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2 THE CLERK: All rise.

3 THE COURT: Good morning.

4 Please be seated.

5 MR. GALLAGHER: Good morning,

6 your Honor. At this point debtor

7 would call Jerrold Glass.

8 THE COURT: You're still under

9 oath.

10 JERROLD GLASS,

11 resumed, having been previously

12 duly sworn, was examined and

13 testified further as follows:

14 DIRECT EXAMINATION

15 BY MR. GALLAGHER:

16 Q. Mr. Glass, do you still hold

17 the same position you held the last time

18 you were with us?

19 A. Yes, I do.

20 Q. Then I would like to move

21 right into the substance of the subject
22 matter and start off by discussing
23 regional jets at US Airways. In order to
24 discuss that subject, I'm going to ask
25 you to put two exhibits in front of you.

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2 MR. GALLAGHER: Your Honor, we
3 have distributed to the bench and
4 the witness and all counsel a
5 binder that contains all of the
6 exhibits Mr. Glass is going to use
7 this morning simply for
8 convenience. Many of these have
9 already been introduced. The few
10 that are new we will discuss and
11 offer at the conclusion of his
12 testimony.

13 Q. Mr. Glass, do you have in
14 front of you the first two exhibits in
15 the binder, APA Exhibit 513? And you

16 will need to take one of them out in
17 order to compare them side by side. The
18 next one is AA Exhibit 502. Do you have
19 those in front of you?

20 A. Exhibit 802?

21 Q. Excuse me, yes, 802.

22 A. Yes, I have those.

23 MR. GALLAGHER: And your
24 Honor, I would note that for 802,
25 in Mr. Glass's declaration, the

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2 footnotes are included in his
3 declaration, but for some reason
4 they were dropped in the stand
5 alone copy of Exhibit 802, so we
6 have put them back and call this
7 Exhibit 802-A. That's the only
8 change is to make the stand alone
9 exhibit conform with the exhibit as
10 it is reflected in the declaration.

11 Q. Is that your understanding,
12 Mr. Glass?

13 A. Yes, it is.

14 Q. Now, on these exhibits I only
15 want to focus on US Airways and the
16 number of regional jets permitted at US
17 Airways. Can you focus on that part of
18 each exhibit?

19 A. Yes.

20 Q. All right. Now, as I read
21 both exhibits, and this was Mr. Eaton's
22 exhibit from APA, both your count and Mr.
23 Eaton's count agree on the first number
24 of 175 regional jets under 50 seats, 50
25 seats or less; is that correct?

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2 A. That's correct.

3 Q. But for the next two columns,
4 there appear to be differences. Do you
5 see that?

6 A. I do.

7 Q. Let me ask you if you would
8 explain those differences and tell us who
9 is correct?

10 A. With respect to Mr. Eaton's 97
11 in the kind of orange color, the 51 to
12 70, the authority under the US Airways
13 agreement for 51 to 76 seats is 212
14 aircraft. And I think the disagreement
15 with Mr. Eaton on that column only has to
16 do with the number that he showed there,
17 which was 97. But if you look at his
18 footnote at the bottom it actually says
19 US Airways 212 aircraft limit is for 51
20 to 76 seats, 93 aircraft limit is for
21 more than 76 seats, which I'll get to in
22 a second.

23 So I think, I think he
24 depicted it incorrectly but it's actually
25 correct in the footnote.

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2 Q. So Mr. Eaton's footnote agrees
3 with you that the number on your chart of
4 212 is correct for aircraft up to 70
5 seats, correct?

6 A. That's right.

7 Q. Then for the third column, for
8 aircraft larger than 70 seats, your
9 number is 153 and his number is 93,
10 correct?

11 A. Correct.

12 Q. Which one is right?

13 A. The 153 is the correct number.

14 Q. How do you know that?

15 A. I negotiated all of the
16 regional jet provisions in the US Airways
17 restructuring agreements.

18 Q. Well can you with reference to
19 any of those agreements explain to us how
20 you get to 153, or either that or with
21 your own summary?

22 A. I will do the best I can
23 because, as I think from listening to Mr.
24 Eaton's testimony and some others, this

25 is not the easiest thing to follow, but

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2 I'll walk everybody through it.

3 Q. Let me see if I can

4 short-circuit it.

5 A. Okay.

6 Q. Turn to the last exhibit in
7 the book. It's an arbitration award, I
8 believe.

9 A. Yes.

10 Q. This is AA Exhibit 1775,
11 correct?

12 A. Yes, it is.

13 Q. Without reading through the
14 whole thing, can you tell us what was the
15 issue and what was the result in that
16 arbitration proceeding?

17 A. The issue was whether under
18 the transition agreement, and
19 specifically in the transition agreement

20 it's Roman numeral VIII paragraph C.

21 Q. What exhibit are you at?

22 A. This would be in Exhibit 505

23 and it would be, if I can find it here.

24 Q. Would it be at page --

25 A. If you look, if you look after

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2 page 16, the first page is called

3 transition agreement, that's page 1.

4 Q. Help me out, we're in Exhibit

5 505.

6 A. We're in Exhibit 505. So we

7 go through LOA 91 and there are 16 pages

8 in LOA 91 after attachment B.

9 Q. After attachment B.

10 A. After attachment B.

11 Q. 16 pages?

12 A. Yes. And then the following

13 page is the first page of the transition

14 agreement, which was the agreement

15 between US Airways and America West

16 during their merger.

17 Q. And that's labeled transition

18 agreement on page 1, correct?

19 A. That's correct.

20 Q. And once you have the

21 transition agreement, where do we go from

22 there?

23 A. Okay. So you look on page 11,

24 it's Roman numeral VIII, paragraph C. I

25 believe this is where Mr. Eaton -- not I

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2 believe, this is where he got his 93

3 aircraft limit, but what he failed to

4 take into account, and it's not, again,

5 it's not an easy thing to decipher, is

6 that under LOA 91 the company had the

7 authority to place 60 CRJ 700s at wholly

8 owned subsidiaries, but in LOA 93, which

9 is Exhibit 1771, we negotiated a change

10 in the authority -- excuse me, a change
11 in the size of the aircraft. The
12 authority of wholly owned remained at
13 60, but the size of the CRJ aircraft went
14 from the 700 to it is 900 which are the
15 77 to 90 seat range that Mr. Eaton has
16 there.

17 So when you add the 93 from
18 the transition agreement in Roman numeral
19 VIII, paragraph C, and the 60 wholly
20 owned aircraft that was granted in LOA 91
21 as modified by LOA 93, you get the 93
22 plus the 60 for a total of 153.

23 We had a dispute with the
24 union over the interpretation of that
25 language because just in reading it, it

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2 would not be clear to the reader what it
3 meant. So the last exhibit, 1775, is the
4 decision of Arbitrator Block on that

5 exhibit dispute. And the company
6 prevailed on that.

7 Q. So they prevailed on the
8 argument that the total number adds the
9 60 from LOA 91 on top of these 93 for a
10 total permissible range of 153 large RJs?

11 A. Correct.

12 THE COURT: Is there a spot in
13 Exhibit 1775 that would lay this
14 out?

15 THE WITNESS: Yes, your Honor,
16 if you look at page number 4 lays
17 out the issue in front of the
18 arbitrator. And it says whether
19 the company has violated section
20 VIII, C of the transition agreement
21 with regard to the operation of
22 aircraft specified in, that section
23 and the if so what is the
24 appropriate remedy and then you
25 have to go to the arbitrator's

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2 decision here. Let me find that
3 for you.

4 Q. So on page 4, Mr. Glass, the
5 arbitrator says the association's
6 position is the company could allocate no
7 more than 93 L S Js, correct?

8 A. Correct.

9 Q. And what's an L S J?

10 A. It's a contradiction in terms
11 is what it is. It's a large small jet.

12 Q. And the association's position
13 was that that limit of 93 was it, that
14 was the limit, correct?

15 A. That is correct.

16 Q. And they asked for a remedy
17 cease and desist from going beyond that?

18 A. That's correct.

19 Q. And did the association
20 prevail?

21 A. No, they did not.

22 Q. And did the arbitrator hear

23 the entire bargaining history?

24 A. He did.

25 Q. And was the association that

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2 brought the grievance the same

3 association that you negotiated the

4 agreement with?

5 A. No. We -- the Air Line Pilots

6 Association was ousted by the US airline

7 pilots association called USAPA. They

8 brought the agreement. So ALPA

9 negotiated it but USAPA filed a grievance

10 over it.

11 Q. So post merger the airline

12 pilots association was the representative

13 of both pilot groups from America West

14 and US Airways?

15 A. Yes.

16 Q. And subsequent to that, the

17 pilots formed a new independent union?

18 A. Correct.

19 Q. Now, so going back to the
20 original two, is there any doubt in your
21 mind about the number 153 for the large
22 regional jets permitted at US Airways?

23 A. No, there's not. That's what
24 the authority is.

25 Q. And what is the seat limit for

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2 those large RJs?

3 A. 90 seats.

4 Q. Is there a weight limit for
5 the larger RJs?

6 A. Yes, it's 90,000 pounds.

7 Q. If you were negotiating a
8 scope clause today, Mr. Glass, would you
9 view 90 thousand pounds as a prudent
10 weight limit for a carrier to agree to
11 today?

12 A. No. And it isn't -- I mean in

13 reality it isn't what we did at the time.
14 Because the CRJ 900 had a weight limit of
15 84,500 pounds, we negotiated 90,000 and
16 that was so we could incorporate the
17 ability to fly the Embraer 175 which is a
18 heavier aircraft than the CRJ aircraft.

19 And so I would take the same
20 view now as new generation aircraft are
21 being developed, the engines generally
22 are more powerful and as a result, the
23 aircraft tend to be heavier, even with
24 the same seat restrictions.

25 Q. So even with the same number

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2 of seats, maximum of 90, could well need
3 a heavier aircraft total weight?

4 A. Yes, it could.

5 Q. Are you aware of the terms of
6 APA's last proposal on regional jets?

7 A. I am.

8 Q. If you turn in the book to,
9 it's a couple of numbers back, APA 414.

10 A. Yes, I have it.

11 Q. If you turn to page 2 and it's
12 APA 414, page 2?

13 A. Yes, I have it.

14 Q. And this is the most recent
15 APA scope clause proposal to American
16 Airlines.

17 A. Right.

18 Q. Can you tell us what this
19 provides?

20 A. The APA proposal says that
21 regional airlines can fly up to 150 jets
22 between 51 and 70 seats and below 80,500
23 pounds, but what --

24 Q. So first of all, the maximum
25 limit is 70 seats?

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2 A. Correct.

3 Q. All right. And the maximum
4 weight, the 80,500, how do those seat
5 limits and weight limits compare to what
6 the other carriers' permitted to do,
7 particularly US Airways?

8 A. Well, it's obviously the seat
9 -- well it is lower than US Airways, it's
10 lower than Delta, and the weight is lower
11 as well. I think Delta's weight limit is
12 I think it's 86,000 pounds.

13 Q. Now I interrupted you. If you
14 would go on to explain the proposal.

15 A. So you take the 150 jets that
16 are permitted and from that you subtract
17 147 because those are already 70 seat
18 jets that are being flown at American
19 Eagle.

20 Q. I think you just said 147, did
21 you mean 47?

22 A. I meant 47, correct, sorry.
23 So you would subtract the 47 from 150 and
24 that would leave American with the
25 ability to have 10370 seat aircraft flown

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2 by a regional airline.

3 Q. New, additive to the current
4 fleet?

5 A. Additive to the 47. However,
6 there's a pretty significant caveat here
7 in that it says that for every new 70
8 seat aircraft you bring on to have a
9 regional airline fly, the airline is
10 obligated to bring, to bring in or order
11 new one 71 to 110 seat jet that would be
12 flown by mainline American pilots.

13 So in other words, a 48th jet
14 of 70 seats would require that one
15 mainline aircraft be added to the fleet
16 between 71 and 110 seats.

17 Q. And if American was unable or
18 unwilling to add those small RJs, small
19 large RJs to the mainline fleet, would it
20 be able to expand beyond the 47 CRJ 700s?

21 A. No.

22 Q. In your view, Mr. Glass, would
23 it be prudent for American to accept a
24 proposal of this sort on regional jets?

25 A. No. I don't know how they

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2 could actually. You don't order one
3 aircraft at a time, you have to order,
4 you know, a fairly significant number and
5 there's a huge capital expense associated
6 with doing that.

7 Q. Let's turn to code sharing.
8 Did any major network carriers get
9 substantial expansion of code sharing
10 during their labor negotiations in
11 bankruptcy?

12 A. Yes, they did.

13 Q. Can you describe briefly?

14 A. Well, I would highlight two,
15 which would be Northwest and United
16 Airlines. In their restructuring

17 agreements they received significant
18 liberalization of their scope clause with
19 respect to the domestic code share and
20 the requirement in those agreements was a
21 meet and confer, but ultimately, the
22 decision was the company's based on its
23 best business judgment.

24 Q. And are there any -- and those
25 code shares that United and Northwest are

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2 permitted to do, are there any
3 limitations? Are they geographic scope,
4 are they nationwide?

5 A. They're national in scope. So
6 as I think I had explained in my direct
7 testimony, that these code share
8 agreements are intended to cover areas of
9 the country where the court reporter does
10 not have the breadth and depth of service
11 that they would need, so rather than

12 spend tens of millions or hundreds of
13 millions of dollars in building up these
14 markets, they enter into code share
15 agreements.

16 Q. Are there any limits on United
17 and Northwest on the number of code share
18 partners?

19 A. No.

20 Q. Are there any limits at all at
21 United and Northwest?

22 A. Coming -- you mean the
23 restructuring agreements?

24 Q. Yes.

25 A. No. Oh, are there any limits?

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2 Q. Yes.

3 A. Yes. Oh, yes, of course.

4 Q. What are those limits?

5 A. There are limits related to
6 how much hub to hub flying could be done

7 and some other provisions as well.

8 Q. Have you reviewed APA's most
9 recent proposal, prehearing proposal to
10 American on the subject of code sharing?

11 A. I have.

12 Q. That is Exhibit 516 before
13 you, if you would turn to that.

14 A. I have it.

15 Q. Where in this exhibit do we
16 find the domestic code share provisions?

17 A. On the middle of page 2,
18 starting with section 1.H, domestic code
19 share and then going to the bottom of
20 page 2 and into page 3 and page 4 where
21 it talks about the jet -- the, excuse me,
22 the JFK domestic code share, the US
23 Airways Shuttle code share and the Alaska
24 code share.

25 Q. All right, well let's parse

2 this out together, if we may, starting at
3 the beginning of section 1.H. the second
4 bullet says if we agree on these three
5 that are spelled out below, we eliminate
6 the current 1.H, correct?

7 A. Correct.

8 Q. So then the only code share
9 provisions would be those set forth
10 below, correct?

11 A. That would be my
12 understanding, yes.

13 Q. You've read this over before,
14 have you not?

15 A. I have.

16 Q. Would you briefly describe
17 what's set forth for the JFK domestic
18 code share here?

19 A. What this says is that
20 American could put its code on JetBlue
21 flying at JFK but its -- and it's limited
22 to the 18 cities that JetBlue is
23 currently interlined with American and
24 then it allows them to add just two

25 additional cities mutually agreed upon by

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2 American and the union.

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The second part of that is
4 that in order to have that code share,
5 American has to maintain at least the
6 current number of total American
7 departures out of JFK and then the total
8 number current.

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So they could not, they could
10 not adjust their flying downward. So,
11 for example, if a market or two or more
12 started losing money, they either have to
13 continue to operate that route at a loss,
14 or I believe they would probably have to
15 pull out of the JetBlue code share.

16

Q. All right. Now it does say
17 they could substitute 20 cities, but only
18 on mutual agreement with APA, correct?

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A. Correct.

20 Q. How many city pair
21 combinations are potentially available
22 for feeding traffic into JFK?

23 A. Just -- on JetBlue or just
24 generally?

25 Q. Generally.

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2 A. Oh, it's hundreds if not
3 thousands.

4 Q. What, if you would, go on and
5 describe what is provided for in the US
6 Air Northeast Shuttle code share?

7 A. This says that American can
8 put their code on the US Airways Shuttle
9 flights between Boston, LaGuardia and
10 DCA, but can only do so if there is a
11 monthly baseline of 102 aggregate, in
12 total, scheduled daily departures at
13 Boston, LaGuardia and DCA and if American
14 falls below the 12 month rolling average

15 of 90 percent of that baseline, and
16 cannot cure that defect, they have to
17 take their code off of the US Airways
18 Shuttle flights.

19 Q. Off of one flight?

20 A. No, all of. They can't code
21 share at all with US Airways Shuttle.

22 Q. So if they fall one flight
23 below what their baseline, they have to
24 pull the code share off the entire
25 shuttle operation?

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2 A. Well there's a cure period. I
3 mean it's not like it would just happen.
4 But in theory, that's correct.

5 Q. And what is provided, proposed
6 for the Alaska code share arrangement?

7 A. In the Alaska code share
8 arrangement, American can expand its
9 current codeshare with Alaska subject to

10 the restrictions that are in those five
11 hollow bullets. First is there has to be
12 an annual baseline of American mainline
13 flying in the LA basin and in, I assume
14 bay area means San Francisco, Oakland.
15 The measurement period is 2011. And it
16 says for each 8,760 mainline annual block
17 hours scheduled over the baseline, they
18 can add two markets.

19 And again, there's a --
20 there's a percentage and a cure period
21 and if they can't meet those, then they
22 have to return to the preexisting code
23 share arrangement.

24 Q. So if American remains static
25 in Los Angeles and San Francisco areas,

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2 can it add any Alaska code share?

3 A. I don't -- I don't think so
4 based by the outline of this term sheet.

5 Q. Okay. How does this proposal
6 compare to the code sharing permitted to
7 the other network carriers?

8 A. It doesn't compare favorably
9 and what I'm comparing it to is the code
10 sharing agreements that were in place
11 prior to the consolidation, the merger
12 between Northwest and Continental --
13 Northwest and Delta and Continental and
14 United, when then they were separate
15 airlines and had very significant code
16 sharing agreements. These do not compare
17 to those at all. Those were
18 comprehensive code share agreements that
19 allowed the airlines to put their code on
20 literally hundreds and hundreds of
21 flights of the other carrier.

22 Q. Now, Mr. Glass, I'd like to
23 turn to some costing and valuation
24 issues. Prior to Mr. Roth's testimony
25 here had you ever heard the phrase

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2 terminal value?

3 A. I had not, no.

4 Q. Is that a generally accepted
5 method of valuing labor contract terms in
6 the airline industry?

7 A. No, it is not.

8 Q. Was that term or method used
9 in either US Airways bankruptcies?

10 A. It was not.

11 Q. Was Mr. Roth involved in
12 either of the US Airways bankruptcy
13 bankruptcies?

14 A. He was the advisor to the
15 machinist union in both.

16 Q. And which employee groups did
17 the machinist union represent?

18 A. They represented three groups,
19 the mechanic and related fleet service
20 and the maintenance training instructors.

21 Q. So those were sizable groups?

22 A. Well, two of them were.

23 Maintenance training instructors I think

24 had 30 people in them.

25 Q. How many rounds of bargaining

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2 were there in both bankruptcies?

3 A. With the machinist union at

4 least three.

5 Q. Did US Airways ever agree to

6 use terminal values?

7 A. No.

8 Q. Have you ever used terminal

9 values in any of the many airline labor

10 negotiations you've been in?

11 A. No, I have not.

12 Q. And what would your position

13 be if a union proposed to use it in

14 negotiations with you today?

15 A. We would reject that.

16 Q. Why?

17 A. Well, for a number of reasons,

18 but I guess the most important one is

19 that whether you are negotiating --
20 whether you are costing an agreement out
21 that's adding cost or savings, you do so
22 within the box of the term of the
23 agreement, whether it's three years, four
24 years, five years.

25 The reason you do that is

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2 quite simple. The next round of
3 bargaining brings a whole new set of
4 proposals and priorities for both the
5 company and the union. So if you went
6 and extended the cost or the savings
7 beyond the amendable date, you're not
8 giving a true representation of what the
9 cost may be in the years outside of the
10 term of the agreement because provisions
11 will change. There will be modifications
12 made in a whole bunch of areas.

13 So I've done, as you know,

14 over a hundred of these agreements and
15 never has management that I've been
16 involved with agreed to savings or
17 costing beyond the term of the agreement.

18 To further illustrate that,
19 one of the things that is done,
20 especially in restructuring or
21 concessionary bargaining, is that it is
22 not uncommon for a few provisions to snap
23 back on the last date of the agreement,
24 and those snap-backs, while they add
25 costs to the agreement, they are not

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2 included in the savings that are
3 calculated during the term and that's
4 precisely why they're put in on the last
5 day of the agreement so they're not
6 included in savings.

7 Q. That sounds like the
8 congressional budget making process, Mr.

9 Glass.

10 A. No comment.

11 Q. Prior to Mr. Roth's testimony
12 have you ever heard the phrase total
13 compensation over 30 years?

14 A. I have not.

15 Q. Is that a generally accepted
16 method of comparing or valuing labor
17 contract terms in the airline industry?

18 A. It is not.

19 Q. Was it used in the US Airways
20 bankruptcies?

21 A. No.

22 Q. Have you ever used it
23 anywhere?

24 A. No.

25 Q. Has any union ever attempted

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2 to use it in negotiations with you?

3 A. No, not with me.

4 Q. And if that was proposed by a
5 union to use it in negotiations with you,
6 what would your response be?

7 A. I would reject it.

8 Q. Why?

9 A. Principally because bargaining
10 is a forward looking system, if you will.
11 History is history. You have to look
12 forward. What you're worried about is
13 can I stay in business and can I become
14 profitable in the future, not what has
15 happened before.

16 Q. Now if you would turn, Mr.
17 Glass, to the next exhibit in the binder,
18 which is Exhibit 1762. I think this is a
19 new exhibit. Can you tell us who
20 prepared it?

21 A. This was prepared by my staff
22 under my direction.

23 Q. And what does it reflect?

24 A. This is a comparison of
25 employee premiums for medical plans,

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2 active employees, and it compares the
3 employee premiums paid by different
4 employee groups to the pilots. The boxes
5 that are shaded in yellow indicate that
6 the employee group pays the same as the
7 pilots or more than the pilots.

8 Q. So American currently, under
9 negotiated collective bargaining
10 agreements, the mechanics and fleet
11 service, Mr. Roth's constituency,
12 currently pay higher medical premiums
13 than the pilots; is that right?

14 A. That's correct.

15 Q. And United, another of Mr.
16 Roth's clients, the mechanics and fleet
17 service, the mechanics and fleet service
18 currently pay higher than the pilots; is
19 that right?

20 A. That is correct.

21 Q. But American -- at Continental

22 and Delta everything is the same for all
23 employees; is that correct?

24 A. Correct.

25 Q. All of the premiums?

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2 A. Yes.

3 Q. And that is what American is
4 proposing; is that correct?

5 A. That's correct.

6 Q. Do you recall during Mr.
7 Roth's testimony that the net savings
8 from outsourcing maintenance and repair
9 jobs is only 13 cents per dollar of
10 expense?

11 A. Yes.

12 Q. Do you agree with that
13 testimony?

14 A. I do not.

15 Q. Why not?

16 A. Because based on my review of

17 his testimony and declaration, it does
18 not encompass -- it's a comparison of
19 apples to oranges. He was comparing the
20 total MRO or vendor cost all in, which
21 includes overhead and rates and benefits
22 and that was compared to just the
23 mechanic rate and a few overhead items.
24 It did not take into account the other,
25 on a fully allocated cost and on a per

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2 unit basis, it does not take into account
3 other areas that would also see a
4 reduction in cost.

