 labor, assessing the labor cost doesn't
23 tell you how much the maintenance labor
24 is costing because it's outsourced and so
25 you've got to look at the total cost to

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1
2 sort of level the playing field.

3 Q. I think you mentioned earlier,
4 but maybe you did not, exactly when the
5 Delta/Northwest merger was announced?

6 A. Yes.

7 Q. What month was that?

8 A. It was in I believe May or
9 April of 2008.

10 Q. And do you know when it was
11 completed financially?

12 A. November of 2008.

13 Q. Now, prior to 2008, did --
14 Delta's ultimately successfully merged
15 with Northwest, correct?

16 A. Not prior to 2008.

17 Q. Not prior to 2008. I'm sorry.
18 But prior to 2008, was Delta approached
19 by another airline regarding a merger?

20 A. Yes.

21 Q. And what airline was that?

22 A. That was US Air.

23 Q. And was Delta in bankruptcy at
24 that time?

25 A. Yes.

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2 Q. And did you have an opinion,

3 and that obviously that bankruptcy --
4 that merger did not succeed, do you have
5 an opinion as to why Delta did not accept
6 US Air or pursue US Air's interest in a
7 merger?

8 MR. FLICKER: Objection.

9 THE COURT: Basis?

10 MR. FLICKER: I don't believe
11 I've seen that in the declaration
12 of this witness.

13 MR. CLAYMAN: I don't think
14 there is anything specifically
15 about it. I just see it as a kind
16 of natural outgrowth of his
17 discussion of mergers in the
18 industry.

19 THE COURT: Well, this is a 61
20 page direct, right, so there is a
21 bit of a -- and I think we had this
22 come up earlier in the airlines'
23 case when there was a question
24 whether something was in the direct
25 and I do think it becomes a notice

1

2 problem I think. We avoided the
3 problem by having somebody from the
4 airlines say they were going to
5 handle it in the rebuttal if
6 appropriate, but I do think if it's
7 not in the direct for an expert
8 then I don't know that he's offered
9 an opinion about that. So I'm
10 going to sustain the objection.

11 MR. CLAYMAN: Okay, thank you.

12 Q. And I think you mentioned that
13 the United/Continental merger was
14 announced. Did you say the month and
15 year? Sorry, Mr. Akins.

16 A. United/Continental I haven't
17 spoken about yet. It was in early 2010.

18 Q. Were there -- preceding May
19 2010, had there been discussions
20 regarding that merger?

21 A. Yes.

22 Q. What types of discussions are
23 you aware of?

24 A. Upon exit from bankruptcy
25 United -- it wasn't lost on anybody

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2 listening when Tilton, the then CEO, said
3 that they were looking for a merger
4 partner and they'd approached Continental
5 in late 2007 to try to get a merger
6 accomplished at that point. That was
7 preceding Delta and Northwest's
8 announcement.

9 So there was a lot of
10 activity, a lot of exchange of due
11 diligence information going on between
12 the financial professionals and
13 ultimately the merger fell apart in April
14 of 2008 for a couple of reasons, one of
15 which was United's big loss in the first
16 quarter of 2008.

17 Q. Was there any other reason
18 that you're aware of?

19 A. Yes, I think there was some
20 issues, as there always are, with the
21 executives as to who was to lead the
22 company. I believe Mr. Tilton had
23 different ideas than the Continental
24 management came up with about who would
25 lead the company.

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2 Q. Who was leading Continental at
3 that time?

4 A. Larry Kellner.

5 Q. At the time of the merger was
6 Mr. Tilton still at United?

7 A. Yes.

8 Q. Was Mr. Kellner?

9 A. No.

10 Q. And who ultimately became the
11 head of Continental, or United, excuse

12 me?

13 MR. FLICKER: Objection. I
14 was looking for it to tie to the
15 declaration, but again, I don't
16 think this does.

17 MR. CLAYMAN: That's okay.
18 I've gone far enough on that.
19 That's fine.

20 Q. Do you believe -- what do you
21 believe was, or did American, let me put
22 it this way, have a competitive response
23 to the announcement of these mergers?

24 A. Yes.

25 Q. What was that?

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2 A. For about the previous five or
3 six years American was operating under
4 something called a turnaround plan, and
5 had a number of goals, as of about 2009,
6 they announced something called Flight

7 Plan 2020. And it was to address
8 specifically the deficiencies I believe
9 that it was experiencing competing
10 against the newly merged Delta, and it
11 called part of that strategy the
12 cornerstone strategy.

13 Q. And that's where they were
14 going to focus in five cities?

15 A. Yes, and it's a widely known,
16 public plan to try to develop, again, and
17 retain customer loyalty, high value
18 customer loyalty in five cities. Two of
19 which I think have resulted in positive
20 results, Miami and Dallas because of
21 American's superior position. And three
22 cities haven't performed as well as the
23 other two in the cornerstone. Those
24 would be New York, Chicago and Los
25 Angeles.

2 Q. By the end of 2010, do you
3 know what the percentage of American
4 flights which began or ended in a
5 cornerstone city?

6 A. Yes, it's phenomenal. It's 98
7 percent of every single flight American
8 flies around the world ends in those five
9 cities or begins in those five cities.

10 Q. Maybe you can just elaborate a
11 little bit more on what is the principal
12 objective of the cornerstone strategy?

13 A. Again, it's I think to try and
14 focus on whether the carrier had or has a
15 belief that it has strength in the
16 ability to increase its market share
17 against its competitors and to retain
18 high value customers by focusing its
19 resources on those five cities, which are
20 some of the largest, most economically
21 viable cities in the country.

22 Q. In each of those cities
23 currently, what is American's position
24 relative to its competition?

25 A. Well, again, the corner

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2 strategy tried to focus more resources in
3 those cities. The results overall is
4 that American's market share actually
5 dropped in the total five, the five
6 cities from public data from 35 percent
7 to about 33 percent.

8 Q. Over what period?

9 A. From 2006 or seven through
10 today. And so there has been an energy
11 around those cities that American's
12 focusing on, but other carriers are
13 increasing their capacity as well and
14 it's a highly competitive industry and
15 American's had difficulty. And again
16 it's mostly based on places where
17 American doesn't have inherent strength,
18 that would be the New York metropolitan
19 area, where it used to be number 1, it's

20 now number 3 or 4, depending how you
21 measure it. Los Angeles where no carrier
22 really has competitive market power and
23 in Chicago where it faces United.

24 Q. Just briefly, could you
25 describe American's -- what American's

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1
2 earnings were in 2010, net earnings in
3 2010 and '11?

4 A. Well, they lost a billion and
5 a half in '09. They reduced that loss to
6 about 400 million in '10 and then over a
7 billion dollars in 2011. Again, the
8 thing that's different about American's
9 trajectory is that most carriers suffered
10 losses in '08 and '09. Most carriers
11 greatly recovered in 2010. American got
12 worse in 2011. That's the difference.

13 Q. What do you attribute that to,
14 again?

15 A. Again, it's, in my read of the
16 data and the statistics and the synergies
17 that are, its main competitors are
18 claiming are direct losses in a way that
19 American is suffering because of its lack
20 of a competitive network that just has
21 occurred. It's not something that was
22 around in 2007 or eight when American
23 made money. It's happening now and it's
24 continuing to happen and things are going
25 to continue to get worse for American in

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2 places like Chicago, as United optimizes
3 its operations there.

4 Q. In terms of its performance in
5 the cornerstone cities, I think you
6 mentioned that from 2006 to 2011 the
7 market share dropped from 35 to 33
8 percent. Did you take a look at what the
9 premise was city by city in those five

10 markets?

11 A. Yes.

12 Q. Let me turn your attention to
13 chart 6 which is a redacted chart.

14 THE COURT: What page,
15 counsel?

16 MR. CLAYMAN: I'm sorry, page
17 14.

18 Q. And could you just tell us
19 what the title of that chart is?

20 A. It's American's performance in
21 cornerstone cities. It's a net margin by
22 hub. That would be the amount of money
23 it earns off of the revenue it gains at
24 those particular cities. This is based
25 off of confidential American data from

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2 the data room.

3 Q. And if the bar is, I take it,
4 above the line it would be a profit and

5 below the line it would be a loss?

6 A. Yes.

7 Q. And again, with regard to the
8 pattern that is shown on this page, what
9 would you attribute that to?

10 A. Well I think it follows the
11 overall earnings pattern that we
12 discussed about American is that there
13 was a rebound in 2010 in all but one of
14 these cities -- in every one of these
15 cities and then in 2011 it went backward,
16 that is the earnings got worse. One of
17 the cities actually got better and I
18 attribute that to its inherent strength
19 in that particular city.

20 Q. Let me just ask you, Mr.
21 Akins, if its net margin that we were
22 talking about earlier improved in 2010
23 relative to its competitors, what do you
24 attribute that to?

25 A. Again, I attribute that to not

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2 so much the cornerstone strategy,
3 regaining ground with high value
4 customers, but more to the recovery in
5 the economy and economic activity that
6 drives the airline business.

7 THE COURT: Let me ask you a
8 question about that. If you tie it
9 to the overall rebound in the
10 economy, how did one understand
11 that vis-à-vis the performance of
12 other airlines that seem to also
13 benefit from that or not as the
14 case may be?

15 THE WITNESS: I think that's a
16 good question. And again, I want
17 to sort of focus on what was going
18 on in the backgrounds of this
19 besides the major exogenous
20 factors, fuel and the economy
21 falling apart and the recoveries.
22 During this time the industry
23 structure was changing radically to

24 the detriment of American. So the
25 big factor here is to look at what

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2 happened between 2010 and '121 when
3 every single carrier in 2011,
4 American's competitors as well as
5 most other carriers produced
6 profits, American went backwards.
7 American's performance got worse
8 and the only explanation I can have
9 looking at the materials that I've
10 assessed is that that is due to the
11 lack of competitive network
12 structure.

13 THE COURT: No, I got that. I
14 think my question is a more narrow
15 one. Which is for 2010, the uptick
16 which you said is attributable to
17 the economy, I'm trying to
18 understand why that would be a

19 particular benefit to American as
20 opposed to some other carrier.

21 THE WITNESS: It benefited
22 everybody, it benefitted everybody.
23 I think it's hard to separate out
24 at that point. It looks like the
25 corner strategy is working. It

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2 looks like the executives have put
3 their strategy to work and it's
4 working, but in 2011, with the same
5 sort of strategy --

6 THE COURT: My question was
7 just for 2010. Thank you, I think
8 I got the answer.

9 Q. Do you have an opinion as to
10 American's share of revenue in the
11 cornerstone cities did not increase
12 during this 2009 to '11 period?

13 A. Could you repeat the question,

14 please.

15 Q. Do you have an opinion as to
16 why American's share of revenue in the
17 cornerstone cities did not increase in
18 the 2009 to 2011 period?

19 A. Yes.

20 Q. What is your opinion?

21 A. You know, again, it's the --
22 it's the lack of, the same thing, it's
23 the lack of a competitive network same
24 theme. In places where American has
25 strength, they perform much better in two

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2 cities. In places where they don't have
3 strength they perform much worse.

4 And again, the situation in
5 the industry right now is very fluid and
6 I believe, again, we're one step away
7 from sort of final maturity of the
8 airline business.

9 Six years ago there were a lot
10 of options out there. Again, there were
11 the big 3 carriers and three smaller
12 networks, Continental, Northwest and US
13 Airways. Now there's two really, really
14 big 36 billion dollar companies and one
15 smaller 23 billion dollar company and
16 then another even smaller 15 billion
17 dollar company, that's US Airways.

18 And I believe that those
19 performance levels at each cornerstone
20 market, especially in 2011, are the
21 result of that permanent restructuring of
22 its network competitors.

23 Q. So in your opinion, in the
24 period since its inception to the period
25 up until its bankruptcy filing, was

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2 American's cornerstone strategy working?

3 A. Up until its bankruptcy, no.

4 Q. Now, I think you testified
5 earlier that you have spent some time
6 analyzing the stand-alone plan. Can you
7 just briefly describe the key components
8 of that plan?

9 A. Sure. It's primarily based on
10 the cornerstone strategy, the five cities
11 again. It's sort of cornerstone on
12 steroids. It's got a lot of things going
13 on with growth in those five cities. It
14 has an attempt to improve marginally the
15 incremental revenue off of its service to
16 those cities through a number of new
17 types of services from larger regional
18 jets. And other improvements to its
19 product. It's also based on recapturing
20 some of the lost I think high value
21 customers through those developments and
22 it combines the very high level of growth
23 with an aggressive insertion of new
24 products and aircraft into those five
25 cornerstone cities. And I believe

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2 American's been pretty public about the
3 fact that it's trying to recover some of
4 the lost ground due to its lack of a
5 competitive network.

6 Q. I think you mentioned earlier
7 that Delta is estimated to be enjoying
8 about \$2 billion in synergies, but could
9 you just explain how that occurs when two
10 airlines come together, what generates
11 those synergies?

12 A. Really simply, I think the
13 airline industry if any other industry is
14 a test case for this is there isn't any
15 large network carrier that hasn't merged.
16 So the airline industry since
17 deregulation has been a series of
18 mergers.

19 The fundamental drivers of
20 those mergers has been very powerful
21 synergy results from the mergers that

22 have occurred and those mergers have
23 resulted in a consolidation of two
24 operating entities. On the one hand, you
25 don't need two CEOs, you get efficiencies

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2 from eliminating duplicative positions,
3 cost positions, but you also get much,
4 much bigger upside from the revenue
5 potential of a larger network and being
6 able to connect passengers across an
7 integrated network rather than trying to
8 interline or code share.

9 So the great majority of
10 synergies that result in mergers of two
11 companies come from the expanded scope,
12 density, scale, of the -- of the two
13 combined companies and that's sort of
14 irrefutable. Whether the number is 2
15 billion, or 10 billion, that's the
16 compelling reason to merge.

17 Again, part of that synergy
18 value is essentially stealing customers
19 from competitors with less powerful
20 networks.

21 Q. Do you know what the estimated
22 amount of synergies associated with the
23 United/Continental merger is as of now?

24 A. It's a little bit less than a
25 billion. They've had a hiccup with their

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2 integration of their IT, but I think by
3 2013 or 2014 they're expecting over a
4 billion.

5 Q. Now, we'll go into some more
6 detail about this, but just, if you
7 could, tell us generally what your view
8 is or opinion is of the viability,
9 achievability, underlying assumptions of
10 American's stand-alone plan?

11 A. Well, unlike any other plan

12 I've seen in bankruptcy, American's plan
13 is based on recapturing a deficit, a
14 structural deficit from its network to
15 try and collect high value customers, and
16 I think the basic approach of the company
17 to try and do this organically, to try
18 and connect with code share partners and
19 approve its regional feed funds tally
20 does not address the basic problem of
21 American's structural deficit in its
22 network.

23 And it's also based on, once I
24 got under the hood with the model, it's
25 also based on a number of assumptions

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2 that don't comport with the standard
3 economic theory of supply/demand
4 relationships and pricing.

5 Q. Could you just list the, if
6 you could, the assumptions or projections

7 that contained in American's stand-alone
8 plan which you have concern with?

9 A. I think the primary ones that
10 are sort of compelling that I haven't
11 seen in other, in other carriers'
12 business plans is that the company's
13 intending to grow at a very high level in
14 particular points in particular years
15 without sort of the measure of imbalance
16 that they grow faster than demand and
17 there's no price dilution which would be
18 if you're growing much faster than the
19 market and much faster than your
20 competitors to gain market share in these
21 cities, you would see that your yields
22 would be diluted, that is the amount that
23 people would pay to ride that, to fill
24 that capacity.

25 Other things include a very

2 aggressive fuel price assumption, some
3 issues to do with its competitors'
4 response that I don't think stand
5 credulity. It's assumptions is that it
6 will not steal passengers from other
7 carriers as it grows and it will simply,
8 other carriers will allow American to
9 catch up. I've heard that said a couple
10 of times.

11 In the airline business I just
12 cannot imagine that United and Delta are
13 not right now preparing and executing
14 plans to aggressively go after American.
15 That's the nature of the business.
16 They're not going to allow American to
17 catch up. And if they don't allow
18 American to catch up this plan becomes
19 less viable.

20 Q. Do you have any concerns about
21 the way the plan assumes growth by
22 region?

23 A. Yes, there's a -- we discussed
24 this a lot I guess in my deposition. One
25 of the things that in constructing models

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2 this is a very large company with a
3 highly diverse fleet and an expansive
4 network. In constructing models, I'm a
5 little bit disturbed, in fact I'm a lot
6 disturbed about the nature of the routing
7 that's the basis for the growth.

8 And again, in my deposition we
9 discussed the problems with trying to
10 identify in very high growth markets
11 where the capacity American was intending
12 to deploy would actually go. New
13 markets, existing markets, and those
14 markets tend to be driven by
15 macroeconomic factors in huge regions
16 like Asia, and as I mentioned in my
17 deposition you can't buy a ticket from
18 Chicago to Asia, you have to be going
19 somewhere and you need that sort of
20 granularity to understand the context of

21 that growth. Not if it's growing at the
22 market but if it's growing much faster
23 than the market. That's the problem. I
24 don't know where they're going to find
25 the capacity to put into markets that are

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2 growing much slower than American
3 predicts.

4 Q. We'll get into that a little
5 bit more, but just in terms of
6 identifying the concerns. There are
7 other assumptions in the plan regarding I
8 believe code sharing. Do you have any
9 concern about that?

10 A. Well, we discussed this again
11 in my deposition in that there are code
12 share partners available for American.
13 Code shares especially back when the
14 industry was more fractional lysed, many
15 more participants and competitors. Code

16 share on a passenger preference basis
17 according to standard theory and modeling
18 is much less preferable than online
19 connections, that is a single carrier
20 taking you from your home port to the
21 foreign or domestic city pair rather than
22 code sharing between two because there
23 are complications. Different terminals,
24 different, you know, different processes
25 to board, different lounges, so forth.

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2 Q. And I think what about in
3 terms of American's utilization of its
4 fleet?

5 A. Well, in terms of what
6 American is intending to do again, it's
7 attempting to through scope relaxation
8 with the pilots trying to expand upon its
9 use of larger regional airplanes, and it
10 expects, again, to achieve a pretty large

11 upside in its incremental revenue based
12 on that change. And again, that change
13 is based on an assumption of switching
14 from some of the mainline airplanes to
15 some smaller regional jets to optimize
16 its system. And again, it's
17 fundamentally premised on the fact that
18 its competitors will not respond to that.

19 And, you know, by respond,
20 American has sort of set itself up as a
21 target, five places you have to worry
22 about it and it's pretty easy for a very
23 hell knee United and Delta to look at
24 those five cities and try to under price
25 with better service and more frequency

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2 anything American tries to put in those
3 markets. So it's not credible again with
4 that re-gauging assumption to assume that
5 other competitors aren't going to try to

6 beat American as it tries to change its
7 operation.

8 Q. Let's take these concerns one
9 at a time just if we may. First with
10 regard to your view on American's fuel
11 assumption.

12 A. Right.

13 Q. Without -- that is
14 confidential information, so without
15 disclosing exactly what it is, do you
16 think it is a credible forecast?

17 A. No.

18 Q. And why not?

19 A. Because I think it misapplies
20 the basis of where it got the data, which
21 is a fuel price curve that changes every
22 day. A forward curve is essentially what
23 you hedge fuel around. You can buy a
24 barrel of fuel two years from now it's
25 going to be less expensive or more

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2 expensive depending on the market today.

3 When you actually get two years from now

4 that price that you bought fuel at two

5 years ago doesn't matter. It's the

6 current spot price that really matters.

7 I've also been involved in

8 other airline bankruptcies currently that

9 have a completely different view of fuel

10 than American.

11 And my assumption is that most

12 people wouldn't think that fuel would be

13 --

14 Q. Don't -- would follow the

15 pattern that, is that what you were about

16 to say?

17 A. Right, would follow the

18 pattern that American has in its business

19 plan. Sorry. I just about fell in that.

20 Q. With regard to the concern

21 that you have or the issue that you've

22 identified with regard to the competitive

23 response that is anticipated in the

24 business plan, can you just explain a
25 little bit more what your view is on

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2 that?

3 A. Well, I don't think that
4 American's idea that other carriers are
5 going to allow it to execute its plan is
6 credible. I think that other carriers in
7 this industry especially, are highly
8 competitive and will take every advantage
9 over American with its network and with
10 its healthier bank accounts, with its
11 larger revenue streams, to pounce on
12 American and to make sure that the
13 implementation of their plan is not as
14 easy as American anticipates.

15 Q. In your reviewing other
16 business plans inside, airline business
17 plans inside and outside bankruptcy, what
18 have been the assumptions in those plans

19 regarding a competitive response?
20 A. The basis for traffic
21 development in those business plans has
22 always been that there will be a
23 competitive response and that growth and
24 demand will be formed within an industry
25 context and that you can measure

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2 anticipated response by the development
3 of a QSI, which is a quality service
4 index, which has been applied to airline
5 business plans since the CAB, and you can
6 anticipate in the future what your
7 competitors are likely to do, including
8 competitive responses.

9 Q. Could you just explain, and
10 this may be, you know, self-evident, but
11 what is a city pair?

12 A. There's a technical definition
13 of a market. It could be New York to Los

14 Angeles. There's three major
15 metropolitan airports in New York,
16 there's five in the LA basin. A city
17 pair is essentially New York to Los
18 Angeles. An airport pair is essentially
19 JFK to LAX.

20 Q. And what if that route
21 included a connection through Chicago,
22 would that be called a city pair, an
23 airplane pair or how would that be
24 described?

25 A. That would be an intermediate

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2 connecting point in a market. That would
3 be the New York/Los Angeles market and on
4 a relative basis, that value, that flight
5 on a pricing basis, on a high value
6 customer basis would be less valuable
7 than a nonstop.

8 Q. And in developing the network

9 that underlies the stand-alone plan, what
10 is the basis for that network?

11 A. Could you repeat that again.

12 Q. I'll try. There's a network
13 that American developed that underlies
14 its business plan; is that right?

15 A. Yes.

16 Q. And what's the basis for that
17 network interpret terms of city pairs for
18 some other increment of measuring market
19 or designating market?

20 A. Sure, it's the cornerstone
21 five cities, it tries to utilize those to
22 the extent possible, they're important
23 cities. I think American said that its
24 cornerstone cities are some of the
25 largest, most attractive, high value

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2 customer points, including the largest
3 cities in the country.

4 However, the network that
5 flows between that, those city pairs is
6 at a competitive deficit compared to the
7 network of United and Delta today.

8 Q. Are those, in developing the
9 network, does the plan designate or show
10 through its six year period the
11 particular cities that will be flown by
12 American from any one of those
13 cornerstone cities?

14 A. It has an analysis within the
15 McKinsey revenue model, which is separate
16 from the business model, that looks at a
17 QSI again on particular cities, but
18 there's no route by route analysis that's
19 available within the business plan other
20 than the big macro markets that drive the
21 growth.

22 Q. What are the macro markets
23 that are identified in the business plan?

24 A. Well, I think the world is cut
25 into about five or six puzzle pieces.

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2 There's north, Latin, which would include
3 sorts of Central America and the
4 Caribbean. There's deep Latin, south
5 Latin, which would be more Brazil,
6 Argentina. Again, but you don't know
7 because it's just considered one big
8 block. There's Asia, Europe, and
9 domestic. And I think there's other to
10 fill in all the places that aren't listed
11 in those big blocks.

12 Q. And in your opinion what would
13 have been a reasonable way for American
14 to develop its projections in the
15 business plan?

16 A. Well I think the reasonable
17 way at least from my review and I think
18 an industry analyst review would be to
19 have a little bit more granularity on
20 where the new capacity, on which new
21 markets, whether they're in China or
22 Singapore or Thailand, American intends

23 to deploy its capacity. And again, there
24 are very distinct points in American's
25 plan where a lot of capacity goes in very

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2 short order and it would help understand
3 where that jump in capacity could be
4 placed given the context of global demand
5 within a region. So a huge growth in
6 Asia? How are we doing that, where are
7 we going, what countries are we going to.

8 I don't need to be down to an
9 OAG schedule basis but I need to know if
10 American plans on growing in Europe very
11 quickly, what countries, what city pairs
12 are involved in those developments
13 because again, it's a lot of American's
14 forecasts do not comport with the
15 underlying demand in those markets.

16 And so there are very large
17 increases in certain markets that would

18 be in the out years. Where that is
19 occurring, how it's occurring, what the
20 basis is for that big jump in growth.

21 So it's difficult to say seven
22 years from now, six years from now what
23 type of aircraft, what time you'd be
24 leaving at but I think it's a little bit
25 simpler to say we anticipate flying more

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2 to England or Scotland, or Finland than
3 just Europe.

4 Q. And I think you mentioned in
5 the course of that answer that there's --
6 that the anticipated or projected growth
7 is greater than the projected increase in
8 demand?

9 A. Yes.

10 Q. And what is used to project --
11 well, when you say an increase in demand,
12 what are you basing that on?

13 A. There are a number of sources
14 that American and its advisors have used
15 to project out five or six years.
16 Airline demand is closely correlated with
17 GDP which is gross domestic product and
18 again, the product I've got with the
19 demand based on gross domestic product is
20 it's a regional gross domestic product,
21 so you could have huge growth in Germany
22 but you're intending to fly to England.
23 There's a disconnect there in that
24 Germany might have a huge growth in GDP
25 but your revenues and your assumptions on

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2 the demand to Europe are based on England
3 and that could have a negative, you know,
4 GDP or some recession that's contained
5 within that country or anywhere in Asia.
6 They're just too big of global
7 amalgamations of countries to assess the

8 reality and the demand for American.

9 But going out five or six
10 years there's very limited tools to
11 assess demand the way American wants to
12 produce its forecasts and again, it's not
13 just because American is expecting to
14 grow, but if you look at a lot of the
15 redacted material, there's a number of
16 issues underlying the assumptions about
17 growth which don't comport in any way
18 with those demand forecasts.

19 Q. In your view, does the
20 business plan take into account the
21 effect of a higher growth rate on
22 American's unit revenue?