5 Q. Would you look at the next
6 exhibit, American Airlines Exhibit 1772.
7 Can you tell us what's reflected here?

8 A. Yes. In the left column, the
9 gray shaded column is the MRO rate per
10 hour. This is an all inclusive rate. So
11 this includes, as I said, everything that

12 a MRO would charge an airline.

13 Q. And that's the number that Mr.
14 Roth used in his declaration, correct?

15 A. That's correct.

16 MR. GALLAGHER: Your Honor,
17 those numbers are confidential, so
18 the actual dollar amounts are not
19 reflected in this document, but
20 they are in Mr. Roth's declaration.

21 THE WITNESS: That's why, your
22 Honor, there's nothing on the Y
23 axis. Normally you would -- that's
24 where you would have the dollars
25 per hour, but because it's

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2 confidential there's nothing there.

3 Q. So what does the middle bar
4 reflect?

5 A. This is the American mechanic
6 and related rates that were used in Mr.

7 Baht's analysis and this is what produced
8 the 13 percent or 13 cents differential.

9 Q. And then what is reflected in
10 the right-hand column?

11 A. The right-hand column is the
12 actual cost per hour, that is the per
13 unit fully allocated cost. So in other
14 words, if you were going to have an
15 apples-to-apples comparison you would
16 compare the MRO rate per hour, the first
17 bar, to the bar on the right. Those
18 would be comparable comparisons.

19 Q. And the underlying datapoints
20 are all drawn from the same American
21 Airlines business plan model, correct?

22 A. That's correct.

23 Q. So whatever those unit cost
24 metrics are, they come from the same
25 source Mr. Roth used?

2 A. Correct. And that's what
3 their crew chief, inspector and stock
4 clerk and the other colored items here,
5 that's the per unit cost of those other
6 groups.

7 Q. And all of those costs are
8 already included in the all inclusive MRO
9 rate, correct?

10 A. Yes.

11 Q. If you would, turn to the
12 second to last exhibit. Which is Exhibit
13 1774.

14 A. Yes.

15 Q. Can you tell us what this
16 reflects? First of all, who prepared
17 this?

18 A. This was prepared again under
19 my direction by my staff. And what this
20 does is it takes the head count of
21 mechanic and related employees as of the
22 end of 2011. It also shows the fleet as
23 of that same date for the network
24 carriers. And when you divide the number
25 of employees into the fleet, you come up

1
2 with a number of mechanic and related
3 employees per aircraft.

4 Q. What conclusions can you draw
5 from this information, Mr. Glass?

6 A. Well, this shows that American
7 has in some cases close to double the
8 number of employees per aircraft than the
9 other network carriers, but regardless, a
10 significant amount more.

11 Q. And by employees we're talking
12 only about the maintenance and repair
13 employees, the mechanics and related
14 employees?

15 A. Mechanics and related. And
16 one of the, you know, one of the reasons
17 that some of these numbers are so low is
18 because the mechanic and related class, a
19 lot of these jobs ended up being
20 outsourced in the restructuring.

21 Q. At other carriers?

22 A. At other carriers, correct.

23 Q. And that's what American
24 proposes here?

25 A. Correct.

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2 Q. That's it for that exhibit,
3 Mr. Glass. I now want to talk about
4 convergence. Is it your opinion that the
5 labor costs of the network carriers will
6 converge in the foreseeable future?

7 A. No, it is not my opinion.

8 Q. Why is that?

9 A. There are many factors that
10 come into play when looking at labor
11 costs of a particular airline. The first
12 and foremost is obviously the financial
13 condition of the airline.

14 Everybody is not profitable,
15 as, for example, American's not, they

16 don't have the same level of
17 profitability.

18 They also, while they have the
19 same business model, they don't all
20 operate in the same environment. And let
21 me give you two examples of that. So,
22 for example, if you have a hub that is
23 primarily a leisure destination, and you
24 are competing against an airline whose
25 primary hub is in a business destination,

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2 in the leisure market you cannot achieve
3 the same kind of revenue premium that you
4 would in a hub in a business area.

5 Same token, if you were
6 operating in an area that, for example,
7 like Phoenix that gets, oh, 350 days of
8 sunshine a year and you're competing
9 against a carrier that is operating out
10 of a Chicago with a lot of bad weather in

11 the winter or in the northeast with a lot
12 of thunderstorms in the summer, there are
13 differences there as well.

14 So that there are a number of
15 reasons why I don't think that would
16 occur.

17 The last reason is to me kind
18 of the most obvious one, which is that
19 this is an industry that is subject to
20 outside -- that is sensitive to outside
21 events like no other industry in the
22 United States. And if you look at the
23 last decade in particular, but you could
24 pick any decade that exists and you will
25 find that there were events, numerous

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1
2 events that had significant impact on one
3 or more carriers, and not necessarily in
4 the same way. Very, very small example,
5 and I'll show you a bigger picture here

6 in a second, but as an example, after the
7 events of 9/11, US Airways, which had a
8 hub, which has a hub at DCA, at national
9 airport, if you recall, that airport
10 remained closed for some months after
11 every single airport in the United States
12 reopened.

13 That had an adverse impact --
14 while 9/11 had an adverse impact on the
15 entire industry, it was even worse for US
16 Airways because they couldn't operate out
17 of one of their major hubs.

18 Q. Let me ask you to turn to the
19 next exhibit in the binder, 1766. Do you
20 have that in front of you?

21 A. 1766. Yes, I do.

22 Q. Who prepared this?

23 A. This was again prepared under
24 my direction by my staff. And what this
25 shows is it just takes a snapshot of the

1

2 last decade and it gives you I think a
3 very good idea of what the industry is up
4 against in terms of competing and being
5 able to be profitable.

6 Every single year there were
7 outside events that impacted either one
8 or a group or the entire industry, and
9 there is, in my opinion, absolutely
10 nothing that changes my mind as we head
11 into this next decade or in this next
12 decade that won't have that same effect.

13 I mean --

14 Q. Is there any way that a
15 carrier can mitigate the risk of these
16 shocks, especially the ones that impact
17 revenue?

18 A. No.

19 Q. Mr. Akins testified that
20 flight attendants' costs would converge
21 in the foreseeable future. Do you agree
22 with that?

23 A. I do not.

24 Q. Why not?

25 A. Well, first, his convergence

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2 theory, at least going out in the future
3 is based solely on one number and that's
4 the pay rates. It doesn't take into
5 account anything that the airlines have
6 done or will do in productivity or other
7 provisions of the agreement.

8 Q. Let me ask you to look at the
9 next Exhibit, 1765. Can you tell us,
10 first of all, who prepared this and what
11 does this reflect?

12 A. This was again prepared under
13 my direction by my staff, and this
14 depicts some of the significant
15 productivity gains achieved by United in
16 its most recent agreement with the
17 association of flight attendants, the one
18 that Mr. Akins indicated flight

19 attendants received a 10 percent increase
20 on date of signing.

21 Q. That's a pay increase?

22 A. Pay increase.

23 Q. And when was the effective
24 date of that agreement?

25 A. February of 2012 I believe.

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2 Q. And what's the duration of
3 that agreement?

4 A. Four years.

5 Q. And were all of these
6 productivity items included in that
7 agreement, which is now in effect?

8 A. Yes.

9 Q. All right. Can you tell us
10 anything about the head count or cost
11 impact of any of these provisions?

12 A. Each one of these items
13 generates some savings to the company.

14 But the one that I am going to focus on
15 is the very first one because, as I
16 testified in my direct, that one of the
17 key critical pieces is the maximum
18 numbers of hours that anybody can fly in
19 a month.

20 So this is to me a very easy
21 calculation to get a sense of what kind
22 of savings is being achieved.

23 So if you just take the
24 monthly maximum, go from 92 to 95 hours,
25 that's an increase of 3 hours a month,

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2 you would simply multiply that by 12
3 months, which would produce an additional
4 36 pay hours a year.

5 Q. For each?

6 A. Per flight attendant. And I
7 don't have the exact number of United
8 flight attendants, but I believe there

9 are more United flight attendants than
10 American flight attendants, but let's
11 just assume there are about 15,000 of
12 them. If you multiply the 15,000 flight
13 attendants by the three additional hours,
14 that generates something in the order of
15 540,000 additional pay hours available to
16 be worked.

17 If you then divided that
18 number not by the pay hours, but by a
19 block hour number, and let's just use 75
20 as an example, that would -- that would
21 generate 600 heads of savings to the
22 company on that one item alone.

23 Q. And would that be a material
24 cost savings to the company?

25 A. A very material, it -- I'm

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1
2 certain it would exceed easily \$20
3 million a year.

4 Q. And that's only for the first
5 line of this page?

6 A. That's correct. As I said, a
7 number of these other items would produce
8 additional savings to the company in
9 terms of head count.

10 Q. You don't presently have
11 access to specific internal financial
12 data from United that would enable you to
13 cost it in an exact manner; is that
14 right?

15 A. I'm not -- no, I do not.

16 Q. Now, apart from productivity,
17 even for pay, is it always certain that
18 the pay elsewhere is going to go up
19 faster than American has proposed it
20 could go at American?

21 A. No, there's no guarantee on
22 that.

23 Q. Did you negotiate the recent
24 US Airways flight attendant agreement
25 that failed ratification?

1

2 A. Did I.

3 Q. Under that agreement -- first
4 of all, what was the term of that
5 agreement?

6 A. Five years.

7 Q. And under that agreement, what
8 was the proposed level of pay increases?

9 A. Initially?

10 Q. Yes.

11 A. Oh, they were very -- they
12 were very significant. I think they
13 probably, at the top end would have been
14 over 14 percent but, you know, you're
15 talking about a period of time, for
16 America West flight attendants it would
17 have been even greater to bring them to
18 parity, but their first contract was
19 negotiated back in 1999 and of course the
20 airway's initial restructuring was 2002.
21 But they were very significant increases
22 to bring them up to where the rest of the

23 industry is.

24 Q. That's significant on a
25 percentage basis?

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2 A. Oh, yes.

3 Q. How did it stack up in terms
4 of comparison to the rates currently in
5 effect at American and proposed by
6 American?

7 A. The date of signing increase
8 would have been \$46, top of scale would
9 have been \$46 per hour, domestically,
10 which is the same rate that American has.

11 Q. So even with those significant
12 increases they would have just come up to
13 match where American is today?

14 A. That is correct, on their base
15 rate. And then on the out-year
16 increases, I believe American is
17 proposing one and a half percent in each

18 of the six years which would be 7.5
19 percent and I think the out year
20 increases for US Airways are in the range
21 of, I want to say 4 to 6 percent,
22 something like that, below where American
23 is.

24 Q. So do you agree with Mr. Akins
25 that American's proposals would put

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2 American's flight attendants 30 percent
3 behind what he called the industry
4 standard within a few years?

5 A. No, I do not.

6 Q. Why not?

7 A. Well, American's rates of
8 course at the time of the restructuring,
9 when the restructuring was the highest in
10 the industry, and even today, the top of
11 scale rate is only exceeded by
12 Continental and Southwest.

13 Delta's increase in July will
14 take them slightly above American on the
15 domestic top of scale but still below
16 them on the international top of scale.

17 Q. I think we covered this in
18 your original testimony, but did Mr.
19 Akins have the right numbers for the
20 Delta pay increase?

21 A. He did not.

22 Q. What are the correct numbers
23 for the Delta flight attendant pay
24 increase this July?

25 A. General wage increase of 2

46

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2 percent and 3.3 percent at the top of
3 scale.

4 Q. I want to shift a bit, Mr.
5 Glass, to this subject of inflation which
6 Mr. Akins also discussed. Let me ask you
7 if you would to look at Company Exhibit

8 1761.

9 A. Okay.

10 Q. Who prepared this document?

11 A. This was prepared under my
12 direction by my staff.

13 Q. And what does it show?

14 A. This shows the changes in
15 flight attendant top of scale domestic
16 rates when you factor in inflation. So
17 what we did is we used the exact same
18 methodology that Mr. Akins utilized in
19 his declaration when he pointed out that
20 American flight attendants when factoring
21 in inflation were 30 percent behind and
22 it's actually 31.8 percent.

23 Q. So the top row, which is
24 American Airlines, that reflects
25 essentially a repeat of Mr. Akins's

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2 analysis?

3 A. That's correct. The 9.1
4 matches exactly his declaration. And all
5 we did rather than just focus on American
6 is we looked at the other carriers, Delta
7 which of course is nonunion, and then
8 United and US Airways, all three of those
9 airlines going through restructurings and
10 as you can see, when factoring in
11 inflation, the flight attendant scales
12 have not kept up with inflation at all at
13 any of the carriers. In fact, I mean you
14 can say that about any of the employee
15 groups, none of them have kept up with
16 inflation because of the significant
17 restructurings that took place.

18 Q. Mr. Akins also testified that
19 American's flight attendants are still
20 working under their 2003 concessionary
21 agreement. Is that true?

22 A. Yes.

23 Q. And is that true for any other
24 airlines' flight attendants?

25 A. Unfortunately it is. The US

1
2 Airways flight attendants are still
3 operating under their restructuring
4 agreement and until February of this
5 year, the United flight attendants were
6 operating under their restructuring
7 agreement.

8 Q. And how long has that United
9 agreement been in place?

10 A. Since 2003, so it's almost,
11 well, it's nine years.

12 Q. In your original testimony
13 before the court, you testified that the
14 pay rates, work rules and benefit for the
15 carriers that had gone through bankruptcy
16 were not set in the middle of the pack,
17 but at or towards the bottom of the peer
18 group. Do you recall that testimony?

19 A. I do.

20 Q. We have two new exhibits that

21 relate to that. If you would turn to
22 Exhibit 1763 and tell us, first of all,
23 who prepared this?

24 A. This was prepared under my
25 direction by my staff.

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2 Q. And what does it reflect?

3 A. So in order to illustrate the
4 fact that the airlines who underwent
5 restructurings really did not end up in
6 the middle of the pack, unfortunately
7 towards the bottom or at the bottom, I
8 looked at a number of significant cost
9 items in work rules.

10 Q. This is for pilots only in
11 this exhibit?

12 A. This is for pilots only and it
13 is done in chronological order, meaning
14 the first airline that filed for
15 bankruptcy was US Airways, and it shows

16 the dates at the top. The next airline
17 that filed for bankruptcy was United in
18 December of 2002, that's on the next
19 page. I'll come back and I'll explain
20 this, I just want to explain the four
21 charts. Then the third page is Delta,
22 because they filed third. And then
23 lastly Northwest which filed on the same
24 day as Delta, but exited one month later.

25 So in essence, we've got this

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2 pattern, and if I can just explain this a
3 little bit, and do so by just focusing on
4 one item, and it's really the same for
5 most of these, but what is in yellow,
6 first off, what is in yellow on each
7 page, the box shaded in yellow indicates
8 a provision that is worse than the
9 provisions in place prior to
10 restructuring.

11 Q. And by worse, you mean worse
12 for the employees?

13 A. Worse for the employee,
14 correct. So if you look at vacation
15 page, when you --

16 Q. That's the last item?

17 A. That's the last row on each
18 page. And if you look at vacation pay
19 for lineholders, that's the LH, you'll
20 see that prior to restructuring US
21 Airways paid pilots 4 hours per day learn
22 they had 7 days or more of vacation, and
23 2 hours -- 2 hours and 50 minutes a day
24 when they had less than 7 days of
25 vacation.

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2 Now, at that same time, United
3 and Delta paid trips missed, which is a
4 more lucrative provision. Northwest paid
5 3 hours and 30 minutes a day.

6 But when US Airways
7 restructured, that 4 hours, because the
8 majority of people, vast majority of
9 people take vacations of at least 7 days
10 because they take them in blocks of a
11 week, that went from 4 hours to 3 hours
12 and 45 minutes a day.

13 Q. So that was a reduction in the
14 compensation to the pilots?

15 A. That was a reduction, a modest
16 one, not a significant one, but
17 nonetheless, when you compare it to trips
18 missed at Delta and United it's a
19 significant, in terms of comparing them,
20 it's a significant reduction.

21 Q. So they went below where the
22 peer group was at the time?

23 A. With the exception of
24 Northwest which was at 3, 30, 3 hours and
25 30 minutes.

1

2 Then when you turn to United,
3 you'll see what they were the next
4 carrier to negotiate restructuring
5 agreements and they went from trips
6 missed to 2 hours and 48 minutes per day,
7 which is well below US Airways, well
8 below Northwest at the time, and well
9 below of course Delta which was trips
10 missed. The next carrier, Delta, the
11 next page, when they filed, they went
12 from trips missed to 3 hours a day, a
13 slightly above where United was, but
14 below where US Airways was.

15 And then finally, Northwest
16 went from 3-30 a day, they matched
17 United's 2 hours and 48 minutes which was
18 the lowest vacation pay among the network
19 carriers.

20 Q. Turn to Exhibit 1764 and tell
21 us what this reflects.

22 A. This is just a look at the
23 defined, the pilot defined benefit plans,
24 again, prior to restructuring and

25 post-restructuring. And this shows that

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2 prior to restructuring all four airlines
3 had defined benefit plans and that
4 post-restructuring three of them
5 terminated the plans and one was frozen.

6 MR. GALLAGHER: I have no
7 further questions, your Honor.

8 MR. JAMES: Your Honor, given
9 I was just given this morning 85
10 pages of exhibits, some of them are
11 our exhibits, can we take a
12 somewhat longer break so we can
13 consult, say 20 minutes?

14 THE COURT: Sure. All right,
15 let's do that.

16 (A recess was taken.)

17 THE CLERK: All rise.

18 THE COURT: Please be seated.

19 MR. JAMES: Your Honor.

20 CROSS EXAMINATION

21 BY MR. JAMES:

22 Q. Mr. Glass, once again.

23 A. Good morning.

24 Q. Good morning. Would you turn
25 to exhibit, I'm going to start backwards,

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2 1763.

3 A. Okay.

4 Q. And the point of this, I
5 assume is is to show that bankruptcy is a
6 tough place to exist, tough place to
7 negotiate?

8 A. Very tough.

9 Q. But there's not one of these
10 agreements was the result of an 1113
11 abrogation of a collective bargaining
12 agreement?

13 A. That is correct.

14 Q. These were all consensual

15 agreements the unions worked out?

16 A. Yes.

17 Q. Are you aware that on many of
18 these issues, post-restructuring, the APA
19 has matched with a comparable or gone
20 beyond what's in these post-restructuring
21 provisions?

22 A. I don't know that I would
23 agree with that statement.

24 Q. Let's look at minimum
25 guarantee. Let's look at United,

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1
2 modified the minimum guarantee, Delta
3 modified the minimum guarantee and
4 Northwest modified the minimum guarantee,
5 correct?

6 A. Correct.

7 Q. Are you aware that APA agreed
8 to eliminate the minimum guaranteed?

9 A. Yes, for lineholders, not for

10 reserves, though.

11 Q. Correct.

12 A. Because minimum guarantee for
13 lineholders is not a very significant
14 item anyway in and of itself because
15 lines are always, are always built above
16 the minimum guarantee. Where it really
17 comes into play is with reserves.

18 Q. Is your number combining --
19 what is your number for minimum
20 guarantee?

21 A. I'm not sure I understand my
22 number.

23 Q. Is it lineholder and reserve?

24 A. For which group? I'm not sure
25 I understand your question.

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2 Q. I understand your testimony is
3 that APA agreed to eliminate for
4 lineholders?

5 A. Yes.

6 Q. Turn to Exhibit 1764. This is
7 what happened to the defined benefit
8 plans?

9 A. Correct.

10 Q. Are you aware that when 1113
11 was filed American had not even cost out
12 what a freeze would amount to?

13 A. No, I'm not aware what they
14 did or didn't do on that.

15 Q. Are you aware that APA is the
16 one who proposed a freeze?

17 A. Again, I don't know.

18 Q. You don't know. Are you aware
19 that the fund is, that the pension fund
20 is nearly fully funded?

21 A. I don't know that.

22 Q. Let me turn to. You talked
23 about convergence. Let me talk about
24 that conceptually because I believe you
25 have a slightly different definition than

1

2 the company's. Are you aware of the
3 American Airlines convergence analysis?

4 A. Yes, I am.

5 Q. It's not that they're looking
6 to see when did the other carriers
7 overtake our labor cost disadvantage in
8 their analysis?

9 A. I'm, say that again.

10 Q. We're not talking about
11 convergence for all the airline pay rates
12 or contracts converge. American is using
13 for the purpose of determining when the
14 other carriers meet their pay, their
15 package labor compensation?

16 A. I don't understand it that
17 way. I'm sorry. I don't agree with
18 that.

19 Q. You don't understand that
20 American's -- have you seen the slide
21 where American makes a presentation to
22 the AMR Board of Directors and talk about

23 labor convergence?

24 A. Yes, I've seen those slides.

25 Q. And the purpose of that slide

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2 was to show the AMR board when the other

3 airlines would be at or above AMR's

4 compensation?

5 A. That was a purpose of it, yes.

6 Q. Thank you. Are you aware of

7 the Delta TA that just got announced?

8 A. I'm aware there is one, yes.

9 Q. Are you aware of the terms of

10 the TA?

11 A. No.

12 Q. Are you aware of the pay

13 rates?

14 A. No.

15 Q. Are you aware of what happened

16 with the ratio of the regional jets to

17 small, small narrowbody planes on the

18 mainline?

19 A. Well, nobody would be aware of
20 it because the MEC has not put out any
21 official summary of the agreement other
22 than a, other than a letter.

23 Q. But the letter sets forth the
24 material terms of the agreement?

25 A. You'd have to show it to me.

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2 Q. I can give you the entire 400
3 page agreement, but Judge Lane would not
4 be pleased with that.

5 A. I'd be very pleased if you
6 gave that to me.

7 Q. I can probably give you that.
8 What I can give you is the summary letter
9 that was put out to all the pilots by the
10 MEC.

11 A. Okay. I mean if you want to
12 do that.

13 Q. I believe we're calling this
14 APA Exhibit 009. You're aware, are you
15 not, that coming into bankruptcy that
16 Delta 1113 agreement, or the agreement
17 that was compromised with the pilots had
18 a three year duration?

19 A. Yes.

20 Q. And if you look at this
21 agreement, it has a 3.5 year duration to
22 it?

23 A. Right.

24 Q. If you see in paragraph 4,
25 paragraph 4, you're aware that the Delta

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1
2 pilots now have a 4 percent pay raise in
3 January?

4 A. Yes, they were -- they
5 received it.

6 Q. Under this agreement they get
7 another 4 percent when they ratify this

8 agreement?

9 A. Yes.

10 Q. And then --

11 A. Which will be July, I guess
12 July 1st, right, I think it's supposed to
13 be ratified the end of June.

14 Q. You've obviously read this
15 letter. Thank you.

16 And they're getting another
17 8.5 percent in January?

18 A. Right.

19 Q. And then 3 percent, 3 percent?

20 A. Correct.

21 Q. And if you go out three years,
22 the pay rates at Delta will be about 40
23 percent over the pay rates at American?

24 A. Correct.

25 Q. And you've testified in your

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2 first appearance before the court that

3 the productivity at Delta is not as high
4 as at American among the pilots?

5 A. That is correct.

6 Q. Are you also aware that all
7 pilots at Delta now have furlough
8 protection?

9 A. Yes.

10 Q. And that if there's -- if the
11 company has an event that causes a
12 furlough, they have to reduce their seat
13 gauge on the subcontracted RJs to 70
14 seats?