23 A. No. In fact, again, it's --
24 the premise, the methodology underlying a
25 lot of the business plan for high growth

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2 with less demand should be that there's a

3 revenue, a negative revenue impact and I
4 like to use the example of Southwest,
5 when Southwest was growing its market,
6 say Baltimore, Islip, what they did is
7 they dumped a whole lot of capacity on
8 the market and the way they filled their
9 capacity is sell their seats for a lot
10 less than the going rate, so they
11 stimulated traffic.

12 And when you're growing at a
13 high rate, the way you fill that capacity
14 is you stimulate traffic with lower
15 fares, especially if you're growing at
16 higher than forecast demand.

17 And the two things which
18 American has in its plan which don't
19 stand up to economic theory are that load
20 factors, which is the utilization of that
21 capacity, stay pretty stable and fares go
22 up. So we've got huge increase in
23 capacity in many, many markets that
24 exceed demand, and you would expect
25 either loads to go down and fares stay

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2 the same or fares to go down to keep that
3 demand up and neither one of those
4 occurs. Both fares increase, which is at
5 odds with economic theory, and loads stay
6 pretty stable.

7 Q. So how does -- I think you
8 mentioned that McKinsey, McKinsey
9 developed this revenue model?

10 A. Yes.

11 Q. How does, maybe this is what
12 you were just saying, that how does that
13 model then relate to or does it follow
14 the concept or theory of supply and
15 demand?

16 A. In some respects, McKinsey's
17 model has elasticities of pricing that
18 are based on capacity and demand
19 imbalances. For instance, shifting the
20 gauge of its aircraft from a larger to a

21 smaller aircraft, a smaller regional jet,
22 there is an increase in the average
23 yield. The average revenue per seat
24 because there's fewer seats. And that
25 drives an increase in American's revenue.

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2 However, in the context of all
3 this high growth there should be a
4 negative component on its pricing that
5 reflects the imbalance not only between
6 American's growth and market demand, but
7 also between American's growth and its
8 competitors' growth.

9 They're going to need to
10 attract a lot of new passengers and the
11 way to do that isn't to increase fares.

12 Q. And in your experience and --
13 in your experience, have you reviewed
14 other airline business plans, or what has
15 been the consideration given to supply

16 and demand in other airline business
17 plans?

18 A. I think one of the things that
19 struck me in this particular case is one
20 of their witnesses, I believe it was Mr.
21 Dichter, quoted essentially economic
22 theory and airline industry practice
23 about the imbalances that one would
24 expect if supply exceeded demand, that
25 there would be a negative revenue

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2 consequence for American or the industry.
3 That isn't applied in the McKinsey model.
4 He stated it, but it's not applied in the
5 McKinsey model.

6 Q. Have you seen that before in a
7 business plan?

8 A. No.

9 Q. Now I think you mentioned that
10 one of your concerns was the plan's

11 reliance on code sharing agreements.
12 What is your view with regard to the
13 company's assumptions about code sharing?

14 A. Well, again, you know, code
15 shares are used in sort of markets where
16 you don't serve generally, and there's a
17 wide variety of code shares. But the
18 kinds of code shares that American's
19 talking about are essentially trying to
20 substitute for its lack of feed at either
21 gateways or at hubs with the services
22 provided by a current competitor. And
23 generally those relationships are
24 beneficial between the two.

25 However, the code share

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2 environment, compared to online service,
3 again, if you've got carrier A and
4 carrier B connecting at some midpoint and
5 carrier A doesn't serve where carrier B

6 serves and vice versa, and you've got
7 carrier C, being United or Delta that
8 serves both points, the beginning and the
9 endpoint, that in any kind of market
10 analysis is a preferable connection than
11 having a code share.

12 So it's sort of a weak
13 synthetic substitute for having organic
14 service, online service in a market,
15 especially for high value customers who
16 want all the accoutrement and the
17 upgrades and the presence that they've
18 got at their particular frequent flyer
19 airlines.

20 Q. Have you assessed the plan's
21 reliance on the re-gauging of its fleet?

22 A. Yes.

23 Q. What are its assumptions with
24 regard to that?

25 A. Well, again, it has a very

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2 aggressive growth plan overall,
3 consolidated growth plan. The most
4 aggressive part of that plan is a very
5 large increase in regional flying with
6 larger airplanes that may or may not have
7 two class service.

8 Q. And think that their approach
9 to, in the business plan concerning the
10 re-gauging of its fleet and the
11 assumptions underlying that, are
12 reasonable in your expert opinion?

13 A. I think they're really
14 aggressive.

15 Q. And why is that?

16 A. Because, again, I think that
17 the assumption of no competitive response
18 is kind of hard to imagine, that the kind
19 of developments and the kind of upside
20 that American thinks it's going to get by
21 recapturing high value passengers, United
22 and Delta are not going to be unaware of
23 that effort and will respond in kind most
24 likely to prevent American from

25 exercising its regional growth strategy,

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2 at least profitably.

3 And I also believe that there
4 are certain things, again, the
5 underpinnings of the -- of the increase
6 in incremental revenue resulting from the
7 re-gauging of the fleet are out of
8 context with the overall situation where
9 American is growing very fast, its
10 regional fleet is growing very, very fast
11 and by switching simply from a larger
12 airplane to a smaller airplane or by
13 re-gauging the smaller airplanes that
14 American already has to a bigger
15 airplane, you have to consider the
16 revenue dilution effects of that growth
17 and not just the switch between a larger
18 and smaller airplane or a smaller
19 airplane and a larger airplane.

20 There's no consideration that
21 there should be some dilution of that
22 revenue, just because you simply switched
23 from a bigger airplane to a smaller
24 airplane.

25 Q. Let's just take that apart for

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2 a minute. Let's say they go from an MD80
3 to a regional jet with approximately, for
4 the sake of this hypothetical, 40 fewer
5 seats.

6 A. Right.

7 Q. Flying the same route. What
8 is the effect on pricing when that
9 happens on that particular route? How
10 would you assess pricing let me say that?

11 A. The standard measure of unit
12 revenue would be based on seat miles. So
13 if you've got, let's say, 50, 60, 70
14 fewer seats on a RJ you're essentially

15 selling those seats at a higher level
16 than you would if you're trying to fill
17 150, 142 seat airplane. So there's an
18 automatic increase in unit revenue.
19 However, unit costs also go up because
20 you've got smaller base to divide the
21 costs. And if you're increasing from a
22 smaller 50 seat regional jet to a larger
23 70, 90 seat regional jet you also should
24 have some dilution because now those unit
25 RASM, unit revenues on smaller airplane

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2 will get diluted by moving to bigger
3 airplane. In some sense American
4 captures a little bit of this in the
5 plan. But I don't think the degree
6 that's necessary. Because this again,
7 this is a really, really radical growth
8 of its regional fleet taking place over a
9 very short period of time.

10 Q. But in making the assessment
11 of the effect of going from smaller
12 aircraft to larger and vice versa, to
13 what extent do you have to consider the
14 overall growth in that particular market
15 to determine the effect of that change in
16 gauge?

17 A. I think that's the bedrock
18 upon which that change in gauge has to be
19 valued. Not just an internal analysis,
20 but actually a market context analysis.

21 Q. Do you believe that American
22 performed that analysis in making an
23 assessment of the revenue that would be
24 realized from the change in gauge?

25 A. I don't believe so from the

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2 data that they've given us. And one of
3 the problems that we've got especially
4 with the regional issue is there's no

5 clarity of who, what, when, how, what
6 types of equipment. We just know it's up
7 gauge regional equipment.

8 Q. Let's go back. What's the
9 what in the what?

10 A. We don't know what type of
11 equipment they're going to fly. We don't
12 know where they're going to fly it. We
13 don't know who's going to fly it.

14 Q. Meaning which airline?

15 A. Right. It could be Eagle, it
16 could be mainline, it could be somebody
17 else. I'm not sure what the plan is.

18 Q. I think the last point I would
19 ask you about in this portion of your
20 testimony is you understand that American
21 has certain assumptions regarding product
22 enhancements?

23 A. Yes.

24 Q. And what are those, if you
25 just describe briefly what are those

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2 product enhancements?

3 A. The product enhancements
4 include improved on-board entertainment
5 systems, I think they've already started
6 trying to develop some of those and
7 deploy them. Hand-held devices to play
8 games and so forth. And also seat pitch,
9 I think American is now trying to
10 retrofit its fleet to get a sort of
11 economy plus type of product out there
12 that there's a little bit more revenue
13 and other carriers have done this,
14 there's a little bit more revenue in that
15 type of configuration. And also first
16 class and business class cabin
17 improvements which include lie flat
18 seats.

19 Q. And with regard to lie flat
20 seats, do you know when that program,
21 when those seats will first be installed
22 in an American plane?

23 MR. CLAYMAN: That was
24 reported.

25 MR. FLICKER: I know some of

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2 it was.

3 MR. CLAYMAN: Just the year.

4 A. I'm being a little careful, I
5 don't want to step in it. The reports
6 are I believe that the lie flat seat
7 implementation will start in 2014. And
8 at some point the aircraft will be
9 configured at some point thereafter.

10 Q. Do you believe there will be a
11 competitive response to those product
12 enhancements?

13 A. Well I think again, it's
14 American in a lot of ways catching up to
15 what's already in the market.

16 And so I believe that United
17 and Delta will continue to develop

18 products well beyond, whatever they are,
19 lie flat seats and things that we can
20 think about in 2012. And that, again, is
21 designed to maintain the capture of their
22 high value customers that they don't want
23 to lose to American. So they're going to
24 try and stay one step ahead.

25 Q. Does the plan assume a

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2 competitive response to these product
3 enhancements?

4 A. No.

5 MR. CLAYMAN: Your Honor I
6 don't know did this is a good
7 breaking point, I'm about to go
8 into a somewhat different section.
9 I probably have about I would say
10 maybe another hopefully less than
11 an hour, but I'm not sure and I
12 know that you wanted to end at

13 12:30.

14 THE COURT: Somewhere in that
15 vicinity. There's a Judge's
16 meeting at 12:30, so if this is a
17 good time to break I'm fine with
18 that. So let's reconvene at 2.

19 (Luncheon recess: 12:26 p.m.)

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2 A F T E R N O O N S E S S I O N

3 2:14 p.m.

4 THE CLERK: All rise.

5 THE COURT: Please be seated.

6 Proceed.

7 MR. CLAYMAN: Thank you, your

8 Honor.

9 DANIEL AKINS,
10 resumed, having been previously
11 duly sworn, was examined and
12 testified further as follows:

13 CONTINUED EXAMINATION

14 BY MR. CLAYMAN:

15 Q. Mr. Akins, I'd like to have
16 you discuss sort of the second half of
17 the cornerstone strategy which is the
18 postpetition cornerstone strategy, which
19 is as I think you said, part of the
20 stand-alone plan; is that right?

21 A. Yes.

22 Q. In your opinion, are there
23 cornerstone markets which will experience
24 some degree of success?

25 A. Yes.

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2 Q. And what are those?

3 A. I think they're the markets
4 that have already experienced some
5 success, where American has a large share
6 of the seats, which is Miami and as a
7 gateway to Latin America, where American
8 has strengths, as well as DFW.

9 Q. Do you know what its market
10 share is in DFW?

11 A. It's around 75 percent.

12 Q. Would you happen to know what
13 the second largest carrier is and its
14 market share?

15 A. Well, if you consider
16 Southwest being at love field, it's the
17 second largest player in Dallas but it's
18 a different type of carrier, different
19 type of service. It used to be Delta
20 until Delta pulled out.

21 Q. When did Delta pull out?

22 A. Sometime around its exit from
23 bankruptcy, I believe, or maybe before.

24 Q. Let me ask you, you mentioned
25 Dallas and Miami as continuing to be

1
2 successful. What about JFK, what is your
3 view on that?

4 A. No, I think Mr. Resnick
5 testified in his declaration that there
6 is a sort of compromise market share in
7 New York which doesn't lead to pricing
8 power. New York's got three major
9 metropolitan airports and the principal
10 focus for international traffic is at
11 JFK, and I don't believe American has
12 enough feed to do the things that it
13 wants to do in its bankruptcy exit plan.
14 And it depends on code shares to execute
15 as well as other operational constraints
16 to change which, which are slots.

17 And so I think American's
18 share of the New York metropolitan area
19 as Mr. Resnick described in a footnote is
20 around 15 percent.

21 Q. Are you saying that Mr.

22 Resnick, is that who you mean?

23 A. I think it's in Mr. Resnick or
24 Mr. Dichter's declaration. So I don't
25 think that there's enough market power

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2 and American's presence here is too
3 small. United, after its merger with
4 Continental is much, much bigger dome
5 strategy and internationally at Newark,
6 it has more feed and that lends to a
7 stronger pricing position in New York.

8 Q. As part of your declaration,
9 did you prepare a table displaying
10 American's relative position in JFK?

11 A. Yes.

12 Q. Let me turn your attention to
13 what's marked as Exhibit 2 on page 27 of
14 Exhibit APFA 700. Can you describe how
15 you put this chart together and what it
16 represents?

17 A. This is just simply an OAG

18 schedule pull.

19 Q. What is OAG?

20 A. OAG is official airline guide.

21 It's the sort of public clearinghouse for

22 scheduling. There are other vendors, but

23 OAG is kind of the longest established

24 vendor of at least domestic schedule

25 data.

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2 Q. What can you say about this

3 chart with regard to American's relative

4 position at JFK?

5 A. Well, you know, I don't think

6 it's simply a measure of size, that being

7 big is better. It's actually how much

8 feed you can flow over your hubs or

9 networks that measures your competitive

10 strength.

11 And some of the metrics, there

12 are a lot of different ones you could
13 look at, are the number of markets you
14 serve on a nonstop basis to feed and flow
15 international traffic to domestic points
16 of origin or destination, which is
17 considered behind the gateway traffic.

18 And there's also the measure
19 of flights, how many flights do you fly
20 to those cities, as well as how many
21 seats are onboard those flights. You can
22 see at the top American at JFK has far
23 fewer flights, markets, and seats than
24 any other carrier and that makes it at a
25 competitive disadvantage for transporting

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2 people over its principal northeast
3 gateway.

4 There are better options for a
5 high value customer to use, more flights,
6 more markets, more seats.

7 Q. Now, I think there have been
8 press reports -- one second, your Honor.

9 Mr. Akins, there have been
10 press reports speculating that JetBlue or
11 American may be interested in entering
12 into a code sharing arrangement with
13 JetBlue. Do you have a view as to
14 whether such a code sharing arrangement
15 would work for American?

16 A. Well, I think it's, you know,
17 code sharing is what airlines do when
18 they need feed that they can't serve from
19 their own organic network. Again, JFK is
20 slot restricted so American just can't
21 start flying a bunch of airplanes into
22 JFK, same as LaGuardia.

23 So it's sort of a second tier
24 solution. The best solution would be to
25 fly organically over your hub and over

2 your gateway. Again, airline modeling
3 protocol would suggest that having a code
4 share is better than not having feed, but
5 having a code share isn't as competitive
6 as having your own feed to your own
7 gateways.

8 Q. Are there any difficulties
9 that a passenger may have in connecting
10 to a JetBlue flight to an American flight
11 at Kennedy?

12 A. Well, there's, you know,
13 obviously anyone who flies in on JFK
14 knows they're in two different terminals
15 and that would present a little bit of an
16 obstacle. I know there are ways to get
17 around that, but I don't know, you know,
18 I don't know any preference to go and do
19 that, to fly into one terminal, take a
20 bus or shuttle to another terminal that's
21 preferable for a business passenger that
22 could fly over Delta's network over JFK
23 or United's network over Newark.

24 It seems to me that the high

25 value customer would prefer to be on an

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2 organic carrier, that is a single

3 carrier.

4 The other thing about JetBlue

5 is I think United and other carriers have

6 been through this with their single class

7 carriers, United called it Ted, and Ted

8 was a low cost carrier that didn't offer

9 any first class seats, so high value

10 customers such as those that American

11 anticipates to be fed into JFK would not

12 have the option on JetBlue to upgrade.

13 It's not a big obstacle, but I know it

14 was a real problem for Ted at United and

15 one of the reasons why it no longer

16 exists is because there was a disconnect

17 with the mainline that high value

18 European customers would come into a

19 place like Chicago flying Lufthansa and

20 United first class and the only way to
21 get to a place like Las Vegas is to fly
22 on Ted and it doesn't offer the same
23 kinds of amenities, there's no upgrades
24 and it's somewhat of a problem on
25 JetBlue.

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2 Q. Did Ted have first class?

3 A. No.

4 Q. How long was Ted around for,
5 approximately?

6 A. I think around eight years.

7 There was a shuttle by United that was
8 also a California based operation that
9 was single class too, but Ted was around
10 for a period of time, probably less than
11 ten years.

12 Q. And with regard to the
13 cornerstone strategy, what is your
14 opinion about the company's plans for

15 Chicago?

16 A. Well, again, I think unlike
17 Dallas and Miami, that Chicago isn't as
18 amenable to American's plan as it would
19 like. It doesn't enjoy the kind of
20 position that it does at Dallas and
21 Miami. It can't really exploit itself.
22 It's not the number one carrier United
23 is. United's the hometown carrier there
24 and I think it's a much harder road to
25 travel at Chicago with United there than,

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2 say, Dallas or Miami.

3 So again, this is the fourth
4 of five cornerstone cities and it is much
5 more difficult avenue, especially
6 anticipating that United is the hometown
7 carrier, United's healthy and United is
8 in the market right now for buying new
9 airplanes. I believe they're going to

10 aggressively respond in Chicago. It's
11 their turf. It's similar to what Delta
12 happened -- what happened to Delta in
13 Dallas, which is the number one carrier
14 usually rules the day.

15 Chicago is the only, the final
16 bifurcated two carrier hub that exists in
17 the US and the reason why there aren't
18 anymore bifurcated hubs which would be
19 Dallas with American and Delta or say
20 Continental and United in Denver, is
21 because the pricing power is lost to the
22 second carrier. You don't have that kind
23 of pricing power.

24 So it's very difficult for
25 American to make money in Chicago versus

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2 United and it's gotten worse since the
3 consolidation.

4 Q. And finally, what is your view

5 of American's plan for Los Angeles?

6 A. It's similar to the presence
7 in New York, around 15 percent. Again,
8 Los Angeles is more than LAX. Los
9 Angeles is five basin airports. That
10 serve local markets as well as
11 international markets in Mexico.

12 So when you talk about Los
13 Angeles, you're talking about an
14 extremely diverse catchment area, lots of
15 ethnic traffic from the Far East, Mexico,
16 lots of domestic traffic up and down the
17 West Coast and transcon, and American
18 plans to use its code shares with Qantas
19 and JAL and its other One World partners,
20 as well as domestic feed from other
21 unnamed code share partners to boost its
22 presence in Los Angeles and I think it's
23 going to be extremely difficult to do.
24 And Los Angeles isn't slot controlled but
25 it's gate constrained.

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2 So it's difficult to envision
3 the types of growth that American sees
4 there especially with better networks in
5 San Francisco and Seattle and Chicago
6 that can feed people into the Asian
7 market.

8 Q. Are you saying you think San
9 Francisco's a better city to fly to Asia
10 than Los Angeles?

11 A. No, I'm talking -- well, it's
12 closer because the polar route goes north
13 over the pole, or close to it. But no,
14 I'm talking about United's operation in
15 San Francisco. Much bigger, organic,
16 complex, as a result of its purchase of
17 Pan Am's Pacific division in 1985. As
18 well as the development that Delta's had
19 since its purchase of Northwest in
20 Minneapolis and Seattle, United in
21 Chicago. They're just bigger gateways
22 for those carriers than what American
23 envisions to be an inorganic gateway in

24 Los Angeles. So that's an obstacle.

25 Q. Let me ask you one last

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2 question about this and go back to JFK.

3 Other than JetBlue, is there any other

4 candidate that could provide feed to

5 American at that airport?

6 MR. FLICKER: I'd rather not

7 have that question answered in open

8 session.

9 MR. CLAYMAN: I'm just asking

10 his opinion.

11 THE COURT: If this witness

12 has access to confidential

13 information I don't know quite how

14 you parse that answer so as to not

15 get into the confidential

16 information if we're talking about

17 protectively which I understand is

18 the line, so.

19 MR. CLAYMAN: All right,

20 that's fine.

21 Q. Now, as part of your work that
22 you've done for APFA, have you taken a
23 look at the views of Wall Street analysts
24 about the stand-alone plan?

25 A. Yes.

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2 Q. And what has, based on that
3 review, what is the -- what opinions have
4 been offered by those analysts?

5 A. Generally negative up to a
6 degree that I haven't seen in any sort of
7 review of Wall Street analysts airline
8 business plans. I haven't seen the kind
9 of rhetoric associated with the business
10 plan that I've seen with Wall Street
11 analysts in this particular plan.

12 Q. And some of that rhetoric is
13 quoted in your declaration; is that

14 right?

15 A. Right.

16 Q. Have you seen any Wall Street
17 analyst who has supported the stand-alone
18 plan?

19 A. Not that I've read. What's
20 tended to happen is that since American's
21 in bankruptcy and isn't really an equity
22 trade that they can follow, a lot of the
23 analysts don't follow American while
24 they're in bankruptcy. So you can get
25 some information about US Airways and

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2 associated positioning of US Airways in
3 terms of consolidation, but it's hard to
4 get the same type of coverage that you
5 would from a carrier who's not in
6 bankruptcy that actually has credible
7 share trades and things that Wall Street
8 analysts like to look at as the upside or

9 downside of a particular stock.

10 Q. But the reports -- you're
11 referring to the opinions of Wall Street
12 analysts, have they issued some reports
13 about American?

14 A. Yes, and again, they issued
15 them since around I think late
16 March/early April. And they're some of
17 the big names in the industry that have
18 come out against the plan.

19 Q. What is the amount of revenue
20 growth that is -- well, I will withdraw
21 that question.

22 You mentioned earlier in your
23 testimony that through consolidation
24 carriers have enjoyed synergies that they
25 would not otherwise have they have led to

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2 more revenue, substantially more revenue.

3 In the business plan that

4 American has presented, the stand-alone
5 plan, do you believe that the plan can
6 generate a comparable amount of revenue
7 without a merger?

8 A. You're talking about
9 substituting synergy values with other
10 methods? I think the attempt that was
11 made by McKinsey and others was
12 essentially to replicate synergy values
13 without a merger and I think it's a much
14 more risky proposition.

15 Again, the underlying dynamics
16 of the airline business have been to
17 capture those synergies through mergers
18 and I think a lot of what has been
19 substituted for that has very high
20 execution risk that it probably won't end
21 up, you know, receiving that level of
22 value from their essentially bolstering
23 the cornerstone strategy with the types
24 of services and improvements that
25 American envisions.

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2 Q. Do you believe at the end of
3 the period of the plan, which is I guess
4 in 2017, do you believe that the
5 stand-alone plan will have created a
6 network that is competitive with United
7 and Delta?

8 A. No, I think the same
9 structural issues exist and this is not a
10 growth issue, this is a network structure
11 issue that by being bigger someplace may
12 help a little bit, but I don't think it
13 fixes the network the way American needs
14 it fixed and the way other carriers have
15 fixed their networks.

16 Q. Do you believe that the
17 stand-alone plan is viable or achievable?

18 A. No, on either count. I don't
19 think the approach of the plan does not
20 address American's structural network
21 deficiency. And I don't think it results

22 in any change in that position.

23 Q. Now, in your experience, have
24 you ever previously opined that a
25 business plan of an airline, bankrupt or

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2 otherwise, was not viable or achievable?

3 A. Not in the sense of the
4 strategy. I've had issues with certain
5 pieces of the development of the business
6 plan, errors in costing or errors in
7 developing certain route strategies, but
8 mostly on a very mathematical sense, not
9 on a strategic sense.

10 And we had trouble with
11 Mesaba's business plan in the Minneapolis
12 bankruptcy, it was called Northstar, and
13 we didn't attack it as being an erroneous
14 assumption that Mesaba wanted to do, we
15 attacked some of the issues that they
16 fixed. It wasn't an error, it was a bad

17 assumption, so they fixed it. So we did
18 have problems with the business, it's not
19 unusual, it's a very complicated
20 business.

21 But in terms of the strategy,
22 I've never had an issue with the type of
23 strategy that American is attempting to
24 execute here.

25 Q. Among the airline plans that

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2 you have evaluated during your career,
3 how would you rank American's stand-alone
4 plan?

5 MR. FLICKER: Objection.

6 Ranking? It seems-speculative.

7 Q. Is it the best?

8 THE COURT: I'll allow it.

9 THE WITNESS: I can speak?

10 THE COURT: Yes.

11 A. Again, there are three sort of

12 levels that I have an issue with, and
13 I've never seen a business plan that --
14 that is this bad in terms of addressing
15 the deficits that American faces. And
16 again, this is a very unusual animal
17 here. We have a very high growth
18 assumption, in an industry whose
19 profitability is based these days on
20 capacity discipline.

21 And so this plan not only
22 threatens with the execution risk of
23 American on a stand-alone plan, it also
24 threatens the stability of the industry
25 if you've got a rogue carrier out there

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2 growing much, much faster than the rest
3 of the industry, especially in certain
4 years. That's, that's a threat to the
5 pricing discipline that's led to
6 profitability recently for the bigger

7 carriers as well as the small ones.

8 Q. Can you explain what you mean
9 by capacity discipline?

10 A. It is, it is something that
11 carriers have learned especially since
12 9/11 and the fuel price issues in 2008,
13 is that the majority of American's
14 revenues as well as other carrier's
15 revenues, comes from a small group of
16 passengers, 25 percent of passengers
17 generally generate a huge amount of the
18 revenue stream. What ends up happening
19 when you've got growth is you're filling
20 the backs of the airplanes with people
21 who don't even break even and so there's
22 25 percent pay for the majority of it and
23 then you've got to fill a big airplane
24 and many big airplanes if you're growing
25 with cheap tickets and so what ends up

2 happening is you sort of undermine your
3 cost discipline on the front of the plane
4 by having too much capacity distributed
5 into the market on the back of the plane.
6 So capacity discipline essentially is
7 carriers judging their ability to make
8 money rather than to take market share on
9 capacity discipline, not growing for the
10 sense of growth, but growing for the
11 sense of profitability.

12 Q. And when a carrier does not
13 act in a disciplined manner in terms of
14 its capacity, does it escape the effect
15 that you just described?

16 A. No. In fact, that's what Mr.
17 Dichter had said, that capacity growing
18 faster than demand will suffer revenue
19 consequences and I don't see that in
20 American's model and there are extreme
21 examples that are mostly redacted where
22 American is growing much, much faster
23 than the market and yet there's no impact
24 on fares. That's not credible.

25 Q. And so do you believe that if

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2 American were to adopt and maintain its
3 adherence to the stand-alone plan, that
4 American would successfully reorganize?

5 A. No, I think there's a --
6 there's a real execution risk here and I
7 want to say that, you know, the ability
8 to mathematically models things in a
9 computer may be defensible, but in the
10 real world what's out there, what's
11 happened, what the position of American
12 is today, can't really be fixed
13 organically and that's unfortunately that
14 American is in a corner now as a result
15 of United and Delta's mergers. There
16 isn't a growth scenario that can fix
17 their structural deficit right now.

18 Q. So do you believe there's an
19 alternative for American that would allow
20 it to successfully reorganize?

21 A. Yes.

22 Q. And what is that?

23 A. That would be to not expand
24 its organic capacity but rather bolt on
25 the capacity of another carrier to fix

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2 its strategic deficit with the
3 relationship between United and Delta.

4 Q. Now, there's been much talk,
5 as you know, about US Airways as a
6 candidate to merge with American, what is
7 your view of a merger between American
8 and US Airways?

9 A. My view is that it's not an
10 option, it's not an alternative, it's
11 inevitable and it's inevitable because of
12 the long track history of carrier mergers
13 in the business, as well as the imbalance
14 that exists today with two very large
15 global network carriers versus a little

16 bit smaller one in American and a much
17 smaller one in US Airways.

18 And if US Airways and American
19 merged just for the sense of, you know,
20 putting one on top of the other, the
21 capacity would represent the largest
22 carrier in the world again and American
23 would regain its position as the
24 Preeminent US carrier and have a network
25 that could compete in large part,

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2 especially in the mid West and the
3 Atlantic coast, with the likes of United
4 and Delta. And that's the way it's been
5 done for a long time. And American could
6 realize the synergies from that merger
7 and wouldn't depend so heavily on the
8 buildup of the cornerstone strategy
9 markets and given the history of the
10 airline business, that's the solution.

11 It's a solution for the business and it's
12 the solution for both US Airways and
13 American.

14 Q. And do you think that American
15 would enjoy some of the synergies that
16 other, have come about through other
17 mergers?

18 A. Yes.

19 Q. And why so?

20 A. Well, it would enjoy revenue
21 synergies because it would be able to
22 flow its passengers over hubs that are
23 better positioned, especially on the East
24 Coast. It would retake the number one
25 position in Chicago. It would be able to

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2 build off of several cornerstone
3 strategies to grow its feed without
4 having to organically do it. It's simply
5 looking at what I consider bolting on US

6 Airways' existing capacity. That doesn't
7 destabilize the industry because the
8 capacity is already out there.

9 THE COURT: This is the second
10 time you mentioned destabilizing
11 the industry. I'm not sure where
12 that fits into your opinion? In
13 other words, if the question is
14 whether American has a plan that
15 will work going forward, what do
16 you want me to take from this
17 notion of destabilizing the
18 industry?

19 THE WITNESS: There's sort of,
20 your Honor, there's two levels of
21 risk here. And the analysts
22 generally are concerned about the
23 pricing discipline that's been used
24 in the market by this capacity
25 restraint. If a single carrier

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like American is out there growing

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very, very rapidly, in certain

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years it destabilizes the pricing

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discipline in the market because if

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American is growing fast in

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Chicago, United is also going to

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grow fast and what that means is

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they're going to have to price

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their capacity cheaper to respond

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and that destroys the earnings

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power of these airlines. So

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there's sort of a risk for American

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that I've discussed today about the

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execution risk of this plan, the

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things it's based on, but I think

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when I look at what analysts are

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saying, what I believe has been the

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reason for profits in the industry

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recently, despite 90¢ a hundred

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dollar fuel that would have

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cratered the industry a few years

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ago is that they have capacity

24 discipline that is only enforceable
25 if everybody sort of believes in

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2 the fact that you have to measure
3 your profitability against your
4 capacity growth. And American is
5 now going to -- a very large
6 carrier, the third largest carrier
7 in the country is going to grow at
8 20 percent or greater in certain
9 markets over the next five or six
10 years and the analysts believe that
11 that could destabilize the capacity
12 discipline.

13 THE COURT: Thank you.

14 Q. Again, when the capacity
15 discipline is, when you say it could
16 destabilize the industry, what would be
17 the effect in that case on American
18 itself?

19 A. Well, American's part of the
20 industry. And American would suffer the
21 consequences if demand wasn't there to
22 meet that capacity. Or if other carriers
23 responded to American's capacity
24 regardless of demand with equal amounts
25 of growth. And that's been done before

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2 in the airline business. It's led to big
3 losses. And that's generally what's
4 happened when you're trying to capture
5 share rather than trying to make profits.

6 Q. Could you explain what is
7 meant by convergence?

8 A. Sure. Convergence is the
9 narrowing of a gap between two, in this
10 case labor groups at different carriers.
11 And labor gaps exist because one
12 carrier's flight attendants or pilots or
13 employees cost more or less than the

14 other carrier's employees. And the term
15 convergence was used by American, has
16 been applied by American to value its
17 labor cost differential between itself
18 and other carriers over about the last
19 five years.

20 Q. What's the -- what is the
21 methodology that I've used to make that
22 assessment?

23 A. American has taken the
24 contracts of its competitors as well as a
25 whole array of airlines and essentially

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2 taken those contractual terms and placed
3 them on American's operations and
4 demographics and come up with a cost that
5 American would bear or save depending on
6 the contract cost versus their own cost.
7 So if American has a billion dollar
8 flight attendant contract cost and they

9 applied someone else's contract cost and
10 it was 900 million, American would say
11 that the other carrier's contract would
12 save them a hundred million dollars.
13 That's the gap.

14 And over time, if that hundred
15 million dollars changes because the other
16 carrier's getting pay raises or
17 improvements, then that gap narrows and
18 that's what we're talking about when we
19 talk about convergence, is that gap
20 narrowing.

21 Q. Are you aware of the company's
22 claim that they suffer from a one billion
23 dollar labor cost disadvantage?

24 A. Yes.

25 Q. In preparing your declaration,

1
2 did you look at a presentation that was
3 given to the Board of Directors in

4 November of 2011?

5 A. Yes.

6 Q. Let me direct your attention,
7 hopefully it should be there, it's APFA
8 Exhibit 3.

9 MR. CLAYMAN: Can I approach?

10 THE COURT: Certainly. Where
11 of the many binders would I find
12 Exhibit 3? More importantly, where
13 would the witness find it?

14 MR. CLAYMAN: How to describe
15 it.

16 THE COURT: What's the first
17 document?

18 MR. CLAYMAN: Objection to
19 motion.

20 THE COURT: It's the brief?

21 MR. CLAYMAN: Yes, I'm sorry.

22 THE COURT: I don't have a
23 copy of it. I don't know how long
24 we'll spend on it. If you have a
25 copy I can use, we don't have to

1
2 wait. If not, give me about 45
3 seconds.

4 MR. FLICKER: Also, your
5 Honor, I'm trying to determine but
6 we believe APFA 3 has been offered
7 under seal; is that correct?

8 THE COURT: So perhaps I'm not
9 the hold-up after all.

10 MR. CLAYMAN: That's right.

11 MR. FLICKER: So if you could
12 examine the witness without
13 specifically referring to the
14 exhibit.

15 THE COURT: It does have the
16 menacing red lettering at the top.
17 Let me ask is it contemplated there
18 will be some questions in an under
19 seal session?

20 MR. CLAYMAN: Yes, this was
21 not -- I wanted to limit those as
22 much as possible.

23 THE COURT: All right, that's
24 fair enough. Just if that's still
25 contemplated --

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2 MR. CLAYMAN: I think the
3 pages I'm going to refer to, I'll
4 show Mr. Flicker.

5 Q. Let me ask you, Mr. Akins, of
6 that billion dollars, over the years has
7 American identified an amount of a labor
8 gap that you're aware of?

9 A. Yes.

10 Q. And what is that amount?

11 A. I think the first time I
12 actually saw it publicly was the second
13 quarter 10-Q from the SEC that American
14 filed in which there was a description of
15 an analysis that American had done
16 related to a labor cost disparity and
17 that was the first I'd seen it. It was

18 an overall labor cost disparity of \$600
19 millionth they estimated through this
20 technique of applying other carriers'
21 contracts to their own demographics.

22 Q. Subsequently, were there
23 public statements made by American in
24 which they changed that 600 million
25 dollar number?

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2 A. Yes, I think early 2011 there
3 was an additional 200 million dollars
4 added to that deficit. A year later,
5 after the 600 million came out they were
6 claiming now that it was 800 million
7 dollars.

8 Q. And are you aware of any other
9 element that adds to the billion dollar,
10 the claim of a billion dollar labor gap?

11 A. As to the 800?

12 Q. Yes.

13 A. Yes.

14 Q. What would that be?

15 A. American has stated they have
16 a more senior work force which costs them
17 -- can I say it?

18 MR. FLICKER: It's the
19 breakdown I think for that
20 particular piece.

21 A. There are other elements.

22 Q. That piece, or that amount is
23 attributable to a claimed seniority
24 difference?

25 A. Right.

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2 Q. Have you been, have you seen
3 any analysis as to how they got to that
4 amount based on a seniority difference?

5 A. Not that I recall, no.

6 Q. With regard to APFA Exhibit
7 005, does that contain a convergence

8 analysis?

9 A. 003?

10 Q. Three, I'm sorry.

11 A. Yes, yes, it does.

12 Q. I would direct your attention

13 to, excuse me, three pages -- three

14 pages? No, two pages from the end.

15 A. Okay.

16 Q. Is that the convergence

17 analysis that you recall seeing?

18 A. Yes, it's a high level

19 summary.

20 Q. And in the course of preparing

21 your declaration, did you utilize that

22 chart as a basis for your own analysis?

23 A. Yes.

24 Q. And where could -- let me turn

25 your attention to page 52 of your

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2 declaration, which is not redacted. And

3 ask you to explain what this chart or
4 table represents?

5 A. This table shows the same data
6 that American has on this table that we
7 referenced in Exhibit 003, however, the
8 chart that I'm using takes out the table
9 cost, table position of American Airlines
10 that they made in previous section 6
11 negotiations. And so instead of the
12 number that we see here in 2011 as the
13 starting point for flight attendants
14 versus their network peers, and when I
15 mean here, I mean Exhibit APFA 003.

16 Q. Right.

17 A. If you take out the cost,
18 American's own valuation of its proposed
19 date of signing bonus as well as its
20 proposed first year percentage across the
21 board increase from their last section 6
22 proposal --

23 Q. You're talking about section 6
24 proposal?

25 A. Right, right.

1

2 Q. Not a supposal, proposal?

3 A. Proposal and their own
4 valuation of it, you end up with the
5 number on page 52 which shows a gap in
6 2011 of 79 million rather than the gap
7 that's on the page in --

8 Q. Second page to the last?

9 A. In 003, yes.

10 Q. And then in 2012 that gap is
11 reduced to 74 million?

12 A. Right.

13 Q. And what would account for the
14 changes over the course of this, over the
15 next three or four years?

16 A. Well there's a couple of
17 things going on in this chart. You'll
18 see that the flight attendants are
19 estimated to have an even bigger gap in
20 2012 and the only way that that's

21 occurring is if the table position of a
22 further increase in 2012 is included.
23 And I think if you turn to the third page
24 from the back of Exhibit APFA 003 you'll
25 see what I'm talking about.

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2 The bottom of this chart shows

3 --

4 THE COURT: When you say

5 chart, which one are we on?

6 A. The bottom on 003. You've got
7 it. So if you look at the bottom of this
8 chart essentially it's split into two
9 pieces of the convergence analysis that
10 American is doing. The top part of this
11 chart says the impact on AA gap due to
12 other airline changes, that shows the
13 degree to which other airlines are
14 getting improvements to close the gap.
15 The bottom chart shows changes to

16 American's flight attendants that are
17 essentially widening the gap. So you've
18 got to look at both to understand how
19 American got the numbers on the next
20 page.

21 But if you look at the bottom
22 chart it shows a number for the 2012 that
23 only results if you apply the last table
24 position for a percentage increase across
25 the board in 2012 and so forth.

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2 So if you take those out of
3 the equation and you simply apply the
4 narrowing of the gap that American has
5 from other carriers, you end up with the
6 numbers on page 52. And that's all I've
7 done with it is apply American's own
8 analysis without the table position using
9 the numbers on the top of the page of
10 APFA 003.

11 Q. And this shows that in 2013
12 would American's contract with its flight
13 attendants be more expensive or less
14 expensive than its peers?

15 A. In 2013 it would be 41 million
16 dollars less expensive than its peers
17 based on American's own convergence
18 analysis minus the table position,
19 without any adjustment for anything other
20 than that.

21 Q. In your declaration you
22 prepared some other similar analyses. I
23 will not walk you through those, but part
24 of the -- did you in those charts take
25 into account other more recent changes to

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2 the industry?

3 A. Yes. As we sit here going
4 through this, the bankruptcy hearings,
5 etc., the world isn't standing still. In

6 fact, it's the opposite. A number of
7 contracts have been signed, a number of
8 contracts have been TA'd, which is
9 temporary arrangement until it's
10 ratified. Delta's pilots as of yesterday
11 I believe got a TA that I've seen the
12 details, they're not public, but it's
13 pretty extraordinary the amount of
14 increase in the costs. United flight
15 attendants have gotten a huge increase in
16 January that was ratified in February.
17 US Airways had a TA that failed that had
18 large increases. Delta flight attendants
19 are scheduled to get a pay increase.

20 The convergence is continuing.
21 So what American assumed here is a little
22 bit slower pace than what is actually
23 happening in the marketplace. A lot of
24 the things they thought were going to
25 happen in 2013 are actually happening

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2 today.

3 Q. And if you were to apply a 230
4 million dollar reduction in American's
5 labor costs, what would -- how much --
6 would I just be adding 230 to any one of
7 these numbers?

8 A. No.

9 Q. How would you calculate that?

10 A. You would have to look at the
11 company's costs for each year, which I
12 don't think any of which are 230 in
13 itself, so you have to actually add I
14 think in the first year it's around 201
15 million and then by the final year it's
16 more like 260. So you end up with at the
17 end of the year, 2015, you end up with a
18 greater number than 230 and in 2012 a
19 much less number than 230. But it places
20 the flight attendants at the end of the
21 day around 30 percent below the cost of
22 their competitors.

23 Q. Now, I think you testified at
24 the beginning of your testimony that you

25 have assisted APFA in valuing proposals;

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2 is that correct?

3 A. Yes.

4 Q. And as part of that, did you

5 look at the American's proposal in the

6 1113 negotiations?

7 A. Yes.

8 Q. And have you done an

9 assessment of the impact that that

10 proposal, if implemented, would have on a

11 flight attendant?

12 A. Yes.

13 Q. So let me just turn your

14 attention to page 58, which is table 4

15 and ask that you kind of walk us through

16 what this table represents?

17 A. Sure. Each of these numbers,

18 as is indicated in the footnote, is

19 something I got from the American

20 Airlines cost out of their 1113 proposal.
21 This happens to be in the first year.
22 2012 at the top of the page is the
23 average flight attendant gross income for
24 the 15,000 flight attendants at American.
25 The average is around 45,000 dollars.

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2 The next, say, four or five items.

3 Q. Excuse me, Mr. Akins, where
4 did you get that 45,000 dollars from?

5 A. From the 1113 term sheet in
6 which American is estimating the cost
7 savings from current pay versus future
8 pay and so this is an unadjusted number
9 that American expects its flight
10 attendants to be paid on average across
11 the entire flight attendant pool.

12 Q. Well, was that number that
13 appeared in the term sheet?

14 A. That's how the term sheet

15 works. It's not the -- it's the cost out
16 of the term sheet. It's essentially all
17 of the modeling that goes behind.

18 Q. I see.

19 A. The term sheet is the fronts
20 of this. The modeling that drives the
21 term sheet number is where this is
22 derived.

23 Q. I'm sorry, okay. So it shows
24 an average take home pay of 45,000
25 dollars?

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2 A. Yes.

3 Q. And there are -- go ahead
4 explain the medical plan changes if you
5 would?

6 A. The next, let's see, the next
7 half a dozen items include the economic
8 impact that are imposed on individual
9 flight attendants by the changes that are

10 non-wage changes to the flight attendant
11 and the first of which is a couple of
12 changes to its medical plan. American
13 proposes a design change that would save
14 it money by transferring a lot of the
15 expense, including the out of pocket
16 maximums, the amount of money that's
17 covered purchasing prescription drugs,
18 transferring the cost of that from
19 American's plan to the individual flight
20 attendant.

21 And I estimate from American's
22 data, again, which is in the, which is in
23 the 1113 term sheet model of around 1273
24 dollars on average per person of
25 increased expense based on that plan

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2 design change.

3 Q. And then what is the
4 contribution?

5 A. The contribution is
6 essentially an increase in American
7 flight attendants out of pocket expense
8 to maintain health insurance which is a
9 bigger number, around 1600 and
10 essentially it's from the same medical
11 plan changes. The two biggest items are
12 which are design change and the increased
13 contribution level. That totaled to 2874
14 dollars, or relating it back to the
15 45,000 dollar income, someone who's now
16 getting covered by the existing medical
17 plan does not have to spend that to get
18 that kind of coverage. So that's to keep
19 the coverage the same, it would cost 2874
20 dollars more out of pocket than the
21 flight attendant today. And so that's
22 about a six and a half percent out of
23 pocket expense they don't have today.

24 Q. And then you show the 401(k)
25 contribution.

1

2 A. Right.

3 Q. Were you here for Mr.

4 Condrick's testimony?

5 A. No. Oh, Adam's, yes, sorry.

6 Q. And you heard him testify that

7 the proposal, the company's proposal

8 would provide for a company match up to

9 5.5 percent?

10 A. Yes.

11 Q. And in order to get that, the

12 employee would have to contribute 5.5

13 percent?

14 A. Yes.

15 Q. And so explain why you assume

16 this 5.5 percent employee contribution?

17 A. Well, it's essentially tied up

18 with the termination or freezing of the

19 defined benefit plan and it essentially

20 is a way for a flight attendant to make

21 up that income that would have been

22 expected to be earned in retirement from

23 the DB plan by trying to fund the 401(k)
24 plan to the maximum extent and that would
25 cost to do that, the defined benefit

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2 income is not a cost out of their pocket
3 today, to replace that future income they
4 would have to take more of their paycheck
5 and invest it in the 401(k) plan.

6 And I think a simple example
7 of this would be someone is expecting to
8 get a 35,000 dollar a year income off of
9 their combined defined benefit plan,
10 defined contribution plan --

11 Q. You say a defined -- dot
12 employees today have a defined
13 contribution plan?

14 A. Yes.

15 Q. Go ahead.

16 A. So let's say they were
17 expecting 35,000 dollars as of next year

18 to cover their retirement expenses.
19 25,000 just for a rough number, would
20 come out of the DB plan. 10,000 could
21 come out of the DC plan. The DB plan now
22 with the freezing could reduce that
23 amount that's coming out of the DB plan,
24 so now they might not have 25,000, they
25 might have something like 20,000.

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2 If they have only 20,000
3 dollars they may have to make that up
4 with defined contribution increases. So
5 in order to keep their expected income in
6 retirement they have to contribute or
7 would have to contribute more today or
8 suffer future income losses in
9 retirement. That's why that's in there.

10 Q. And the remaining changes are
11 all derived from the company's term
12 sheet?

13 A. Yes.

14 Q. And so the total impact is how
15 much?

16 A. Almost 17 percent, 16.9
17 percent.

18 Q. So the flight attendant today
19 who's making 45,000 dollars would be
20 making somewhere in the neighborhood of
21 37,500 dollars?

22 A. Gross pay, right.

23 Q. Gross pay.

24 A. I think it's important to
25 point out that's not in my deck, but we

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2 talked about it, is that going forward
3 that 45,000 actually gets smaller in
4 terms of the average pay because of the
5 company's attrition assumptions. And so
6 that 16.9 actually grows over time rather
7 than shrinks, which is what you'd expect.

8 Q. And so let's go back to -- I
9 think you were here for Laura's
10 testimony, Laura Glading's?

11 A. Yes.

12 Q. And under the restructuring
13 participation agreement I think she said
14 that there was initially a 15.6 percent
15 wage cut in 2003?

16 A. Yes.

17 Q. Yes.

18 A. Yes.

19 Q. And there were, do you recall
20 how many 1.5 percent increases after
21 that?

22 A. I think there were five
23 leading up to 2008.

24 Q. So based on the 2003
25 agreement, how much of an increase would

1

2 the flight attendants have to get to get

3 back to where they were before
4 restructuring participation agreement?

5 A. A little bit less than 10
6 percent.

7 Q. Have you calculated the impact
8 of the company's proposal in combination
9 with the continuing effect of the RPA?

10 A. Yes.

11 Q. And what have you established
12 or determined?

13 A. That there are a number of
14 factors that are coming to bear on flight
15 attendant take home pay besides the
16 company's latest 1113 proposal. The
17 amount of money that they're behind from
18 the RPA today is 10 percent. If you add
19 in inflation, it's about 23 percent
20 increase in inflation, so you're talking
21 around 30 some percent of behind actual
22 purchasing power today. If you add in
23 the 16 percent, .9 percent that we talked
24 about, you're in the mid forties and if
25 you assume that there's inflation going

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2 forward you're now into the high fifties,
3 low sixties in terms of a percent loss of
4 real take home pay of the individual
5 flight attendant.

6 You have to deduce from that
7 any increase in pay that the flight
8 attendants would get under the new
9 proposal which is around 7.5 percent and
10 you'd end up with an average flight
11 attendant having real take home pay, that
12 is real spending power today that is 50
13 percent less than in 2003.

14 Q. Which year would it be 50
15 percent less?

16 A. By the end of the proposed
17 term sheet.

18 Q. In 2017?

19 A. Yes.

20 MR. CLAYMAN: I'll pass the
21 witness. Thank you.

22 THE COURT: All right. Cross
23 examination.
24 MR. GEIER: Jon Geier for
25 American Airlines.

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2 CROSS EXAMINATION

3 BY MR. GEIER:

4 Q. Good afternoon, Mr. Akins.

5 A. Good afternoon, Jon.

6 Q. We're going to start with the
7 subject matter that you ended with.

8 A. Okay.

9 Q. Mr. Flicker will take you
10 through the first part of your
11 examination.

12 So it's your testimony that
13 American flight attendants currently,
14 currently make about 30 percent less in
15 real dollars post-inflation than they did
16 in 2003; is that right?

17 A. Yes.

18 Q. At the time you prepared your
19 testimony, you had not performed a
20 similar analysis to compare the current
21 rates of pay or the post-inflation
22 reductions at United Airlines or US
23 airlines, had you?

24 A. No, I hadn't.

25 Q. And it's true, isn't it, that

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2 as a percentage of the overall ask in the
3 restructurings at United and at US
4 Airways earlier in the decade, that the
5 cuts to flight attendant wages at those
6 airlines were larger than those at
7 American's -- than American's flight
8 attendants took in the 2003 out of court
9 restructuring, right?

10 MR. CLAYMAN: Objection; lack
11 of foundation.

12 THE COURT: Well, there's been
13 -- first of all, it's cross
14 examination. So you brought up
15 2003 extensively. And so I think
16 it's a fair, it's a fair subject
17 for cross examination. And I don't
18 think for an expert he has to
19 establish foundation necessarily.

20 But I really given the many
21 different sets of numbers from
22 bargaining just before the
23 bankruptcy, during the bankruptcy,
24 before the proposal, after the
25 proposal, the level of granularity

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2 about 2003 is really not
3 particularly helpful. So I was
4 going to cut it off before, but the
5 questions ended.

6 I just -- I understand the

7 basic facts about 2003. But I'm
8 having trouble understanding what
9 you want me to do with the specific
10 numbers when you present this kind
11 of analysis which leads to response
12 back and forth.

13 So unless anybody can explain
14 that to me in a cogent way why it
15 is worth the time to get into it, I
16 really am going to ask the parties
17 to just move on to what I have in
18 front of me which is significant
19 enough as it is. So does anybody
20 want to try to take that challenge
21 on or are we just going to sort of
22 move on from the granularity
23 discussion on 2003 issues? I'm
24 asking the parties because this is
25 going to keep coming up and I'm

2 sorry I didn't grab the bull by the
3 horns earlier because we spent
4 countless hours on it.

5 I'm not saying that the fact,
6 inn the history of negotiations is
7 irrelevant. That's clearly,
8 clearly relevant and bye but it's
9 been gone into with basically
10 almost every witness and now we're
11 getting into it with really just
12 we're doing statistical analysis
13 and hoops and back and forth and
14 then objections about what kind of
15 numbers and I'm just -- I'm
16 beginning to get a little
17 frustrated because it really is,
18 there's the trees and there's the
19 forest and these are trees that I
20 just don't know I'm going to have
21 to deal with at this level.

22 So if you'd like to give me
23 some sort of an explanation as to
24 what you want me to take from this,

25 it would be helpful to hear it now

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2 because otherwise I'm just going to
3 start to just pipe up even if there
4 is no objection because it's just,
5 I don't know what to do with it.
6 I'm putting my pen down and so
7 maybe you can help me.

8 MR. CLAYMAN: Well, your
9 Honor, for our purposes, and
10 particularly with regard to Mr.
11 Akins' testimony, we are trying to
12 convey the continued effects from
13 2003 as it relates to the amount of
14 sacrifices that flight attendants
15 are continuing to give in terms of
16 a fair and equitable criteria.