15 A. I don't know that they have to
16 do that immediately. There is -- there
17 could be a cure period. There could be
18 provisions in their ASA or their
19 agreement that say when the ASA expires.
20 I can't just take your word for it.

21 Q. That's fair enough because
22 there typically is a cure period in these
23 agreements, correct?

24 A. Correct, I mean you just don't
25 put aircraft down overnight literally

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2 because you'd be stranding thousands upon
3 thousands of passengers.

4 Q. I agree with you. Is it your
5 understanding as a result of this new TA
6 there is an agreement for every small RJ,
7 up to 76 seats that's added, on a
8 subcontracted basis the company commits
9 to put another larger gauge airplane
10 toward the bottom of the Delta fleet?

11 A. No, that's not my
12 understanding.

13 Q. What is your understanding
14 then?

15 A. You just have to read what it
16 says: "Delta will be permitted
17 accelerated access to 76 seat jets but
18 this access can only occur if Delta first
19 acquires small narrowbody jets flown by
20 Delta mainline pilots and there is a
21 significant reduction in the number of 50

22 seat aircraft."

23 Well, what this doesn't say is
24 that when you're talking about
25 accelerated access you're talking about

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2 something over and above what exists
3 today. So assuming they're not at the
4 cap of 76 aircraft, seat aircraft today,
5 I read this that it only means over and
6 above what they already have. That's
7 number 1.

8 Number 2, my understanding,
9 not -- I don't think it's in this letter,
10 but my understanding is they may already
11 have an agreement on small narrowbody
12 aircraft and they've previously announced
13 that they're going to reduce their 50
14 seat aircraft by 150 to 200 aircraft.

15 So when I look at this, I
16 don't see a lot new. I mean the words,

17 the words say it and obviously it's
18 written by the MEC chairman for its
19 members, he's going to put things in here
20 that are beneficial to his folks. He's
21 not going to put things in here that are
22 beneficial to the company, which is why
23 it's critical that you see the agreement.

24 It's further illustrated by my
25 exhibit on the United productivity for

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2 flight attendants. Nobody said anything
3 about that piece of the agreement. So I
4 would need to see all of it before just
5 admitting that one piece benefits one
6 side and there is nothing good for the
7 company.

8 Q. Fair enough. That's just a
9 lesson in open-ended cross examination
10 error. Can we agree though that there is
11 an industry understanding and it goes

12 like this, and I think this is like the
13 Neal Mollen question that we figured Jim
14 Eaton would not agree with him on, he
15 agreed with him on, at Continental it's a
16 50 seat, 50 seats is the max on
17 outsourced aircraft, correct?

18 A. Only jets.

19 Q. Jets?

20 A. Not on props. For props it's
21 76 seats.

22 Q. Okay. And at United it's 70
23 seats?

24 A. Correct.

25 Q. And at Delta it's at 76 seats?

65

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2 A. Correct.

3 Q. And there's one oddball in the
4 system and that is at US Air, correct?

5 A. I take offense to referring to
6 that airline as oddball.

7 Q. That's because you negotiated
8 it. But at US Air the tradeoff is
9 different, that is, they will fly the
10 larger RJ mainline and they get a larger
11 gauge subcontracted, correct?

12 A. That was one of the tradeoffs,
13 yes, as I've testified.

14 Q. And have you looked at the
15 APA's contingent agreement with US Air?
16 I'm sure you've seen the exhibit because
17 you do keep up on the industry.

18 A. Yes, I've seen it. The one
19 that I think Mr. Eaton showed on the A,
20 B, C category, yes, I saw that.

21 Q. Correct. And you're aware
22 that APA negotiated for every -- for
23 every four aircraft at 70 seats and below
24 at US Air they would have one in
25 basically the Embraer 190 range?

2 A. Yes.

3 Q. And for two aircraft in the 71
4 to 88 seat range, they would have one in
5 that EMB 190 range?

6 A. Right.

7 Q. You criticized American's
8 pilots for trying to get the company to
9 buy and fly large RJs. Do you remember
10 that? I thought it was on your rebuttal
11 testimony?

12 A. I criticized American's
13 pilots.

14 Q. Their scope proposal for
15 saying for every so many planes you have
16 to fly higher by a --

17 A. Yes, I'm not --

18 Q. -- 71 to 110 seat airplane?

19 A. Yes, I don't think I
20 criticized American's pilots. What I was
21 saying, I thought what I was saying was
22 that in answer to a question from Mr.
23 Gallagher, that it wasn't a provision
24 that existed elsewhere.

25 Q. Are you aware in American's

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2 business plan there is a very large order
3 for 71 to 110 seat aircraft?

4 A. I believe I've seen that, yes.

5 Q. And to fly the mainline?

6 A. Yes.

7 Q. And are you aware that the
8 pilots agreed to fly that aircraft at the
9 mainline at market rates?

10 A. Yes, they've agreed to fly the
11 plane, the aircraft at market rates of
12 pay but the work rules and the other
13 provisions would be the same as mainline,
14 which in most cases would make it
15 uncompetitive with the regional airline
16 provisions that exist.

17 Q. And do you know the other
18 employees, the TWU and APA agreed they
19 would do the same thing?

20 A. On rates of pay?

21 Q. That the three unions would
22 work together to try and make the company
23 indifferent as between which company they
24 flew the large RJs at?

25 A. Yes, I'm aware of that.

68

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2 Q. Do you know of any other
3 carrier that flies aircraft outsourced,
4 114,500 pounds?

5 A. No.

6 Q. You testified that the largest
7 was US Air at 90,000 pounds which you
8 negotiated?

9 A. Right.

10 Q. And that was to accommodate
11 the 93, what is it, CRJ 900s?

12 A. Its was actually to
13 accommodate the Embraer 175s.

14 Q. I think one of the things I

15 would like to do with Jack or Neil after
16 this, is Judge, we have a chart, it's a
17 one pager, it's the manufacturer's specs
18 on this aircraft because unless you live
19 in this world I can't keep track, I have
20 to look at it every time I talk about the
21 aircraft. It gives you the maximum
22 takeoff weight and seats. We'll submit
23 it as a joint exhibit.

24 MR. GALLAGHER: It's in?
25 There's an APA exhibit on that

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2 point.

3 MR. JAMES: He tells me I put
4 it in.

5 THE COURT: If it's in, great,
6 if not, I'll be happy to get you to
7 agree upon it.

8 MR. JAMES: I just want to
9 make sure we have it in court

10 because without it the record is
11 very difficult to follow. You're
12 talking about two different
13 manufacturers, you're talking about
14 different ranges, the models within
15 a range.

16 Q. Let me talk about domestic
17 code sharing, Mr. Glass. Is there any
18 legacy air carrier, the ones that
19 American uses as comparators that has
20 unlimited domestic code sharing?

21 A. No.

22 Q. And you've criticized the --
23 there's 1.H -- 1.H is a letter that
24 allows American and APA to enter into
25 domestic code sharing agreements, you

70

1
2 agree with that?

3 A. Yes.

4 Q. And in 1.H, are you aware 1.H

5 is what the company asked for and got in
6 2003 in the restructuring talks?

7 A. Yes.

8 Q. And that's because they didn't
9 know -- well, you testified -- maybe it
10 was Dan Kasper who testified, so I
11 apologize, that there were limited
12 domestic code sharing options in 2003 for
13 American Airlines?

14 A. I didn't testify to that.

15 Q. Okay.

16 A. So maybe it was Dan.

17 Q. But the company did not know
18 in 2003 which company it wanted to code
19 share with?

20 A. I think that's a fair
21 statement.

22 Q. And 1.H was an agreement, it's
23 an interest arbitration agreement,
24 correct?

25 A. Ultimately if the parties

1

2 can't agree, yes.

3 Q. If the parties couldn't agree
4 in an expedited time period to go to
5 interest arbitration?

6 A. Right.

7 Q. And isn't that the process
8 that usually management wants and we're
9 reluctant to give because it resolves
10 disputes quickly through an arbitrator,
11 they decide what the outcome is?

12 A. No, I wouldn't agree with that
13 statement.

14 Q. You don't like interest
15 arbitration?

16 A. Managements generally, not all
17 the time, but don't like interest
18 arbitrations on certain provisions
19 because the problem is you have to wait a
20 long time. So, for example, if you want
21 to go order an aircraft, there's a
22 perfect example, most airlines, I think
23 as you know, have new equipment

24 provisions that call for a period of
25 negotiations followed by interest

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2 arbitration.

3 The difficulty with that
4 provision is that if you want to order
5 new aircraft, you don't know what your
6 rate of pay is going to be until after
7 that interest arbitration is completed.
8 And you have to order aircraft sometimes
9 years in advance. So unless you have
10 certainty on that rate, it makes --
11 you're buying a pig in a poke or you
12 don't do the transaction.

13 In the case, for example, this
14 is going back many years ago, but I'm
15 sure you remember, when Delta bought the
16 777s and had not negotiated a rate in
17 advance, ended up with an above market
18 rate and ended up leasing and grounding

19 the aircraft until they negotiated

20 something different.

21 Q. Thank you.

22 A. So --

23 Q. Fine. Are you aware in 1996

24 and 1997 APA agreed to negotiate the

25 rates before the equipment, the company

73

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2 even had orders in for 737s?

3 A. Yes. And that would be a good

4 thing.

5 Q. Thank you. Under 1.H, the

6 domestic code sharing provision American

7 wanted, there was no restriction on the

8 number of domestic code share agreements

9 American could enter into, nothing?

10 A. I'm not sure I would agree

11 with that.

12 Q. What it says, does it not,

13 that if they wanted a domestic code share

14 agreement with a particular carrier
15 they'll bargain and the interest
16 arbitrator would decide what industry
17 standards provisions would apply?

18 A. Right, and also what would be
19 fair to the pilots.

20 Q. And they could do it as many
21 times as they want. Is there any
22 limitation in that agreement on the
23 number they could do?

24 A. No.

25 Q. Is there any geographic

74

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2 limitation on that agreement?

3 A. Not unless the arbitrator
4 makes a decision that based on industry
5 standard there should be limits.

6 Q. Based on industry standard,
7 thank you.

8 A. And what is fair to the

9 pilots.

10 Q. Thank you. Now, you said
11 United, you testified about the United
12 domestic code sharing, in fact, they have
13 limitations in the United/US Air domestic
14 code sharing agreement, correct?

15 A. Correct, yes, I think I
16 testified to that.

17 Q. Now on JetBlue, you testified
18 about -- does JetBlue put its code on any
19 aircraft in the world?

20 A. They do have some code share
21 agreements.

22 Q. Incoming code share. They'll
23 allow anybody to put their code on them?

24 A. I don't think they put their
25 code on anybody.

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2 Q. Correct. And are you aware of
3 Mr. Barger, the CEO's recent earnings

4 call where he talked about American
5 Airlines?

6 A. No.

7 Q. So wouldn't be aware that he
8 expressed less than disinterest in code
9 sharing with American?

10 A. I don't know what less than
11 disinterest means.

12 Q. He did not have any interest
13 in doing code sharing with American?

14 A. I don't know.

15 Q. And the Alaska code share
16 agreement, are you aware that there's
17 still capacity under that agreement under
18 the APA American Airlines agreement with
19 -- American Airlines APA agreement
20 permitting the Alaska code share, there's
21 still capacity that the company can
22 choose?

23 A. Yes.

24 Q. And you understand that's the
25 entire area west of the Mississippi?

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2 A. Yes. But it's not a place,
3 you know, obviously Alaska doesn't fly
4 everywhere.

5 Q. We understand that. But we
6 would agree that west of the Mississippi
7 is a large territory?

8 A. We would agree.

9 Q. I grew up in Oregon. Thank
10 you.

11 Now you testified about the
12 shuttle, that if only one flight were
13 cancelled, that American would have to
14 get out of the shuttle agreement, do you
15 recall that testimony?

16 A. I don't think I said that
17 exactly.

18 Q. I thought that's what you
19 said, you said if they drop one flight
20 they have to pull the code?

21 A. Well I think that was a

22 question asked by Mr. Gallagher and my
23 response was yes, but there's a cure
24 period in the provision, so --

25 Q. In fact, it's more than that,

77

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2 isn't it a 90 percent drop before they
3 have to deal with code?

4 A. There's a 90 percent ratio,
5 yes.

6 Q. And that would be 11 flights
7 before they have to pull the code?

8 A. Correct.

9 Q. And they have a cure period?

10 A. Correct.

11 Q. And APA's suggestion for the
12 cure period was six months?

13 A. Yes.

14 Q. And the company's penalty was
15 to yank the code forever if they busted
16 and APA's was to pull the code for a

17 year, do you recall that?

18 A. I don't know what the company

19 -- I know it says in there a year, six

20 months and a year.

21 Q. Take a look at AA, it's your

22 511.

23 A. Right. APA 511. I think it's

24 516, under the tab 516, APA Exhibit 516.

25 Q. I'm looking for the company's

78

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2 proposal?

3 A. I was looking -- we have the

4 APA proposal in here.

5 Q. Oh, oh, oh, oh, oh. I don't

6 have 511 in front of me?

7 A. That's why I'm not familiar

8 with the other side's proposal.

9 Q. But would it surprise you to

10 learn that American had a permanent pull

11 off the code if they busted the

12 limitation and couldn't cure it?

13 A. I don't know.

14 MR. JAMES: Your Honor, if I
15 could just take a minute with my
16 people in the hallway.

17 THE COURT: Sure.

18 (A recess was taken.)

19 Q. Just two questions, Mr. Glass,
20 I'm told by my compatriots that I have a
21 little bit of a muddle in my question.
22 When I said that the three unions at
23 American had agreed to fly the 70 to 110
24 seat RJs at the mainline, they agreed to
25 fly them at market cost in all respects,

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2 are you aware of that?

3 A. No.

4 Q. Are you aware that the
5 company's April 17th, 2012 proposal to
6 APA on RJs proposed that they could go to

7 interest arbitration on the number of RJs
8 and the size of the RJs?

9 A. No.

10 MR. JAMES: No further
11 questions of the witness. Thank
12 you, Jerry.

13 THE WITNESS: Thanks.

14 CROSS EXAMINATION

15 BY MR. CLAYMAN:

16 Q. Good morning, Mr. Glass. My
17 name is Rob Clayman and I'll be asking
18 you some questions on behalf of the
19 Association of Professional Flight
20 Attendants.

21 If you would, could you turn
22 to, let's see, chart 1766.

23 A. Yes.

24 Q. You have that?

25 A. I do.

2 Q. And you said that you prepared
3 this with the assistance of people within
4 your office?

5 A. Correct.

6 Q. And I take it though that you
7 have not quantified the effect that each
8 of these events have had on the airline
9 industry, have you?

10 A. Yes.

11 Q. Okay, let me ask you then, the
12 December Madoff scandal, what was the
13 effect on the airline industry?

14 A. Well, your question --

15 Q. Quantifying it?

16 A. Excuse me. If the effect of
17 these -- of these items in their totality
18 have virtually destroyed the --

19 Q. That's not my --

20 A. The industry.

21 THE COURT: We can't get
22 multiple people talking at the same
23 time.

24 Q. Mr. Glass, my question is on
25 an individual basis, that was my

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2 question, have you identified the impact
3 that each of these events have had
4 individually on the airline industry?

5 A. No.

6 Q. So you can't tell us, for
7 example, what effect, if any, the Madoff
8 scandal had on the airline industry, can
9 you?

10 A. Not in and of itself.

11 Q. And what effect when you list
12 as a future shock, each of the mergers
13 that have taken place in this time
14 period, isn't it true it's just a shock
15 to the other airlines that have not
16 merged?

17 A. I think I've testified, I
18 testified to that fact, that these
19 events, some affect the entire industry
20 and some affect individual carriers.

21 Q. And in the case of a merger,
22 what is the future shock?

23 A. Well, it changes the nature of
24 the industry.

25 Q. How so, Mr. Glass?

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2 A. In terms of pricing power, in
3 terms of markets that are entered. There
4 are -- it impacts employees. It has all
5 sorts of impacts.

6 Q. So when two carriers merge,
7 those two carriers will then earn ploy
8 greater pricing power?

9 A. That's, I think if you study
10 economics 101, that is one of the points
11 of consolidation, is to increase pricing
12 power, yes.

13 Q. Could we turn to Exhibit 1762.

14 A. Give me a second while I find
15 it. It's on the screen here, so okay.

16 Q. Before we get into that chart,
17 let me just understand that you have
18 dealt with a number of negotiations which
19 have been concessionary in nature?

20 A. Yes.

21 Q. And they have involved more
22 than one union at the same time?

23 A. Yes.

24 Q. And isn't it true in those
25 negotiations it is common for each union

83

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2 to select, so to speak, their poison?

3 A. Within limits, yes.

4 Q. And do you know, for example,
5 in the restructuring participation
6 agreement that the flight attendants
7 chose to preserve their healthcare
8 benefit to a larger extent than did the
9 Transport Workers Union?

10 A. Yes.

11 Q. So that was something that
12 went on in 2003 and is reflected in your
13 chart today; is it not?

14 A. Correct.

15 Q. And is that is the nature of
16 collective bargaining, correct?

17 A. Correct.

18 Q. And isn't it through Delta
19 does not engage in collective bargaining?

20 A. No, that's not true.

21 Q. Well, other than with the
22 pilots?

23 A. Still not true.

24 Q. And the dispatchers?

25 A. Now it's true.

84

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2 Q. And what percentage of their
3 -- how many dispatchers are there, Mr.
4 Glass?

5 A. At Delta?

6 Q. Delta.

7 A. Hundreds.

8 Q. And on a percentage basis,
9 what percentage of Delta is unionized?

10 A. I don't know. I don't know
11 the exact percentage. The majority is
12 not.

13 Q. Right. And they don't do,
14 they don't engage in collective
15 bargaining with those nonrepresented
16 unions, do they?

17 A. They do not engage in
18 collective bargaining. They do have
19 other forums in which to get input from
20 employees.

21 Q. Thank you, Mr. Glass. That's
22 illuminating: And with regard to
23 Continental, isn't it true that with
24 regard to the flight attendant agreement
25 that healthcare benefit benefits are not

1

2 negotiated, they are not part of the
3 collective bargaining agreement?

4 A. I'm not aware of that.

5 Q. You don't know that?

6 A. I'm not aware of that.

7 Q. Are you aware that any other
8 group may not have included in the
9 contract as part of the terms and
10 conditions that they've negotiated
11 healthcare benefits?

12 A. No, sorry, could you ask that
13 again.

14 Q. Are there any other groups you
15 are aware of who have not included in
16 their contracts healthcare benefits?

17 A. I want to be clear about the
18 question. Are you saying that there's no
19 provision in the contract whatsoever
20 cover medical, that it doesn't even say
21 you get some medical plan, or you get the
22 other, same as other employees, or --

23 Q. Let me ask you a different

24 way. Do you know if in the flight
25 attendant agreement the company has a

86

1
2 right to make unilateral changes to
3 healthcare benefits?

4 A. In that particular agreement?

5 Q. Yes.

6 A. No. I'm not aware of it.

7 Q. And you're not aware of that
8 in any other provision of the Continental
9 agreement, agreements?

10 A. No.

11 Q. Let's turn to 1765. Now, Mr.
12 Glass, I think you testified earlier that
13 you were not responsible for valuations
14 of contracts within your firm?

15 A. That's correct.

16 Q. And so let's go to your
17 analysis of the 92 to 95 hours.

18 A. Sure.

19 Q. Are you aware of the increase
20 in the schedule max the company has
21 proposed for the flight attendants?

22 A. Yes.

23 Q. I think you earlier testified
24 that the schedule max for flight
25 attendants today is 77 hours for a

87

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2 domestic flight attendant and 82 hours
3 for an international flight attendant; is
4 that right?

5 A. That is correct.

6 Q. And the increase will be to a
7 hundred hours; is that right?

8 A. That's what's proposed.

9 Q. For both domestic and
10 international?

11 A. Yes.

12 Q. And are you aware that the
13 value that the company has placed on that

14 increase of, let's say, roughly 20 hours,
15 is 32 million dollars?

16 A. I've looked at the costing of
17 the term sheet, so if you say that, then.

18 Q. And so for each hour increase
19 in the schedule max, that would be worth
20 about one and a half million dollars,
21 would it not?

22 A. If you --

23 Q. 20 times one and a half is
24 about 30?

25 A. Sure.

88

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2 Q. And your calculation is that a
3 three hour schedule increase will
4 generate savings of upwards of 20 million
5 dollars; is that right?

6 A. I think it would be north of
7 that actually.

8 Q. You think it would be north of

9 that?

10 A. Yes.

11 Q. So your testimony is that a
12 three hour increase divided into 20, and
13 let's call it 21 because you think it's
14 higher, would generate a per hour savings
15 of 7 million dollars; is that correct?

16 A. Yes, but that's not how you
17 look at it.

18 Q. Well I'm not asking you how
19 you look at it. I'm just saying
20 undertake?

21 A. In that calculation, yes, that
22 would be correct.

23 Q. And when you look at a 92 to
24 95 hour increase in the schedule max, can
25 you say with any certainty that every

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2 flight attendant at United will now in
3 fact fly 3 hours more every month?

4 A. Actually, based on the
5 productivity gains I would expect United
6 flight attendants to fly more than 3
7 hours because if you look at, one, two,
8 three, four, five, six --

9 Q. Mr. Glass --

10 THE COURT: You asked him the
11 question. He's asking if you
12 expected them to fly more than 3
13 hours.

14 A. So if you look one, two,
15 three, four, five, six, the seventh dash
16 down increased average line value at each
17 domicile from 84 to 88 hours, so
18 actually, my expectation based on this is
19 that the average flight attendant would
20 fly up to 4 hours additionally each
21 month.

22 Q. And Mr. Glass, how many, what
23 percentage of the United flight
24 attendants serve reserve?

25 A. I don't know the exact number.

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2 Q. And you have no idea to what
3 extent, if at all, their productivity
4 would improve based on this contract?

5 A. No, I do not.

6 Q. So in fact, it would not be
7 every flight attendant at United at every
8 month would be flying 4 hours month;
9 isn't that true?

10 A. For probably about 80 or 85
11 percent it would be true.

12 Q. And do you know what the total
13 value of the United contract is?

14 A. The total value of the new
15 agreement?

16 Q. Yes.

17 A. Net?

18 Q. Net.

19 A. No.

20 Q. And so you have no idea
21 whether these productivity improvements
22 are offset in large part, if not

23 completely, by improvements to the flight
24 attendants' wages, benefits and working
25 conditions?

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2 A. I could say definitively that
3 they do not offset it completely.

4 Q. How would you know that having
5 just said you do not know the total
6 value, Mr. Glass?

7 A. Because a simple, again,
8 simple experience and math. When you,
9 when you take -- give everybody a 10
10 percent increase based by head count, the
11 same way you can just do a back of the
12 envelope calculation.

13 Q. Mr. Glass, doesn't the United
14 contract include many, many more
15 improvements than merely a 10 percent
16 increase in wages?

17 A. Yes, they do.

18 Q. So I'm talking about all of
19 the improvements versus all the
20 productivity gains, do you have any idea
21 what the net value is?

22 A. No.

23 Q. And I take it you performed no
24 convergence analysis using the new United
25 contract with the American agreement?

92

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2 A. Correct.

3 Q. Have you performed any
4 convergence analysis at all for this
5 case?

6 A. No.

7 Q. Let's take a look at 1761.
8 Let's talk for a minute before we get to
9 the chart, with regard to Delta, you
10 testified that the wage increases were 2
11 and 3.3 percent; is that right?