17 THE COURT: How does that
18 work? Then don't I have to compare
19 the entire industry and don't I

20 have to in addition to having a
21 trial about what's going on now,
22 having a trial about what went on
23 in 2003 and don't I have to have a
24 third trial that somehow core
25 plates 2003 with now so we look at

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2 an overall picture? I mean that's
3 my problem, that it opens the door
4 to a discussion that really knows
5 no bounds. And so I think we're
6 going to have three weeks of
7 testimony anyway, so again, I want
8 to give folks a chance to
9 articulate what their theory is, if
10 I'm missing it.

11 And I'm not seeking to exclude
12 the basic facts about the
13 collective bargaining agreements
14 that have occurred, we heard about

15 2001, we've heard about 2003, but
16 I'm just -- I mean we've just been
17 over this in some painful detail,
18 but I didn't know we could get into
19 more painful detail but apparently
20 today has placed a new trail on
21 that. Again, if there's really a
22 specific legal argument you want to
23 try out now, otherwise I'm going to
24 ask you to just not go over the
25 grounds we've covered numerous

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2 times.

3 MR. CLAYMAN: Just in terms of
4 connecting up the testimony we've
5 covered thus far, it's our position
6 that what each stakeholder is
7 giving today is of course of
8 relevance and some of that is
9 routed in 2003, the sacrifices that

10 people are giving today. And what
11 they gave pre-bankruptcy for
12 purposes of this bankruptcy is
13 relevant.

14 THE COURT: But it's eight
15 years ago. And you're opening,
16 aren't you opening the door to
17 doing this for every union for
18 every agreement for every airline?
19 And I have enough problems with
20 trying this case. I don't want to
21 try that case.

22 MR. CLAYMAN: Of course not.
23 I'm not at all interested in any
24 other airline, I'm interested --

25 THE COURT: No, but he will be

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2 and that's the response. He just
3 asked that question. And what I'm
4 telling you is right now I'm not

5 going there.

6 MR. CLAYMAN: I'm not asking
7 you to, your Honor, I'm not asking
8 to.

9 THE COURT: Well you are by
10 asking the questions you're asking
11 because it-list sits a response,
12 there's sort of the ying and yang
13 of the litigation universe, you ask
14 a question and they respond, they
15 ask a question and you respond.

16 MR. CLAYMAN: Can I just ask
17 though, our point here is that
18 today what is the sacrifice of the
19 flight attendants compared to other
20 stakeholders in this case. I don't
21 understand the relevance of whether
22 or not a United flight attendant
23 may have given up more or less.
24 The issue is in comparison to other
25 stakeholders looking --

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2 THE COURT: I don't think we
3 have it as to other stakeholders, I
4 don't think I've heard about -- I
5 don't think you've made that
6 connection. Maybe you'll make it
7 in your briefs and I didn't
8 understand the unions to sort of be
9 jostling each other for position.

10 MR. CLAYMAN: No, not to union
11 to union. I'm not saying union to
12 other union.

13 THE COURT: So what are you
14 saying?

15 MR. CLAYMAN: I'm saying union
16 to other stakeholders. Union to
17 other creditors. Unions in terms
18 of --

19 THE COURT: I don't have any
20 evidence about that.

21 MR. CLAYMAN: I would say
22 that's an issue.

23 THE COURT: So you're asking

24 me as a legal matter that in my
25 1113 analysis I have to go back to

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2 2003 when measuring the sacrifice
3 and how it should be shared
4 equally. If that's your argument,
5 I explicitly reject it.

6 MR. CLAYMAN: Let me try to
7 make it a little bit more palatable
8 if I may.

9 THE COURT: You can try.

10 MR. CLAYMAN: I'll try. If
11 those concessions that were given
12 up in 2003 are still in place
13 today, just take the radical
14 position that all labor gave up, 3
15 billion dollars every year, and are
16 still giving up 3 billion dollars
17 now, and they gave up 3 billion
18 dollar every year before the

19 bankruptcy, immediately prior to
20 the bankruptcy, and no other
21 stakeholder has made any other
22 financial sacrifice other than
23 labor, that would seem to us to go
24 clearly to a showing that the
25 treatment that is now being

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2 afforded to the flight attendants
3 through this 1113 proposal is not
4 fair and equitable.

5 THE COURT: I think that's the
6 same argument you just made because
7 you're asking me by using the words
8 give up, you're asking me to use
9 2003 as the baseline and you're
10 asking me then historically go back
11 and look at all stakeholders from
12 2003. And I understand what I have
13 is the bankruptcy. I'm not saying,

14 and that's why I said this from the
15 very beginning, I'm not saying that
16 2003 is not relevant historically
17 speaking, as a general matter. But
18 what I'm saying is when you begin
19 to provide deltas of here's what
20 our numbers are, here's where our
21 sacrifices are and begin to make
22 that explicit argument, I just
23 think it's untenable. I don't
24 think it's what I'm supposed to be
25 doing. I don't know anything in

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2 the case law where I'm asked to
3 look at that delta going back
4 almost a decade and how I'm
5 supposed to figure that out, and
6 how that would be any different
7 than in analyzing the industry
8 standard going back more than a

9 decade, what were they doing at
10 United, what were they doing at
11 Delta. What were they doing at
12 Northwest.

13 And as long as this trial is
14 going to be, and I think parties
15 have actually, despite my
16 occasional humorous comments, I
17 think parties have been fairly
18 focused on the issues that have to
19 be decided, I don't see anyway to
20 limit that trial. And what I'm
21 trying to do is not give people
22 false hope about what I want to be
23 hearing about, what really the case
24 is before.

25 And since we went down this

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2 rabbit hole today, I'm just telling
3 you I do not believe that 2003 is

4 an appropriate baseline. I think
5 it's appropriate historical
6 background.

7 So at this point I'm not going
8 to let people get into statistical
9 analysis and facts other than
10 what's been presented, which I
11 think is historically relevant and
12 I understand your point, but I just
13 think when we start getting into
14 experts measuring deltas using 2003
15 as a baseline, I just think there's
16 no basis in 1113 and the 1113 case
17 law to do that.

18 MR. CLAYMAN: I would just add
19 that Mr. Akins' testimony about the
20 percentage that the flight
21 attendants are now behind with
22 regard to inflation and the impact
23 and where they are behind in terms
24 of market should the 230 be
25 imposed, that captures what we've

1
2 been talking about.

3 THE COURT: I'm telling you I
4 don't agree with you that that's
5 the appropriate measure. And I
6 don't know where the line is
7 between using it as a baseline
8 versus using it as history of the
9 parties' discussions and
10 negotiations and equities. I
11 haven't made that determination.
12 But what I'm explicitly rejecting
13 is using that as a baseline and I
14 think when you start talking about
15 baselines that's when you start
16 talking about the need to do how
17 does that compare to this, what's
18 the percentage of that.

19 I understand what happened in
20 2003 and there's been testimony
21 about that, but I just want to be

22 very clear I reject that as the
23 baseline for my 1113 analysis on
24 the statute. I just don't think
25 it's what I'm supposed to be doing.

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2 So with that said, my
3 apologies for you having to sit
4 through that. If I knew it was
5 going to be so long I would have
6 invited you to get a breath of
7 fresh air.

8 That's what I think and so I
9 want parties to tailor their
10 examinations in that light. I
11 think I've heard enough about 2003.

12 So if you have new facts,
13 that's one thing. But I don't want
14 analysis of these sorts of things
15 at this point, I don't think it
16 helpful.

17 Q. With that, your Honor, I'll
18 turn to the present day, Mr. Akins.

19 A. My answer is yes.

20 Q. You are familiar with the
21 current contracts, the current new
22 contract at United for flight attendants,
23 correct?

24 A. Yes.

25 Q. And you are familiar and you

172

1
2 discussed the failed new contract, the
3 failed ratification at US Airways,
4 correct?

5 A. Yes.

6 Q. And you're aware that today,
7 as we sit here today, that American's top
8 of scale wage rates are higher than any
9 of the other network carriers with the
10 exception of Continental?

11 A. Today, yes.

12 Q. And that's true even with
13 taking into account the 10 percent raise
14 that the United, again, United and
15 Continental flight attendants fly under
16 their separate collective bargaining
17 agreements today, correct?

18 A. Yes.

19 Q. That even considering the 10
20 percent increase that the United flight
21 attendants received under their recent
22 new collective bargaining agreement, that
23 American's top of scale rates today are
24 higher?

25 A. Yes.

173

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2 Q. And I believe there are three
3 years of out-year increases contained
4 within the four year duration of the new
5 United flight attendant contract; is that
6 correct?

7 A. Yes.

8 Q. And those are two and a half
9 percent date of signing plus 12 and then
10 2 percent date of signing plus 24 and
11 another 2 percent at date of signing plus
12 12 and then 24?

13 A. Well, it's actually split
14 between domestic and international where
15 international gets a percent and a half I
16 think in the last two years and domestic
17 gets two and a half, so roughly two and
18 two is in the middle, so I'll agree, yes.

19 Q. And two and two usually equals
20 four?

21 A. Right.

22 Q. Thank you. And you understand
23 that American's proposal to APFA included
24 the one and a half percent increases each
25 year over six years as proposed?

2 A. Yes. And originally, it was
3 proposed only with the acceptance of the
4 term sheet and 230.

5 Q. That continues to be the case?

6 A. Right.

7 Q. It's contingent upon a
8 consensual deal?

9 A. Okay.

10 Q. If that deal had been
11 achieved, and at the end of four years
12 when the current United, new United
13 contract has a four year duration,
14 correct?

15 A. Yes.

16 Q. And at the end of those four
17 years American's top of scale rate would
18 continue to exceed the top of scale rate
19 at United; isn't that true?

20 A. Yes.

21 Q. And although it didn't happen,
22 you're familiar with the terms of the
23 failed tentative agreement at US Air,
24 correct?

25 A. Yes.

1

2 Q. And it's true, isn't it, I
3 believe you estimate or you somehow state
4 that the initial increase to the US Air
5 flight attendants, if that deal had been
6 ratified, would have been 14.4 percent;
7 is that correct?

8 A. Yes, and neither side actually
9 gets that amount. That's a weighted
10 average between the two halves.

11 Q. Between the olds America West
12 and the legacy US Airways, correct?

13 A. Yes.

14 Q. But we'll take that 14.4
15 percent. And it's true that if that TA
16 had been ratified, that the top of scale
17 rates at American today would be higher
18 than under that failed agreement,
19 correct?

20 A. The US Airways top rate was 46

21 dollars.

22 Q. So it would have been tied?

23 A. So it would have been tied
24 today, without incentive pay.

25 Q. Correct. Thank you. And

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2 there were out-year increases contained
3 within the TA that failed ratification at
4 US Airways, correct?

5 A. Yes.

6 Q. And I believe those, you may
7 know better, was one percent at date of
8 signing plus 18 months and then 1.5s at
9 date of signing plus 36 and 54 months,
10 correct?

11 A. That sounds right.

12 Q. And at the end of that, of the
13 duration of that deal, and again, given
14 the 1.5 increases contemplated in a
15 consensual deal under the American 1113

16 proposals, American's top of scale rate
17 would be higher, notwithstanding that
18 they start off tied, would be higher at
19 the end of those four years, correct?

20 A. Yes.

21 Q. Keeping with pay for just a
22 moment, I would like to turn back to your
23 table 4 where you talk about --

24 A. Do you have the page there?

25 Q. I'm going to get it. 58. We

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2 talked about this a little bit at your
3 deposition and I want to go over a couple
4 of the points.

5 Isn't it true that the base
6 wages number that you used there, the 44,
7 well, the total of 45,086 dollars, wasn't
8 that taken from the base case portion of
9 the labor costing model?

10 A. Yes.

11 Q. So that's the base pay of
12 flight attendants today under the current
13 book not under the can contemplated
14 proposals that American has made in the
15 section 1113 negotiations; isn't that
16 right?

17 A. Yes.

18 Q. And it's an average pay,
19 correct?

20 A. Yes.

21 Q. So it includes people, flight
22 attendants both at the top of the scale,
23 which is a large majority of them I
24 agree, but includes flight attendants at
25 lower steps in the pay scale as well,

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2 correct?

3 A. Yes.

4 Q. And you made a comment that
5 over time that average wage decreases,

6 correct?

7 A. In the --

8 Q. In the model?

9 A. In the base case, yes.

10 Q. In part that's at least

11 attributable to the fact that even the

12 base case assumes certain percentage of

13 new hires coming in over time, correct?

14 A. Yes.

15 Q. And as new hires come in, that

16 reduces, more flight attendants will be

17 at the lower steps, at the bottom steps

18 in the scale and that will act to reduce

19 the average wage?

20 A. Yes.

21 Q. Now, you're aware, aren't you,

22 that the company has proposed to increase

23 the average number of hours included in a

24 flight attendant's schedule under its

25 proposals so that the average line would

1
2 move from approximately 75 hours under
3 the current back to about 85 hours
4 domestically under the proposals,
5 correct?

6 A. Yes.

7 Q. And you would agree, wouldn't
8 you, that a flight attendant, let's talk
9 about somebody at the top of the scale
10 for a minute, that someone working 85
11 hours under the section 1113 proposals
12 which I understand includes the
13 elimination of incentive pay, would make
14 more in gross pay than someone working 75
15 hours now under the current book?

16 A. Yes.

17 Q. So in order to really figure
18 out out-of-pocket expenses for an
19 individual flight attendant as compared
20 to an average flight attendant, you would
21 really have to take into account their
22 increased base due to the additional 10
23 hours of work as contemplated under the

24 section 1113 proposal, wouldn't you?

25 A. Yes.

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2 Q. And if you increased that
3 amount, the denominator would change and
4 the percentage of any reductions would
5 reduce if you took the pre and post pay
6 based upon a 75 versus an 85 hour
7 schedule, correct?

8 A. Right, right. I think one of
9 the clarifications I'd like to make if I
10 may, is that one of the things that is a
11 little bit unusual about the American's
12 projection of its cost due to what you
13 just said about new hires, actually goes
14 down to around 40,000 dollars a year in
15 2017 in the base case. So now you're
16 talking about building back up with a
17 combination of hours as well as 7.5
18 percent increases. So I'm not exactly

19 sure where they end up, but I think the
20 playing field for this equation is
21 somewhere in the mid-forties throughout
22 the term.

23 Q. But if you did the analysis,
24 and I understand what you did in using an
25 average rate, but if you looked at an

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2 individual flight attendant, somebody at
3 the top of the scale, they're making a
4 certain amount of money today and assume
5 both are going to fly the average line
6 pre and post-section 1113 proposals,
7 right?

8 A. Yes.

9 Q. That individual flight
10 attendant, top of the scale, is going to
11 earn more gross pay flying 85 hours than
12 they are flying 75 hours even considering
13 the elimination of the incentive pay?

14 A. Yes, and before we take out
15 the changes that I've highlighted here.

16 Q. I'm going to get to those?

17 A. Okay.

18 Q. Just a brief question on the
19 design change column. If I understand
20 it, when you modeled this expense you
21 didn't build in any assumptions about how
22 flight attendants might change their
23 usage of health insurance because of the
24 increase in the cost of them due to
25 design changes; is that true?

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2 A. That's true.

3 Q. And on the 401(k) line, you're
4 assuming, aren't you, that you're
5 calculating this reduction in take home
6 pay as if none of the flight attendants
7 are currently making any DC contribution,
8 correct?

9 A. No.

10 Q. Are you aware that 68 percent
11 of flight attendants today currently
12 contribute to the 401(k) plan?

13 A. That sounds about right.

14 Q. You were given information in
15 the information exchange that assumed
16 that, that disclosed that amount,
17 correct?

18 A. No. You stated it and I
19 checked with Ms. Glading and she said
20 that's about right.

21 Q. So you take my word for it?

22 A. Yes.

23 Q. Did Ms. Glading also tell you,
24 after I told you at your deposition, that
25 flight attendants who make 401(k)

183

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2 contributions do so at an average of 11

3 percent of their wages?

4 A. She said that sounded right.

5 Q. So a flight attendant who
6 already contributes 5.5 percent of his or
7 her wages to the current 401(k) would not
8 have to couldn't beauty another penny in
9 order to get the 5.5 percent company
10 match under the company's proposal; isn't
11 that true?

12 A. They wouldn't have to
13 contribute another penny to get the
14 match, no, they wouldn't.

15 Q. So those flight attendants
16 won't wouldn't have to contribute another
17 penny, wouldn't have any reduction in
18 their take home pay, take home pay from
19 their check for the DC plan, correct?

20 A. Right. But if they were
21 trying to make up for the loss in the DB
22 plan, that's where this is.

23 Q. I'll repeat the question if
24 you just give me an answer to it, Mr.
25 Akins.

1
2 A flight attendant today who
3 is making a 5.5 percent contribution
4 would not have any diminution in their
5 take home pay in order to receive the 5.5
6 percent match, correct?

7 A. Correct.

8 Q. I'm going to turn a little bit
9 convergence and I'll direct you to chart
10 20 in paragraph 75 of your declaration
11 which is on page --

12 A. 48.

13 Q. Thank you. Yes, 48. And
14 there was certain information redacted
15 off of the chart, I'm not sure that shows
16 on yours, but I think only the --
17 correct, thanks.

18 THE COURT: Is that the green
19 highlighting or is it a chart
20 redacted because I have yellow
21 highlighting? All right, thank
22 you.

23 Q. Directing your attention to

24 the flight attendant line --

25 A. Yes.

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2 Q. The numbers on this line
3 represent as of a certain date whether
4 competing carriers collective bargaining
5 agreements would cost American more or
6 less than the contract they actually --
7 than the actual APFA contract, correct?

8 A. That's correct.

9 Q. So, for example, if the
10 relationship between American and its
11 flight attendants were governed by the
12 rules in place at United as of the time
13 this chart was created, American would
14 spend less by the amount in that first
15 column, correct?

16 A. That's the theory, yes.

17 Q. And all the way over to the

18 right, the green weighted average column,
19 that's just an average of the individual
20 carrier differences weighted by each
21 airlines' available seat miles, correct?

22 A. Yes.

23 Q. Turning to the next page,
24 which is your table 3 on page 49. I
25 think it relates to information in

186

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2 paragraph 76.

3 A. Yes.

4 Q. This table breaks out the
5 flight attendant numbers from chart 20
6 and identifies the specific areas of the
7 contract, compensation issues, benefits
8 issues, work rules, compounding, etc.,
9 correct?

10 A. Yes.

11 Q. But again, what this shows is
12 the amount, higher or lower, that

13 American would be spending on those areas
14 if it was subject to those particular
15 provisions of its competitors' contracts,
16 right?

17 A. Yes.

18 Q. So, and this is the same
19 example we talked about during the
20 deposition, if you look at the vacation
21 row, you see a fairly large positive
22 number in the H P, which is America West?

23 A. Yes.

24 Q. Column, that means that if
25 American were subject to America West's

187

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2 vacation rules, it would spend that much
3 more, correct?

4 A. Yes.

5 Q. But it's true, isn't it, that
6 the large positive number in the America
7 West column is due to the fact that

8 America West's vacation provisions are
9 much richer for high seniority flight
10 attendants, which American happens to
11 have a lot of, right?

12 A. Yes, and I also think it's
13 based on, to some degree the PBS protocol
14 as opposed to what's American's basis for
15 vacation called trips touched. So if
16 you're flying a PBS protocol to a trips
17 touched vacations you might have an
18 increase in cost because the two aren't
19 meant to go together.

20 Q. But whatever the -- would you
21 agree that a substantial portion of the
22 difference is attributable to the higher
23 seniority at American than at America
24 West?

25 A. Yes.

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2 Q. And that kind of limitation,

3 the fact that American has a different
4 network, a different flight attendant
5 demographics, that affects all of the
6 numbers on this chart to some extent,
7 doesn't it?

8 A. Yes.

9 Q. So the two tables we've just
10 looked at and American's convergence
11 analysis for the, or the OA to AA
12 analysis, do you know what I mean by
13 that, same thing?

14 A. Yes.

15 Q. They don't tell you anything
16 about the other airlines' actual labor
17 costs, do they?

18 A. No.

19 Q. Because their labor cost are
20 designed and tailored to their operation
21 that exists at their particular carrier?

22 A. That was the argument I made
23 to Taylor Vaughn about a year ago, yes.

24 Q. Thank you.

25 MR. GEIER: Move to strike

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2 that as nonresponsive and
3 irrelevant.

4 THE COURT: Let's move on.

5 MR. GEIER: I'm going to.

6 Q. Now, I think you already
7 testified in response to questions from
8 Mr. Clayman that the November 2011 board
9 deck identified a billion dollar labor
10 cost disadvantage between American and
11 its network competitors, correct?

12 A. Yes.

13 Q. And that analysis was not
14 based on the analyses that we just looked
15 at, this other airline to AA contract
16 analysis, was it?

17 A. No.

18 Q. So in paragraph 78, when you
19 say that pilots, flight attendants and
20 fleet service clerks will be at or near

21 convergence in 2014, the term convergence
22 refers to the difference between
23 American's actual costs and the
24 theoretical costs that American would
25 have in it operated under those other

190

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2 airlines's contracts?

3 A. Yes.

4 Q. And again, and I'll try not to
5 beat this horse deader than after this,
6 it does not refer to convergence between
7 American's actual flight attendant labor
8 costs and the actual flight attendant
9 cost at other airlines, correct?

10 A. No, it's just a measure of the
11 contractual difference.

12 Q. Without belaboring it, the
13 same would be true when we talk about
14 chart 22 on page 52 and chart 24 on page
15 54, isn't that right?

16 A. What would be true about those
17 charts?

18 Q. Those have nothing to do with
19 a difference in actual labor costs,
20 they're all built off of this contract
21 analysis, correct?

22 A. Yes, that the company was
23 using, yes.

24 Q. I'd like to turn to chart 24
25 on page 54. In this chart, as I

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2 understand it, you take as a starting
3 point that other airline to AA contract
4 analysis but update certain assumptions,
5 correct?

6 A. Yes.

7 Q. And those updated assumptions
8 are in the little box which interestingly
9 is called updated assumptions, correct?

10 A. There's a correction in that

11 updated box.

12 Q. That's the Delta correction
13 and you've not yet filed a corrected?

14 A. I filed it to the lawyers on
15 our side and I haven't filed an errata.

16 Q. Just for the record, as I
17 understand the errata, instead of saying
18 5 percent increase on 7/1 you believe it
19 should be 7.5 percent difference that's
20 reflected in paragraph 84 above that,
21 correct?

22 A. That's correct, and there's a
23 very small change to the actual numbers
24 on this chart by about \$2 million.

25 Q. And that 7.5 percent number

192

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2 that you calculate, that's again not the
3 raise that any specific flight attendant
4 would get, it's a weighted average
5 between the raises that the Northwest

6 flight attendants got when they were
7 merged into the Delta scale and a raise
8 that's anticipated at Delta later this
9 summer?

10 A. Yes, that's correct.

11 Q. But you also have included an
12 updated assumption that in 2012 US
13 Airways will have a 14.4 percent
14 increase, correct?

15 A. Yes.

16 Q. Now that's speculation on your
17 part, correct?

18 A. Yes.

19 Q. And you do include an updated
20 assumption of a 10 percent increase, pay
21 increase for United Airlines, correct?

22 A. Yes.

23 Q. And that's in fact occurred
24 when the new United Airlines contract was
25 ratified?

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2 A. That's correct.

3 Q. But your changes in
4 assumptions in this chart did not include
5 the effect of productivity increases that
6 United obtained as part of its new
7 collective bargaining agreement, correct?

8 A. Correct.

9 Q. And the United agreement
10 increased the monthly maximum of hours
11 its flight attendants could be scheduled
12 for to 95 hours, correct?

13 A. Yes.

14 Q. American's monthly scheduled
15 maximum for domestic flight attendants is
16 currently 77 and 82 for international,
17 correct?

18 A. Yes.

19 Q. Under United's new contract
20 the company could increase the line
21 average for each domicile from 84 to 88
22 hours, correct?

23 A. With the United contract?

24 Q. With the United contract, yes?

25 A. I think in certain months they

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2 get a flex, yes.

3 Q. And American's domestic line
4 average is just 75 hours, currently?

5 A. 77. Would you ask the
6 question again.

7 Q. I said isn't American's
8 domestic line average today 75 hours?

9 A. I think it's a little higher,
10 but it's in the high seventies.

11 Q. And the United agreement also
12 increased the number of hours that flight
13 attendants can fly during a seven day
14 period from 30 to 35 hours, correct?

15 A. Yes.

16 Q. And American currently still
17 has a 30 hour restriction, right?

18 A. Yes.

19 Q. If you had taken into account

20 all of those productivity changes and
21 applied them to the American, the current
22 American demographic and network, those
23 numbers on chart 24 would change,
24 correct?

25 A. Right. And I think, again if

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2 you're just permit me, there are other
3 non-wage, non-productivity issues that
4 also were included in United's contract
5 that actually raise the average cost of
6 the United contract by a hundred million
7 dollars a year. The only peeves I put in
8 here was the 10 percent increase in wages
9 to keep out of that. But that 10 percent
10 increase is around 60 million dollars.
11 There's another 40 in other stuff,
12 including the productivity increases.
13 And I was there for that costing of it.

14 Q. So there's a whole bunch of

15 stuff that's included here that makes
16 this chart inaccurate in terms of a true
17 comparison overlaying the United contract
18 onto the American contract?

19 A. And everyone one of these,
20 Jon, I put just the wages because I
21 figured that was the most
22 straightforward. There's a give and take
23 in contractual negotiations that a lot of
24 things change, but I happened to know
25 what the costs are of each of those

196

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2 because I did the costing at the table.

3 Q. Turning to chart 25 for just a
4 second, all of the issues that I just
5 went through in terms of the speculation
6 about US Airways, the failure to include
7 the productivity and any other issues you
8 point out weren't included, you also did
9 not include in chart 25, which is an

10 attempt as I understand it, to look at
11 the application of American's 1113
12 proposals, you failed to take into
13 account the 1.5 percent raises that would
14 have been put into effect with a
15 consensual agreement, correct?

16 A. That's correct.

17 Q. So looking at charts 24 and 25
18 individually, collectively, they include
19 speculation?

20 A. Yes.

21 Q. They omit certain things?

22 A. Yes.

23 Q. Both as to other airlines and
24 as to American's proposals?

25 A. Yes.

1

2 Q. So isn't it true that those
3 two charts tell us virtually nothing
4 about how American's labor costs compare

5 to those of its competitors?

6 A. No, I think the things that
7 you're talking about are pretty marginal
8 issues. The American one and a half
9 percent is essentially \$10 million a year
10 difference on to this. If I exclude US
11 Airways completely it's another 10
12 million dollars on to this.

13 So if you're looking, for
14 instance, at chart 25, the year 2012, 174
15 million dollars give or take might change
16 to 150. We're not talking about that the
17 point of convergence is going to change,
18 it's really just the amounts that going
19 forward will change.

20 Q. The charts, but the charts are
21 not complete?

22 A. The charts aren't complete but
23 they're not incomplete in the way you're
24 describing. They're not useless. I
25 think they represent a fair zip code of

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2 where the contract costs would be under
3 the provisions that I discuss in each of
4 these charts.

5 Q. I'd like to move on to some of
6 your testimony on costing.

7 MR. GEIER: May I approach,
8 your Honor?

9 THE COURT: Yes. It seems
10 like now is a good time for a
11 break, so why don't we take a few
12 minutes. Is there something you'd
13 like to raise before we take a
14 break?

15 MS. PARCELLI: No, I was
16 trying to pay attention.

17 THE COURT: I think the
18 witness can use a break to stretch
19 his legs, so let's do that.

20 (A recess was taken.)

21 THE CLERK: All rise.

22 THE COURT: Please be seated.

23 Let me just get a general sense of
24 where we are and I know there's
25 expected to be some confidential

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2 questioning as well. Any sense of
3 how long you'll be?

4 MR. GEIER: I'll be another 15
5 minutes tops, your Honor.

6 MR. FLICKER: I've talked to
7 Mr. Clayman about this, the
8 confidential session he wants to do
9 would focus on the business issues
10 which are also my issues, so what
11 we decided to do, if it's all right
12 with your Honor would be to go into
13 the confidential direct after Mr.
14 Geier's finished with the labor
15 cost section, then I'll do all of
16 my cross hopefully in the open
17 record.

18 THE COURT: What I'd like to
19 do is avoid the situation we have
20 to close the courtroom and reopen
21 it and close it again. I'd like to
22 do it once because I think it's
23 less painful for all. So if you
24 all worked something out, that's
25 fine with me.

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2 If that's the case, then we
3 anticipate doing that I guess
4 shortly, right?

5 MR. CLAYMAN: Correct.

6 THE COURT: In other words, in
7 the next half hour. Any sense of
8 how long the questioning is on both
9 sides of the confidential issues?

10 MR. CLAYMAN: I think I have
11 somewhere around 10 questions.

12 THE COURT: Oh, that's --

13 MR. FLICKER: I've actually
14 planned my cross to do it in open
15 session. So unless something comes
16 up in the confidential section I
17 didn't anticipate, I would do the
18 cross in the open session and I
19 anticipate 90 minutes.

20 THE COURT: Well you'll hear
21 the ten questions or so and see if
22 you need it. Again, my idea is to
23 just do it in one shot rather than
24 have people shuttle in and out.

25 And obviously, I would expect

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2 the parties to work with whoever is
3 here to ensure that the appropriate
4 people who can stay, stay, and the
5 people who aren't subject to
6 confidentiality protections, that
7 they move along until such time.

8 We also obviously need to turn the
9 cameras off because there will be
10 no point to people to leave the
11 courtroom. So we'll take a break
12 when we get to that point.

13 MR. FLICKER: Thank you.

14 THE COURT: Just to let you
15 know, Mr. Clayman, the 2003
16 question has been, if you couldn't
17 tell by my comments, it's been sort
18 of gnawing at me for awhile and the
19 amount of time we've spent on it,
20 and again, I instant that
21 historically speaking it's
22 relevant. I don't think anyone is
23 objecting to it. It's just that
24 when we start getting into
25 statistical analysis of it, that's

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2 where I'm drawing the line because

3 I think then we're almost treating
4 it like the 1113 benchmark and I
5 don't want to go there because I
6 think in addition to this trial
7 that's a whole other trial and I
8 think as much fun as we're having
9 here, I don't think we want to have
10 another trial with a different set
11 of metrics.

12 So proceed.

13 MR. GEIER: Thank you.

14 Q. I've handed you what was
15 marked during American's case as APFA
16 Exhibit 10. Do you recognize that
17 document?

18 A. Yes.

19 Q. And did you prepare this
20 document?

21 A. Yes, I did.

22 Q. And this document represents a
23 line by line costing of each of the
24 modifications that APFA proposed to
25 American in the term sheet that I think

1
2 we spoke about with Ms. Loew yesterday
3 from March 22nd, correct?

4 A. Yes.

5 Q. And the number at the lower
6 right in red, the 199 million, that
7 reflects your calculation of the average
8 annual savings the APFA proposal would
9 provide over the four year life of that
10 proposal, correct?

11 A. Yes.

12 Q. And that number depends on
13 each of the individual costings above
14 doesn't it?

15 A. Yes.

16 Q. Now, again, as we just talked
17 about, the proposal covered by this cost
18 out is for a deal with a four year
19 duration, correct?

20 A. Yes.

21 Q. And prior to costing this out

22 as a four year proposal, you had costed
23 out those same terms that are listed down
24 the left-hand side as a six year
25 proposal, correct?

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2 A. Correct.

3 Q. But at some point after you
4 had costed out the six year proposal,
5 isn't it true that Mr. Clayman here
6 telephoned you and told you to just
7 change the terms to a four year deal?

8 A. Either email or telephone,
9 yes.

10 Q. And in order to do that, you
11 basically just chopped off the two
12 columns to the right of the fourth year
13 and costed -- and that represented years
14 five and six, correct?

15 A. Yes.

16 Q. And I think we've established

17 in your testimony with Mr. Clayman that
18 you have done a great deal of work
19 evaluating the company's business plan,
20 correct?

21 A. Yes.

22 Q. But it's true that as far as
23 you know the decision to move from a six
24 year to a four year deal had nothing to
25 do with any evaluation of the business

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2 plan, right?

3 A. Yes.

4 Q. Now, the top part is a cost
5 out of the early out proposal that APFA
6 made to American, correct?

7 A. Yes.

8 Q. And am I correct that someone
9 at Jefferies & Company performed the
10 costing of that early out piece?

11 A. Yes.

12 Q. And you are, is it true that
13 you're unaware of any of the assumptions
14 that underlay that evaluation?

15 A. I'm generally aware, but not
16 discretely aware of each variable and how
17 it functioned.

18 Q. You didn't do anything to
19 verify that calculation, correct?

20 A. No.

21 Q. So in your original six year
22 cost out of the APFA proposals, you
23 simply inserted the numbers that
24 Jefferies gave to you for that line item,
25 correct?

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2 A. Yes.

3 Q. And when you went from a four
4 year deal and cut out years 5 and 6, you
5 didn't change the costing you got from
6 Jefferies in years 1 through 4 in any

7 way, did you?

8 A. No.

9 Q. Now, you have worked on early
10 out programs before, correct?

11 A. Yes.

12 Q. Indeed, I think you told me
13 you thought you were going to do it here,
14 correct?

15 A. Right.

16 Q. Now, you'd agree, wouldn't
17 you, that -- well there are up-front
18 costs for early out programs, right?

19 A. Yes.

20 Q. And you would agree that the
21 up front costs for a program like this
22 should be spread out over the duration of
23 the deal that it's proposed in, correct?

24 A. It can be. I don't know if it
25 should be, but it can be.

2 Q. So if the upfront cost, as in
3 this deal, is 120 million dollars, and
4 you have a four year deal, you would
5 think in most cases that you would
6 attribute 30 million dollars, you'd
7 deduct 30 million dollars each year from
8 any savings that you also calculated to
9 account for those upfront payments,
10 right?

11 A. If you were -- if you were
12 paying over the four year period, yes.

13 Q. And you don't know whether the
14 calculations that Jefferies did
15 attributed the 120 million dollars
16 upfront payment over six years or four
17 years, do you?

18 A. I think we talked about it in
19 my deposition.

20 Q. So are you aware whether they
21 calculated it, spread out the 120 million
22 dollar upfront payment over a six year
23 deal or over a four year deal?

24 A. I think it was a six year.

25 Q. So in other words, only 20

208

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2 million dollars a year is accounted for
3 for the upfront cost in each of these
4 four years?

5 A. Yes.

6 Q. And that would equal 80
7 million dollars, right?

8 A. Yes.

9 Q. And if you had attributed all
10 120 million dollars it would have been
11 another \$10 million reduction off of any
12 savings in each of those four years,
13 correct?

14 A. If you were assuming that the
15 whole 120 were collected in those four
16 years, yes.

17 Q. Which you say is the normal
18 way you would do it?

19 A. No, I think there isn't really

20 a normal way to do early outs. I think
21 you can do it that way. United is not
22 doing it that way.

23 Q. Looking at the two lines for
24 the retiree medical and the active
25 medical valuations which show that those

209

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2 are Segal valuations, correct?

3 A. Yes.

4 Q. And were those -- again, you
5 didn't do those valuations yourself,
6 correct?

7 A. No.

8 Q. They were provided to you by
9 somebody at Segal?

10 A. Yes.

11 Q. Was that person Mr. Stuart
12 Wohl?

13 A. No.

14 Q. Do you know who did them at

15 Segal?

16 A. No, I know that the studies
17 were done by Segal and they were passed
18 to me. So I don't know who did them.

19 Q. And you didn't verify or
20 confirm any of them, did you?

21 A. I'm not equipped to do that,
22 no.

23 Q. Let's talk for a minute before
24 the costing of the schedule max proposal
25 and the PBS proposals. You're familiar

210

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2 with them?

3 A. Yes.

4 Q. And both of those include the
5 net present value of savings that occur
6 for the six years following the duration
7 of the four year contract that APFA
8 proposed, correct?

9 A. Yes.

10 Q. And those savings in fact,
11 four years of those savings occur outside
12 the six year term of the American
13 business plan, correct?

14 A. Yes.

15 Q. And it's true, isn't it, that
16 you're not aware much any other carrier
17 that's agreed to provide credit for
18 savings obtained outside the duration of
19 the contract that they were negotiating,
20 are you?

21 A. Not for schedule max or the
22 PBS, but I haven't seen it in a context
23 in which we were providing these values
24 for ten years outside the bounds of the
25 six or the four, so it's a little bit

211

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2 unusual.

3 Q. It's unusual, you've not seen
4 it before any other carrier agreeing to

5 that?

6 A. Right.

7 Q. Now, your declaration does not
8 address in any way the company's
9 valuation of its own proposals, correct?

10 A. I think other than just saying
11 the 230, that's it.

12 Q. And that's because you were
13 able to verify a large percentage of
14 American's model apart from very small
15 rounding level issues, right?

16 A. Yes.

17 Q. And in fact, you used the
18 company's model to value some of the
19 union's proposals, didn't you?

20 A. Yes.

21 Q. Including the compounding
22 line, you just took that from the
23 company's proposal, correct?

24 A. Right.

25 Q. And the compounding line

1
2 accounts for the interaction of terms,
3 each of the individual line items is
4 priced as an independent change and the
5 compounding takes into effect all of
6 those interactive, the interactions
7 between the line items, correct?

8 A. Yes, correct.

9 Q. And in part, you can't do your
10 own compounding because there are
11 different pieces that were being done by
12 others and you don't have a consolidated
13 model that contains all of these?

14 A. That's correct.

15 Q. So you were comfortable in
16 doing this costing to accept the
17 company's costing model, correct?

18 A. For the majority of thieves
19 items, yes, we didn't have a big
20 difference. And again, we've been doing
21 this for four years prior to the 1113 so
22 the math behind this these is just sort
23 of a moving target. It's not something

24 new.

25 Q. And you understand, don't you,

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2 that the company used its own model to
3 value the APFA's proposals, correct?

4 A. Yes.

5 Q. And you understand that the
6 company's model, which you have no
7 problem with other than a few rounding
8 errors, valued the APFA's proposal at
9 only 48 million dollars, correct?

10 A. Yes.

11 Q. And that 48 million dollars is
12 just 21 percent of the 230 million
13 dollars, correct?

14 A. That's correct.

15 MR. GEIER: I don't have
16 anything else, your Honor. Thank
17 you.

18 THE COURT: All right. So

19 this is confidential questioning?

20 MR. CLAYMAN: No, actually, I
21 have in redirect.

22 THE COURT: All right.

23 REDIRECT EXAMINATION

24 BY MR. CLAYMAN:

25 Q. Mr. Akins, do you remember

214

1
2 what the contract, the proposed contract
3 term was for APFA's proposal for
4 preferential bidding in the schedule max?

5 A. I think at the end it was ten
6 years.

7 Q. So everything else would have
8 been a four year duration and those two
9 items would have been a ten year
10 duration; is that correct?

11 A. Right.

12 Q. Now, I think you testified
13 earlier that the first time -- or that

14 you have seen the 600 million dollar

15 labor gap number in public filings?

16 A. Yes.

17 Q. Have you seen it? SEC

18 filings?

19 A. Yes.

20 Q. And how is it described in

21 those filings?

22 A. As a labor cost disparity.

23 Q. And as far as you know --

24 well, and in the time that you've been

25 working on this case, when was the first

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2 time that you were provided an analysis

3 by American that showed a 600 million or

4 approximately a 600 million dollar labor

5 cost gap?

6 A. Sometime in early 2010 during

7 negotiations.

8 Q. And what was the basis for

9 that analysis? Was it the same kind of
10 convergence analysis we've been talking
11 about?

12 A. Right. And American has done
13 this, I didn't know that the data room
14 had new costing convergence analysis that
15 we weren't aware of, but this is
16 something that they've done from time to
17 time since 2008.

18 Q. Have you ever seen any other
19 analysis which shows a 600 million dollar
20 labor gap, cost gap other than the one
21 that is based upon the convergence
22 analysis?

23 A. At American, no.

24 Q. And so when we go to APFA
25 Exhibit 003, and we can now, this is a

1
2 public document as it turns out because
3 it was used in the pilots' case by

4 American, when we go to the wage --

5 MR. FLICKER: Hold it. What I
6 confirmed is it turned out someone
7 read the numbers during the
8 testimony. I can't confirm that
9 the document itself was displayed.

10 MR. CLAYMAN: According to my
11 associate it was displayed because
12 he was sitting in the back.

13 THE COURT: If there's a
14 dispute do you expect toe to decide
15 that right now?

16 MR. CLAYMAN: No, I can work
17 around it.

18 THE COURT: Yes, let's work
19 around it.

20 MR. CLAYMAN: That's fine.

21 Q. That shows nine pages from the
22 back, the one that lists the components
23 of a billion dollar gap, do you see that?
24 Nine pages from the back. It's called
25 total labor gap valuation.

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2 A. Yes, I've got it.

3 Q. And that shows a 600 million
4 dollar contractual labor gap?

5 A. Yes.

6 Q. And then is the 150 million
7 dollars in seniority differences, is that
8 attributable to the contract?

9 A. No.

10 Q. And the 200 million dollars in
11 retiree medical, that's got a
12 parenthetical that that's a book
13 accounting difference; is that correct?

14 A. Yes.

15 Q. So does that have anything to
16 do with the actual cost of the contract
17 on an annual basis?

18 A. No.

19 Q. And do the flight attendants
20 have anything to do with the 200 million
21 dollars on the fleet mix?

22 A. No.
23 Q. And so when you look at the
24 \$600 million which says contractual labor
25 gap and then you look to the next to last

218

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2 page of this document, and you look at
3 the chart that is there, the table AA
4 labor costs with other airlines, and you
5 look at 2011, what is the labor cost gap
6 that's shown there?

7 A. Approximately the same, 600
8 million.

9 Q. Do you have any reason to
10 believe that that is not the basis, this
11 number that appears on the second to last
12 page is not the basis for the number that
13 appears on the page that is nine pages
14 from the end?

15 A. No.

16 Q. And looking at that chart,

17 just over time, by 2015, according to the
18 company's own estimate, they would be how
19 close, or in 2014, how far away would the
20 flight attendants be away from closing
21 the contractual labor gap?

22 A. Around 155 million overall and
23 all of that is attributed to mechanics,
24 minus a little bit of flight attendants.
25 So everybody is at convergence

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2 essentially.

3 Q. And for the flight attendants
4 where are they in 2014?

5 A. Five million dollars above the
6 cost of their competitors.

7 Q. And just for the record, the
8 chart that appears in your declaration on
9 page 49, that's redacted table 3?

10 A. Yes.

11 Q. Who prepared this chart?

12 A. Someone at American.

13 Q. And when you worked on the
14 United contract, who were you
15 representing?

16 A. The Association of Flight
17 Attendants.

18 Q. And was the total amount of
19 that contract cost or savings
20 confidential?

21 A. Yes, specifically.

22 Q. Were the wage increases
23 confidential?

24 A. No.

25 MR. CLAYMAN: If I may just

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2 have a moment, please.

3 I have nothing else, thank
4 you.

5 MR. GEIER: No recross on
6 these issues.

7 THE COURT: All right, so the
8 next step is?

9 MR. CLAYMAN: Close the court.

10 THE COURT: We'll close the
11 courtroom to address information
12 that has been identified as
13 business confidential information
14 and consistent with how it's been
15 handled in this courthouse in other
16 proceedings, I'll ask folks who do
17 not have, have not been given
18 essentially confidentiality
19 agreements dealing with this
20 information, that they clear the
21 courtroom. For those folks who
22 have to do that, let me ask how
23 long this portion of the program
24 will take. You said 10 questions?

25 MR. CLAYMAN: I have ten

2 written questions, actually it
3 looks like maybe nine. I would
4 hope I can run through this in 15
5 minutes.

6 THE COURT: So if anybody does
7 have to leave, I would imagine
8 we'll take a short break after
9 we're done with confidential
10 information to let people know they
11 can come back in.

12 All right, so we do not I
13 think to take a break for purposes
14 of ECRO, so we essentially start a
15 separate transcript. That will
16 give a few minutes for me to call
17 and get the cameras turned off as
18 well as for anybody who needs to
19 take a walk for about 15, 20
20 minutes, to get on their way. And
21 so why don't we take a short break
22 to get all that accomplished I'd
23 ask the parties to work together to
24 make sure everybody who is here is
25 supposed to be here. Thank you.

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2 (A recess was taken.)

3 (Whereupon, the trial

4 continued in closed session and

5 transcribed separately.)

6 THE CLERK: All rise.

7 THE COURT: Please be seated.

8 So the cameras are back on to the

9 overflow room. Everything else is

10 up to speed and that one person has

11 been let back in.

12 So I don't know who that is,

13 but welcome back.

14 So proceed with cross.

15 MR. FLICKER: Thank you, your

16 Honor, I'm Scott Flicker for

17 American Airlines.

18 CROSS EXAMINATION

19 BY MR. FLICKER:

20 Q. Good afternoon.

21 A. Good afternoon.

22 Q. You indicated in your
23 testimony that you performed analyses of
24 other airline business plans; is that
25 right?

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2 A. Yes.

3 Q. And in the course of that work
4 you've examined profit and loss
5 projections?

6 A. Yes.

7 Q. Pro forma financial
8 statements?

9 A. Yes.

10 Q. And network planning
11 projections?

12 A. Yes.

13 Q. And fleet plans?

14 A. Yes.

15 Q. And business plan models?

16 A. Yes.

17 Q. Now, have you analyzed any
18 such detailed information for any
19 specific combination between American and
20 any specific merger partner?

21 A. No.

22 Q. You heard Ms. Glading testify
23 about the provision in the agreement
24 between APFA and US Airways that makes
25 that agreement conditional on a review of

224

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2 the business plan of the merged entity;
3 is that correct?

4 A. Yes.

5 Q. Have you conducted any
6 evaluation of any business plan of a
7 merged American/US Airways entity?

8 A. No.

9 Q. Do you know whether anyone
10 else on behalf of APFA has conducted any

11 such evaluation?

12 A. I don't believe so.

13 Q. You read or you've seen Mr.

14 Kasper's testimony in this case?

15 A. I read Mr. Kasper's

16 declaration, yes.

17 Q. You don't disagree with Mr.

18 Kasper that deregulation unleashed

19 significant price competition in the

20 industry, correct?

21 A. No, I don't disagree with

22 that.

23 Q. You don't disagree that the

24 financial performance of US airlines has

25 been impacted by numerous external shocks

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2 since the year 2000?

3 A. No, I don't disagree with that

4 either.

5 Q. You don't disagree that LCC

6 competition has continue Bermuda to a
7 real decrease in the average price per
8 mile, the yield for air service in the
9 United States?

10 A. Generally, yes.

11 Q. Let's focus on American. You
12 don't dispute that in the ten years prior
13 to American's filing for bankruptcy
14 American has lost billions of dollars?

15 A. No, I don't dispute that.

16 Q. Including over one billion
17 last year alone, right?

18 A. Right.

19 Q. And Mr. Kasper testified that
20 American has the highest labor cost in
21 the industry, didn't he?

22 A. Yes.

23 Q. And you heard Mr. James for
24 the APA tell the court this week that the
25 status quo collective bargaining

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2 agreements are not sustainable, right?

3 A. I don't recall that. But I
4 was here.

5 Q. And you heard Mr. Yearley
6 testify on behalf of the APA that
7 American's labor costs are above market?

8 A. Yes.

9 Q. Yet it's your contention that
10 American has a revenue problem, not a
11 cost problem; is that right?

12 A. The biggest problem American
13 has is a revenue problem.

14 Q. You have a chart in your
15 declaration on page 9 you were shown
16 during your direct, the mainline unit
17 cost ex fuel CASM?

18 A. Yes.

19 Q. American's labor CASM
20 comprises a higher percentage of overall
21 CASM than the other airlines currently
22 operating today on this chart; is that
23 right?

24 A. Yes.

25 Q. So the other airlines are

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2 actually able to devote a higher
3 percentage of their cost spending to
4 spending that can improve their product
5 and grow the airline, right?

6 A. I don't think you can deduce
7 that from that equation. Again, what I
8 talked about was that some of the other
9 carriers' other costs are related to
10 contracts to replace what American
11 considers labor through outsourcing.

12 Q. Yes. And when they do that
13 that shows up in their CASM; is that
14 correct?

15 A. Yes.

16 Q. Now, in a rational world those
17 other airlines when they are contracting,
18 their mechanics labor they're doing so

19 because they believe they can get lower
20 mechanics labor costs that way; is that
21 right?

22 A. Yes.

23 Q. So even adding that back in,
24 the overall labor plus mechanics cost
25 that the other airlines incur is going to

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2 be lower than the American labor CASM;
3 isn't that right?

4 A. If they made a good decision
5 about outsourcing, yes.

6 Q. And given that assumption, the
7 other costs that the airlines are
8 incurring include costs for them to
9 invest in their airlines; is that right?

10 A. Yes.

11 Q. Now the parties are in
12 agreement that American has a network
13 disadvantage, there's no dispute about

14 that, right?

15 A. Yes.

16 Q. And a significant portion of
17 the company's business plan is directed
18 to addressing that; is that right?

19 A. It's directed toward growing
20 what it has in the cornerstone
21 Citigroup's. I don't think it's directed
22 toward fixing the networks deficiencies.

23 Q. Although it does talk about
24 fixing deficiencies in terms of
25 increasing the frequencies of flight

229

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2 through operations of large RJs?

3 A. Yes.

4 Q. And synthetically growing
5 network through code share?

6 A. Yes, that's right.

7 Q. Is it your contention that a
8 carrier with a network disadvantage can't

9 be profitable?

10 A. No.

11 Q. And there are carriers that
12 make a profit with a smaller network; is
13 that right?

14 A. Yes.

15 Q. In fact, one major network
16 carrier with a smaller network than
17 American's is profitable, isn't it?

18 A. Yes.

19 Q. And that is which carrier?

20 A. US Airways.

21 Q. You follow press reports on
22 the major industry players, don't you?

23 A. Generally, yes.

24 Q. And you know what US Airways'
25 credits for being able to turn a profit

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2 despite having a network driven revenue

3 disadvantage?

4 A. Yes.

5 Q. What's that?

6 A. Lower costs.

7 Q. Now, let's talk about your
8 criticisms of the business plan. It's
9 your position that the revenue
10 projections in the business plan are too
11 aggressive, aren't they?

12 A. They're too aggressive in
13 terms of the risk that they present and I
14 don't think it's considered a base case.
15 There isn't any more aggressive cases you
16 can imagine. I think one of the
17 witnesses said that from American.

18 Q. So you believe that the
19 ability of American to generate the
20 revenue in the business case is subject
21 to risk?

22 A. Yes.

23 Q. And that means that the
24 EBITDAR or the earnings margin that
25 American projects in the business plan is

1
2 also subject to risk, right?

3 A. Yes.

4 Q. Now, in paragraph 30 of your
5 report which starts on page 19: Please
6 don't reveal the actual number here, but
7 you contend that the overall revenue
8 growth projection by American is
9 excessive there, don't you?

10 A. For the period of time in
11 which they're planning to grow, yes.

12 Q. And this total revenue growth
13 is a six year projection; is that
14 correct?

15 A. The majority of it is in the
16 last three years.

17 Q. Hold on, let's not talk about
18 that. I'm just talking about overall
19 number and the period of growth, correct?

20 A. Yes.

21 Q. And you know that the growth
22 in American's business plan is weighted

23 toward international operations?

24 A. Yes.

25 Q. And when I deposed you last

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2 week you said you had not, when leveling
3 your criticism about the amount of
4 revenue growth here, you had not examined
5 historical industry growth rates over the
6 past six, seven years, have you?

7 A. No.

8 Q. And have you done so since
9 then?

10 A. No, I think it's irrelevant.

11 Q. Would it surprise you though
12 that the international growth rate for
13 the past six years has been 55 percent?

14 A. No.

15 Q. And have you analyzed historic
16 growth rates in American?

17 A. Not particularly, no.

18 Q. Did you know that in the six
19 year period starting with 2003, our magic
20 year, when American had reached cost and
21 other restructuring arrangements with the
22 unions, American had revenue growth that
23 is in the range of what's being projected
24 in this business plan, did you know that?