12 A. Correct.

13 Q. Did you weight those
14 increases?

15 A. No.

16 Q. Did you take into account the
17 effect they would have on current
18 Northwest wage rates?

19 A. No. And the reason is because
20 you have to do an apples-to-apples
21 comparison. If you're going to, as Mr.
22 Akins did, took general wage increases
23 for other groups, like the failed US
24 Airways TA, he didn't weight those or ask
25 the America West folks to a higher

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2 number. You have to do an
3 apples-to-apples comparison. So to
4 weight one and not weight the other is
5 not, not accurate. So we just showed the
6 general -- we just showed the general --
7 I explained the general wage increases

8 similar, again, United, general wage
9 increase of 10 percent, Delta general
10 wage increase.

11 Q. I understand, Mr. Glass. But
12 isn't it true that the Northwest flight
13 attendants have been operating under a
14 different agreement than the Delta flight
15 attendants?

16 A. No, I don't think that's
17 accurate.

18 Q. When did those contracts
19 merged, do you know?

20 A. Well, there wouldn't be merged
21 contracts since Delta's nonunion, but
22 after AFA lost the representation
23 election and the NMB ruled that there was
24 no carrier interference, I think they
25 were merged at that time or shortly

1
2 thereafter.

3 Q. So it would come as a surprise
4 if I were to tell you they were not
5 merged until May 1 st of this year?

6 A. That would surprise me.

7 Q. And in fact, if that were true
8 and their wages were substantially below
9 Delta, then adding a 3.3 percent increase
10 to the Delta wage rates and raising the
11 Northwest wage rates to Delta would be
12 more than a 3.3 percent increase for the
13 Northwest flight attendants?

14 A. Same example as with US
15 Airways east and West, no difference.

16 Q. Do you know what the total
17 cost of that increase is to Delta?

18 A. No.

19 Q. Do you know if it was offset
20 by any productivity improvements?

21 A. No.

22 Q. And with regard to United --
23 excuse me, US Airways, do you know what
24 the total value of that contract would
25 have been, the total cost or savings to

1

2 US Airways?

3 A. Yes, but I can't disclose
4 that.

5 Q. So when you prepared chart
6 1761, you did not include any of the
7 recent changes that have been negotiated,
8 or imposed in the case of Delta imposed,
9 in the case of United negotiated; is that
10 correct?

11 A. Right, because that would be
12 an apples to oranges comparison. It
13 would not replicate the comparison that
14 Mr. Akins did.

15 Q. Mr. Akins in fact, are you
16 aware of the fact that Mr. Akins'
17 analysis went out to 2017?

18 A. Yes.

19 Q. Does this go out to 2017?

20 A. No, because this is not

21 measured -- again, this does --

22 Q. I'm not asking you for an
23 explanation. It's either a yes or no.
24 If your counsel wants you to explain more
25 than yes or no, he will have the right to

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2 do so.

3 Are you aware that incentive
4 pay which is the pay that flight
5 attendants receive after they have
6 worked, have been paid 70 hours in a
7 month, anything above 70 hours they are
8 paid a premium, are you aware of that?

9 A. Yes.

10 Q. And does this take into
11 account the fact that the company has
12 proposed eliminating incentive pay?

13 A. This chart?

14 Q. Yes.

15 A. No. Neither did Mr. Akins'.

16 Q. Are you aware of Mr. Akins'
17 analysis that all the changes to the
18 collective bargaining agreement proposed
19 by the company would decrease the flight
20 attendants' take home pay by almost 17
21 percent?

22 A. Yes.

23 Q. Mr. Glass, you previously
24 testified that you saw or reviewed the
25 deck of slides or presentation that was

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2 given to the AMR Board of Directors in
3 November; is that right?

4 A. Correct.

5 Q. And that included a
6 convergence analysis that you reviewed?

7 A. Yes.

8 Q. And isn't it through that
9 convergence analysis showed -- well first
10 let me go back. That that convergence

11 analysis was based not only on certain
12 assumptions of changes to other airlines'
13 agreements, but also took into account
14 the last table position that American had
15 with regard to each work group?

16 A. Yes.

17 Q. And that was incorporated into
18 the convergence analysis, correct?

19 A. That American did?

20 Q. Yes.

21 A. Yes.

22 Q. And isn't it true that that
23 convergence analysis showed that by 2013
24 the flight attendants would be 30 million
25 dollars more expensive than their

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1
2 competitors?

3 A. It did show that.

4 Q. And isn't it true that Mr.
5 Akins' analysis did two things: It

6 removed the value of the American's
7 proposal to the flight attendants and
8 then took into account the company's ask
9 of 230 million dollars; isn't that true?

10 A. That's what his analysis did,
11 yes.

12 Q. And that's the analysis that
13 resulted in him stating in his
14 declaration and in testimony that the
15 flight attendants would be 30 percent
16 below their peers if that were to happen,
17 correct?

18 A. That is correct.

19 Q. And do you have any idea how
20 much the -- how much American's labor
21 convergence analysis, what role that
22 analyses played in determining the
23 company's labor ask of one and a quarter
24 billion dollars?

25 A. I don't.

1

2 Q. And I take it you have no
3 explanation as to why American would
4 value their proposal at 32 million
5 dollars for a \$20 million -- 20 hour --

6 MR. GALLAGHER: Objection;
7 your Honor, calling for
8 speculation.

9 THE COURT: Let me hear the
10 question first.

11 Q. I take it you have no idea why
12 by your estimate a single hour -- I'll
13 withdraw the question, that's all right.

14 MR. CLAYMAN: If I could just
15 have a minute, your Honor.

16 THE COURT: Sure.

17 Q. Do you know what the total
18 payroll is for United Airlines?

19 A. No.

20 Q. So how could you calculate
21 what the value of the 10 percent wage
22 increase is for the flight attendants?

23 A. You just make an assumption on
24 what the average compensation is, which

25 is not going to be all that different

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2 than, you know, their paid higher now
3 than US Airways lower than American. But
4 there's a general, you know, average you
5 can come up with that's ball park.

6 Q. I have another question.
7 Looking at the productivity chart, Mr.
8 Glass, sitting here today, I take it
9 other than the two that you pointed out,
10 you have no idea what the savings would
11 be from any of these other items; is that
12 true?

13 A. Can you -- I'm sorry, could
14 you tell me which exhibit?

15 Q. It's Exhibit 1765, it's the
16 list of United's productivity gains.

17 A. Oh, okay. And I'm sorry,
18 could you ask the question.

19 Q. So looking at this chart that

20 you prepared, I take it that you could
21 not tell us the amount of savings, if
22 any, from any of the other bullets that
23 are listed here other than the two that
24 you mentioned earlier; is that true?

25 A. That is correct.

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2 MR. CLAYMAN: Just a minute,
3 your Honor. Thank you.

4 THE WITNESS: Thank you.

5 MS. LEVINE: Your Honor, just
6 briefly.

7 THE COURT: Certainly.

8 CROSS EXAMINATION

9 BY MS . LEVINE:

10 Q. Mr. Glass, are you familiar
11 with the TWU's March 21 proposal to the
12 company?

13 A. No, not intimately, no.

14 Q. Are you aware that it offered

15 to outsource over 2,000 jobs for AMR?

16 A. I've seen a figure along those
17 lines.

18 Q. And are you also aware that
19 American Airlines' fleet is the lowest in
20 the industry right now?

21 A. I'm not --

22 Q. Let's compare. The American
23 Airlines fleet is older, than, for
24 example --

25 A. Oh, older, I apologize. I

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2 thought you -- that it's older on average
3 than others in the industry? Yes.

4 Q. Under their business plan
5 they're looking to upgrade that, correct?

6 A. Correct.

7 Q. And as they upgrade that, it
8 will be additional attrition to the M&R
9 group just by virtue of the fact there is

10 less maintenance to do on the planes,
11 correct?

12 A. Under the current agreement.

13 Q. Under the current agreement
14 without change?

15 A. I don't think so because of
16 the no furlough and no -- you know, with
17 the job security provisions that exist
18 today, I don't think that other than
19 through retirements American could lay
20 off a sufficient number of mechanics
21 because they have the ability to -- they
22 have station protection and system
23 protection.

24 Q. Isn't it true that there are
25 3,000 jobs that are unprotected by that

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2 provision?

3 A. Yes, but the overwhelming
4 majority are protected.

5 Q. So between the 2,000 jobs that
6 we've offered to give up under March 21
7 and the 3,000 jobs that are unprotected,
8 isn't it true that if you turn to Exhibit
9 1774, that if American implements the
10 rest of its business plan with respect
11 with regard to the fleet, the employee
12 per aircraft will actually for the TWU
13 represented work force be less than
14 United and right in line with US Air,
15 Delta and Continental?

16 A. I don't know without seeing
17 the numbers.

18 Q. There was a little bit of
19 colloquy with regard to terminal value.
20 Do you recall that on your direct?

21 A. Yes.

22 Q. And one of the things I
23 believe you excused is the fact that you
24 don't recall having conversations with
25 Mr. Roth with regard to terminal value

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2 during the negotiations in US Airways; is
3 that correct?

4 A. No, I don't think that was my
5 testimony.

6 Q. Do you recall having
7 conversations with Mr. Roth about
8 terminal value in the US Airways
9 negotiations?

10 A. No.

11 Q. Isn't it through the
12 conversations with regard to value in US
13 Airways took place between Mr. Roth and
14 Mr. Davis and actually you weren't really
15 a part of most of those conversations; is
16 that correct?

17 A. That part is correct. I was
18 not involved in those conversations, but
19 I certainly know what the number was,
20 that the ask that the company had, and
21 that put on the table and that we
22 achieved that ask.

23 Q. I think the question was did
24 Mr. Roth have conversations with Mr.
25 Davis with regard to valuation?

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2 A. Oh, he had conversations with
3 a number of people in finance.

4 Q. Is that a yes?

5 A. Yes.

6 Q. In talking about valuing labor
7 concessions, putting aside the phrase
8 terminal value, isn't it true that you
9 look at what the value of those
10 concessions will be at the end of the
11 term of the concessionary period? So,
12 for example, if at the end of the
13 contract term the concessions go away you
14 have a snap-back situation, at the end of
15 the contract term if it's expected that
16 the concessions will stay in place, you
17 have like in Northwest, a steady state

18 type of analysis, and if at the end of
19 the contract terms it's unclear whether
20 or not the end of the concessions will be
21 the final end of the concessions, you
22 have present value issues with regard to
23 valuation because the concessions will
24 continue to accrue value, does that sound
25 fair?

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2 A. I mean it sounds fair but it's
3 not the way that airlines do their
4 costing.

5 Q. Well when Mr. Roth was having
6 -- well, let me go back to your prior
7 testimony. In connection with US Airways
8 there was an agreement reached between
9 the equivalent group of M&R and the
10 company?

11 A. No, actually, there never was
12 in the second bankruptcy, the contract,

13 the court found an abrogation and granted
14 the company its 1113 motion and then the
15 union put out that package to its members
16 for a vote which they ratified.

17 Q. But during the course of those
18 negotiations, the value of the
19 concessions that was being asked was
20 reduced by the company, correct?

21 A. The value of the concessions?

22 Q. Correct.

23 A. I don't recall that, no.

24 Q. Okay. So then since the value
25 of the concessions in your view didn't

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2 change but the list of concessions did;
3 is that correct?

4 A. That is correct, yes.

5 Q. And according to the unions'
6 perspective, they valued the list of
7 concessions which the company ultimately

8 agreed to put out as its last offer as
9 having, and isn't your value, this is the
10 unions' value, as having less of a
11 detrimental value than the concessions
12 that the company was looking to impose,
13 correct?

14 A. They might have, yes.

15 Q. And those conversations took
16 place not between you and Mr. Roth, but
17 between Mr. Davis and Mr. Roth, correct?

18 A. Well, I wouldn't even go into
19 the issue of conversations. It would be
20 what the machinist union told their
21 members as to what they accomplished.

22 Q. Well actually what I'm getting
23 at is slightly different. There were
24 discussions with the company at US Air
25 with regard to valuation, correct?

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2 A. Yes.

3 Q. And there were disputes with
4 regard to how different items were going
5 to be valued, correct?

6 A. Correct.

7 Q. And during the course of those
8 discussions, some of the unions'
9 valuations were accepted by the company,
10 correct?

11 A. Yes, I suspect they were.

12 MS. LEVINE: Thank you,
13 nothing further.

14 THE WITNESS: Sure.

15 THE COURT: Any other cross?
16 Any redirect?

17 MR. GALLAGHER: May we have a
18 five minute break, your Honor.

19 MR. JAMES: Jack, can I get
20 agreement to move APA Exhibit 009?

21 MR. GALLAGHER: Yes.

22 MR. JAMES: Thank you.

23 THE COURT: All right, it's
24 in.

25 (A recess was taken.)

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2 THE CLERK: All rise.

3 THE COURT: Please be seated.

4 MR. GALLAGHER: Thank you,
5 your Honor. I'm pleased to report
6 we have nothing further for this
7 witness, but I would at this time
8 like to offer into evidence the new
9 exhibits, American Exhibits 1761,
10 1762, 1763, 1764, 1765, 1766, 1771,
11 1772, 1774 and 1775.

12 THE COURT: Any objection?

13 MS. LEVINE: One question and
14 there may be a reservation of
15 right, your Honor. Under 1772
16 there's a reference to other TWU.
17 I'm just wondering what CBAs those
18 relate to.

19 MR. GALLAGHER: I would expect
20 that they relate to all, your
21 Honor, but it's whatever is in the

22 business model. So I'm not sure
23 that I can answer it
24 authoritatively or definitively as
25 we stand here. But the request and

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2 the intent was to reflect there all
3 of the other costs attributed in
4 the business model to each
5 maintenance hour.

6 MS. LEVINE: Your Honor, if it
7 relates to M&R and stores, if it
8 relates to those two CBAs, we have
9 no objection. If it relates to
10 CBAs other than the two CBAs which
11 we understand to be the subject of
12 this 1113 proceeding, we would just
13 reserve our rights for an issue
14 that your Honor already has under
15 advisement.

16 MR. GALLAGHER: Well I am

17 assured, your Honor, that these are
18 the unit costs that are attributed
19 to M&R only.

20 THE COURT: All right.

21 MS. LEVINE: Thank you.

22 THE COURT: So it's M&R and
23 stores as well, the pink is M&R and
24 the one on top is stores?

25 MR. GALLAGHER: Yes.

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2 THE COURT: All right, does
3 that resolve the objection?

4 MS. LEVINE: Yes. Thank you.

5 THE COURT: Thank you. All
6 right, those exhibits are admitted
7 and you're excused.

8 THE WITNESS: Thank you.

9 THE COURT: Thank you.

10 MR. GALLAGHER: Your Honor,
11 the next company witness is Mr.

12 Dennis Newgren who has been
13 tendered for cross examination
14 only, and I'm advised counsel by
15 APA it will be 15 to 20 minutes, so
16 we think it's something we can
17 accomplish before lunch.

18 THE COURT: All right, let's
19 give it a shot.

20 Good afternoon, you are still
21 under oath.

22 MR. NEWGREN: I have not been
23 sworn.

24 THE COURT: Oh, you have not.
25 All right. I'm glad you pointed

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2 that out. Would you swear the
3 witness.

4 DENNIS NEWGREN,
5 called as a witness, having been
6 first duly sworn, was examined

7 and testified as follows:

8 MR. MOLLEN: Your Honor, if
9 I may, Mr. Newgren has, he
10 submitted a declaration, we
11 referred to this earlier in this
12 week's proceedings on the
13 information sharing issues.
14 Folks at APA said that they
15 wanted to ask him some questions
16 about that declaration. That's
17 his purpose here today. So it's
18 a fairly focused examination.

19 THE COURT: All right.
20 Proceed.

21 CROSS EXAMINATION

22 BY MR. ROSENTHAL:

23 Q. Hello, Mr. Newgren.

24 A. Afternoon.

25 Q. My name is Daniel Rosenthal

2 and I represent the APA. I'm going to be
3 asking you some questions about the
4 supplemental declaration that you
5 submitted. Do you have that in front of
6 you?

7 A. I do not. Is it one of these
8 binders?

9 MR. ROSENTHAL: Do you all
10 have a copy of his declaration?

11 MR. MOLLEN: I expect we do
12 someplace.

13 MR. ROSENTHAL: I have one
14 copy that you provided to me.

15 THE COURT: We'll get one.
16 While we wait, let me just chat
17 briefly about scheduling. So we
18 have Mr. Newgren who's present here
19 now, and then there were two other
20 witnesses contemplated for today.
21 What do we expect in terms of
22 scheduling of those witnesses?

23 MR. GALLAGHER: They are both
24 available, your Honor. One is I

25 think here already and the other is

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2 on call and will be here

3 momentarily.

4 THE COURT: Do we expect to be

5 able to fit them all in today?

6 MR. GALLAGHER: We would fully

7 expect so, your Honor. The first

8 witness is we think 15 to 20

9 minutes on direct. Mr. Resnick may

10 be a bit longer, but we should

11 easily be able to get to them

12 today.

13 THE COURT: All right.

14 MR. GALLAGHER: The witness

15 following Mr. Resnick is Mr.

16 Dichter and he is arriving in the

17 city today from abroad, so he would

18 not be available today.

19 THE COURT: I understood the

20 intent was to get through the four
21 witnesses today, that's why I asked
22 and it sounds like the intent then
23 is to take a break and then proceed
24 with the other two tomorrow?

25 MR. GALLAGHER: That's right,

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2 your Honor.

3 THE COURT: All right. Thank
4 you for that. I appreciate your
5 efforts to get that binder. That's
6 without people keeping track of
7 these things the trials grind to a
8 halt, so I appreciate your efforts.

9 MR. CLAYMAN: Excuse me, your
10 Honor, just a housekeeping matter.
11 If the company has these witnesses,
12 we would be, we would very much
13 like to get if they have exhibit
14 books like we've already seen, to

15 get those prior to the actual
16 calling of the witness. For
17 example, we didn't receive Mr.
18 Glass's until minutes before he
19 started testifying. So if they
20 have those available now, it would
21 be I think appropriate for us to
22 get copies.

23 THE COURT: If you have those
24 binders, if you could get them to
25 folks and I think that will allow

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2 us to probably take less breaks in
3 terms of getting through the
4 testimony.

5 MR. GALLAGHER: I will
6 inquire, your Honor, and attempt to
7 locate whatever is available.

8 THE COURT: All right. Thank
9 you. Proceed.

10 MR. ROSENTHAL: Does your
11 Honor have a copy of Mr. Newgren's
12 supplemental affidavit?

13 THE COURT: You know, I do.
14 But now that you say that --

15 MR. ROSENTHAL: I could give
16 you mine, Mr. Butler --

17 THE COURT: If you'd be so
18 kind. I'm glad you pointed that
19 out. If you're going to use it --
20 just give me one minute. Is that
21 the only one you have?

22 MR. ROSENTHAL: Well, yes, but
23 I --

24 THE COURT: No, you shouldn't
25 surrender it. Give me one moment.

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2 Thank you. I've been clearing
3 these things off at the end of the
4 day so it got pushed to the other

5 room. So fire away.

6 Q. So after all of that, I think
7 we're finally ready to get started. So
8 let me just start with a couple of basic
9 questions. Your declaration talks about
10 provision of information related to
11 American's manpower planning model; is
12 that right?

13 A. Yes.

14 Q. And that's the model that's
15 been commonly referred to as AAMPL?

16 A. Yes.

17 Q. The requests that you, you
18 talk about a number of information
19 requests from the APA in your
20 declaration, right?

21 A. Yes, I do.

22 Q. And those requests were
23 generally communicated from Neil Roghair
24 to yourself via an email or attachments
25 to emails; is that right?

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2 A. Yes, sometimes they were
3 delivered across the table. Sometimes in
4 writing via email or through hand
5 delivered hard copy.

6 Q. And was that the standard way
7 that APA requested information from
8 American?

9 A. Yes, it was.

10 Q. Is it true that each one of
11 the requests from APA came through that
12 channel, that you -- sorry, let me be
13 more specific. Each specific that you
14 talk about in your declaration came
15 through that channel?

16 A. Yes.

17 Q. And are you aware there was
18 also a separate channel of requests
19 between Lazard, which was the APA's
20 advisor and Rothschild, which was
21 American's advisor?

22 A. Yes.

23 Q. Now turning to the AAMPL model

24 itself, it's a complicated model, right?

25 A. Extremely complex, yes.

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2 Q. It takes a lot of different
3 inputs?

4 A. Yes, it does.

5 Q. And it requires a lot of
6 different assumptions about American's
7 scheduling and operations, doesn't it?

8 A. Yes.

9 Q. And in fact, some of those
10 assumptions are, have changed over the
11 course of recent negotiations, haven't
12 they?

13 A. I know there's been lots of
14 discussion between the parties above all
15 of the inputs to the model.

16 Q. And hasn't American decided to
17 change some of those inputs pretty
18 significantly over the last few months?

19 A. My understanding is yes, there
20 have been some adjustments to the
21 assumptions as well as requests to run
22 different assumptions from APA which we
23 have done so.

24 Q. Okay. And it's a model the
25 company's been using for awhile, isn't

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2 it?

3 A. Yes.

4 Q. I think you say that in your
5 declaration, that it's been using the
6 model for several years; is that right?

7 A. That's correct.

8 Q. And you've been involved in
9 negotiations with the APA for several
10 years, right?

11 A. Coming up on six years.

12 Q. Is March 6th the first time
13 that you ever told the APA about the

14 AAMPL model?

15 A. We had through numerous
16 valuation model discussions talked about
17 inputs with regard to crew manning, but I
18 believe the first time the actual
19 reference to AAMPL was on March 6th.

20 Q. And there was another
21 scheduling model that American and APA
22 were using which some people have
23 referred to as the joints scheduling
24 model, right?

25 A. Yes, but there were inputs

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2 from our crew resources first that enter
3 played with that model.

4 Q. And March 6th was the first
5 time that you specifically disclosed the
6 existence of the AAMPL model?

7 A. Well, it's the first time we
8 explained where those inputs were coming

9 from, what the software name was that was
10 being used by crew resources.

11 Q. And that followed a month of
12 negotiations post-bankruptcy that focused
13 on scheduling issues, right?

14 A. I don't know that the entire
15 month was focused solely on scheduling
16 issues, but yes, we did discuss work
17 rules as part of our negotiating
18 sessions.

19 Q. Would you say it was one of
20 the most important issues in
21 negotiations?

22 A. Well, it was one of many
23 important issues.

24 Q. Now, to this date American has
25 not provided the actual model itself to

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2 APA, right?

3 A. No, we explained that because

4 of the complexity of the model and the
5 fact that it was proprietary software,
6 that we offered to set up a live meeting
7 where we could have our subject matter
8 experts who actually work with the model
9 on a regular basis sit with APA's
10 representatives and explain how it works
11 and also run different assumptions that
12 they asked us to run.

13 Q. I'd like to get into that a
14 little bit more in a minute, but just so
15 the record is clear, the actual model has
16 never been provided to the APA, right?

17 A. No, because it was complex and
18 proprietary.

19 Q. But the APA did ask to see it,
20 right?

21 A. Yes, and we showed it to them
22 in a live session.

23 Q. Now, as you alluded to,
24 because APA could not see the model, they
25 asked you to basically run different

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2 inputs into the model and so that they
3 could see what different outputs were
4 produced by that?

5 A. That is correct.

6 Q. And if I understand the
7 history correctly, there have been seven
8 different what's been called scenarios or
9 sets of inputs that APA has asked to run
10 on the AAMPL model; is that right?

11 A. I don't know the exact number,
12 but I know they've asked for multiple
13 scenarios.

14 Q. Well, there were three that
15 they asked for on March 9th, 2012, right?
16 Is that reflected in your declaration --

17 A. If you can point me to it.

18 Q. -- in Exhibit 810, request
19 number 2, 1810?

20 A. What page, I'm sorry, what
21 paragraph are you referring to?

22 Q. I'm referring to Exhibit, AA
23 Exhibit 1810, request number 2.

24 A. Oh, I'm sorry. Yes, they made
25 this request, they submitted this

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2 request.

3 Q. And that was a request they
4 submitted shortly after they learned
5 about the AAMPL model on March 6th?

6 A. Yes.

7 Q. So it was before they had seen
8 the full presentation or they knew all
9 the details you provided later in the
10 month, right?

11 A. Yes, we had presented a
12 PowerPoint presentation that actually
13 outlined and had some visual slides that
14 showed the complexity of the model.

15 Q. Okay. So if I understand this
16 request, 1810 correctly, tell me if I'm

17 wrong, APA was asking for American to
18 change two of the variables, two of the
19 many variables that go into the AAMPL
20 model, is that right, the average line
21 value and the rolling average line value?

22 A. Yes, on question number 2, or
23 request number 2.

24 Q. Those were the only two
25 variables that APA asked to change at

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2 that time?

3 A. Those are the only two that
4 are outlined in item 2, yes.

5 Q. And you in fact ran those
6 scenarios and you gave APA the results of
7 those scenarios, right?

8 A. Yes.

9 Q. Is that reflected in AA
10 Exhibit 1713, on the second page, it's
11 this colorful rainbow style chart, lots

12 of pretty dotted lines. I think I may be
13 looking at the page directly after the
14 one you're looking at, Mr. Newgren.

15 A. I'm sorry. Oh, the second
16 page. Okay.

17 Q. It's labeled page 2. Does
18 that show the results of the three
19 scenarios that APA asked to run on
20 March 9th?

21 A. Yes, the yellow, green and
22 blue were the three requested by APA.

23 Q. And just so that we're clear,
24 I think that the exact same chart, almost
25 the exact same chart is reproduced at AA

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2 Exhibit 812; is that right?

3 A. 1812 or 812?

4 Q. 1812, sorry.

5 A. It's a similar but different
6 chart.

7 Q. How is it different?

8 A. If you see on 1713 the box at
9 the top identifies one, two, three, four,
10 five, six different scenarios whereas the
11 box at the top of 1812 identifies four.

12 Q. So in other words, 1812 is a
13 more limited version of 1713; is that
14 what you're saying?

15 A. I'm just saying it's
16 different.

17 Q. Okay. Are the lines that are
18 shown on 1812 in fact the same lines that
19 are shown on 1713? There's an 81 max, 80
20 line average line that's on both?

21 A. Yes. 81 --

22 Q. 83 max, 82 line average?

23 A. Yes, I see those.

24 Q. And the 85 max 83.5 line
25 average, those are again the same

2 scenarios that APA requested on March
3 9th, right?

4 A. Yes.

5 Q. So there are a lot of other
6 inputs or variables that go into AAMPL
7 that APA did not ask you to test on March
8 9th, right?

9 A. Correct.

10 Q. One of those is a required
11 assumption about sick usage, is that
12 right, that goes into AAMPL?

13 A. Yes, that was not part of
14 request number 2.

15 Q. There's a required assumption
16 about how much time pilots will
17 voluntarily decide to add to their
18 schedules that goes into AAMPL?

19 A. To be honest with you, I'm not
20 the technical expert regarding AAMPL, so
21 I couldn't tell you.

22 Q. But you've been present at
23 presentations where these different
24 aspects of the model have been explained,
25 right?

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2 A. Some, but not all.

3 Q. So do you have an

4 understanding that there's a required

5 assumption about how much time pilots

6 will add to their schedules?

7 A. I wouldn't be surprised, but I

8 don't know for sure.

9 Q. Would you be surprised that

10 there are required assumptions related to

11 vacation and training?

12 A. That I believe there is.

13 Q. And none of those assumptions

14 were tested or run through the March 9th

15 set of requests from APA, right?

16 A. Well, they were not asked for

17 on the March 9th item number 2 question.

18 Q. So on March 27th, APA asked to

19 run some additional scenarios that did

20 test those other variables, right?

21 A. Yes.

22 Q. And at the meeting, there was
23 a meeting that happened on March 27th
24 where those scenarios were run through
25 the model?

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2 A. Yes, that was the live meeting
3 where we met with APA and had our subject
4 matter experts run the model based on any
5 combination of inputs they asked us to
6 put in.

7 Q. And is it your understanding
8 that someone from American told APA at
9 that meeting that American would be
10 providing a spreadsheet that showed the
11 results of the different scenarios?

12 A. Yes, we produced the results
13 in the meeting. They were projected on a
14 screen, and everybody in attendance was
15 taking notes on both sides and at the end

16 of the meeting we asked if they had a
17 desire for any additional runs and there
18 was no request, they said they did not
19 need any additional runs. So to my
20 understanding, at the end of that meeting
21 there was a request for a copy of the
22 output that was projected on the screen.

23 Q. And American agreed at the
24 meeting to provide that spreadsheet?

25 A. CORRECT.

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2 Q. And APA later made that same
3 request for that spreadsheet in writing
4 on March 30th, is that your
5 understanding.

6 A. Yes.

7 Q. And you responded to that
8 request on April 11th in an email to Neil
9 Roghair, right? I think that's Exhibit
10 1818 to your declaration, your

11 supplemental declaration.

12 A. Yes, that's an email from me
13 to Neil Roghair.

14 Q. So that was about 12 days
15 after Mr. Roghair had made the request in
16 writing?

17 A. Yes.

18 Q. And in your response you told
19 Mr. Roghair that the spreadsheet that he
20 asked for was posted on this file sharing
21 service IntraLinks, right?

22 A. Yes, I was advised that it was
23 posted.

24 Q. And you gave a specific
25 reference number that he could use to

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2 look up the document; is that right?

3 A. Yes, I did.

4 Q. And that reference was to
5 folder 22, document 71; is that right?

6 A. Yes, it is.

7 Q. And APA two days later
8 followed up with another written request
9 on April 13th; is that right? Is it
10 Exhibit 1819 to your declaration?

11 A. Yes.

12 Q. Let's turn to the, I think
13 it's the fifth page. These aren't
14 numbered.

15 A. I think you're looking for
16 paragraph 2 (a). I'm sorry.

17 Q. Ah, I see it. It is on the
18 first, second, third, fourth page. At
19 paragraph 4. Do you see that?

20 A. IV? Is it number 4?

21 Q. Number 4.

22 A. Number 4, subparagraph (b).

23 Q. I'm actually looking at 4,
24 subparagraph (a) please provide a copy of
25 the assumptions and results produced from

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2 the various AAMPL runs conducted on March
3 27th, 2012, do you see that?

4 A. Yes.

5 Q. And do you see underneath
6 where APA acknowledged your earlier
7 response that went IntraLinks file 22,71?

8 A. Yes, I see that, but it
9 indicates --

10 Q. And you see that the APA said
11 that the document wasn't accessible to
12 the negotiating committee?

13 A. Yes. When I received this I
14 asked my staff to investigate that and
15 work with the IntraLinks folks and make
16 sure that the file would be accessible.

17 Q. In fact, that document, 2271
18 actually had nothing to do with the AAMPL
19 model, did it?

20 A. I found that out last week
21 after Mr. Rosselot raised the issue that
22 they hadn't received the information.

23 Q. So after you got this

24 follow-up request on April 13th, you
25 didn't check to make sure it was the

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2 right document?

3 A. No, I had my staff who was
4 coordinating the hundreds of requests
5 that were coming in from the APA and so
6 they would work with the subject matter
7 experts and with the IntraLinks folks and
8 folks that were posting to make sure that
9 it happened, that it got posted.

10 Q. So just so we're clear, the
11 document that you said you had posted at
12 2271, this wasn't just a case of
13 mislabeling, in fact the document wasn't
14 anywhere on IntraLinks, was it?

15 A. No, I've become aware that it
16 was actually a confidential benefit
17 document, but at the time I received
18 Exhibit 1819, there was no reference that

19 there was not a document. Obviously they
20 could not access.

21 So I was acting under the
22 assumption that it was a proper document
23 and that it was an issue of access which
24 we had several other technical issues
25 regarding opening files and things like

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2 that. So I just passed it off to my
3 technical folks.

4 Q. Let me try to clarify my
5 question. So was the document that you
6 thought had been posted, 2271, was that
7 posted somewhere else on IntraLinks?

8 A. Not that I'm aware of.

9 Q. Was it provided to the APA in
10 any form?

11 A. No. We first became aware of
12 it last week.

13 Q. And as we sit here today has

14 it been provided to the APA in any form?

15 A. No. However, when we did
16 respond that we fixed the access
17 information, I never received any
18 follow-up requests indicating that this
19 was the wrong file. So there was no
20 additional information to indicate to me
21 that there was a problem with the
22 information.

23 Q. Okay. Let me just make sure
24 that I get a clear answer to my question.
25 As we Exhibit here today, has the

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1
2 document ever been provided to the APA in
3 any form?

4 A. It has not.

5 MR. ROSENTHAL: Nothing
6 further.

7 MR. MOLLEN: No questions,
8 your Honor.

9 THE COURT: You're excused.

10 Do you want to move?

11 MR. MOLLEN: Your Honor, this
12 was -- yes, the answer is yes, your
13 Honor, we'd like to move Mr.
14 Newgren's supplemental declaration,
15 his Exhibit 1713 and all the
16 associated exhibits into evidence.

17 THE COURT: Any objection?

18 MR. ROSENTHAL: We don't have
19 an objection.

20 THE COURT: All right, they
21 are admitted.

22 MR. MOLLEN: Your Honor, there
23 was also a supplemental -- a
24 declaration from a Keith Austin and
25 a supplemental declaration from

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2 Denise Lynn on the same subject.

3 We'd like to move those and their

4 associated exhibits into evidence
5 as well.

6 THE COURT: My understanding
7 is there's no desire to cross those
8 folks; is that correct?

9 MR. ROSENTHAL: Can I have one
10 second.

11 MR. JAMES: Can we address
12 that right after lunch, your Honor?

13 THE COURT: Sure. Is there
14 any one in particular that I should
15 focus on if I'm looking at anything
16 over lunch?

17 MR. JAMES: Just Denise Lynn.

18 MR. MOLLEN: I think there was
19 one issue that Mr. James had
20 pointed out to us with a heading in
21 Ms. Lynn's declaration that he
22 suspected he wanted to ask her
23 questions about. I think we agreed
24 to resolve that issue by either
25 removing that heading or rewriting

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2 it by consent to take away the
3 ambiguity. Ms. Lynn is in Texas
4 and we'd hate to have to bring her,
5 she's working on something else
6 that's very important, and we'd
7 hate to have to bring her up to
8 testify for a few minutes on an
9 information sharing issue.

10 THE COURT: All right, well
11 I'll let you talk about it first.
12 If you can work it out, great. If
13 you can't, then we'll figure out
14 what to do with it.

15 MR. MOLLEN: Thank you, your
16 Honor.

17 THE COURT: Let's take an hour
18 for lunch and I'll see you all back
19 here after that.

20 (Luncheon recess: 1:11 p.m.)

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

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2:22 p.m.

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THE CLERK: All rise.

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THE COURT: Please be seated.

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I think the parties were going to

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discuss over lunch the supplemental

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Lynn declaration and exhibits.

9

MR. GALLAGHER: I believe Mr.

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Mollen was handling that for us,

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your Honor, he's not in the

12

courtroom right now.

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THE COURT: All right. It

14

will wait.

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MR. GALLAGHER: Thank you,

16

your Honor.

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THE COURT: All right, what's

18 next?

19 MR. GAGE: Your Honor, Ken
20 Gage for American Airlines. We
21 call Bruce Richards to the witness
22 stand.

23 THE COURT: If you'd swear the
24 witness.

25 BRUCE RICHARDS,

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2 called as a witness, having been
3 first duly sworn was examined
4 and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. GAGE:

7 Q. Mr. Richards, what's your
8 educational background?

9 A. I am a graduate of the
10 University of Pennsylvania.

11 Q. What was your degree in?

12 A. Actuarial science.

13 Q. And what do you do for a
14 living?

15 A. I am the chief actuary and
16 quality leader for Mercer Health &
17 Benefits.

18 Q. How long have you been an
19 actuary?

20 A. I've been a full fellow in the
21 Society of Actuaries since 1987.

22 Q. And you mentioned you're a
23 fellow of the Society of Actuaries. Do
24 you have any other professional
25 qualifications?

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2 A. Yes, I am also a member of the
3 American Academy of Actuaries and a
4 fellow of the Conference of Consulting
5 Actuaries.

6 Q. And what involvement, if any,
7 have you had with the committees within

8 the Society of Actuaries?

9 A. I have participated on exam
10 committees.

11 Q. And what role do those
12 committees serve within the society?

13 A. Those committees are formed to
14 actually create the exam syllabus which
15 is the course that people need to go
16 through to become a credentialed actuary,
17 and they also develop the material that
18 goes on to the syllabus.

19 Q. Now, I think you indicated
20 that you currently are the chief actuary
21 for Mercer's health and benefits
22 practice. What are your responsibilities
23 in that position?

24 A. My responsibilities in that
25 position include making sure that our

3 give the clients, is accurate, it
4 reflects our best practice, and it goes
5 through our internal process for review
6 before it gets delivered to a customer.

7 Q. And when you say accurate,
8 what do you mean?

9 A. Accurate would be -- well our
10 clients are quite particular that we get
11 the financial numbers correct, and so
12 whether we be -- so we owe them the best
13 estimate possible, and whether the number
14 be high or low, we are accountable for
15 what we predict and our clients actually
16 do make us reconcile those type of
17 estimates.

18 Q. Does Mercer have any sort of a
19 peer review process as part of its
20 quality controls?

21 A. Peer review is a process in
22 Mercer is part of the company's DNA
23 fabric, it means that we have a very
24 defined and well defined process for peer
25 review, for a financial deliverable such

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2 as American Airlines receives from
3 Mercer, it needs two full credentialed
4 actuaries to review it and frequently
5 more people than that.

6 Q. Do you also have client
7 responsibilities at Mercer?

8 A. I also do work with clients
9 regularly and I have maintained about a
10 dozen clients in a lead capacity.

11 Q. Without mentioning client
12 names, can you just describe those
13 clients?

14 A. Those clients are typically
15 50,000 lives are more national in
16 presence and typically have two or more
17 healthcare vendors they two business.

18 Q. When you say 50,000 lives or
19 more, what are you referring to?

20 A. That is they have at least

21 50,000 employees enrolled in their
22 benefits plan.

23 Q. Now, do you publish articles
24 regarding the work that you do for
25 clients?

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2 A. Mercer per se does not publish
3 client information ever and pretty much
4 when we learn something, we consider that
5 to be in-house information. He meaning
6 we consider it to be intellectual capital
7 and therefore we do not publish or
8 distribute it.

9 Q. Do you publish internal leave
10 the work that you do for clients?

11 A. We indeed do have internal
12 learning which we call case studies that
13 we circulate to our lead professionals
14 and we do go over them and they do cover
15 a variety of topics.

16 Q. Now, prior to becoming the
17 chief actuary for the practice, what role
18 did you have at Mercer?

19 A. I was a senior consultant and
20 actual what's called the chair of the
21 tools committee.

22 Q. Can you tell us what the chair
23 of the tools committee is responsible
24 for?

25 A. Sure. The tools committee

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2 chair is responsible for developing all
3 our technical applications, which are the
4 applications we use to develop cost
5 estimates for employers and then
6 deploying them and making sure that we
7 have appropriate standards of practice
8 around how people are supposed to use
9 those tools.

10 Q. Does that include software?

11 A. It does.

12 Q. Now, could you describe the
13 tool that was used by Mr. Naughton in
14 connection with his evaluation of costs
15 for American Airlines?

16 A. The tool that we use on
17 evaluations is a tool called MedPrice.
18 MedPrice is a collection of tens of
19 millions of individual claim at a very
20 finite level. It actually tabulates
21 everything that happens, if you're in a
22 hospital and/or at a doctor's office and
23 so we have the information on every
24 single procedure that was done on an
25 individual-by-individual basis. That is

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2 the backgrounds data warehouse from which
3 we then write a proprietary in-house
4 program to run cost comparisons against.

5 Q. Now, can you tell us a little

6 bit more specifically how those cost
7 comparisons are generated in a situation
8 where an employer, like here, is
9 proposing new plans?

10 A. Sure. We take this
11 multi-million dollar -- multi-million
12 record data set and take a particular
13 plan design and enter that into our
14 software and the software then will
15 adjudicate each and every claim in that
16 data set to produce a result. We will
17 then, in this example, look at what the
18 future plan design would be and again
19 have all those claim records adjudicated
20 and then you can compare the first result
21 to the second result and see the relative
22 cost level change.

23 Q. Now, at what point in Mercer's
24 process, if at all, do you consider
25 whether plan design changes will affect

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2 utilization?

3 A. That is part of the standard
4 review. It's always on the checklist of
5 things that need to be done. Typically,
6 what happens is you will make the
7 evaluation of what the relative cost
8 change and then if the cost change is
9 significant enough, you will make an
10 assessment of what utilization impact, if
11 any, should be applied.

12 Q. And what guides your judgment
13 in determining whether a utilization
14 change should be assumed and if so, how
15 much?

16 A. Mercer has thousands of
17 clients where we go through this exercise
18 every year and so a lot of what we do is
19 apply the historical learning from things
20 that have actually been actually
21 implemented and completed.

22 So, for example, if someone
23 makes a plan design change, we will see
24 how the actual experience panned out

25 versus the estimate. And by definition,

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2 and if our learning is sequential, we
3 continue to update what we have based on
4 our live clients' experience.

5 Q. Now, are you familiar with the
6 testimony that was given by Christopher
7 Heppner in this proceeding?

8 A. I am.

9 Q. And do you recall reading Mr.
10 Heppner's testimony regarding the
11 software that Segal uses to estimate
12 utilization changes as a result of plan
13 design changes?

14 A. I am familiar with that.

15 Q. Why doesn't Mercer approach it
16 that way?

17 A. The software that Segal's
18 using, for us we would call it black box
19 application because you can't actually

20 see everything that actually goes on.

21 In our particular process, as

22 I described to you, we can see every

23 calculation and basically have created

24 every assumption that goes into the

25 software. So I understand the

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2 line-by-line coding and what comes in and

3 what comes out.

4 Q. Now, did you have any

5 involvement whatsoever in the evaluation

6 of American Airlines' active medical

7 proposals to its unions?

8 A. Yes.

9 Q. Tell us what that involvement

10 was?

11 A. The actuary for the account,

12 Matt Naughton, actually called me to

13 discuss the proposed changes, to have a

14 peer review conversation about what we

15 thought would occur.

16 Q. And what specifically did he
17 ask you about?

18 A. Matt asked if a certain series
19 of plan design changes were made, what
20 would happen to experience in the current
21 policy year, the current calendar year,
22 and what would happen in the following
23 calendar year and what might happen
24 thereafter.

25 Q. Did you have a discussion with

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2 him regarding utilization, this concept
3 of utilization?

4 A. We had a conversation
5 discussing the magnitude of the program
6 changes, as well as any expected
7 utilization changes that might occur.

8 Q. And did you agree or disagree
9 with the assumptions that he ultimately

10 made?

11 A. I agreed with the assumptions
12 that Matt made.

13 Q. Now, there's been testimony or
14 reference in the testimony to something
15 called rush, hush, crush. Are you
16 familiar with that phrase?

17 A. I am.

18 Q. Can you describe, briefly
19 describe what it is?

20 A. Rush, hush, crush is an
21 element that occurs when an employer goes
22 to change its program design and what
23 happens is people become aware of the
24 change and it may modify the behavior and
25 time their services differently based

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2 upon the program change. And it
3 typically impacts I'll call procedures or
4 -- and things that people can time, such

5 as knee surgery and other operations and
6 where the individual gets to select the
7 exact date.

8 Q. And did you describe the rush,
9 the rush and the crush in that
10 description?

11 A. Well, sure. What happens is
12 first the people realize there's a
13 program change, so they then accelerate
14 their service to take them more
15 immediately.

16 Then right after, into the
17 next fiscal year for that particular
18 client, because the individual's just had
19 the service they can't get it again, so
20 there's a decrease in the service that
21 following period. And then toward the
22 middle of the following year it returns
23 back to normal. And what returns back to
24 normal, you're going from a suppressed
25 base to a normal base and that suppressed

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2 base to normal base creates a larger than
3 typical unit cost increase.

4 Q. Now, to your knowledge, are
5 there any articles discussing this
6 phenomenon?

7 A. Yes, there are.

8 Q. I'll hand you a document.

9 MR. GAGE: I believe these
10 have already been provided to
11 counsel.

12 Q. Can you identify what's been
13 marked as American Airlines Exhibit 1719?

14 A. Yes, it's the May 2008
15 internal health watch newsletter from the
16 Society of Actuaries.

17 Q. Is there a particular article
18 in this exhibit?

19 A. On the second page of the
20 exhibit there's an article by Joan
21 Barrett which describes this particular
22 issue succinctly.

23 Q. And prior to this proceeding,
24 were you familiar with this article?

25 A. I was aware of this article

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2 prior to this proceeding, yes.

3 Q. How did you learn about this
4 article?

5 A. I actually know Joan Barrett,
6 so I knew she was actually publishing
7 this article. So I've known about her
8 particular work for a number of years.

9 Q. Has this article, to your
10 knowledge, ever been presented at any
11 conferences or meetings?

12 A. Joan has presented slides and
13 pieces of this article at multiple
14 Society of Actuaries meetings.

15 Q. Now, do you have an
16 understanding whether this phenomenon,
17 rush, hush, crush, is accepted within the

18 actuarial community?

19 A. At the same Society of
20 Actuaries meetings obviously information
21 flows fairly freely, so many of us do
22 have that discussion. So I would
23 actually say yes, it is well accepted.

24 Q. And why is it that you say
25 it's well accepted?

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2 A. Well, first of all, you know,
3 when you get a bunch of senior actuaries
4 agreeing, that's step 1.

5 Also step 2, this same article
6 does appear on the study syllabus of the
7 Society of Actuaries and the study
8 syllabus is what we teach our young
9 actuaries from.

10 Q. I hand you what's been marked
11 as Exhibit American Airlines 1773. Can
12 you identify this document?

13 A. Yes. This is an outline of
14 the spring 2012 group and health design
15 and pricing syllabus from the Society of
16 Actuaries that any colleague looking to
17 pass the exam must take this to be a
18 healthcare actuary.

19 Q. Is there anything in the
20 syllabus that references this phenomenon
21 rush, hush, crush?

22 A. Yes, there is. If you look
23 under section 8, which is the third page
24 from the end, and you count up from the
25 bottom it's the fourth bullet, it's

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2 called "Timing's everything: The impact
3 of benefit rush."

4 Q. Now, is this phenomenon known
5 as rush, hush, crush, in any way built
6 into Mercer's own practices or policies?

7 A. It's part of Mercer's policy

8 for review. It does not come out of the
9 MedPrice tool. The evaluation of whether
10 to and how much to adjust particular
11 claims cost and utilization is a function
12 of the collective experience that
13 Mercer's actually collected from all our
14 client scenarios.

15 Q. Do you have any personal
16 experiences that would inform whether to
17 include an assumption regarding a
18 decrease in utilization following plan
19 changes such as American Airlines has
20 proposed here?

21 A. Many of our large customers
22 actually make us monitor at a very
23 significant level what happens when they
24 make benefit design changes and they're
25 equally upset if we are way high or are

1
2 way low.