25 A. No.

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2 Q. And in other six year periods
3 in which American has had changes to its
4 labor contracts, such as the 1983 pilots
5 contract, did you know that American
6 experienced significant revenue growth
7 during those six year periods?

8 A. No, I did not.

9 Q. And if you take a sample over
10 the past 20 years, do you know what the
11 average six year growth rate for
12 American's revenues is?

13 A. Boy, I don't know if it would
14 mean much because of the 9/11 punctuated
15 in there, it's a pretty big dive. So I
16 don't know what the average is.

17 Q. The answer to my question was
18 no?

19 A. No.

20 Q. Would it surprise you to know
21 the average over the last 20 years for
22 six year growth rate was 40 percent for
23 American?

24 A. The average six year growth, I
25 don't know how you determined that. I'd

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2 have to see some evidence.

3 Q. Now, does knowing the data
4 about the six year growth rate say
5 starting from 2003, or the average growth
6 rates over historic periods for American,
7 does it alter your opinion that the

8 growth rates in the American plan are not
9 credible?

10 A. No.

11 Q. You have criticisms of
12 American's cornerstone strategy, right?

13 A. Yes.

14 Q. Now, in fact, it's the case
15 that American's unit revenue in the five
16 cornerstones, as we have seen, has
17 improved in the past few years, hasn't
18 it?

19 A. Relative to the past, yes.

20 Q. And now American is proposing
21 to couple the focus on those five markets
22 with a leaner cost structure, with
23 increased investments in the product, and
24 with relief from the operational
25 constraints it has in its collective

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2 bargaining agreements; isn't that right?

3 A. Yes.

4 Q. Now have you modeled what
5 American's revenue growth would have been
6 over the past several years if its
7 current section 1113 proposals had been
8 implemented then?

9 A. No.

10 Q. In your testimony, at least in
11 your direct both on the stand and in
12 declaration, you cite to analysts who
13 criticize the American plan; is that
14 right?

15 A. Yes.

16 Q. And essentially they've
17 criticized the growth in the plan as
18 being bad for industry pricing and bad
19 for capacity control; is that right?

20 A. Yes.

21 Q. In other words, the analysts
22 have criticized the plan for potentially
23 upsetting the supply/demand equilibrium
24 you've discussed?

25 A. Yes.

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2 Q. Now the details of the
3 business plan as we know are
4 confidential, correct?

5 A. Yes.

6 Q. You don't have any knowledge
7 that any of these analysts have actually
8 seen the business plan model, have you?

9 A. No.

10 Q. Now you've seen it, correct?

11 A. Yes.

12 Q. And you attended meetings at
13 which the workings of the models were
14 discussed, right?

15 A. Yes.

16 Q. And you were presents in the
17 February 3rd meeting when American and
18 McKinsey walked through how the models
19 ways constructed, right?

20 A. Yes.

21 Q. And you asked questions at
22 that meeting?

23 A. Yes.

24 Q. And the meeting ended earlier
25 than scheduled if you remember because

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2 the attendees had no more questions; is
3 that right?

4 A. Well, I felt kind of
5 sandbagged. We got -- we got two decks
6 of about 50 pages of very detailed,
7 complicated assumptions and so at that
8 point if we'd had a day to look through
9 it we'd probably have had more questions,
10 but I think, yes, we all kind of left at
11 about lunch when the thing was scheduled
12 to go to about two or four.

13 Q. So you were given a ton of
14 information on February 3rd about the
15 business plan?

16 A. Right, and we went through it
17 really quickly and it was complicated and
18 I think the reason why people didn't have
19 questions is because I think everybody
20 felt like I did, you know, we didn't
21 really have a chance to form questions.

22 Q. On February 24th, several
23 weeks later, you attended a meeting at
24 which Keith Williams of McKinsey offered
25 to have a one-on-one session with you or

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2 Jefferies, right, to walk through the
3 models?

4 A. Yes.

5 Q. And in fact on March 8th you
6 attended a meeting at American's
7 headquarters in which the workings and
8 the interrelationship of the revenue
9 model and the business plan were
10 discussed?

11 A. Yes, it wasn't a one on one
12 like we anticipated.

13 Q. The meeting was scheduled for
14 four hours, but it ended early, didn't
15 it?

16 A. Which one was that now?

17 Q. That was the March 8 meeting.

18 A. Is that the first meeting with
19 Mr., with Keith or is it the second one
20 with the larger group?

21 Q. This is the one in which Ms.
22 Irvin was there.

23 A. Okay, yes.

24 Q. And in fact, the meeting ended
25 early than as well, didn't it?

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2 A. Yes.

3 Q. And Ms. Irvin offered to stay
4 for longer but the attendees declined;
5 isn't that right?

6 A. I don't recall that.

7 Q. Now, let's talk about the
8 company's business plan a little bit.

9 The amount sought by the company from
10 unionized labor in this case is 990
11 million dollars on a six year average,
12 correct?

13 A. Yes.

14 Q. And you understand that the
15 amount of this request comes from the
16 business plan?

17 A. Yes.

18 Q. You don't dispute that the 990
19 million dollar number is the company's
20 calculation of the unions' share needed
21 to meet the objectives of the business
22 plan?

23 A. No.

24 Q. Now, as I understand it, a
25 principal criticism you level is that

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2 American forecasts it would grow its
3 capacity in specific markets without
4 taking into account that this growth will
5 depress revenues; is that right?

6 A. In markets where it exceeds
7 demand, yes.

8 Q. And you have a chart, which is
9 confidential, on page 35 of your
10 declaration, so we're not going to
11 discuss the numbers. This is your chart
12 14, correct?

13 A. Right.

14 Q. I want to ask you about the
15 components of this chart. We have blue
16 bars and we have red bars, right?

17 A. Yes.

18 Q. And the blue bars represent
19 American's forecast of the growth rates
20 in industry demand in all the markets
21 that American plans to operate in
22 combined; is that right?

23 A. Yes.

24 Q. So those are the combined

25 industry growth rates?

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2 A. Yes.

3 Q. And the red bars represent the
4 growth in American's supply, its
5 capacity; is that right?

6 A. That's correct.

7 Q. And your contention is that in
8 the years in which the red bar exceeds
9 the blue bar, due to the law of supply
10 and demand, American's unit revenue
11 should go down or at least not be
12 expected to increase, right?

13 A. Yes.

14 Q. Now, this chart is not
15 comparing industry demand to industry
16 supply; is that right?

17 A. No, because American assumes
18 that in 2015, 16 and 17 --

19 Q. Hold on, be careful about what

20 you say. Is it comparing industry demand

21 to industry supply?

22 A. No.

23 Q. You're comparing apples to

24 oranges here, right?

25 A. No.

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2 Q. The numbers on the chart are

3 percentages of change; isn't that right,

4 they're not absolute numbers?

5 A. Right.

6 Q. So the base on which one could

7 grow at a 5 percent rate, could wildly

8 differ from the base of what one could

9 grow at a 9 percent rate?

10 A. Yes.

11 Q. They're two different sources?

12 A. Right.

13 Q. And in fact, the total amount

14 of American's supply across these

15 markets, okay, is far less than total
16 industry demand in these markets, there
17 of many, many more ASMs being demanded
18 industry-wide than American has ever
19 supplied by itself; isn't that right?

20 A. Yes.

21 Q. And the percent of growth and
22 capacity that American might forecast in
23 any given year, these red bars, it simply
24 represents the projected increase of
25 American's ASMs from American's ASMs in

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2 the prior year; is that right?

3 A. Yes.

4 Q. And the percentage growth of
5 industry demand in any given year, the
6 blue bar, represents a projected increase
7 in total industry demand from industry
8 demand in the prior year?

9 A. Yes.

10 Q. And we're going to use a
11 number, it's not in the chart, but just
12 use it for example, so in any given year
13 American's capacity might be shown to
14 grow by 5 percent from its prior year,
15 correct?

16 A. Yes.

17 Q. And industry wide demand might
18 be shown in that same year to grow by 3
19 percent, correct?

20 A. Yes.

21 Q. And your chart doesn't
22 indicate that the absolute amount of
23 capacity that American might be adding in
24 that year is greater than the total
25 amount of demand being added to the

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2 industry that year; is that right?

3 A. Right.

4 Q. And to evaluate whether

5 supplied/demands imbalances will have an
6 impact on revenues in the industry, you
7 have to evaluate whether in the industry
8 the overall supply, not just American's
9 supply, will exceed the overall demand;
10 isn't that right?

11 A. Right.

12 Q. And that's not what you're
13 showing here, right?

14 A. No. But I want to say that
15 the McKinsey model has a facility to do
16 that.

17 Q. We'll get there, I promise you
18 we will.

19 Now, have you rendered a
20 version of your chart 14 that we're
21 looking at that shows industry demand and
22 industry supply as projected in the
23 American model?

24 A. Yes.

25 Q. Did you share that with us

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2 here?

3 A. No.

4 Q. We've done it.

5 MR. FLICKER: May I approach,
6 your Honor?

7 THE COURT: Yes.

8 Q. What I'm passing out is a
9 confidential document it does contain
10 projections from the American business
11 plan, correct?

12 A. Yes.

13 Q. This is, we've labeled this as
14 American Airlines 1720. I want you to
15 look at that. Does that look to you like
16 a representation of the industry demand
17 and industry supply numbers that were
18 prepared?

19 A. Yes, I just about talked about
20 it. I'm glad you stopped me.

21 MR. FLICKER: That's fine.

22 Your Honor, I'd like to offer

23 American Airlines 1720 in evidence.

24 THE COURT: Any objection?

25 MR. CLAYMAN: No, your Honor.

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2 THE COURT: All right, it's

3 admitted.

4 Q. So without putting these

5 numbers on the record, American's revenue

6 model, the overall model projects that in

7 some years industry demand will be

8 exceeding industry supply; is that

9 correct?

10 A. Yes.

11 Q. The blue bars will be higher

12 than the red bars?

13 A. Yes.

14 Q. And in other years supply and

15 demand will be equal, correct?

16 A. Yes.

17 Q. But in no case is there a

18 projected to be in the plan an increase
19 in supply that exceeds demand, right?

20 A. Right.

21 Q. So in no year does the
22 supply/demand balance as forecast by the
23 business plan suggest a downward pressure
24 on unit revenues in the industry?

25 A. Correct.

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2 Q. And you know from looking at
3 the plan, that the red bars, the industry
4 supply, includes the capacity that
5 American intends to bring on in these
6 various years; is that right?

7 A. I'm not sure. I don't know
8 that.

9 Q. Okay. If I represented to you
10 that it did, does that change anything in
11 your testimony?

12 A. No. American is part of the

13 industry.

14 Q. And it is correct, isn't it,
15 that American's model projects that
16 overall American's total market share
17 from 2012 to 2017 remains unchanged?

18 A. Yes.

19 Q. And that's actually true with
20 everyone one of these geographic markets;
21 isn't that correct?

22 A. No. In domestic it falls.

23 Q. Okay. But in international
24 that's true?

25 A. I believe so.

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2 Q. And most of the growth of this
3 plan is in fact international growth;
4 isn't that correct?

5 A. About three quarters, yes.

6 Q. And isn't it the case that
7 some revenue growth can result from

8 down-gauging the product that you fly?

9 A. Yes.

10 Q. Let's discuss a little bit
11 more about how the revenue model is put
12 together. As you know, the revenue model
13 projects capacity growth between each of
14 American's five hub cities and six
15 regions from macro markets; isn't that
16 right?

17 A. Yes.

18 Q. That was that chart we saw in
19 your declaration, is it not, right, which
20 has the green, yellow and the red
21 squares?

22 A. Correct.

23 Q. So each one of the squares
24 represents a projection between a
25 cornerstone market across the top and a

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2 geographic or what we call macro market

3 on the right; is that correct?

4 A. That's correct.

5 THE COURT: Counsel, what page
6 are you on?

7 MR. FLICKER: I'm sorry,
8 that's 39, chart 16.

9 Q. It's just a way of seeing what
10 the macro markets are defined as, as we
11 use that term.

12 And so, as you know, what the
13 revenue model that American has adopted
14 does is it first looks to project
15 capacity growth, available supply between
16 each one of the American hub cities and
17 these macro markets. That's what it --
18 that's one of the things that it does;
19 isn't that correct?

20 A. Right.

21 Q. And it starts with the actual
22 schedules, the OAGs for the first year?

23 A. Yes.

24 Q. It says that's the current
25 capacity in the market in each one of

1
2 these macro markets, correct?

3 A. Yes.

4 Q. And then from 2014 to 2015 the
5 model takes the existing OAG schedules of
6 all the airlines in these markets and it
7 applies the current aircraft order books
8 and projected retirements of aircraft,
9 yielding net fleet changes and
10 distributes this net additional capacity
11 change across the regions based on
12 changes in expected demand growth in
13 those regions; is that right?

14 A. I think the only correction I
15 have to that is it's not through 2015,
16 it's 2013 and 2014.

17 Q. And then for the next two
18 years the model assumes that supply
19 growth is going to match demand growth?

20 A. Next three years.

21 Q. And that the capacity growth

22 in the industry will be distributed
23 essentially rationally, if there's
24 additional demand projected, it's
25 presumed that capacity will be allocated

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2 to that demand?

3 A. The capacity will chase
4 demand, yes.

5 Q. And then so that's how the
6 overall supply of the industry is
7 projected in the plan, correct?

8 A. Yes.

9 Q. And then the revenue model
10 projects demand growth in each one of
11 these regions, or macro markets using
12 region specific GDP projections; is that
13 right?

14 A. Yes.

15 Q. And using these projections,
16 where there's a mismatch between the

17 supply and demand growth projections in
18 any given region, the model projects an
19 impact on unit revenue as a result of
20 that; isn't that correct?

21 A. The McKinsey model?

22 Q. Yes.

23 A. It does for the first two
24 years. In the last three years it
25 doesn't function.

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2 Q. Well in the last three years
3 you just said that the model presumes
4 that supply will chase demand and
5 therefore there will be no downward
6 pressure or upward pressure on revenue?

7 A. In the industry, but for
8 American --

9 Q. Just the industry is what
10 we're talking about?

11 A. Okay, for the industry, no.

12 Q. So for any particular market
13 where industry supply, additional
14 capacity, which includes American's
15 capacity, exceeds projected demand
16 growth, the model shows, calculates
17 negative income on revenue?

18 A. I haven't seen that.

19 Q. So you don't know that that's
20 how the model works?

21 A. I've only seen the nominal
22 yield that I can't mention the number,
23 but the model's baseline, at least in the
24 revenue model, is a positive number.

25 Q. Okay. So there is a factor

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2 that's added to what's called the market
3 driven number and that factor is a
4 baseline number, we'll say it's -- let's
5 say it's one percent for purposes of
6 discussion, and that's calculated onto

7 the revenue projections as well; isn't

8 that right?

9 A. Correct.

10 Q. And that's calculated by using

11 30 years of historic yields adjusted for

12 fuel and stage lengths?

13 A. Yes.

14 Q. So what the market does is it

15 applies these growth factors for each

16 region, it calculates the impact on

17 revenue of any supply/demand imbalance

18 that is projected, it also has this what

19 we're calling the one percent factor over

20 the top, essentially a price rise, and

21 that's called market driven PRASM in the

22 model?

23 A. P-R-A-S-M, yes.

24 Q. P-R-A-S-M, passenger revenue

25 per available seat mile, right?

2 A. Yes.

3 Q. So the model applies this
4 overall PRASM growth factor for each
5 region to the specific capacity that
6 American intends to deploy in each year;
7 isn't that right?

8 A. It's not tied to the capacity,
9 no.

10 Q. But if American adds capacity
11 to a specific market in a specific year,
12 the model calculates the revenue that
13 American expects to generate on that
14 route, applying this revenue factor
15 that's derived from the previous
16 calculation?

17 A. It stops in 2015.

18 Q. But as we excused, the model
19 has assumed that from 2015 on, that if
20 there is an increase or a decrease in
21 demand that supply will adjust to; isn't
22 that correct?

23 A. It assumes that and it applies
24 this nominal one percent, but American is

25 growing much faster than the market in a

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2 few years and they don't put that as a
3 factor into that calculation.

4 Q. But the fact is that the model
5 itself when it looks like industry supply
6 and industry demand, calculates that
7 factor; is that right?

8 A. Yes, it assumes that it's in
9 balance and it's only a nominal factor of
10 --

11 Q. You can't say that. We'll use
12 one percent?

13 A. Of PRASM.

14 Q. But in fact, if you look at a
15 particular region which American is
16 operating, this factor that we discussed,
17 this pressure on revenues factor is
18 actually calculated into the model, isn't
19 it?

20 A. Into the model on an industry
21 base level, yes.

22 Q. Let's take a look at a
23 particular region.

24 MR. FLICKER: Your Honor, may
25 I approach again?

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2 THE COURT: Yes.

3 MR. FLICKER: I'm handing out
4 a confidential document.

5 Q. So this is a document which is
6 marked as American 1722 and this is, it's
7 entitled "PRASM development in Asia."

8 Now, do you recognize this do
9 to be a representation of the industry
10 demand in the gray, the industry supply
11 growth rate in the light blue, and the
12 changes to AORs, PRASM, in dark blue?

13 A. I don't know what, what's the
14 source of this?

15 Q. The business plan model, the
16 revenue model.

17 A. Is it the McKinsey model?

18 Q. Yes.

19 A. I don't -- I don't recognize
20 this chart, if it was created off the
21 data in the chart, in the model.

22 Q. Let me --

23 A. I don't recognize this.

24 Q. Let me ask you if this
25 illustrates how you understand the model

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2 to work.

3 A. Yes.

4 Q. So in the year 2013, industry
5 demand, which is represented in gray, is
6 lower than industry supply which is
7 represented in light blue in this region,
8 correct?

9 A. Right.

10 Q. And the impact on market
11 driven PRASM, that revenue factor is
12 shown to be a negative number; is that
13 correct?

14 A. For the overall industry, yes.

15 Q. And this is that supply/demand
16 imbalance effect on revenue that both you
17 and Mr. Dichter talked about, right?

18 A. Yes.

19 Q. And you know that that number,
20 the dark blue number is applied to
21 American's capacity as introduced into
22 the market in each one of these years; is
23 that correct?

24 A. In the first two years I don't
25 have any problem, that's correct.

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2 Q. I understand, I'm just asking
3 you a yes or no question.

4 A. Yes.

5 Q. And I understand that you have
6 a problem with the fact that the number
7 is positive in the later years, right? I
8 understand that. But do you think that
9 this accurately reflects the mechanics of
10 the PRASM factor in the model?

11 A. In the years when that PRASM
12 factor function is turned on, yes. It's
13 turned off in the last three years.

14 Q. And in the last few years
15 you're showing, the model shows supply
16 and demand are at equilibrium; isn't that
17 correct?

18 A. For the industry, yes.

19 Q. I think we understand each
20 other.

21 MR. FLICKER: Is there any
22 objection if we introduce 1722 in
23 evidence?

24 MR. CLAYMAN: No.

25 THE COURT: All right, it's

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2 admitted.

3 MR. FLICKER: Thank you.

4 Q. Now, one of the criticisms
5 that I've seen and heard in your
6 testimony is that your ability to analyze
7 American's growth was undermined because
8 the plan doesn't indicate which specific
9 routes American intends to deploy its
10 capacity growth; is that correct?

11 A. That's correct.

12 Q. And you said that this problem
13 exists in every hub in every gateway?

14 A. That's correct.

15 Q. I think you said today that
16 you wanted a little more granularity
17 where American intends to deploy its
18 capacity; is that right?

19 A. Yes.

20 Q. And if it shows growth in Asia
21 you'd like to know what countries at
22 least American is growing in Asia?

23 A. More than that, but yes, that

24 would be the minimum.

25 Q. Why did you want that

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2 information?

3 A. Because I think especially in
4 the chart that we talked about when we
5 were at confidential on page 40, it shows
6 a huge growth in a particular market,
7 that seems to be well outside the
8 industry demand profile, and aside from
9 that, it would be interesting to see what
10 in the model is forecast in that
11 particular region that would allow the
12 company to grow that much in that
13 particular region and try to assess who's
14 in those markets.

15 And again, the worry is in a
16 macro market like Europe, Germany could
17 be growing very fast and drive the GDP
18 and England or Iceland could be falling

19 off. And so when you look at what drives
20 these things I would just like to
21 understand what are we intending to do to
22 support this growth, where is it coming
23 from, is it coming from JFK, is it coming
24 from, you know, code share, feed into
25 JFK, what sort of underlies this that

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2 American sees in three years that Europe
3 is going to grow that fast, and where.
4 That's really my contention,
5 is that I can't dive into this and look
6 at it and say a lot of new markets, a lot
7 of new growth out of Chicago, I can't say
8 that from what I've seen from the revenue
9 models.

10 Q. Generally, you have not had
11 big complaints about getting access to
12 documents from company; is that right?

13 A. No.

14 Q. In fact I think you told me it
15 was the opposite, you contended if
16 anything there were too many documents to
17 review?

18 A. Yes, that's a different
19 problem.

20 Q. And you had access to these
21 documents on IntraLinks, right?

22 A. Yes.

23 Q. Now, did you send anything to
24 American raising your criticism that
25 American's plan doesn't indicate which

262

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2 specific routes American intends to
3 deploy?

4 A. I think from the very first
5 meeting that we had on February 3rd, as
6 well as subsequent meetings I raised that
7 issue, and the model's not built on that.

8 Q. And you didn't get any

9 information on which to make the analysis
10 you wanted to make?

11 A. No, not a network plan, no.

12 MR. FLICKER: Your Honor, I'm
13 going to approach again.

14 THE COURT: All right.

15 MR. FLICKER: Not a
16 confidential document this time.

17 THE COURT: Thank you.

18 Q. I'll show you a document that
19 has been marked as American Airlines
20 1724. Do you recognize this to be an
21 index of the documents under the business
22 plan model tab or folder of IntraLinks?

23 A. You know, I can't attest to
24 that. It looks like it. I've never seen
25 it in this format, but it looks like the

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2 kinds of documents that are underneath
3 tab 25.

4 Q. If I direct your attention to
5 2535 on the second page, the document,
6 the spreadsheet called 2017 frequencies,
7 do you recognize that title?

8 A. No.

9 Q. Did you look at that document,
10 to your knowledge?

11 A. I don't recall.

12 Q. I'll show you a confidential
13 document. Do you recall having pulled
14 this document down off of IntraLinks?

15 A. No.

16 Q. Now, this document indicates
17 which specific routes American intends to
18 deploy its growth using which equipment;
19 isn't that correct?

20 A. For one year, and I'm not sure
21 what it means. Is it nine flights from
22 Abilene to DFW.

23 Q. Did you ever ask anybody that
24 question?

25 A. I never saw this document.

1

2 Q. It was on IntraLinks.

3

4 MR. CLAYMAN: Your Honor,
5 there's lack of foundation here for
6 a variety of reasons.

7

8 THE COURT: He's offered an
9 opinion, he may have considered
10 something, he may not have
11 considered something. It may be
12 that he should have considered or
13 that it didn't matter, so I can't
14 sort that all out today. So I'm
15 going to allow it. But let me ask
16 is this confidential or not
17 confidential?

18 MR. FLICKER: Yes, sir, it is.

19

20 THE COURT: So I think we have
21 to be careful about that. I keep
22 mentioning it because I'm really
23 not smart enough to keep track of
24 it, you all have done a better job

22 than I have.

23 MR. CLAYMAN: Just one other
24 point, though, your Honor, that
25 there is, these documents are

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2 posted sometimes sequentially,
3 sometimes they're posted not
4 sequentially in that they're not
5 made available at the time that
6 they're posted to certain people.
7 So we have no idea when or if this
8 document was made available to Mr.
9 Akins. So that's just, I just
10 don't know and there's no
11 foundation laid as to that.

12 Q. Sir, you know how IntraLinks
13 works, you get alerts every time a
14 document is posted on IntraLinks; isn't
15 that right?

16 A. Yes, my email box is stuffed

17 almost every day.

18 Q. In fact, sir, isn't it the
19 case that you were added to the APFA's
20 advisors 2 group on February 17th of this
21 year?

22 A. I don't know what that means.

23 THE COURT: Let me do this
24 because certainly you can ask the
25 witness these questions, but

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2 counsel are more knowledgeable to
3 what people actually got and what
4 people didn't get. So do you want
5 to take a second and chat because I
6 think it's cruel and unusual
7 punishment to ask the witness these
8 kind of questions without him
9 sitting at his desk trying to
10 figure that out.

11 MR. CLAYMAN: Sure, that would

12 be great.

13 MR. FLICKER: There's going to
14 be a disagreement, not a
15 disagreement, but they're not going
16 to accept my representation about
17 when this witness had access.

18 THE COURT: Here's what I'm
19 going to do. Why don't you take a
20 walk, we'll come find you, this is
21 not a very exciting conversation.
22 I'll hear from counsel and we'll
23 sort it out. I can't promise you
24 they won't have questions about
25 this topic when you come back, but

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2 we'll see what we can do.

3 THE WITNESS: Thank you.

4 (At this time, the witness
5 left the courtroom.)

6 THE COURT: All right.

7 Clearly there is testimony about
8 this witness' criticism of the
9 business plan and various things
10 where he thinks it's deficient.
11 One of them is the level of
12 granularity. I understand this
13 question to go to that issue. So
14 all things being equal, it seems to
15 be relevant and obviously you'll
16 have your argument about why it's
17 not relevant or why it's
18 particularly relevant or all that
19 kind of stuff. But the question
20 about what he had or didn't have
21 can be handled several ways. It
22 can be handled with an objection or
23 it can be handled with an I didn't
24 get it. What's the status of
25 counsel's understanding of what he

2 got and didn't get at the time.

3 MR. FLICKER: So my
4 understanding of what he got over
5 time included an investigation of
6 when he got this document. And the
7 advisors that he is part of the
8 group of -- the way this works of
9 course is --

10 THE COURT: Let me back up for
11 a second just so -- because I'm the
12 least knowledgeable person on this.
13 When you say this document, you're
14 talking about 1725?