3 So we actually do conduct
4 studies, postmortem you might want to
5 call them, on each one of these changes
6 when this occurs. And what we found over
7 time is if there's a significant change,
8 it will indeed create some lasting
9 utilization change, but there's a
10 threshold where if the change is not
11 significant, basically nothing happens.

12 Q. Now, do you recall from Mr.
13 Heppner's testimony that he testified,
14 for example, regarding emergency room
15 visits and he offered the opinion that if
16 co-pays or deductibles are raised people
17 will use the emergency room less
18 frequently? Do you agree with his
19 assessment?

20 A. I would generally disagree. I
21 mean there are some instances where that
22 would be correct, but typically when
23 people go to the ER they're going for
24 multiple reasons, but one of them is you
25 perhaps have called the nurse hotline and

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2 they directed you to the ER, or two, it's
3 ingrained that when your child perhaps
4 falls off the playground and breaks an
5 arm or a leg that's where you're going.

6 And so there are instances
7 obviously where how you change the plan
8 design, you'd like it to influence
9 people's behavior, but it may not do so.

10 MR. GAGE: No further
11 questions, your Honor.

12 THE COURT: All right, cross.

13 CROSS EXAMINATION

14 BY MS. PARCELLI:

15 Q. Good afternoon, Mr. Richards;
16 is that correct?

17 A. Yes, good afternoon.

18 Q. My name is Carmen Parcelli and
19 I'm counsel for the Association of
20 Professional Flight Attendants in this
21 case.

22 Okay. So you have done work
23 directly on the American Airlines
24 proposed medical benefit changes,
25 correct?

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2 A. I have reviewed work that's
3 been done.

4 Q. Okay, fair enough. And you
5 understand that the proposed changes
6 involve increases in co-pays; is that
7 correct? And increases in deductibles;
8 is that correct?

9 A. Correct.

10 Q. And also increases for
11 employees in their coverage of out of
12 pocket, correct?

13 A. Correct.

14 Q. And correct me if I'm wrong,
15 based on the testimony that you just
16 gave, but Mercer does recognize that

17 increasing employee costs can lead to

18 changes in utilization; is that fair?

19 A. That's fair.

20 Q. Okay. And that's a standard

21 belief in the health benefits community,

22 is it not?

23 A. It's fair to say that would be

24 true when the change is significant.

25 Q. Fair enough. And it's also,

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2 it's also a proposition that has been

3 tested and confirmed through various

4 surveys and health benefits studies,

5 correct?

6 A. What's really been tested are

7 short term impacts like what happens when

8 you change it in the initial year. What

9 there is not a lot of data is what

10 happens thereafter.

11 Q. And I believe that you

12 testified that in terms of Mercer's own
13 proprietary software system, which you
14 called MedPrice, that utilization changes
15 are built into that software system,
16 correct?

17 A. The utilization changes are
18 not in the software system, although what
19 is in the software system since we update
20 it once a year is any change that happens
21 year to year. So, for example, when we
22 update the data in 2011 any change in
23 utilization that occurred between 2010
24 and 2011 is therefore implicitly embedded
25 in the new software.

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2 Q. Okay. And so that is in the
3 software. And so then your practice
4 would be to go back and revisit after the
5 software makes an assessment whether or
6 not you would make changes to the

7 utilization that the software, changes
8 that the software produced; is that fair
9 to say?

10 A. That's correct.

11 Q. Now let's talk about rush,
12 hush, crush. So we've had entered into
13 evidence as American Exhibit 1719 Ms.
14 Barrett's article title entitled "Timing
15 is everything," correct? You have it?

16 A. I have it.

17 Q. Good, good. And is there only
18 this one article that you're aware of
19 that discusses rush, hush, crush?

20 A. That is correct.

21 Q. Okay. And Ms. Barrett's
22 article, does it have in it or reference
23 any kind of survey data or statistical
24 data on which it's based?

25 A. This actual study, since I

2 know where it comes from, this is Joan
3 Barrett, I should probably say Joan is on
4 the Board of Directors of Society of
5 Actuaries --

6 Q. Sir, I think my question was a
7 little more direct than that. Does Ms.
8 Barrett's article, are there any
9 footnotes you can point me to, are there
10 any references that you can point me to
11 in the text of her article that shows
12 that she relies on some kind of
13 statistical survey for her conclusions?

14 A. I cannot point to tables, so
15 if there are no tables attached, that
16 would be correct.

17 Q. Isn't it true if you look into
18 the first paragraph, her first or second
19 paragraph she basically uses herself as
20 sort of anecdotal evidence that if you
21 expect a change in how much you're going
22 to have to pay for your healthcare you
23 might rush out and go ahead and get
24 attended to something that you've been

25 holding off, right, she uses herself as

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2 anecdotal evidence, right?

3 A. Correct.

4 Q. Do you see also, sir, on this

5 first page of the article itself, the

6 paragraph that begins "A benefit rush may

7 occur"? Are you with me?

8 A. Yes.

9 Q. And then going down further in

10 that paragraph, do you see where it says

11 "For large groups, announcements come

12 early and a change such as a full

13 replacement CDH are considered major, so

14 an increase in annual claims cost in the

15 3 percent to 5 percent range is common."

16 Do you see where she says

17 that?

18 A. I see that.

19 Q. But there's no footnote,

20 there's nothing that indicates where Ms.
21 Barrett gets her 3 percent or 5 percent
22 change; is that correct?

23 A. That's correct.

24 Q. Okay. So are you aware of or
25 have there been any surveys or studies

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2 that react to or challenge Ms. Barrett's
3 thesis in this article?

4 A. I have not seen any.

5 Q. Any that even not challenge,
6 but, say, look at or study it?

7 A. I believe this is the actually
8 only article that there is on this
9 subject matter.

10 Q. Now, does Mercer always apply
11 this rush, I'm going to mess this up a
12 few times, rush, hush, crush theory to
13 valuations that you do?

14 A. As part of our standard

15 actuarial automatic procedure it must be
16 considered each and every time. One may
17 conclude that it does not apply. For
18 example, if someone changes a deductible
19 by 50 dollars and it's the only change,
20 it is rather insignificant and then we
21 would not go through the exercise of
22 doing this evaluation.

23 Q. Can you give us kind of an
24 estimate of how often you do apply this
25 principle of rush, hush, crush?

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2 A. We actually apply it I would
3 say every time we feel that we have a
4 benefits design value change of 5 percent
5 or more.

6 Q. Is that in most of the
7 valuations you look at, or not?

8 A. It varies from year to year.

9 Q. Okay. So let's get a little

10 more clarity about how rush, hush, crush
11 works according to Ms. Barrett here. So
12 the rush is after benefits changes have
13 been announced and made known to
14 employees but before they're actually
15 implemented, correct?

16 A. Correct.

17 Q. Okay. And then the hush is
18 sort of decreased usage, occurs in the
19 year following the implementation of the
20 benefits changes, correct?

21 A. Correct.

22 Q. And then the crush, according
23 to Ms. Barrett, is in the second year of
24 after the implementation of the changes,
25 correct?

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2 A. Correct.

3 Q. Okay. Now, with regard to the
4 changes that American is proposing, is it

5 correct to say that the valuation that's
6 been done is done as if the changes had
7 taken place at the commencement of 2012?
8 Am I correct on that?

9 A. The valuation that is done
10 actually evaluates when the anticipated
11 change is to occur. So if a change is to
12 occur on 1/1/2013, that's when the value
13 is actually calculated, and that's when
14 the claim costs are assumed to be
15 impacted going forward.

16 Q. Okay, but the valuation that
17 was done and prepared and given to the
18 unions you think doesn't show changes
19 going into effect until 2013, that's your
20 understanding?

21 A. I used the 1/1 date because
22 it's easier to pick the beginning of
23 calendar years to talk about changes and
24 so it's easier to say here's a calendar
25 year plan, if you want to think about the

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2 rush happens before it, and so this is
3 more simplistic that way for me to
4 convey.

5 Q. Okay, well maybe I'll try and
6 refocus this. So according to the
7 valuations that you performed on behalf
8 of American, when is the rush period?

9 A. The rush period will occur
10 between the time you announce the change
11 and the time the change is effective.

12 Q. Okay, but don't the
13 evaluations, the valuations that have
14 been done and that feed into what labor
15 is being asked to give, don't they assume
16 a date when these changes are going to be
17 implemented?

18 A. Well, they indeed do assume
19 the date, a date, but, you know, the real
20 thing is the length of time an individual
21 has to react also is factored into that.
22 So if you tell me on December 1st and
23 it's effective 1/1, you only have 30 days

24 to react so it's really a question of how
25 long in advance do you know of the

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2 change.

3 Q. But are you saying then that
4 we don't know when the rush period ends
5 at this point?

6 A. No, rush period will continue
7 from the time you announce it to the time
8 the benefit change is actually effective.

9 Q. And what did Mercer assume
10 then in terms of when the rush period is
11 with respect to American's proposal?

12 A. I believe -- well, I'm not --
13 I'm not quite remembering exactly when
14 the effective date of the change was, but
15 it ends right on the effective date of
16 the change.

17 Q. But you don't know when that
18 is?

19 A. I don't recall when that is.

20 Q. And then that affects of
21 course the period that's known as hush,
22 right, the one year period following that
23 is hush but because you don't know an
24 assumed implementation date, you don't
25 really know when that one year begins and

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2 ends, right?

3 A. The assumption there you've
4 made is a one year period. I would
5 actually probably tell you it's shorter
6 than that. Because the things that are
7 judgmental in nature, like knee surgeries
8 or back surgeries, people have them and
9 they don't have them, but they do
10 continue within that second year that
11 we're talking about thereafter.

12 Q. So let me just make sure I
13 understand. So you think that the hush

14 period with respect to American is going
15 to be somewhat shorter than the one year
16 presumed by Ms. Barrett in her analysis,
17 correct?

18 A. Actuarial analyses like Ms.
19 Barrett does typically focus on one year
20 periods because that's the easiest time
21 period to study.

22 Q. Okay, but when you were
23 valuing the changes, how much time did
24 you assign to the hush period?

25 A. We evaluate one year intervals

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2 also.

3 Q. Okay, okay, so you did assume
4 a one year hush period?

5 A. Right.

6 Q. And then the second year in
7 your valuation of American's proposal you
8 assumed that you would have the crush

9 phenomenon; is that fair to say?

10 A. Correct.

11 Q. And is it your understanding
12 that American's proposal is a six year
13 proposal?

14 A. Yes.

15 Q. So as far as the last three
16 years of the proposal, what did you
17 assume? I mean our rush, hush, crush
18 period is over by then, so what would be
19 the assumption going forward?

20 A. The assumption after that is
21 there's a consistent overall cost
22 increase of 7 percent, so there's no ups
23 and downs, just the claims proceed at a 7
24 percent per enrolled individual level.

25 Q. I think my question wasn't

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2 precise enough. In those years, the last
3 three years of the proposal, what was the

4 assumption with regard to the effect of
5 increased cost borne by employees on
6 utilization?

7 A. Our evaluation -- I'm going to
8 answer this in the way I think you're
9 trying to ask it. Our proposal, we'll
10 get to it, has a particular claim cost
11 increase of 7 percent embedded in it, so
12 after you reach the crush there's a
13 constant 7 percent increase in cost for
14 everything combined. It doesn't --

15 Q. Okay. But does that assume
16 that there will be an increase in
17 utilization because employees are paying
18 more for their medical spends out of
19 pocket?

20 A. It does not.

21 Q. It does not, okay. Now Ms.
22 Barrett's article doesn't say anything
23 about what you should or shouldn't assume
24 about utilization following the rush,
25 hush, crush period, does she?

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2 A. It does not.

3 Q. And so you're aware I mean
4 whether or not you make assumptions about
5 utilization, whether you think that
6 utilization will go down because
7 employees are spending more of their own
8 money, it does have a significant impact
9 on how you value the changes, correct?

10 A. There are a significant number
11 of things that impact how you value
12 changes.

13 Q. No, I'm asking about this one
14 though. It can have a significant
15 impact, can it not?

16 A. It can have -- it could.

17 Q. Turning to what was marked as
18 American Exhibit 1773, the syllabus. And
19 I believe you testified that you are on a
20 committee for the Society of Actuaries
21 that administers exams; is that correct?

22 A. I am no longer on that
23 committee.

24 Q. Okay, but you were?

25 A. I were -- I was.

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2 Q. And is this syllabus in
3 connection, is this something that that
4 committee prepares?

5 A. No, it isn't. Well each
6 committee prepares its own syllabus, but
7 I did not have anything to do with this
8 syllabus.

9 Q. So you didn't participate in
10 preparing this syllabus?

11 A. I did not.

12 MS. PARCELLI: Your Honor, can
13 I have a moment, please?

14 THE COURT: Sure.

15 MS. PARCELLI: Your Honor, I'm
16 going to pass the witness to APA,

17 but they'd like to take a short
18 break if they may.

19 MR. DALMAT: Just five
20 minutes, your Honor.

21 THE COURT: Just a short one
22 though. The next witness, how long
23 do we expect the direct to be?

24 MR. POLLACK: Good afternoon,
25 Judge. Mark Pollack for the

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2 debtors. The next witness will be
3 Mr. Resnick and I anticipate a 40
4 minute give or take direct
5 examination.

6 THE COURT: The reason why I'm
7 asking is because I need to figure
8 out if I need to ask some court
9 staff to stay for purposes of this
10 evening and if so what time we're
11 looking at.

12 MR. POLLACK: Well, assuming
13 we get to Mr. Resnick by 3:30, we
14 ought to be done by five.

15 THE COURT: Using the
16 multiplier effect I'll say 5:30 as
17 a safe assumption. Does that sound
18 in the ball park? All right.
19 Thank you.

20 (A recess was taken.)

21 THE CLERK: All rise.

22 THE COURT: Please be seated.
23 Proceed.

24 MR. DALMAT: For the record,
25 Darin Dalmat, on behalf of the

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2 Allied Pilots Association.

3 CROSS EXAMINATION

4 BY MR. DALMAT:

5 Q. Good afternoon.

6 A. Good afternoon.

7 Q. I believe you testified today
8 to a few different levels of significance
9 and I just wanted to make sure that I
10 understand what those mean.

11 I think you said that if
12 there's a plan change that would increase
13 costs by 5 percent that that's the
14 threshold level at which Mercer would
15 begin to apply the rush, crush, hush
16 factor; is that correct?

17 A. That's actually the threshold
18 where we know that utilization might be
19 impacted going forward.

20 Q. Okay. So was there a lower
21 threshold at which point Mercer begins to
22 apply the rush, hush, crush analysis?

23 A. We consider it for every time
24 there's a plan design change and we then
25 will look at what the benefit design

2 changes are and go into our historical,
3 learnings of what similar situated
4 results produced, and if indeed the
5 changes would generate something that we
6 think would actually look like some of
7 these historical standards we looked at,
8 we apply that as part of our budgeting
9 and forecasting process. And by the way,
10 you know, as you kind of heard, we don't
11 do that individually, it takes a
12 consensus of multiple actuarial people.

13 Q. I understand. I'm just asking
14 about the threshold right now.

15 A. Okay.

16 Q. So at the 5 percent level,
17 that is when a plan design change would
18 add 5 percent to the cost from the
19 employee perspective, that's the
20 threshold at which a utilization change
21 factor would be appropriate; is that
22 correct?

23 A. That's the level that in our
24 historical experience we believe that it
25 occurs, correct.

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2 Q. And you're aware of the
3 increase in costs that would be required
4 for the employees of American Airlines
5 under American's term sheet?

6 A. I am.

7 Q. And that's in excess of 5
8 percent, isn't it?

9 A. For the most generous program
10 to most generous program, I believe the
11 change is actually 3.5 percent.

12 Q. Let's talk about it in terms
13 of particular elements. Let's talk about
14 the out of pocket maximum. There are a
15 number of different out of pocket
16 maximums under the current benefit plan
17 at American; is that right?

18 A. That's correct.

19 Q. And they range from 1,000 to
20 2500; is that correct?

21 A. I believe that's correct.

22 Q. And American's term sheet
23 would move that to a 4,000 dollar out of
24 pocket; is that correct?

25 A. I believe the out of pocket

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2 varies by plan.

3 Q. Well that's the standard plan
4 in network?

5 A. Okay.

6 Q. Is that correct?

7 A. I believe that's correct.

8 Q. And that's well in excess of a
9 5 percent change from the perspective of
10 the employees, correct?

11 A. Correct.

12 Q. How about family deductibles,
13 under the current plan, the -- I'll
14 withdraw that question.

15 So going back to the out of

16 pocket maximums, I think you testified
17 that the rush phenomenon would be caused
18 by employees who have sort of optional or
19 selective procedures that they can elect
20 to take now rather than later, right?

21 A. That's correct.

22 Q. And an example of that would
23 be something like Lasik surgery?

24 A. Lasik is probably not covered
25 by the plan, but it would be something

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2 like knee surgery.

3 Q. Do you think that an employee
4 whose out of pocket maximums are going to
5 move from a thousand dollars to 4,000
6 dollars might make a different decision,
7 might choose to forgo that knee surgery
8 entirely if they have 3,000 dollars
9 afterwards?

10 A. That's possible.

11 Q. As Ms. Parcelli asked you a
12 few questions about how the utilization
13 rates would change from years 4 through
14 6. Did you do anything to come up with a
15 composite figure for utilization over the
16 course of the contract?

17 A. Our basic modeling we've done
18 assumed no change over the course of the
19 contract.

20 Q. And that's because you
21 averaged the rush, the hush and the crush
22 periods together?

23 A. Correct.

24 Q. But you don't know how long
25 those periods would be, that's what you

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2 testified when Ms. Parcelli was asking
3 you questions?

4 A. We believe honestly the whole
5 rush, hush, crush phenomenon will play

6 itself out over that two year period.

7 That's where it's embedded in.

8 Q. Right. You assume that the
9 crush period would be one year because
10 that's easy math for actuaries; is that
11 right?

12 A. Well it's one year simply
13 because the plan design intervals are one
14 year. We do financial projections, not
15 because it's easy math for actuaries. We
16 talk in fiscal years.

17 Q. Well fair enough, but you
18 don't know how the course of employee
19 behavior might change during the course
20 of that year, the crush period could
21 actually be two months, correct?

22 A. That's correct.

23 Q. It could be one month?

24 A. Correct.

25 Q. But you just averaged all

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2 these together and assume that, and
3 calculated that there would be a net
4 effect of zero; is that right?

5 A. We -- that would be the
6 mathematical calculation, but it's more
7 based upon what we've learned.

8 MR. DALMAT: Thank you, that's
9 all. I pass the witness.

10 THE COURT: Any other cross
11 examination? Redirect?

12 MR. GAGE: Just briefly, your
13 Honor.

14 REDIRECT EXAMINATION

15 BY MR. GAGE:

16 Q. Mr. Richards, you were just
17 asked some questions about a 5 percent
18 threshold. In your testimony when you
19 made a reference to a 5 percent
20 threshold, does that 5 percent represent?

21 A. It is 5 percent of total cost
22 of the program, employee and company
23 cost.

24 Q. And so it doesn't represent 5
25 percent increase in the co-pays or

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2 deductibles?

3 A. That would be correct.

4 Q. And when you said that in this
5 instance the change from the two plans
6 you described was actually approximately
7 3.5 percent, what were you referring to?

8 A. That goes back to my, when I
9 was describing MedPrice, we run the
10 current program and compare it to the
11 future program. That -- those two most
12 generous programs produce a 3.5 percent
13 claim cost differential in our model.

14 Q. And that's total claim cost?

15 A. That's --

16 Q. Employee portion and employer
17 portion, correct?

18 A. Correct, across all services,

19 whether they be inpatient, outpatient or
20 professional and pharmacy.

21 Q. And what does that number,
22 that 3.5 percent suggest to you would
23 happen with respect to utilization
24 following implementation of these changes
25 over time?

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2 A. It suggests to us that the
3 change, although, you know, feeling that
4 it's going to be large, it does not have
5 enough impact to significantly influence
6 long term behavior for the plan.

7 Q. And why is it that you reach
8 that conclusion?

9 A. We reach that conclusion
10 simply because of how many times we've
11 actually gone through this with other
12 employers and so we're relying on our
13 cumulative knowledge of other similar

14 situations where a change of
15 approximately 3.5 percent occurs.

16 MR. GAGE: No other questions,
17 your Honor.

18 RECROSS EXAMINATION

19 BY MS. PARCELLI:

20 Q. Sir, if your calculation
21 showed that there wasn't a degree of
22 difference, you know, 3.5, to even
23 trigger having to be concerned about
24 utilization, why did you also go into the
25 rush, hush, crush analysis? It doesn't

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2 seem to make any sense.

3 A. For our clients it's important
4 for us to get the right financial piece
5 in each and every year. And so when we
6 convey this to American Airlines, for
7 example, we want them to know that their
8 claims costs will go up, it will be

9 followed by periods down and they just
10 can't apply a typical claim trend built
11 in the second year into the third year.

12 Q. So that had nothing to do then
13 with the actual valuation of the proposed
14 changes, right?

15 A. Correct.

16 THE COURT: Anything else with
17 this witness?

18 MR. GAGE: Nothing further,
19 your Honor.

20 THE COURT: All right. I
21 assume you want to move into
22 evidence the two documents?

23 MR. GAGE: Yes, your Honor.

24 THE COURT: Any objection to I
25 believe it's 1719 and 1773? All

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2 right, hearing none, they are
3 received.

4 Next witness.

5 MR. POLLACK: The debtor calls
6 its next witness, David Resnick.

7 THE COURT: I believe you
8 testified earlier so you are still
9 under oath.

10 THE WITNESS: Several weeks
11 ago, but yes, your Honor.

12 DAVID RESNICK,
13 resumed, having been previously
14 duly sworn, was examined and
15 testified further as follows:

16 DIRECT EXAMINATION

17 BY MR. POLLACK:

18 Q. Good afternoon, Mr. Resnick.

19 A. Good afternoon.

20 Q. First and most fundamentally
21 today, the unions have suggested over the
22 course of these last few weeks that you
23 and your firm, Rothschild, have failed to
24 endorse the viability of American's
25 business plan?

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MR. CLAYMAN: Your Honor,

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we're going to object. I mean this

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is like an introduction to a

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question that obviously has leading

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implications. I don't think Mr.

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Pollack is allowed to make a speech

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before he asks the first question.

9

THE COURT: Well, there's a

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fine line between speechifying and

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trying to keep the rebuttal focused

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on rebuttal. So you don't have any

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quibbles with the testimony that's

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actually to be elicited and so it's

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an objection to form, right?

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MR. CLAYMAN: Yes, your Honor.

17

THE COURT: Objection to form

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suffices. So that's sustained.

19

Can you rephrase the question.

20

Q. Mr. Resnick, do you and your

21

firm Rothschild endorse the viability of

22

American's business plan?

23 A. Yes, we do.
24 Q. Can you explain why?
25 A. One of the key components of

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2 our engagement, as I testified before,
3 was to work with the company on the
4 development of its business plan.

5 As the company's restructuring
6 advisor, the business plan that the
7 company produces is the keystone for a
8 plan of reorganization that it would
9 ultimately present to the court.

10 So the business plan that the
11 company presents to its stakeholders,
12 which it did here in early February, has
13 to be thorough, has to be thoughtful, has
14 to have detailed assumptions that can
15 withstand significant diligence from the
16 stakeholders, this is their right to do,
17 to challenge the company on the key

18 assumptions of its business plan, so that
19 the company can go forward and begin to
20 have a dialogue with its stakeholders
21 around the terms of the plan of
22 reorganization.