15 MR. FLICKER: 1725.

16 THE COURT: What is the name
17 of this document? Is that what you
18 were circling, the 2017
19 frequencies?

20 MR. FLICKER: That's correct.

21 THE COURT: So this is that
22 document?

23 MR. FLICKER: That's correct.

24 THE COURT: Let me then ask
25 1724, what does that purport to be?

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2

MR. FLICKER: 1724 is a

3

basically a screen shot of the

4

IntraLinks website showing for the

5

business plan model folder what

6

documents are in the folder.

7

THE COURT: What's the date of

8

this screen shot?

9

MR. FLICKER: The screen shot

10

itself is yesterday or the day

11

before.

12

THE COURT: Is there any

13

historical screen shot that would

14

tell us when this 2017 frequency

15

was in or not in?

16

MR. FLICKER: Well, I don't

17

know whether I can get a historical

18

screen shot. There are reports

19

that you can run on IntraLinks and

20

although I don't have the report

21 with me in court, we did run the
22 report and the group, the
23 permissions group that Mr. Akins
24 belonged to received access to that
25 document on March 20th. And if we

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2 have to, we can bring in witnesses
3 on rebuttal to establish that
4 foundation, or I could simply just
5 ask the witness whether it would
6 alter his opinion in any way if he
7 knew that this document existed.

8 THE COURT: Well let me ask
9 this question. I don't know that
10 it's been done here. But it's not
11 uncommon in litigation generally
12 for experts to say in reaching my
13 opinion I have considered the
14 following things, and an enormous
15 list. I don't remember if there's

16 something in his declaration that
17 does this and lists what he
18 considered.

19 So let me ask if there is -- I
20 keep hearing IntraLinks mentioned,
21 I keep operating under the
22 assumption that it is the data
23 sharing vehicle and that that's
24 what people have access to and
25 whether you look at it, consider

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1
2 it, don't consider it is up to you
3 and then people can make an
4 argument about whether you should
5 look at it.

6 MR. CLAYMAN: It's a little
7 more complicated than that, your
8 Honor.

9 THE COURT: I was afraid of
10 that.

11 MR. CLAYMAN: There have been
12 instances where, first of all, I
13 may get a document, I'm in the same
14 group as co-counsel or counsel for
15 APFA and he doesn't have access to
16 that document.

17 There have been instances
18 where documents are not provided
19 sequentially. And in fact, we just
20 pulled up all the documents that
21 appeared under 25, the file number
22 25, and as it turns out 2535 is not
23 listed on our list.

24 MS. PARCELLI: In what we've
25 downloaded just four weeks ago from

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1
2 the website.

3 MR. FLICKER: Four weeks ago.

4 MS. PARCELLI: When did you
5 say it was posted?

6 MR. FLICKER: March 20th.

7 MR. CLAYMAN: That would have
8 been in the middle of April.

9 MS. PARCELLI: It lists them
10 but skips that one.

11 THE COURT: I obviously am not
12 qualified to hold an inquisition as
13 to this particular issue and that's
14 probably not very exciting to do
15 so.

16 What I'm inclined to do, so
17 that we don't get bogged down in
18 this, is to let the questions get
19 asked subject to whatever argument
20 folks want to make, but in the
21 meantime you'll have discussion,
22 see if you can reach some objective
23 level of truth about what was
24 shared and what wasn't shared.

25 The reason why I think it may

1

2 be appropriate to do that is one
3 is, I mean otherwise we have to
4 recall this witness. I don't know
5 that that's a humane thing to do
6 for this. I think I am capable of
7 parsing it. I understand that
8 experts will look at certain
9 things. If they say well, you
10 never gave it to me, what do you
11 want from me, that's certainly a
12 fair, a fair thing to say if in
13 fact it wasn't shared with him.

14 It also could, you know, he
15 may tell us, I don't know, that,
16 you know, whether I got it or not
17 it doesn't matter, I don't care.
18 And if that's the answer, then you
19 may not even need to have that
20 exciting discussion about the
21 history of IntraLinks throughout
22 the ages. I would suggest we just
23 recall him, ask questions, your

24 objection is preserved. And then
25 anyone has the right depending on

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2 what his testimony is to follow up
3 on that issue and make a proffer,
4 make an argument, but you also may
5 come back and say it doesn't
6 matter, we're just happy to have
7 the record stand as is depending on
8 what he says. Is that acceptable?

9 MR. CLAYMAN: Yes, I mean --
10 of course -- I can talk to Mr.
11 Flicker about how we're going to
12 try to reconcile that and all that.

13 THE COURT: I understand that.
14 It's a thankless task so I don't
15 envy you, but at least this way
16 this witness can finish and like
17 the industry experts that I've
18 heard from this case, is obviously

19 a very competent witness and can
20 more than hold his own in
21 addressing this issue. So if
22 somebody would be so kind as to
23 retrieve that gentleman.

24 (At this time, the witness
25 returned to the courtroom.)

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2 THE COURT: You didn't miss
3 much. But the good news is that
4 we're going to try to do this in a
5 way where no one ever asks you to
6 come back to chat about something
7 that's always a risk when there's a
8 disagreement about the scope of
9 questioning and I think we've
10 resolved it so the questioning can
11 continue and we'll just take it
12 from there.
13 Q. Mr. Akins, in looking at

14 document 1725.

15 A. Right.

16 Q. Do you recognize the left
17 column to be airport codes?

18 A. Yes.

19 Q. And do you read that to mean
20 origin and destination points for
21 flights?

22 A. I'm not sure what it means.

23 Q. In your business you see
24 airport code pairs like this all the
25 time?

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1

2 A. Right.

3 Q. And if you have a document
4 that says frequency and you're looking at
5 airport codes you're saying you don't
6 know whether that might represent city
7 pairs?

8 A. I don't see frequencies on

9 here.

10 Q. You see market, right?

11 A. I see market.

12 Q. And the next thing, A-C in
13 your industry what does that mean?

14 A. Aircraft.

15 Q. Do you recognize the symbols
16 underneath that to represent types of
17 aircraft?

18 A. Kind of.

19 Q. PRP for prop?

20 A. Right. I've never seen that
21 before.

22 Q. 737, you've seen that?

23 A. Yes.

24 Q. MRJ versus LRJ?

25 A. No, I haven't seen that

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2 before.

3 Q. Now, if in fact this document

4 indicates specific routes that American
5 intends to deploy its growth using which
6 equipment, 2017, would this document
7 constitute the type of granularity that
8 you wanted to see?

9 A. No.

10 Q. Why not?

11 A. Because it doesn't tell me
12 what, for instance, nine is.

13 Q. If you could get an answer to
14 that question that it was nine
15 frequencies?

16 A. I'd like to see 2012, '13,
17 '14, '15, '16.

18 Q. And indeed, you can see 2012;
19 isn't that right?

20 A. Yes, but I can't see where,
21 for instance, in 2015 where there's this
22 huge growth in Europe, I don't know where
23 that is.

24 Q. Yes, but you could take the
25 OAG from 2012 that exists today, probably

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2 in your office, correct, and the 2017
3 frequencies, assuming that's what this
4 is?

5 A. Yes.

6 Q. And you could actually at
7 least chart where the growth was going to
8 take place; isn't that right?

9 A. I could do it sort of endpoint
10 dot to dot, yes.

11 Q. You also have the growth rates
12 that American intends to apply in each
13 region; isn't that right?

14 A. Year by year I do.

15 Q. Yes. So you could apply those
16 growth rates to that line that you drew?

17 A. Right.

18 Q. Couldn't you?

19 A. Yes, I mean there's a lot of
20 things. If I got this document pulled
21 down and it said 2017, 9, a lot of these
22 markets are seasonal. I don't know if

23 that's directional, if that's return. I
24 don't know if these are code share
25 markets that somebody else is supplying.

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2 There's a lot questions here that I can't
3 have answer to the granularity question.

4 Q. You certainly could ask those
5 questions, couldn't you?

6 A. I asked for a network plane to
7 show where the airplanes are going to
8 deployed on an annual basis.

9 Q. So there's a dispute about
10 whether or not you had access to this
11 document on IntraLinks?

12 A. No, there's no dispute on
13 that. If I pulled this document down, if
14 I had pulled it down, I don't think it
15 answers my question.

16 Q. So this isn't enough
17 granularity for your satisfaction?

18 A. No.

19 THE COURT: Can I ask counsel
20 to make a proffer what you
21 understand the 2017 column and
22 those numbers to mean?

23 MR. FLICKER: In the year to
24 17, your Honor, that the company
25 would intend to operate the number

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2 of frequencies that you see listed
3 in that column using the equipment
4 in the middle column to those city
5 pairs on the left.

6 THE WITNESS: Per day.

7 MR. FLICKER: Per day.

8 THE COURT: Actually per day
9 was what -- I was trying to figure
10 out what the measure of time was on
11 it. Certainly I'll just note all
12 it says is 2017 which is why I

13 asked the question.

14 Q. You had a criticism about the
15 fuel forecasting in the model; is that
16 correct?

17 A. Yes.

18 Q. But you do know that the model
19 did use a forward fuel curve?

20 A. Right, and I have a problem
21 with that.

22 Q. You do. But you know that
23 McKinsey doesn't; isn't that correct?

24 A. I don't know if they do or
25 not. I don't know who developed the fuel

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2 curve.

3 Q. You don't know who developed
4 the fuel curve?

5 A. I don't know who pulled the
6 data on that particular day when they
7 pulled it. I don't know if it was you or

8 McKinsey or American.

9 Q. That's your criticism, I
10 understand. Now, what did you project
11 the price of fuel to be next year?

12 A. I don't -- I don't use a
13 forward curve. I've used past history
14 and a long trend line. I'm not in the
15 fuel pricing business, but I've never
16 seen an assumption like this in a
17 business plan especially the current year
18 of fuel.

19 Q. You're aware the model to some
20 extent passes fuel changes through to the
21 revenue line; is that right?

22 A. I think there's an assumption
23 that the company can recapture fuel price
24 changes within a range, but it didn't
25 assume a decrease in revenue associated

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2 with a decrease in fuel prices so I think

3 it's a one-way valve.

4 Q. You do know that the idea of
5 recapturing fuel changes is something
6 that is done at other airlines and in
7 fact it's experienced by other airlines,
8 right?

9 A. Yes.

10 Q. Let's look at some of the
11 other revenue drivers in the model?

12 A. Okay.

13 Q. You do have some criticisms
14 about American's projection of revenues
15 from increased code sharing; is that
16 right?

17 A. Yes, generally.

18 Q. And while specific code shares
19 with specific parties are not discussed,
20 you have, as we know, you have seen news
21 reports about speculating about a
22 potential JetBlue JFK code share
23 arrangement; is that right?

24 A. Yes.

25 Q. And you actually have some

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2 specific criticisms in your report about
3 that?

4 A. Yes.

5 Q. And one of the criticisms that
6 you have leveled is that as far as you're
7 aware American hasn't made a formal
8 proposal to JetBlue regarding a code
9 share?

10 A. Yes, as I understand it yes,
11 they have not made a formal proposal.

12 Q. You're aware the pilot scope
13 clause restricts American's ability to
14 enter into new code shares; is that
15 right?

16 A. Generally, yes, I'm aware.

17 Q. And you criticize the
18 feasibility of any code share arrangement
19 with JetBlue because you say high value
20 travelers would not wish to connect to

21 American's international service using a
22 JetBlue flight; is that right?

23 A. Compared to the competition.

24 Q. But in fact, it is the case
25 that business travelers will use JetBlue

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2 flights for connections; isn't that the
3 case?

4 A. No, I would assume there'd be
5 a few. I don't think there'd be as many
6 as United or Delta.

7 Q. And you do know that Business
8 Traveler magazine rated JetBlue the
9 number one low cost carrier last year;
10 isn't that right?

11 A. You mentioned that before. I
12 don't know that for a fact. I'll take
13 your word for it.

14 Q. Okay. JetBlue has announced
15 other code sharing arrangements; isn't

16 that right?

17 A. Yes, I saw something in the
18 press recently.

19 Q. In fact, they announced a code
20 sharing arrangement with Emirates, didn't
21 they?

22 A. Yes.

23 Q. And Emirates caters to high
24 value international customers; isn't that
25 right?

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2 A. Yes.

3 Q. And you talked about terminal
4 obstacles to code sharing between
5 American and JetBlue at JFK, right?

6 A. Yes.

7 Q. But as you know, currently at
8 JFK flights do connect from terminal to
9 terminal using air side buses; isn't that
10 right?

11 A. No, I don't know that.

12 Q. In fact, you admitted in your
13 deposition that's currently done, didn't
14 you?

15 A. I wasn't sure of it. I still
16 am not sure of it. I think you were the
17 first one that ever told me that.

18 Q. Now, did you go and
19 investigate that question when you were
20 leveling your criticism?

21 A. I should have.

22 Q. Do you listen air carrier
23 earnings calls from time to time, or read
24 the transcripts?

25 A. Occasionally.

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2 Q. And did you listen to
3 JetBlue's most recent earnings call for
4 the first quarter of 2012 when this issue
5 was brought up?

6 A. No, I didn't.

7 Q. So do you know what was said?

8 A. No.

9 Q. Is that something that you
10 considered?

11 A. No.

12 Q. In your opinion?

13 A. No.

14 Q. If I told you that in fact
15 JetBlue indicated that this kind of
16 noncontiguous terminal connection is not
17 a problem, would that alter your opinion
18 in any way?

19 A. No, I think they've got a
20 reason to promote themselves.

21 Q. In fact, if I told you that
22 JetBlue's chief commercial officer said
23 in the most recent earnings call "If you
24 look at the connection experienced
25 between American and JetBlue at JFK, its

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2 two new and very high quality terminals,
3 and any customer landing internationally
4 is going to have to clear Customs and go
5 through security again in any case. So
6 the only bit you could argue it's
7 slightly different to maybe an airport
8 where it's all on the same route." But
9 she then cites other examples of these
10 types of connections.

11 Do you have any reason to
12 disagree with that?

13 A. The only contention that I'd
14 have with it is that's it's in a vacuum
15 of lack of other choices. You have to
16 consider that that is something that
17 JetBlue is saying because of their
18 relationship with a major international
19 gateway at JFK.

20 It doesn't consider whether
21 something that's flying to Europe would
22 have a better connection and more
23 convenient trip on Delta or United or
24 even US Air. That's the issue.

25 Q. When you attacked the

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2 feasibility of the tie-up between
3 American and JetBlue, you've cited this
4 terminal option?

5 A. As in context with available
6 options to capture high value customers,
7 that's not a preferred interchange.

8 Q. But it is done?

9 A. It is done.

10 Q. And you contend that as
11 another ground that you think that the
12 JetBlue JFK -- JetBlue/American/JFK
13 reports don't make sense is that
14 Lufthansa has an ownership stake in
15 JetBlue and that Lufthansa is a member of
16 the Star Alliance and as I think you said
17 in your declaration, it's difficult to
18 imagine that American, a member of One
19 World, could engage in a code share with

20 JetBlue?

21 A. Right, I speculated that that
22 could be true.

23 Q. Speculated that?

24 A. Yes.

25 Q. Thank you. And you're not

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2 aware of any agreement between Lufthansa
3 or JetBlue that prohibits JetBlue from
4 code sharing with a non-Star Alliance
5 carrier?

6 A. No, I'm not.

7 Q. You know that in fact JetBlue
8 currently code shares with JAL which is a
9 member of One World, right?

10 A. Yes.

11 Q. You also criticize American's
12 plan to increase revenues through
13 increased deployment of large regional
14 jets; is that correct?

15 A. Yes.

16 Q. Now you do agree that removal
17 of scope clause restrictions on
18 American's ability to deploy more large
19 RJs, that will have a positive impact?

20 A. Yes.

21 Q. In fact, if you look at page 5
22 of your declaration, table 1, which I
23 think you discussed in your direct,
24 that's page 5, table 1.

25 A. Okay.

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2 Q. Here you're comparing United,
3 Delta and American's city serve in the
4 mainline and regional; is that right?

5 A. Yes.

6 Q. In fact, the lion's share of
7 the disparity in total aircraft service
8 between American and the other two is not
9 at the mainline, it's at regional, isn't

10 it?

11 A. That's correct.

12 Q. So this disparity could be
13 closed by increasing regional operations;
14 isn't that right?

15 A. That's the way it could be
16 closed, yes.

17 Q. And you claim that the model
18 provides no definition of actual
19 deployment of growth in specific markets;
20 is that right?

21 A. That's correct.

22 Q. Now, we've already discussed
23 that IntraLinks document 2535 that we
24 looked at, AA 1725, actually lists the
25 type of equipment there, doesn't it?

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2 A. Yes.

3 Q. Now, do you recall receiving
4 or attending a presentation by the

5 company on its regional strategy back

6 in --

7 A. I don't think I was there. I
8 stayed out of the regional mix.

9 Q. I'll show you a document
10 marked as 1723, a confidential document.
11 I'll represent to you that this is
12 document 20.37 on IntraLinks. It is a
13 confidential document entitled "Regional
14 strategy update."

15 My question to you is do you
16 recognize this document? Did you access
17 it?

18 A. You know, Scott, I recognize a
19 couple of tables in here from other
20 documents, as is the case with a lot of
21 IntraLinks documents, there seems to be a
22 cross-poll nation of various exhibits and
23 documents, so there's a few pages in here
24 I recognize, there's a number I know.

25 Q. If I direct your attention to

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2 pages 12 through 23, I ask you if you
3 recognize those pages?

4 A. No, I recognize page 11 though
5 if that helps.

6 Q. Take a look at 12. This is a
7 document that talks about a regional
8 fleet deployment in future years; is that
9 correct?

10 A. Yes.

11 Q. And 14 is specific types of
12 aircraft that might be candidates for
13 regional operations; is that correct?

14 A. Can you say that again.

15 Q. Page 14 depicts types of
16 regional jets that may be candidates for
17 large regional jet operations?

18 A. Yes, it appears that's what
19 that shows.

20 Q. And you don't recall actually
21 having seen this document?

22 A. I can tell you I haven't seen

23 the one with the pictures on it.

24 Q. And if you had reviewed this
25 document would this change your opinion

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2 or criticism in any way about the lack of
3 specificity of the regional jet
4 deployment?

5 A. Yes, I still, I still don't
6 know if these are replacing Eagle flying,
7 if these are adopted at the mainline,
8 which one of these, you know, somewhat
9 large, medium RJs, each with different
10 sort of range and capabilities, costs,
11 revenue profiles American would choose.
12 They're all from different manufacturers,
13 and I don't know if they're available.

14 You know, if they -- you know,
15 for example, when we did the Northwest
16 bankruptcy, they had this thing that they
17 called newco and newco became Compass and

18 Compass is still around today. It got,
19 you know, bought, but Compass as a part
20 of their plan, had two types of aircraft,
21 and they were able to deploy, have a
22 route map and show they were replacing
23 the DC9 flying out of Memphis and
24 Minneapolis.

25 And that's sort of what's

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2 missing here is there's no there there.
3 It's not present. You've got to sort of
4 sift through this stuff and try to weave
5 your own kind of ideas about what could
6 be possible and what we're talking about
7 here. And that's sort of the next level,
8 that it would be helpful, but it's not
9 really the sort of full development of
10 what I would consider to be a plan.
11 Maybe American is not ready to do that
12 yet, I understand.

13 Q. Compass was a wholly owned
14 subsidiary at the time of Northwest?

15 A. Compass wasn't even a
16 creation.

17 Q. At the time they were planning
18 it was going to be a wholly owned
19 subsidiary?

20 A. Yes.

21 Q. Two types of aircraft?

22 A. I think two types of aircraft,
23 yes.

24 Q. And it was actually going to
25 be owned by Northwest?

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2 A. It was going to be owned by
3 Northwest and Mesaba wasn't and Pinnacle
4 wasn't and essentially they had a fleet
5 plan for the regionals that included
6 Compass, a newly started wholly owned
7 subsidiary with a route plan and

8 everything else.

9 So I don't know what these
10 represent in terms of Eagle flying,
11 mainline flying, Skywest flying them,
12 Republic flying them, I don't know that.
13 And that's an important consideration to
14 see what's available, is this an
15 executable plan.

16 Because the regional part of
17 the plan is the most aggressive by far,
18 by far.

19 Q. And you know of course that
20 American has in fact identified regional
21 capacity in the marketplace?

22 A. In terms of just overall
23 availability? Yes.

24 Q. And you know in fact that
25 American's plan contemplates that it's

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2 going to in fact source its regional

3 capacity from any one of a number of
4 available capacity?

5 A. I know there's an RFP out,
6 Scott, that requires 50 seat, 50 50
7 seaters. I'm not aware of other larger
8 aircraft because these are pretty rare in
9 the regional world.

10 Q. But in fact, the regional
11 strategy update talks about not only
12 potential candidates of aircraft, it
13 talks about the -- look at paragraph --
14 page 19, without actually reading
15 anything into the record, you can see
16 that it actually starts to discuss the
17 availability of large regional jets from
18 various manufacturers and specific
19 manufacturers; isn't that right?

20 A. Yes.

21 Q. So as you understand how the
22 business plan works, American is not
23 planning, is not -- has not built the
24 business plan to assume that it's going
25 to own all the regional capacity, is it?

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2 A. Right.

3 Q. That's right. So American has
4 the flexibility to go in the marketplace
5 where the capacity might exist and
6 contract for it?

7 A. This kind of capacity isn't
8 available in the marketplace to my
9 belief.

10 Q. Say that again.

11 A. This type of capacity, large
12 RJs, medium RJs aren't anywhere near as
13 available as 50 seat RJs.

14 Q. Have you gone out into
15 marketplace with RFPs and discussions
16 with the manufacturers and actually gone
17 out to make the investigation about
18 whether the large RJs in the plan will be
19 available during the years that the plan
20 says they will be, have you done that?

21 A. No.

22 MR. FLICKER: No further

23 questions.

24 MR. CLAYMAN: Can I just have

25 five minutes, your Honor?

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2 THE COURT: Sure. Let me ask

3 now because so the witness could be

4 in the courtroom, what's the

5 intent, I think there's one other

6 witness, right?

7 MR. CLAYMAN: Tomorrow

8 morning.

9 THE COURT: You want to do it

10 tomorrow. That's fine. Just in

11 case that person is sitting here

12 hoping he gets home. So let's take

13 five minutes.

14 (A recess was taken.)

15 THE CLERK: All rise.

16 THE COURT: Please be seated.

17 MS. LEVINE: Your Honor, an
18 objection.

19 THE COURT: I assume the
20 objection is based on the motion
21 that was filed before the case as
22 to the committee's participation?

23 MS. LEVINE: Actually, no.

24 THE COURT: All right, then go
25 ahead.

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2 MS. LEVINE: Your Honor, the
3 committee stood in connection with
4 every witness who has testified
5 with regard to the business plan
6 and asserted the reservation of
7 right that it also asserted in the
8 scheduling order. So we're not
9 sure exactly why they're crossing
10 this witness with regard to the
11 business plan, but if they are we'd

12 like a clarification with regard to
13 the purpose of the cross
14 examination.

15 THE COURT: All right, well,
16 what can you tell her.

17 MR. BUTLER: Your Honor, I
18 believe the committee has risen
19 thus far in the case to cross
20 examine a total of two witnesses.
21 The first was a witness in the
22 debtor's direct and the second is
23 this witness. And the examination
24 that we want to focus on here is a
25 statement that, a line of testimony

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2 that is focused on AMR's
3 stand-alone plan not being
4 achievable, period, a black and
5 white conclusion. And we believe
6 that is relevant for the 1113 as

7 opposed to another, another
8 proceeding, that's why the
9 committee is a section 1113 party
10 under the scheduling order and has
11 wide latitude under your Honor's
12 order to participate in this case.

13 THE COURT: Well let's get
14 down to brass tax. How many
15 questions do you have?

16 MR. BUTLER: I think it's
17 probably ten minutes, Judge, max.

18 THE COURT: Why given that
19 they are an 1113 participant,
20 again, I don't profess to
21 understand why the committee has
22 the level of involvement thus far,
23 but that's not really my problem.
24 So the question is given that they
25 have a desire to ask a few

2 questions of this witness, that
3 probably would, if they don't ask
4 the debtors will probably ask them,
5 so I'm just trying to figure out
6 whether this really has any impact
7 on the proceeding.

8 MS. LEVINE: We respectfully
9 submit that it does. The committee
10 takes the position that they
11 support the debtor, we get that.
12 They're also taking the position
13 this business plan has no import
14 with regard to issues that the
15 committee intends to focus on.

16 So basically the business plan
17 is part of the dispute right now
18 between the debtor and each of the
19 labor unions. The committee has
20 indicated not only that it's not
21 really a party in interest directly
22 in that direct dispute, but that
23 it's not a party in interest with
24 regard to this particular business

25 plan.

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MR. BUTLER: Your Honor,

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that's not --

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THE COURT: Hold on a second.

5

Here's my problem is and I guess I

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haven't formally ruled on the

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motion in terms of the objections

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to the committee's participation.

9

And so let me rule on it now. I'm

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going to deny the motion because

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under the scheduling order that you

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all worked out they're a

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participant and the objection to

14

the committee's participation was

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filed really I think just a few

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business hours before the trial

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began. The parties are free to

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make whatever arguments they want

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to make. What you're talking to me

20 about is sort of a very end game
21 kind of concern about where the
22 case is going in a very big
23 picture. And I profess that I'm
24 not smart enough to see how that's
25 going. Certainly I don't think the

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2 parties know where it's going yet.

3 So if they don't, I couldn't
4 hope to.

5 MS. LEVINE: Your Honor --

6 THE COURT: I suspect that the
7 questions here, if they're not
8 asked by this party they will
9 probably be done on redirect by the
10 debtors if in fact I understand the
11 alignment of the parties correctly
12 on this particular issue.

13 So I don't want to get bogged
14 down in this. Certainly I

15 understand your objection and your
16 sort of long-standing objection to
17 the committee's participation.

18 MS. LEVINE: Your Honor, I
19 want to parse the objection because
20 in the your Honor wants to overrule
21 and let Mr. Butler cross examine on
22 the business plan I'll accept your
23 Honor's ruling.

24 If your Honor is considering
25 the motion we filed at the

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2 beginning of the case, we're not,
3 the beginning of this motion, we're
4 not pressing it. If we were to
5 press it, though it's a slightly
6 different and perhaps more robust
7 issue, so we'd ask the court to
8 leave that --

9 THE COURT: If you're not

10 pressing it now I don't know that
11 we need to talk about it.

12 MS. LEVINE: I want to make
13 sure your Honor is not ruling on it
14 then. If you are, I need to deal
15 with it. If you're overruling my
16 objection to his cross examination,
17 that's fine.

18 THE COURT: Here's what we're
19 going to do. We're going to have
20 the question -- well again, what I
21 heard you say sounded an awful lot
22 like --

23 MS. LEVINE: Your Honor, it's
24 a narrow objection. Let me try and
25 rephrase it.

305

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2 THE COURT: The motion. But
3 if you're not -- no, I really don't
4 want to get bogged down in it and I

5 say that and I hear myself continue
6 to talk about it, so I'm going in
7 the wrong direction, that's my
8 fault.

9 So we're going to have the
10 questions. Your objection to him
11 asking questions is overruled and
12 we'll table any other issues that
13 relate to the committee's
14 involvement for another day in the
15 interest of expediency.

16 MS. LEVINE: Thank you.

17 THE COURT: With all that
18 prologue, proceed.

19 MR. BUTLER: Your Honor, Jack
20 Butler from Skadden Arps on behalf
21 of the committee.

22 THE COURT: Although you do
23 present a problem. I've been using
24 a different color for each party
25 and I don't have a color for you.

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2 I do now. Fire away.

3 CROSS EXAMINATION

4 BY MR. BUTLER:

5 Q. Mr. Akins, good evening. I
6 have just a few questions and I'd like
7 you to turn if you would to paragraph 26
8 of your testimony.

9 First, you testified earlier
10 this afternoon that in your opinion the
11 consolidation of American and US Airways
12 is inevitable; is that correct?

13 A. Yes.

14 Q. And in fact, Mr. Akins, had
15 you that person before this Chapter 11
16 was filed last November, didn't you?

17 A. No.

18 Q. When did you form that
19 opinion?

20 A. When I saw American's business
21 plan.

22 Q. So your opinion was formed on
23 February 1st, or what point in time?

24 A. No, it began to solidify after
25 I saw the business plan. I didn't see it

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2 until February 3rd, and I believe that at
3 that point that American's stand-alone
4 plan wasn't achievable and given that and
5 given US Airways's position in the
6 industry, that's when I thought it was
7 inevitable, that smart people at American
8 know this plan isn't achievable.
9 McKinsey knows it, Rothschild knows it.

10 Q. In terms of the business plan,
11 you've commented in your direct
12 examination and during cross that you've
13 been critical of the fact that it's going
14 to take a number of years for elements of
15 this plan to kick in; isn't that correct?

16 A. Yes.

17 Q. In fact, no matter who
18 controlled American Airlines in whatever

19 form, it will take a number of years to
20 implement the fleet strategy; isn't that
21 correct?

22 A. Stand alone, yes.

23 Q. Even in a merger, assuming the
24 orders with Airbus and Boeing were still,
25 were still in place, it will take a

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2 number of years to implement that
3 strategy, won't it?

4 A. I don't think the strategy
5 will be the strategy behind a merged
6 carrier.

7 Q. If you assume that the Boeing
8 and Airbus orders are not cancelled,
9 wouldn't you agree with me that it will
10 take a number of years to implements the
11 fleet strategy?

12 A. The fleet strategy? The
13 stand-alone plan, again, I don't think

14 that that would happen in a merged
15 scenario.

16 Q. Let's assume for a moment that
17 in a merged scenario the Airbus and
18 Boeing orders were maintained by the
19 merged entity?

20 A. Yes.

21 Q. In that instance, would you
22 agree with me that it will take a number
23 of years to implement the fleet strategy?

24 A. Yes.

25 Q. Same conclusion with respect

309

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2 to the regional strategy?

3 A. Once again, I don't think
4 again in a merged entity that the
5 strategy would remain the same because
6 you fixed a lot of what the growth is
7 trying to do, to fix the network.

8 Q. But that issue would be more

9 code share, wouldn't it, Mr. Akins?

10 A.

11 Q. It wouldn't be so much, with
12 assuming that the aircraft orders are
13 kept outstanding, it will take time for
14 that to occur, correct?

15 A. And again, I don't think it
16 would generally occur the way it would in
17 a merged entities. I think the
18 distribution and optimization of the
19 fleet in a merged entities would be
20 different.

21 Q. So it's your opinion, it's
22 your expert opinion that if there's a
23 merger the Airbus and Boeing order would
24 be cancelled?

25 A. No, I think it would be

310

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2 distributed differently, accepted

3 differently. Replaced different aircraft

4 at different rates and perhaps some of
5 the smaller gauge Boeing aircraft are on
6 order now would be turned into larger
7 Airbus and Boeing aircraft given that the
8 fleet optimization that would occur with
9 a merged entity would be different than
10 either carrier's stand-alone.

11 Q. Mr. Akins, with respect to
12 product enhancements, the upgrading of
13 the aircraft to include input in
14 improvements such as main cabin extra
15 which is the economy plus type seating,
16 that's going to take a number of years no
17 matter who controls the airline, isn't
18 it?

19 A. If that's continued to be the
20 strategy, yes.

21 Q. And isn't that also true with
22 the lie flat beds that have to get
23 installed over a number of years, that's
24 going to take a number of years no matter
25 who controls the airline?

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2 A. That's right.

3 Q. So you'd agree with me that

4 given where American is right now and

5 given things that have to be done to

6 improve the customer experience, that no

7 matter who controls the airline it's

8 going to take some years for that to

9 occur; isn't that correct? That's a yes

10 or no, sir.

11 A. I can't answer yes or no.

12 Because who controls the airline is

13 assuming that it's an independent airline

14 if it's a merged airline they don't need

15 to have those things to catch up and fix

16 its network strategy.

17 Q. So if it's a merged airline

18 you don't think they need to have lie

19 flat for seats, is that what you're

20 suggesting?

21 A. No, I don't think it's as

22 critical to have those things because the
23 critical component of the network is the
24 feed and operation and structure of their
25 network, not whether they have lie flat

312

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2 seeds.

3 Q. Can you imagine a scenario
4 under which through a merger or
5 stand-alone that American is not going to
6 have the same kind of products that
7 United and Delta have, like economy plus,
8 like flat seats?

9 A. I think they're, you know,
10 five years behind everybody.

11 Q. And can you imagine a credible
12 scenario in which they won't in fact
13 execute on catching up with their
14 competitors no matter who controls them,
15 by merger or in stand-alone?

16 A. I think it's difficult to

17 catch up with your competitors.

18 Q. But they're going to try no
19 matter what, aren't they?

20 A. They're going to try.

21 Q. And it's going to take a
22 number of years no matter how, what form
23 of transaction occurs, stand-alone or
24 merger, they're going to pursue that;
25 isn't that correct?

313

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2 A. Who's they're?

3 Q. Whoever the management of this
4 company is?

5 A. I don't know. Again, in a
6 merged scenario it's a different
7 structure, different strategy.

8 Q. Mr. Akins, my understanding
9 from Ms. Glading's testimony is that you
10 participated in some of the meetings in
11 Phoenix with US Airways; is that correct?

12 A. Yes.

13 MR. CLAYMAN: Your Honor, that
14 is clearly outside the scope of his
15 declaration. There is nothing in
16 his declaration that relates to
17 negotiations with US Airways.

18 MR. BUTLER: I thought you
19 asked him questions about US
20 Airways on direct.

21 MR. CLAYMAN: I asked him
22 about US Airways with regard to the
23 alternative to a stand-alone plan
24 only.

25 MR. BUTLER: But his

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2 declaration is replete with
3 testimony about the stand-alone
4 plan.

5 THE COURT: My memory is that
6 there's a question where we were

7 talking about a transaction that
8 there's a question the benefits of
9 the transaction. I don't believe
10 that there are questions about
11 actual negotiations. So I'm not
12 sure what your -- one, I don't know
13 if it's worth spending a lot of
14 time trying to parse it that
15 finely, but are your questions
16 having to do with the potential
17 transaction or to the actual
18 negotiations because I don't --

19 MR. BUTLER: More the
20 transaction, your Honor.

21 THE COURT: Then let's stick
22 to the transaction, I think we'll
23 be fine.

24 Q. Mr. Akins, in terms of the
25 proposed transaction involving US

2 Airways, you're aware, aren't you, that
3 there is no financial deal that's been
4 negotiated between US Airways and anyone
5 other than the labor groups?

6 A. I'm not sure that I know what
7 other deals people have made.

8 Q. Do you have any knowledge that
9 anyone else has entered into any other
10 kind of deal with respect to US Airways
11 involving any element of a proposed
12 merger transaction?

13 A. No.

14 Q. Other than the labor groups?

15 A. No.

16 Q. Do you have any knowledge that
17 US Airways has access to nonpublic
18 information involving American Airlines?

19 A. No.

20 Q. Would you agree with me given
21 your expert participation, your history
22 and involvement in the industry, that for
23 creditors and other stakeholders in this
24 case to be able to put in context the
25 labor agreements that have been

1
2 negotiated those kinds of direct
3 negotiations with US Airways would have
4 to occur, you'd have to understand the
5 financial deal here in order to be able
6 to put in context the labor deal; is that
7 correct?

8 A. The financial deal of the
9 merger?

10 Q. Yes.

11 A. I think we've asked to do
12 that.

13 Q. But it hasn't happened, has
14 it?

15 A. No, because we don't have
16 access to the data room because American
17 won't let them in.

18 Q. So you now, you concede they
19 don't have nonpublic information, right?

20 A. Right.

21 Q. And you would agree with me
22 that they need that information in order
23 to be able to negotiate a financial deal
24 surrounding a merger, you'd agree with
25 me?

317

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2 A. They need to do diligence on
3 American operation and finances, yes.

4 Q. And you'd agree with me that
5 the creditors would need to be able to
6 have that negotiation before anyone could
7 put in context labor agreements that have
8 been conditionally agreed to, wouldn't
9 you agree?

10 A. The creditors would have to
11 have the business plan of US Airways with
12 a merger scenario, is that what you're
13 asking?

14 Q. I think the question, I'll ask
15 it again.

16 A. Okay.

17 Q. I think the question I asked
18 you was wouldn't you agree, given your
19 experience and history, that in order for
20 other creditors to be able to evaluate
21 the labor term sheets, they would only be
22 able to do that in the context of a
23 comprehensive financial transaction
24 involving a merger?

25 A. For their recoveries?

318

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2 Q. For any purpose?

3 A. I think it would be helpful to
4 understand the context, yes.

5 Q. In fact, you'd agree with me
6 without understanding the context they
7 couldn't evaluate those term sheets;
8 isn't that right?

9 A. I think they can value the
10 term sheets. They have values that are

11 based on American's values in the 1113.

12 There's no surprise as to what those

13 values are.

14 Q. But without the context of how

15 they fit into a merger you think someone

16 could fairly evaluate that?

17 A. I think US Airways fit those

18 into the merger when they announced their

19 synergies. I think they've got an idea

20 because they negotiated the deal.

21 Q. But none of the stakeholders

22 of this company have an idea, do they,

23 in terms of --

24 A. No. And US Airways would love

25 to do that.

319

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2 Q. But that hasn't occurred yet,

3 you concede that?

4 A. They've been restricted from

5 both the UCC and the data room.

6 THE COURT: I got it, you can
7 move on.

8 Q. You testified earlier that in
9 connection with convergence, convergence
10 analysis, you testified that Delta, US
11 Airways and United through separate labor
12 negotiations have all accelerated into
13 2012 convergence events that you thought
14 would occur in later years; is that
15 correct?

16 A. Not that I thought, that
17 American thought.

18 Q. Do I have it correct in what I
19 just said?

20 A. No.

21 Q. That those have been
22 accelerated, the convergence items have
23 been accelerated from 2013 and 14 into
24 2012?

25 A. No, they've been accelerated

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2 from American's belief. There's no
3 acceleration in the real world.

4 Q. Do you have a belief that they
5 have gone faster than you would have
6 anticipated?

7 A. No.

8 THE COURT: I understood your
9 testimony to be that some of these
10 things that were in the business
11 plan in terms of convergence for
12 down the road are happening now.

13 THE WITNESS: Yes.

14 THE COURT: All right.

15 Q. Do you have an opinion as to
16 why they're happening now as opposed to
17 later?

18 A. Yes.

19 Q. What is that opinion?

20 A. They're trying to extract
21 synergies rather than focus on labor cost
22 issues.

23 Q. And do you have an opinion as

24 to why they're doing that now?

25 A. They want to, they want to

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2 have the strongest possible network.

3 Q. One last question, Mr. Akins.

4 In connection with your belief that a

5 merger is inevitable, would you agree

6 that the timing of that inevitability is

7 still very much up in the air, that is to

8 say whether it happens in Chapter 11 or

9 happens at some other time, is completely

10 a matter of speculation, wouldn't you

11 agree?

12 A. Yes.

13 Q. And you'd acknowledge that the

14 last two major mergers, the two you've

15 been testifying to, all occurred outside

16 of Chapter 11; isn't that correct?

17 A. Yes.

18 MR. BUTLER: No further

19 questions.

20 THE COURT: All right. I've
21 lost track of where we are in terms
22 of who's got the time.

23 MR. CLAYMAN: I think I'm
24 next.

25 THE COURT: We'll get you out

322

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2 of here today before the sun sets.

3 THE WITNESS: It's my
4 anniversary so I have to get out.

5 THE COURT: You have my
6 sympathy.

7 REDIRECT EXAMINATION

8 BY MR. CLAYMAN:

9 Q. Mr. Flicker mentioned that one
10 of the carriers that is not nearly as
11 large as United or Delta that is making
12 money is US Air?

13 A. Yes.

14 Q. And I think you earlier
15 testified that, as Mr. Butler pointed
16 out, that it's inevitable that US Air and
17 American merge. What do you think the
18 prospects are for US Air if it doesn't
19 merge?

20 A. Well, again, US Air in context
21 of the new world here with two big
22 carriers, I think US Airways has escaped
23 a lot of the competitive pressure because
24 they don't fly in the places that Delta
25 and United do except perhaps to Europe.

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2 They're more up and down the East Coast,
3 they don't have a big Pacific network and
4 so I think to the extent that they're
5 smaller they've been less exposed to it,
6 but again, I think it's a short term
7 issue. I don't think US Airways feels
8 that in a world with two gigantic

9 competitors that are making 37 billion
10 dollars in revenue each year and their
11 size is a long term sustainable option
12 for them.

13 Q. Turning your attention to
14 American Exhibit 1722. I'm sorry, 1720.

15 A. Okay.

16 Q. Now, Mr. Flicker I think said
17 that these bars include the growth that
18 American anticipates within the industry;
19 is that correct?

20 A. Yes.

21 Q. If that were true, for
22 example, in 2015 --

23 THE COURT: Again, let's be
24 mindful this is confidential, so we
25 don't get into numbers.

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2 MR. CLAYMAN: Oh, right.

3 Q. Let me see if I can do this.

4 In 2015, assuming hypothetically that in
5 2015 American's rate of growth was 10
6 percent.

7 A. Yes.

8 Q. Let's say. And the rest of
9 the industry was 4.9 percent?

10 A. Right.

11 Q. Then in order for American to
12 achieve the demand that it would need
13 based on that supply, maintain a
14 reasonable PRASM, then the demand would
15 also have to approach 10 percent?

16 A. Right. Especially if you're
17 going to keep your load factors constant
18 it's by definition it would have to
19 approach that.

20 Q. And where would that
21 additional demand come from in the -- why
22 would or how would American assume that
23 if the overall growth was 4.9 percent,
24 and it increased its supply by 10 percent
25 that the industry, oral that it could

1
2 match a higher growth rate with a higher
3 demand?

4 A. One way to do it is to drop
5 fares in the way Southwest did. And I
6 think the way that this data was
7 developed is important to understand in
8 that this does not include American by
9 default. This is a capacity number
10 that's based on a GDP number that's based
11 on forecasts for regions. So this does
12 not include American's forecast in here.

13 Q. I see. Okay. Thank you. I
14 think Mr. Flicker referred to the market
15 position that American would have at the
16 end of the period covered by the
17 stand-alone plan. In terms of that
18 position relative to where it is, how it
19 compares to United and Delta, how much
20 would it change by 2017?

21 A. I lost you.

22 Q. Well, with good reason, okay.

23 I'll try it again.

24 In 2017 American is supposed
25 to grow approximately 22 percent.

326

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2 MR. FLICKER: Hold on, hold
3 on.

4 MR. CLAYMAN: That's not
5 right.

6 THE COURT: Well first of all,
7 anything that's in the future a
8 confidential number so you can't go
9 there.

10 MR. CLAYMAN: I'm sorry.

11 THE COURT: Again, it's not my
12 attention to be the gatekeeper of
13 this stuff, people have to pay
14 attention.

15 MR. CLAYMAN: I'm sorry.

16 THE COURT: We've already
17 flown close to the sun on a few

18 things and I kept quiet, so let's
19 be careful.

20 MR. CLAYMAN: I'm sorry.

21 Q. In terms of American's
22 position today, I think you testified
23 earlier --

24 MR. CLAYMAN: Let me ask Mr.
25 Flicker if I can ask this question.

327

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2 THE COURT: Sure.

3 Q. I think you have already
4 testified that in 2000 -- today,
5 American, Delta and United is
6 approximately 50 percent larger than
7 American?

8 A. Yes.

9 Q. In 2017, will that
10 relationship change?

11 A. No.

12 Q. Now, just to be clear --

13 THE COURT: Let me just say
14 before you continue on questioning,
15 I think we are getting to the point
16 where we've gone as far as we can
17 with this witness in terms of
18 making arguments through having the
19 witness on the stand. I'll say
20 that to all sides. So in the
21 interest of compassion and the fact
22 I do have an extensive declaration,
23 it is his anniversary, and I think
24 I've got the points, but let's try
25 to wrap this up.

328

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2 MR. CLAYMAN: I think I have
3 three more questions.
4 THE COURT: Again, because we
5 hoped to get another witness in
6 today by going to seven, it's now
7 two minutes to seven. He's been on

8 the stand a long time.

9 MR. CLAYMAN: I think I have
10 actually maybe two or three
11 questions left.

12 Q. Just very quickly, looking at
13 Exhibit 1725, American Exhibit AA 1725.

14 A. Yes.

15 Q. That is listed on the other
16 document that you were given, 1724, as
17 IntraLinks document 2535, correct?

18 A. Yes.

19 Q. Do you know with any certain
20 if in fact that document was listed on
21 your IntraLinks website, 2535?

22 A. No, but again, this is one
23 folder of dozens and dozens of folders
24 that have hundreds of documents in it.
25 So there's a certain point of document

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2 fatigue here that is quickly reached when

3 you look in the data room.

4 THE COURT: Amen.

5 Q. I think last, maybe next to
6 last, 1725, this shows the frequencies --

7 MR. CLAYMAN: Is this a
8 confidential document?

9 MR. FLICKER: Yes.

10 THE COURT: Yes.

11 Q. This shows a number of
12 frequencies in 2017, correct?
13 Apparently, that's what it's purported to
14 do?

15 THE COURT: You can ask him
16 questions about this. I really
17 have trouble imagine how you're
18 going to add anything meaningful to
19 what he's already testified to.
20 You can try, so give it a shot.

21 MR. CLAYMAN: Thank you.

22 THE COURT: Because he's never
23 seen it before and I think he
24 caveated his views about it quite
25 clearly. But --

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MR. CLAYMAN: I have one

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question.

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THE COURT: There's always

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that redirect that actually turns

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out to be a self-inflicted wound,

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so, but give it a shot.

8

MR. CLAYMAN: Well based on

9

what Ms. Glading said yesterday,

10

I'm not going to ask the question,

11

okay.

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Q. And then just turning your

13

attention to 1723, and looking at page

14

12.

15

MR. CLAYMAN: This is

16

confidential.

17

Q. It shows a fleet mix, correct,

18

on page 12 of the fleet plan document?

19

A. Bear with me one second.

20

THE COURT: It's 20 or 30

21 pages he's still not there. Page
22 12.
23 A. Yes.
24 Q. It says on the top the
25 business plan as originally formulated,

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2 correct?
3 A. Yes.
4 Q. And then turning to page 26,
5 if you look in the bottom right-hand
6 corner, the same number appears on both
7 page 12 and 26; is that right?

8 A. 350, something.

9 Q. Something. Okay, we'll end
10 then, that's fine.

11 THE COURT: Also, again, he
12 said he'd only seen a couple of
13 pages of this so the idea was to
14 stay away from things where he's
15 just seeing documents, he because

16 he has no --

17 MR. CLAYMAN: With that I'm
18 done. That's fine.

19 THE COURT: Any further
20 questioning?

21 MR. FLICKER: No, your Honor.

22 THE COURT: All right. So
23 let's introduce whatever documents
24 and exhibits his declaration and I
25 believe it's documents 701 through

332

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2 708.

3 MR. CLAYMAN: Right, your
4 Honor, we'd like to move for the
5 admission of document, I guess this
6 deck declaration is 700 and then
7 through 708.

8 THE COURT: Any objection?

9 MR. GEIER: I have an
10 objection, your Honor, on the

11 calculation of the 199 million
12 dollar cost of the APFA proposal
13 that Mr. Akins did. He testified
14 that Segal did the calculations for
15 the retiree and active medical,
16 that would have been supported
17 foundationally by Mr. Wohl's
18 declaration which has been
19 withdrawn. So I'd object to it.

20 THE COURT: You can make that
21 argument. As long as he's not
22 saying, and I don't believe he did
23 say that he had some strongly held
24 view based on his own personal
25 analysis of that number and he's

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2 saying somebody else did it, so I
3 think it's not really proper for
4 this witness.

5 So I understand your point

6 that you're making a larger point
7 about that number and whether
8 there's evidentiary support and
9 that's fine, but I think as to this
10 witness, I don't think he claimed
11 ownership of that number
12 particularly. I think he was very
13 careful to say what was his numbers
14 and assumptions and what weren't.

15 MR. GEIER: This declaration
16 says, calculates in paragraph 92
17 what the total value was and that
18 total value includes --

19 THE COURT: What I will do is
20 say I understand him to be offering
21 an opinion based on somebody else's
22 calculation. It's not his. And so
23 you can say there's whatever
24 problem with that number, but I
25 don't believe he's saying he has

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2 some independent basis for that
3 number except somebody gave him
4 that number, it's not his number.

5 Is that correct?

6 THE WITNESS: That's correct.

7 THE COURT: I guess what I'm
8 saying is I think the objection you
9 have is not to this line in this
10 witness' testimony because he's not
11 vouching for that number one way or
12 another, other than input he got
13 from somebody else which you can
14 tell me has no support and he can
15 tell me has support, so.

16 MR. GEIER: Thank you.

17 THE COURT: All right, you are
18 free to go. Happy anniversary and
19 thank you for your patience. It
20 was a long day.

21 All right, so let's talk about
22 tomorrow the next and I believe
23 last witness for the flight
24 attendants.

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2 final witness, Leon Szlezinger who
3 I think will be relatively brief
4 tomorrow morning. From our end I
5 would think 30 minutes on direct.

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THE COURT: And then after
7 that I understand we are starting
8 the TWU; is that correct?

9

MS. LEVINE: Yes, your Honor.

10

THE COURT: What do we expect
11 to get through tomorrow? I can't
12 remember which counsel mentioned
13 something about it being the end of
14 the week travel plans. I know a
15 lot of people are out of town. So
16 I'm happy to sort of work out with
17 you now so people can make whatever
18 arrangements they want to make.
19 It's obvious we're not getting

20 through this case tomorrow. So
21 this has become a marathon rather
22 than a sprint. So I don't know
23 what you all would like to do
24 tomorrow in terms of what the
25 business day looks like.

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2 MR. BUTLER: Yesterday you
3 said five o'clock.

4 THE COURT: Do people want to
5 operate on those parameters, 5
6 o'clock?

7 MR. GALLAGHER: Yes, your
8 Honor.

9 THE COURT: Why don't we say 5
10 o'clock unless somebody has to see
11 a man about a Doug. All right, so
12 what do we expect to get through
13 tomorrow in terms of the -- I know
14 there's an opening I believe you

15 reserved, correct?

16 MS. LEVINE: We're going to
17 cross examine Mr. Brundage. He'll
18 be relatively brief I believe.

19 THE COURT: Actually, if you
20 wouldn't mind finding a microphone
21 because I think I have pretty good
22 ears but I don't think you'll get
23 picked up by the transcript.

24 MS. LEVINE: Sharon Levine,
25 Lowenstein Sandler, for the TWU.

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2 Brief cross examination of Mr.
3 Brundage, a brief opening because
4 as you'll recall we reserved our
5 right to open, but it won't be
6 extensive. Tom Roth, our Dan
7 Akins, our economic expert, Don
8 Videtich is our TWU representative
9 and then very short testimony from

10 Accordia group, Henry Owsley.

11 THE COURT: We're never
12 getting through that all tomorrow
13 if you're putting on your Dan Akins
14 based on this Dan Akins, so just
15 because those witnesses tend to,
16 they're all knowledgeable experts
17 and they tend to go a few rounds.

18 So I guess tomorrow in terms
19 of finishing the one witness from
20 the flight attendants, opening, Mr.
21 Brundage, and either one long
22 witness or we'll see, but I imagine
23 probably three witnesses is as far
24 as we're going to get tomorrow. So
25 then I guess the expectation is you

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2 have a shot at finishing more than
3 day, although again, I have a
4 calendar Monday and plan to start

5 at noon. So I guess you finish
6 Monday or it might slide to early
7 Tuesday.

8 MS. LEVINE: I'm pretty
9 confident we should finish on
10 Monday, your Honor.

11 THE COURT: Then we're going
12 to go straight. I don't know if
13 there's any issues about in terms
14 of you had mentioned Mr. Brundage.
15 Anybody else that you had intended
16 to pursue on cross where you had
17 reserved rights as to the debtor's
18 witnesses?

19 MS. LEVINE: No, your Honor.

20 THE COURT: All right. So
21 anything else we should discuss
22 this evening? All right. See you
23 tomorrow at 10.

24 (Time noted: 7:08 p.m.)

25