23 Q. Let me stop you right there.
24 You mentioned the diligence process. Can
25 you describe the extent of the diligence

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2 process over this company's business
3 plan?

4 A. Well the diligence process has
5 been extraordinarily extensive. I would
6 say in my career as an investment banker
7 for the past 27 years doing restructuring
8 work it's been one of the most
9 substantial diligence processes of
10 stakeholder groups which is absolutely
11 appropriate for a case of this
12 significance.

13 Our team spent a considerable
14 amount of time from the company's filing
15 to the presentation of the business plan
16 in February, working closely with the
17 company, with McKinsey, and the team that
18 the company had put together to produce
19 the business plan, to challenge the
20 assumptions, to work through the issues.

21 So my point was that this is a
22 document with which we're very
23 comfortable, we think is thorough and is
24 a very reasonable basis for going forward
25 in the progression of the Chapter 11.

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2 Q. The business plan variously
3 has been labeled as a placeholder or as a
4 negotiating foil. Would you accept those
5 characterizations?

6 A. Absolutely not. I think the
7 company has said from the beginning of

8 this process that it treats very
9 seriously the development of its business
10 plan. I think the company's hiring of
11 McKinsey demonstrates how serious its
12 been around the business plan. I think
13 I've testified, Ms. Goulet's testified in
14 the past. The company had a business
15 plan with which it had worked previously,
16 but because of the importance of getting
17 it right, getting a business plan right
18 when it would think about emerging from
19 Chapter 11, it brought into the process a
20 very credible, well regarded expert in
21 airline, in the airline industry and it
22 interviewed several and chose McKinsey to
23 challenge its assumptions, to ensure that
24 it had looked at all the appropriate
25 issues thoughtfully in terms of

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2 generating revenue opportunities, other

3 cost savings beyond labor, so that it had
4 a viable plan it could present to the
5 stakeholders.

6 Q. The unions also have argued
7 here that the fact that American has
8 agreed to evaluate other potential
9 strategic alternatives before emerging
10 from bankruptcy suggests that it's less
11 than serious or committed to its business
12 plan, stand-alone plan, excuse me, do you
13 agree with that characterization?

14 MS. LEVINE: Objection, your
15 Honor, I believe that may
16 mischaracterize the testimony or
17 the arguments. I mean we're back
18 to the same, if he wants to ask the
19 question, let him ask the question.

20 THE COURT: Well because this
21 is rebuttal and we're trying to
22 actually address specific things
23 that have been mentioned and I
24 think the parties have been,
25 actually it's been done on the

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2 cross as well, I've heard this
3 testimony, you heard this
4 testimony, do you agree or not
5 agree. So the definition of a
6 question that is objectionable to
7 form is where the question suggests
8 the answer. That doesn't mean
9 there can't be a prologue to the
10 question to narrow the focus of it
11 so we don't go back to square one
12 and day one of the witness'
13 testimony. So let me hear the
14 question again.

15 MR. POLLACK: I'll try to
16 restate it as closely as I can,
17 Judge.

18 Q. The unions have argued that
19 the fact that American has agreed to
20 evaluate other strategic alternatives

21 before it emerges from bankruptcy
22 suggests that it is less than committed
23 to its stand-alone business plan, do you
24 agree with that characterization?

25 THE COURT: Answer the

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2 question.

3 A. I do not agree with that
4 characterization. As a matter of fact, I
5 believe, and I think I've testified
6 previously, that the fiduciary obligation
7 of the debtor in this Chapter 11 is to
8 analyze with its key stakeholders all the
9 strategic alternatives available to it
10 and to form its plan of reorganization
11 around that alternative that maximizes
12 stakeholder value. And the company has
13 said that the stand-alone plan is an
14 alternative. It's a very important one.
15 As I said, the business plan is the

16 keystone, the basis for evaluating other
17 alternatives. And that's what the
18 company needs to do.

19 Q. How does American's existing
20 cost structure impact its positioning in
21 any potential M&A transaction?

22 A. Well, at present, and as the
23 company has experienced in the past when
24 it has considered other strategic
25 transactions, that the fact its cost

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2 structure was not comparable to its peers
3 has been an impediment for the company to
4 proceed with any consolidating
5 transaction.

6 And the company believes and I
7 think the parties with whom the company
8 has spoken in the past have indicated
9 that when its cost structure is
10 comparable it would be the basis for a

11 potential discussion. It's not the only
12 reason, but it is an important reason.

13 Q. Are you familiar with the
14 method by which the other network
15 carriers sequenced their efforts to
16 restructure their labor costs in
17 connection with their consolidation
18 activities?

19 A. Yes. For the most part, the
20 other network carriers that have filed
21 for Chapter 11 have reorganized on a
22 stand-alone basis and then proceeded to
23 investigate consolidation alternatives,
24 mergers. In some cases they might have
25 discussed and considered them during the

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2 pendency of the case, but certainly with
3 respect to Northwest and Delta, United,
4 Continental, it occurred subsequent to
5 their emergence.

6 Earlier, I believe, US Air
7 consummated its transaction with America
8 West as part of its emergence from
9 Chapter 11.

10 Q. For those carriers who
11 consolidated scent to their emergence,
12 did they consolidate their labor cost
13 through the 1113 process or otherwise,
14 before they emerged from bankruptcy?

15 A. Yes, that was a component of
16 their Chapter 11 cases.

17 Q. Now, there has been testimony
18 or reference made to certain analysts,
19 Wall Street analysts who have criticized
20 American's business plan. Have you
21 become familiar with the analyst's stated
22 views on the business plan?

23 A. I've seen some, some of them.
24 I'm not sure I've seen all of them.

25 Q. What is your reaction to those

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2 who have criticized the plan?

3 A. I think the issue with the
4 analyst reports is that they have not
5 seen the business plan, they have not
6 seen the extensive supporting analysis
7 that the company shared with its
8 stakeholders who have access to the
9 confidential data. As anyone who's
10 looked at it knows that it's a quite huge
11 amount of information. And I think you
12 have to look at what the analysts say
13 with the appropriate context, that they
14 don't have all the information, they
15 haven't had a chance to speak with the
16 management team. So I think you have to
17 be careful how you view what they say.

18 I think further I'd look to
19 the parties who have had the ability to
20 at the information and we haven't had
21 people come back and say here's another
22 alternative for a stand-alone plan.
23 They've had questions, they've had issues
24 that we've addressed, but they have not

25 suggested for a stand-alone plan there's

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2 another approach that the company should

3 consider.

4 Q. You're referring to other

5 stakeholders in this proceeding?

6 A. Yes.

7 Q. Now, Mr. Yearley's written and

8 oral testimony took exception with the

9 EBITDAR margin levels that are targeted

10 in American's business plan. I want to

11 ask you a series of questions about

12 Rothschild's role in the development of

13 those margins.

14 But first I want to step back

15 for a moment and just ask contextually

16 how does EBITDAR compare to net income as

17 a company would typically report it on a

18 P&L?

19 A. Well, EBITDAR is a different

20 financial metric, but it is a financial
21 metric that's widely used because it's
22 probably the best apples-to-apples
23 comparison of operating performance and
24 profitability for companies. Because it
25 shows earnings before interest, taxes,

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2 depreciation, amortization and in this
3 case aircraft rent. That is it excludes
4 those items related to the company's
5 capital structure and tax attributes that
6 vary, in many cases considerably, from
7 company to company.

8 So from a banker's perspective
9 it's the cleanest comparison you can make
10 in terms of assessing the company's
11 financial performance, operating
12 performance and profitability.

13 Net income goes all the way to
14 what's commonly referred to as the bottom

15 line, taking into account interest
16 expense, so a company that is highly
17 leveraged and has a large amount of
18 interest expense is going to have a much
19 lower net income, for example, than a
20 company that doesn't have much debt.

21 Q. Using American's 2011
22 performance just to illustrate the point,
23 in 2011 how did American's net income
24 position compare to its EBITDAR position?

25 A. Well its net income was

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2 significantly negative and EBITDAR was
3 positive.

4 Q. Can you first describe the
5 process by which the company developed
6 its targeted EBITDAR metrics and the role
7 that Rothschild played in connection with
8 that process?

9 A. As I believe I discussed

10 previously, as part of our work with the
11 company on the business plan, the company
12 asked us to look at the key financial
13 metrics that other airlines use and
14 analysts that evaluate, financial
15 analysts on Wall Street who evaluate
16 airlines use to assess their financial
17 performance.

18 So we prepared a presentation,
19 I believe a presentation is in the data
20 room that we shared with the management
21 team that looks at a comparable set of
22 companies and their financial performance
23 focusing on the key elements, EBITDAR,
24 liquidity metrics, pretax income and
25 array of metrics, but as I say EBITDAR

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2 was probably the most -- one of the more
3 important.

4 We also looked at the plans of

5 reorganization filed by other airlines
6 that had gone through Chapter 11 and
7 looked at their financial metrics and
8 projections because you find projections
9 in a plan of reorganization, you
10 generally cannot find them for more than
11 a year when a company is public.

12 Although, as I think I mentioned, we
13 looked at analyst reports as well.

14 We provided that information
15 to the company, discussed with them
16 what's the reasonable range of those
17 financial metrics and they had that as
18 part of their process when they put their
19 business plan together.

20 Q. Did Rothschild suggest a
21 particular EBITDAR target?

22 A. No, we did not.

23 Q. You mentioned the comparable
24 group of companies that you reviewed and
25 you were aware that the unions have

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2 questioned the relevance of several of
3 those companies, the low cost carriers in
4 particular. Can you explain to the court
5 why you deemed the low cost carriers to
6 be relevant comparables for American
7 Airlines today?

8 A. Yes. I think including the
9 low cost carriers in the comparable set
10 is appropriate, it's reasonable, and
11 frankly, I think it's highly relevant in
12 today's environment in the airline
13 industry.

14 The reality is whether people
15 like it or not, that American competes, I
16 think Mr. Kasper indicated in his
17 declaration or his testimony that close
18 to 80 percent of the routes American
19 flies it has competition from a low cost
20 carrier.

21 Now, the business models of
22 the airlines may vary, but the reality is

23 all carriers have to purchase aircraft,
24 they have to purchase fuel for the
25 aircraft, they have to have employees to

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2 fly the aircraft. And American may focus
3 more on the business traveler and trying
4 to obtain premium fares, as may some of
5 the other former legacy carriers, but
6 when you're flying a plane like a 777 you
7 have to fill the seats. And many of
8 those seats are going to be filled by
9 leisure travelers as well as business
10 travelers.

11 And anyone that goes on a
12 travel website that's going to book a
13 trip, whether it's to Chicago where
14 you're from, is going to type up the
15 choices and they're going to be low cost
16 carriers and legacy carriers and they're
17 competing on fares and you're going to

18 make that decision.

19 So the reality is in today's
20 environment, particularly when you're
21 putting together a plan of reorganization
22 that would be the basis for the company's
23 viability in the future, you have to take
24 into account the reality of the role in
25 which you're competing and that includes

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2 low cost carriers, and that's why I think
3 they're appropriately relevant for our
4 comparable set.

5 Q. You're aware that Mr. Yearley
6 analyzed the comparable set much
7 differently, he just looked at legacy
8 carriers, right?

9 A. That's correct.

10 Q. And you have reviewed the
11 historical analysis that Mr. Yearley
12 rendered with respect to those legacy

13 carriers, didn't you?

14 A. Yes.

15 MR. POLLACK: Your Honor, if I
16 may approach?

17 THE COURT: Yes.

18 Q. I'll give you what we've
19 marked as American Airlines 1768. And
20 first of all, I just want to caution you
21 that this is a confidential document and
22 it contains redacted information. So
23 we're going to be careful in discussing
24 it.

25 Just to get grounded here, can

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2 you describe the different sections of
3 the table that is depicted in this
4 Exhibit 1768? What's the top half?

5 A. The top half is the set of
6 comparables used by Mr. Yearley.

7 Q. And the bottom half?

8 A. Is the full comparable set
9 that we utilized at Rothschild for our
10 analysis.

11 Q. And without reference to the
12 circles at this point, what do the
13 numbers represent across the Y axis here?

14 A. The numbers represent the
15 historical EBITDAR margins of this group
16 of carriers since 2001.

17 Q. Without describing the level
18 of margin that you noted on the bottom
19 right of the chart, what have you done
20 with the red circles? What have you
21 tried to depict with the red circles?

22 A. The red circles indicate
23 EBITDAR margins in excess of American's
24 target for 2013.

25 Q. Now, the top half of this

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2 chart is what Mr. Yearley presented in

3 his report; is that right?

4 A. Yes.

5 Q. And you're aware that he
6 contended that if you, if you look at
7 that set of airlines, that going back 10
8 years there were very few instances where
9 American's targeted EBITDAR margin was
10 met or exceeded by the performance of
11 those carriers, right?

12 A. Yes.

13 Q. What does your analysis of a
14 broader set reveal?

15 A. It indicates when you look at
16 that broader group there's a very
17 significant number of times where
18 carriers have exceeded the targeted
19 margin.

20 Q. You're aware that Mr. Yearley
21 prepared a companion exhibit that he
22 described as a frequency histogram with
23 this document?

24 A. Yes.

25 Q. I'm going to hand that to you.

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2 It's marked as American Exhibit 1769. I
3 don't believe this document contains any
4 confidential information. But just to
5 get us grounded, can you describe what
6 the two bars, the gray and the orange
7 bars represent?

8 A. The gray bar, the gray bars
9 represent the cases where the comparables
10 Mr. Yearley utilized were those carriers
11 during that period 2001 to 2011 achieved
12 EBITDAR margins in the range set forth on
13 the bottom of the chart a, the number of
14 times.

15 The orange is for our
16 comparable set, the broader comparable
17 set when carriers achieve EBITDAR margins
18 in the range set forth on the bottom of
19 the chart.

20 Q. And if you limit your focus to
21 those that Mr. Yearley did, is it fair to

22 say that the majority of the historical
23 frequencies fell on the far left of the
24 chart?

25 A. Yes, if you look at the three

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2 left-most bars and add them together that
3 exceeds 50 percent.

4 Q. And when you expands your
5 analysis to include the comparator set
6 that you deem relevant, what does the
7 frequency suggest?

8 A. I think you get a more
9 realistic sense of profitability in the
10 industry over this period of time and not
11 surprisingly statistically if you look
12 toward the middle you'll see that there's
13 a concentration in the, whether it's 10.5
14 to 12.5 to 15 to 17.5, if you add those
15 together with the orange you're going to
16 be close to 50 percent and there's still

17 a few to the right and obviously there's
18 some to the left as well.

19 Q. Mr. Yearley also criticized in
20 his testimony the relevance of your
21 utilization of the other airlines' plans
22 of reorganization as a datapoint. Do you
23 have that testimony in mind?

24 A. Yes.

25 Q. Can you explain why you deemed

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2 it relevant and for what purpose you
3 considered the data that you gleaned from
4 the other airlines' POS?

5 A. I think that information is
6 important because it indicates a sense of
7 how companies going through the same
8 process American is going through, the
9 same industry, look at their business
10 when they were in Chapter 11, when
11 companies have an obligation to its

12 stakeholders to take a very close and
13 detailed look at their business, develop
14 a credible business plan and put together
15 a set of projections that they believe
16 allow it to emerge as a viable company at
17 the time the court confirms their plan of
18 reorganization.

19 So the management teams and
20 the stakeholders with whom they were
21 working were looking at the environment
22 that existed at the time, were looking at
23 the challenges that the business would
24 face at the time it would emerge, and
25 then put together a plan that had a set

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2 of projections that they felt would
3 confirm their plan of reorganization and
4 would produce a viable business.

5 Q. Have you summarized that data
6 on a new exhibit that your team has

7 prepared?

8 A. Yes.

9 Q. I hand you American 1770. And
10 I caution you that the information to the
11 far highlighted in yellow that depicts
12 the American data is confidential and so
13 this document, like the first, is going
14 to be filed under seal, or offered under
15 seal, excuse me.

16 Without regard to the columns
17 to the right involving American, just get
18 us around it and explain to us what is
19 presented with regard to the other
20 carriers on this exhibit?

21 A. Well, we have in this case is
22 the carriers that filed plans of
23 reorganization and the date on which, the
24 time period on which they emerged. And
25 then where we have the column heading

2 EBITDAR margin, T equals zero is the
3 first year in which they emerged. T plus
4 1 is the first year after emergence. T
5 plus 2, the second year, and so on.

6 Q. Have you had occasion to
7 review the margins targeted by these
8 carriers with the industry norms that Mr.
9 Yearley displayed in his report?

10 A. Yes.

11 Q. And I can direct your
12 attention for comparative purposes to the
13 first exhibit I gave you, 1768.

14 A. Yes.

15 Q. Let me first ask you how does,
16 how do the EBITDAR margins that were
17 targeted by Delta in 2007 compare to what
18 the industry was experiencing in the
19 years leading up to that?

20 A. The margins projected by Delta
21 in its plan are in excess of the -- of
22 the margins earned in the industry in the
23 comparable set in the years preceding,
24 except for some of the low cost carriers,

25 where Delta's margins are closer in line

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2 to their performance.

3 Q. If I can direct your attention
4 to the bottom line on Exhibit 1768, which
5 is denominated as the non-AMR average,
6 what is depicted there?

7 A. That is the average of this
8 full group of comparables excluding the
9 margin for American Airlines.

10 Q. And if you look at that full
11 group of comparables, how does that
12 compare to Delta's targeted EBITDARs?

13 A. In 2006, the year prior to
14 Delta's emergence, it's lower. And in
15 2007, the first year that Delta emerged
16 it's pretty much right on to the
17 projection presented.

18 Q. Looking back I'm asking you
19 from 2001 through 2006, what does that

20 analysis indicate?

21 A. It indicates that Delta's
22 projection is significantly higher.

23 Q. And have you done a similar
24 evaluation of the other carriers that are
25 depicted on 1770?

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2 A. Yes.

3 Q. What did that analysis reveal?

4 A. Very similar to what we just
5 discussed with Delta.

6 Q. Before we leave this exhibit,
7 I just want to direct your attention to
8 the American column T = 0. I don't want
9 to discuss the number at all, but can you
10 explain what is and isn't included in
11 that first year of T = 0 there for
12 American.

13 A. What is not included is the
14 full year of labor cost savings and that

15 number because we're not assuming that
16 obviously we're in 2012 now. So I think
17 I said -- we're in 2012 now and American
18 has not yet emerged from Chapter 11.

19 Q. And in the ensuing years, T +
20 1, 2 and 3 those assume a full year of
21 relief requested in this motion?

22 A. Correct, and that the company
23 has emerged and is operating outside of
24 Chapter 11.

25 And I think, just to finish

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2 answering the question, the comparison
3 shows that the numbers projected for
4 American are below the average of the
5 other carriers that they were projecting
6 when they emerged from Chapter 11.

7 Q. Now, the unions have pointed
8 out that these other carriers failed to
9 achieve the margins that were projected

10 in their plans of reorganization. What
11 does that suggest to you?

12 A. Well, what it suggests are the
13 challenges that this industry faces and
14 why, frankly, it's a very difficult
15 industry given its high fixed costs, and
16 susceptibility to shocks beyond
17 management's control.

18 For example, in the period
19 since we were talking about Delta, Delta
20 emerged not long after that there was a
21 big spike in fuel prices which has a
22 significant impact on the liquidity of a
23 carrier as well as its profitability, but
24 as we talked about before, liquidity is
25 an important financial metric for an

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2 airline.

3 At the same time, as
4 everyone's very well aware, we've had a

5 significant economic downturn which has
6 placed meaningful pressure on companies's
7 profitability for a period of time slowed
8 traffic, airline traffic, and those are
9 two items that are very difficult to
10 project.

11 Q. With respect to liquidity in
12 particular, have the analysts, has the
13 analyst community settled on an
14 appropriate liquidity range for US
15 commercial airlines in today's economy?

16 A. Most analysts and I think most
17 management teams like to see about 20, 20
18 percent of revenues, you know, cash, you
19 know, availability under a revolver,
20 pretty standard.

21 Q. Lastly, Mr. Resnick, it has
22 been suggested here that American could
23 reduce its targeted EBITDAR margin by one
24 percent, to use an example, and then go
25 ahead and reduce the requested labor

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2 concessions by corresponding dollar
3 amounts. Do you agree with that
4 assertion?

5 A. No. I don't agree. I wish it
6 were that easy to do the arithmetic that
7 way, but the reality, and I think I've
8 seen this through our work on the plan
9 and I think Ms. Goulet and Mr. Dichter
10 have addressed this as well, that an
11 airline is a very complex business and
12 the interrelationship between cost and
13 revenues is an important factor that you
14 need to consider and to say that you can
15 take one change in cost and have the
16 impact on EBITDAR doesn't reflect the
17 significance of how certain cost changes
18 such as code sharing or fuel would affect
19 the revenue of a company. That's tied to
20 the fleet plan. And there are a whole
21 host of elements that interrelate.

22 And I think that analysis is
23 really the key way to assess the

24 viability of the business not by looking
25 at one financial metric, because EBITDAR

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2 is important, but there are other
3 financial metrics that are important to
4 an airline's viability as we talked
5 about, such as liquidity, you'd need to
6 know the impact on that.

7 So you just can't isolate the
8 one and not take into account the others.

9 MR. POLLACK: Your Honor, may
10 I just have a moment to confer with
11 my colleagues.

12 We have nothing further,
13 Judge, pass the witness.

14 THE COURT: All right.

15 Do you want a short break
16 before proceeding?

17 MS. PARCELLI: Yes, please.

18 (A recess was taken.)

19 THE CLERK: All rise.

20 THE COURT: Please be seated.

21 Proceed.

22 MS. KRIEGER: Good afternoon,
23 your Honor.

24 THE COURT: Good afternoon.

25 CROSS EXAMINATION

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2 BY MS. KRIEGER:

3 Q. Good afternoon, Mr. Resnick.

4 Kathy Krieger for the Allied Pilots
5 Association.

6 Mr. Resnick, do you have
7 before you the declaration of Andrew
8 Yearley?

9 A. No. Unless you can tell me
10 where it might be.

11 Q. This is Exhibit 100-A. Have
12 you read that declaration?

13 A. Yes.

14 Q. I understand you take issue
15 with that declaration's discussion of
16 whether or not local cost carriers belong
17 in the comparable set?

18 A. I do.

19 Q. First of all, you're aware,
20 aren't you, that in all its public
21 statements and representations and all
22 its public filings prior to this
23 proceeding, American has consistently
24 compared itself with the large network
25 carriers, correct?

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2 A. Yes.

3 Q. And it's excluded low cost
4 carriers from that?

5 A. Yes.

6 Q. Now if you could turn to page
7 14 of Mr. Yearley's declaration, and
8 that's Exhibit 100-A. There's a series

9 of bullet points that address each of the
10 additional carriers that were included in
11 the comparable set you would like to have
12 us review. Can you review that and tell
13 me which facts in there you dispute and
14 why?

15 A. Well --

16 Q. Start with the Alaska
17 Airlines, the description there, is there
18 anything in there that is wrong?

19 A. Well, I think --

20 THE COURT: Counsel, just for
21 the record, can you make it clear,
22 I don't have it in front of me, are
23 you talking about a paragraph, a
24 page, a sentence, a chart?

25 MS. KRIEGER: I apologize. I

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2 thought you had our book. May I
3 approach, your Honor?

4 THE COURT: Thank you. So
5 this is essentially one paragraph
6 on each --

7 Q. It's under paragraph 17 and
8 it's four bullet points laid out at page
9 14 of the declaration. Could you start
10 with Alaska Airlines and just which
11 factual statements in there do you
12 disagree with and why?

13 A. Yes. But first I'd just like
14 to clarify that Mr. Yearley also excludes
15 Southwest which is not listed in this
16 group, but just to be clear, that's
17 excluded and it is included in our group,
18 just to correct what you had said before.

19 Q. Correct, and he did also
20 include it as a point of comparison for
21 the EBITDAR comparison, correct? But
22 looking at those starting with Alaska,
23 what in there do you disagree with and
24 why?

25 A. Well, I disagree with the

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2 statement that it's not appropriate to
3 include Alaska Airlines because it's
4 focused solely on the Pacific Northwest
5 and West Coast.

6 Q. Well, I was just -- just
7 what's stated there in that bullet point,
8 I think those are facts.

9 MR. POLLACK: I'm going to
10 object to the form of that
11 question.

12 THE COURT: I mean there's a
13 way to do this. It's just, I mean
14 I understand you may be trying to
15 move it along and I appreciate
16 that, but it may just be cleaner to
17 just ask the sentence by sentence
18 --

19 Q. If you could go sentence by
20 sentence in the first bullet point, which
21 sentence you disagree with and why?

22 A. Well, I disagree with the
23 final sentence where it says as such, it
24 is not comparable to AMR. AMR is larger
25 and operates a nationwide network, but as

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2 I indicated earlier, AMR competes with
3 low cost carriers such as the Alaska
4 Airlines in certain segments of its
5 market and just because it's not the same
6 size doesn't mean it's not comparable.
7 That's the point with which I disagree.

8 Q. But you agree that the
9 preceding sentence says that it has a
10 smaller footprint, it's a regional
11 carrier in terms of its footprints?

12 A. Yes, those are accurate facts.

13 Q. Under Allegiant Airlines, the
14 second bullet point.

15 A. Well, I agree with the
16 description of Allegiant Airlines, but I

17 take issue --

18 Q. You agree with what's
19 described there?

20 MR. POLLACK: Your Honor, I
21 think the witness should be allowed
22 to answer the question.

23 Q. Is there any fact there stated
24 that you disagree with?

25 THE COURT: There's a way to

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2 do this. I mean read the sentence,
3 do you agree Allegiant Airlines, a
4 low cost point to point carrier
5 that offers scheduled and chartered
6 air service, yes, no.

7 MS. KRIEGER: I was hoping not
8 to have to read each one.

9 THE COURT: Sometimes if there
10 are assumptions baked into the fact
11 this is a bullet point list that

12 supports sort of this bracketed by
13 assumptions, you may have to go
14 back to the good old fashioned days
15 of reading the statement.

16 Q. Putting aside these
17 assumptions, is there any statement in
18 there that you dispute factually?

19 A. I would disagree where the
20 sentence begins "Its business model
21 differs substantially from AMR." I think
22 it does differ from AMR, but AMR does
23 serve leisure travelers. Allegiant
24 focuses exclusively on them, but American
25 serves them also, and therefore, they do

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2 compete when they have scheduled flights
3 against one another.

4 Q. And do you know the extent of
5 scheduled flights against one another?

6 A. I do not know exactly what the

7 schedule, but I do know they compete with
8 one another in certain markets.

9 Q. And which markets are those?

10 A. Allegiant is, well, they're
11 located in Las Vegas. They fly
12 principally to leisure markets. I don't
13 know exactly their schedule by memory,
14 but I know Florida, Las Vegas.

15 Q. Okay. On JetBlue Airlines, is
16 there any sentence in that third bullet
17 point that you disagree with?

18 A. I would, I would disagree with
19 what I consider the emphasis at the end
20 that says entirely different from AMR's
21 traditional network carrier model. It is
22 different, but again, they do, they do
23 compete with one another.

24 Q. Okay. "JetBlue's product and
25 service offering, new planes, single

2 cabin with high quality products and
3 services," do you agree with that?

4 A. Yes, that's a correct
5 description of JetBlue.

6 Q. And you agree that its network
7 is primarily a point to point network?

8 A. Yes.

9 Q. And you agree that the
10 business model is focused on limited
11 fleet types and a low cost operation?

12 A. Yes.

13 Q. Okay. And Spirit Airlines,
14 finally, the fourth bullet point, is
15 there any sentence in there that you
16 disagree with?

17 A. I think that's a correct
18 description of Spirit Airlines.

19 Q. Okay. Now, you're aware,
20 aren't you, that in Delta's restructuring
21 that its financial advisors, Blackstone,
22 excluded low cost carriers, the so-called
23 LCCs, from the comparators?

24 A. I do not recall that.

25 Q. You're aware that in the

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2 Northwest restructuring, its financial
3 advisors, Seabury, excluded all the low
4 cost carriers from its comparator set?

5 A. I just don't recall that.

6 Q. And you're aware that in the
7 United Airlines plan of reorganization in
8 its valuation that Rothschild as
9 financial advisor excluded all the low
10 cost carriers, correct?

11 A. I just don't recall.

12 Q. Well let me see, have you --
13 did you look at the plan of
14 reorganization from United Airlines in
15 your analysis and advice to American
16 Airlines?

17 A. I did, but I haven't looked at
18 it for some time.

19 Q. Can I draw your attention to,
20 well it's the United States bankruptcy

21 court, Northern District of Illinois was
22 the jurisdiction in which you pulled the
23 papers?

24 A. I assume so. I didn't work on
25 that, that matter, but that's where the

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2 case was filed.

3 Q. Rothschild did?

4 A. Rothschild did, yes.

5 Q. And the docket entry 13279
6 from October 2005, was the first amended
7 disclosure statement filed by United
8 Airlines that included an exhibit from
9 Rothschild in which Rothschild laid out
10 its comparator analysis?

11 MR. POLLACK: Objection;
12 Judge, lack of foundation at this
13 point.

14 THE COURT: I think this would
15 be more productive with a document

16 in front of him. I don't know that
17 he's going to disagree with you,
18 but.

19 Q. You don't remember that
20 Rothschild says that LCCs were excluded
21 from the comparable companies analysis
22 due to their vastly different business
23 models?

24 MR. POLLACK: Continuing
25 objections?

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2 THE COURT: No, I think that's
3 appropriate. That's a substantive
4 question, it's not a procedural.
5 Can you just identify which case
6 you're referring to.

7 Q. Yes, this is United Airlines,
8 the case is 02-48191. It's United States
9 bankruptcy court for the Northern
10 District of Illinois. We can ask the

11 document to be admitted as a public
12 record that we can take notice of, but
13 it's docket entry 1327 --

14 THE COURT: I don't need a
15 docket entry. You had been talking
16 about three different cases.

17 A. So if you're going to ask the
18 witness about the positions I wanted to
19 know which case it's in.

20 Q. It's Exhibit 29 of the
21 Rothschild valuation analysis associated
22 with that. Does that refresh your
23 recollection?

24 A. Not unless you show it to me.
25 No, as I said, that was from 2006. I

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2 didn't work on the matter. I'm happy to
3 look at a document.

4 Q. Did any of the plans of
5 reorganization that you did look at

6 contain valuation analyses that included
7 the comparators you've included here for
8 American's consideration?

9 A. I don't recall.

10 Q. Now, you indicated that you
11 are -- Rothschild's advice to American
12 was showing them the way in which other
13 airlines that had gone through bankruptcy
14 and were emerging had thought and that
15 was your point in using those plans of
16 reorganizations?

17 A. Yes, that was part of the data
18 for them to consider in developing their
19 business plan, not exclusive, but part.

20 Q. Isn't it true that all of
21 those plans of reorganization that you
22 provided, they were reached by way of
23 consensual agreements with labor,
24 correct, there was no court ruling that
25 approved or blessed rejection of the

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2 pilots' collective bargaining agreement,
3 for example, based on those project
4 EBITDARs, correct?

5 A. I just don't recall. I know
6 several of them, including United went
7 through 1113 processes. I just don't
8 recall whether they reached agreement
9 prior to the end or after a conclusion.

10 Q. Well let me ask you, all the
11 plans of reorganization were put together
12 and presented for a vote after they had
13 achieved agreements, no?

14 A. Yes, that's correct.

15 Q. And those were voluntary
16 agreements, those were not court imposed
17 terms, correct?

18 A. I don't recall.

19 Q. And for the pilots, for
20 example, the EBITDAR projections that
21 were shown in those final plan of
22 reorganizations, the final business plan,
23 was developed based on a model that

24 included ratified collective bargaining
25 agreements or voluntary agreements with

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2 labor?

3 A. Which case are you referring

4 to?

5 Q. The other plans of

6 reorganization that you examined?

7 A. I just don't recall that.

8 Q. Now let me ask you, you also

9 talked about the targeted EBITDARs for

10 these other airlines that went through

11 Chapter 11. Isn't it the case that the

12 reason that they didn't reach their

13 projected EBITDARs was because actual

14 fuel price increases intervened?

15 A. Since emergence from Chapter

16 11?

17 Q. Yes.

18 A. Yes, increase in fuel prices

19 was a reason.

20 Q. Now in looking at your revised
21 analysis, Exhibit American Airlines 17 --
22 would you look at 1770. Do you have that
23 in front of you?

24 A. Yes.

25 Q. On the very far right column,

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2 you model, or you have a chart there for
3 only AMR without labor savings, that is
4 zero labor savings, that's correct?

5 A. Yes.

6 Q. Now it's true, isn't it the
7 case, that all of the unions here have
8 offered labor savings as part of the
9 negotiations; isn't that correct?

10 A. I know there have been
11 negotiations based on the proposal made
12 by American.

13 Q. Well more to the point,

14 there's not a single union involved in
15 this case that has insisted on zero labor
16 savings?

17 A. I'm sorry, I can't understand
18 you.

19 Q. There's not a single union in
20 this case that has insisted on zero labor
21 savings, that is maintaining the existing
22 collective bargaining agreement?

23 A. That is correct.

24 Q. And in point of fact for the
25 pilots, for example, the range of labor

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2 savings we're talking about is in the
3 neighborhood of at least 240 million and
4 higher?

5 MR. POLLACK: Objection;
6 without foundation.

7 Q. You've heard the testimony?

8 THE COURT: I'll allow it.

9 A. I've heard some of the
10 testimony. I've heard that number, but I
11 have not heard all the testimony.

12 Q. It's considerably closer to
13 the 370 million ask than it is to zero,
14 correct?

15 A. Arithmetically, that is
16 correct.

17 Q. Okay. And why does your
18 column model only the alternative of zero
19 labor savings?

20 A. Because that shows a range.
21 It shows the AMR proposal and if there's
22 no agreement, so I call that, that's a,
23 you know, that's a range. It could be
24 something in between if that's what
25 results from the mediation that's

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2 ongoing.

3 Q. At all times it was possible

4 for you to model what the metrics would
5 be in the event of labor savings greater
6 than zero, correct?

7 A. We did not know where these
8 negotiations would end, so what we did
9 know was if there was no agreement and we
10 know the proposal that we made, so that's
11 what we put on the chart here.

12 Q. Now, the EBITDAR margins that
13 were projected for United and US Airways
14 were not as high as the target margin for
15 2017 for AMR, correct?

16 A. I'm sorry, could you repeat
17 that question again.

18 Q. The United Airlines and US
19 Airways EBITDAR margins are in the realm
20 of 12 percent to under 16 percent?

21 A. In the early years, but in the
22 later years, you know, US Airways is
23 almost 23 percent. You know, United, I
24 mean you can see 15.4. Northwest 20.2.
25 Delta 17.8.

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2 Q. In your exhibits --

3 A. The average is 19.1.

4 Q. In your exhibits for 101 and
5 102, you've revised our exhibits 101 and
6 102 and called them American Airlines
7 1768 and 1769?

8 A. Yes.

9 Q. And you've changed the red
10 circle target to match an EBITDAR
11 artifact of American's plan for 2013,
12 correct?

13 A. Yes.

14 Q. That is not the target of
15 American's plan, the target is several
16 percentage points higher, correct?

17 A. Ultimately, yes, that's what
18 they project.

19 Q. Not ultimately, that was the
20 target that drove the 3.1 billion dollar
21 cash improvement target, correct?

22 A. I would not say that's what

23 drove it, no.

24 Q. That's what corresponds to
25 that target?

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2 A. I don't think that's the way
3 to look at it, no.

4 Q. And that's the target that the
5 testimony shows drove the 1.5 billion
6 allocation of labor cost savings needed
7 to fill the gap?

8 A. Well, I think the company
9 looks at that over a period of time.
10 That's why there's an average number and
11 --

12 Q. Right, it was targeted to
13 reach that in 2017 and then back
14 engineered to come up with what the
15 number would have to be each year in
16 order to achieve that, correct?

17 A. No.

18 Q. The number of savings?
19 A. No.
20 Q. The 1.25 billion in labor
21 savings was the average over six years to
22 reach the 1.5 billion improvement in
23 2017, correct?
24 A. No, I disagree with the whole
25 premise of your question about it being

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2 back engineered to get to that. I think
3 that's inaccurate and misleading.
4 Q. Okay, forget about back
5 engineered. The number that was shown --
6 the document that you refer to is the
7 document that you're comfortable with,
8 the document that embodies the business
9 plan, is that the February 1st, 2012
10 presentation, called the Plan For
11 Success?
12 A. Yes.

13 Q. That's in the record as
14 American Airlines Exhibit 1505, I don't
15 believe?

16 A. I don't know what exhibit it
17 is.

18 Q. But I just want to get clear,
19 you said there's a document that you're
20 totally comfortable with and that's the
21 business plan, is that the document
22 you're referring to?

23 A. Yes.

24 Q. And in that document it shows
25 the 3.1 billion dollar total cash

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2 improvement needed and it shows how --
3 the 1.5 billion was the plug that needed
4 to be filled after solving for the amount
5 of revenue and the amount of non-labor
6 cost savings, correct?

7 A. I guess I just disagree with

8 your statement that it was the plug.

9 That was -- I disagree with the
10 characterization that it was a plug. It
11 was one component of the plan.

12 Q. I'm sorry, the actual document
13 uses the word gap, not plug, so I
14 apologize, but it uses the word gap and
15 1.5 billion is the gap we're talking
16 about and the gap is driven off the 17 --
17 excuse me, the high EBITDAR rate for
18 2017?

19 A. I think it's -- the higher
20 rate, the rate, like all the other
21 airlines' plans of reorganizations as
22 we've indicated increases over time as
23 the company reorganizes and begins to
24 achieve its objectives in its business
25 plan.

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2 Q. But the 2013 EBITDAR rate that

3 happened to be an artifact of that
4 document was not the target that drove
5 the 370 million dollar labor ask for the
6 pilots, it wasn't achieving that target?

7 A. Again, I think you have to
8 look at the EBITDAR improvement over
9 time. That's how the company looks at
10 it. And yes, it was higher at the end of
11 the projection period than it was at the
12 beginning, which is kind of logical to me
13 as the company begins to achieve its
14 revenue improvements and cost savings.
15 So it, yes, it fit together --

16 Q. If the company --

17 THE COURT: One person at a
18 time. If he's in the middle of an
19 answer, let him finish his answer.

20 A. It fit together with the
21 period of the plan.

22 Q. Okay. But if the period, if
23 the plan had targeted the number that you
24 indicate as your target on Exhibit 1768,
25 if that were in fact the EBITDAR target

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2 that was driving the gap from which we
3 would quantify the labor ask of the
4 pilots today, what would be the total
5 amount of labor ask if it were driven off
6 that number?

7 MR. POLLACK: Objection.

8 Again to the characterization. He
9 disputed it three times now.

10 THE COURT: Experts are asked
11 hypotheticals all the time. So
12 I'll allow it and could you ask the
13 question again.

14 Q. If the EBITDAR target for the
15 business plan from which we compute the
16 total amount of labor ask were in fact
17 the target that you show here on AA
18 Exhibit 1768, what would be the total
19 labor cost gap needed to achieve that
20 target?

21 A. I understand the question. I

22 haven't done that calculation and --

23 Q. Would it be less than 1.5

24 billion?

25 A. I don't know. It's a

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2 complicated question because as I said in

3 my earlier testimony, you cannot simply

4 just take a reduced margin as you're

5 suggesting here and say what's -- let's

6 reduce the labor ask by that same amount

7 and assume it will have absolutely no

8 impact on revenues, fleet plan or the

9 other complex elements of how this

10 business operates.

11 So I understand the question.

12 And you're saying if the margin in the

13 final year is the margin we're indicating

14 here, what does that do to the labor

15 savings. I just don't know.

16 Q. Forgetting about the labor
17 saving, let's go back to the higher order
18 of Bev Goulet's Plan for success
19 document, the circle that showed 3.1
20 billion total improvement, that was based
21 on the higher EBITDAR number. What would
22 that number be if, just that gross
23 number, forgetting about -- because
24 that's how it was built, if it was only
25 the target you've shown here on AA

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2 Exhibit 1768?

3 A. I said I cannot answer that
4 because I don't know the
5 interrelationships with respect to
6 revenue pre-plan.

7 Q. We're not talking about how
8 it's broken down, just the total cash
9 improvement needed?

10 A. I don't follow the question.

11 Q. Would it be less than 3.1
12 billion?

13 A. You've lost me in terms of
14 what your question is.

15 Q. Okay. The chart that Bev
16 Goulet presented as the justification for
17 the labor ask showed a high EBITDAR
18 target, it showed a total cash
19 improvement of 3.1 billion needed by 2017
20 which achieved that metric and then it
21 broke it down into revenue, non-labor
22 cost savings and labor cost savings,
23 correct?

24 A. Yes.

25 Q. And the total number that

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2 corresponded with that high EBITDAR of
3 cash improvement was 3.1 billion,
4 correct?

5 A. Yes.

6 Q. Okay. So I'm just asking if
7 that EBITDAR number were not the number
8 there but was the number in AA Exhibit
9 1768, what would that do to the 3.1
10 billion total cash improvement needed to
11 achieve that?

12 A. Well, if the margin was not as
13 high, you have to have more revenue or
14 more cost savings to end up at the same
15 level of profitability.

16 Q. If the margin were --

17 A. If the margin were -- if I
18 understand your question, if the margin
19 was lower, the revenues were the same.

20 Q. I'm not saying what the
21 targeted revenues were, just what's the
22 total cash improvement that would need to
23 be achieved by American in order to get
24 to that EBITDAR? Is it less than 3.1
25 billion?

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2 A. I just -- I don't know. I'm
3 not -- I'm sorry, but I'm not following
4 your question.

5 THE COURT: Perhaps counsel,
6 if you want to pursue this further
7 you can actually break out that
8 document.

9 MS. KRIEGER: Maybe we'll take
10 a break and get that confidential
11 document.

12 Q. Just moving to the component
13 you mentioned that you can't just do a
14 mathematical reduction because labor cost
15 items like codeshare factor into how the
16 business plan is built.

17 A. Well, I said a number of
18 items. I think that was one of the items
19 I mentioned.

20 Q. Do you treat codeshare as a
21 labor cost?

22 A. I think it's a component of
23 what the company is asking for.

24 Q. So it's actually a cost

25 reduction attributable to the pilots?

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2 A. Well, I'm not, I'm not sure
3 how the company accounts for code
4 sharing. But it is an element of the
5 plan that the company has proposed to
6 include greater code sharing. So I'm
7 just saying if, if part of the change
8 includes modifications to that, it could
9 have a revenue impact as well.

10 Q. Okay. Let's say it doesn't
11 because let's just say American is doing
12 what it did in its chart which is it did
13 not include code sharing or scope changes
14 as part of the 1.5 billion in labor cost
15 reductions.

16 A. Right.

17 Q. Okay. So take that off the
18 table. Again, are you saying it's
19 impossible to answer what would be the

20 effect of a lower target EBITDAR?

21 A. I think we have to go back and
22 understand what elements were being
23 changed and see the impact it has on
24 other components of the business plan.

25 For example, if part of those

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2 changes make certain routes less
3 profitable or unprofitable to fly, just
4 in terms of other cost elements, then the
5 company may not fly those routes and
6 that's potentially going to have a
7 revenue impact. It's going to have an
8 impact on the fleet plan.

9 So I'm saying it's a more
10 complex business model without knowing
11 the impact of what you're removing on the
12 cost side just to see.

13 Q. But you know what was proposed
14 to the unions was not a specific

15 configuration in theory, but just a

16 number, okay?

17 A. Okay.

18 Q. Just a number, it could be

19 gotten in theory, American is now telling

20 us, any number of ways as long as it adds

21 up to 370 million for the pilots,

22 correct?

23 A. I'm not sure what's being

24 said? The current negotiations.

25 Q. Not in the current

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2 negotiations, just when it was rolled

3 out, this is your target number. It's

4 1.5 billion and we're dividing it equally

5 across all labor groups, not made up of

6 particular bricks and stones, but just

7 here's the number you have to reach,

8 correct?

9 A. My understanding is that there

10 are components of what's being asked on

11 --

12 THE COURT: We're going to
13 cope having the same problem if
14 people are talking over each other,
15 so.

16 Q. It was presented as this is a
17 fixed number and we need to meet it,
18 correct?

19 A. My understanding is that there
20 were components of the ask in terms of
21 what accounts for the savings.

22 Q. American had estimated what it
23 thought it could do that would reach
24 those savings?

25 THE COURT: I think there's an

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2 objection.

3 MR. POLLACK: I'm going to
4 object at this. We're way beyond

5 the scope of what I covered with
6 him. He wasn't involved in these
7 particular meetings and discussions
8 and we have a scope issue.

9 MS. KRIEGER: What he's trying
10 to pronounce on is the idea that
11 the target ask number would not be
12 if EBITDAR were different.

13 THE COURT: Let me say I
14 understand what the question is and
15 I think you've made your point.
16 And again, the point of rebuttal is
17 not to go back through the original
18 direct testimony. But because some
19 of these things are interrelated
20 I've given people some latitude. I
21 guess my point is a more practical
22 one. I think I understand what
23 your question is, I think I
24 understand the witness' answer, so
25 I think I got it.

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2 Q. Well let me ask you just this.

3 You mentioned that there's a host of
4 conflicts underlying models and
5 assumptions that prohibit you from giving
6 any opinion what the impact would be of a
7 lower EBITDAR target. Have those models
8 been provided to the other stakeholders
9 here so that we can understand what it is
10 that you're saying in this case?

11 A. Yes, my understanding is we
12 have provided the financial model that
13 the company uses to model its business
14 plan. All the supporting data have been
15 available to answer all questions.

16 Q. I'm asking about the factors
17 that make it impossible for you to model
18 anything other than American's particular
19 ask and zero labor savings?

20 A. I think we've explained the
21 interrelationships and the complexities
22 and have tried to answer questions of

23 what would happen if you change certain
24 elements and why it isn't as
25 straightforward as you suggest.

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2 Q. And have you provided an
3 explanation for why you can't run an
4 assessment of a different EBITDAR target
5 and a different dollar amount of labor
6 ask?

7 A. I believe that's been
8 discussed in the due diligence please
9 that the companies had with its
10 stakeholders.

11 Q. And have you explained it here
12 to the court?

13 A. I think I've tried to.

14 Q. Well you've said it's
15 complicated and you just can't do it?

16 A. Well, first of all, I don't
17 and Rothschild doesn't run the company's

18 business plan model. It's done by the
19 company and its financial team. They
20 report to Ms. Goulet.

21 And what I've tried to explain
22 and anyone that has done diligence has
23 seen how the model is built, how it has
24 components from various elements of the
25 company, from fleet planning, revenue

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2 management, the commercial people, the
3 people that handle the aircraft leasing,
4 and that comes together and that's what
5 people need to appreciate are the various
6 components of the model. And if you just
7 change one you have to look at the impact
8 it has on all other elements of the
9 model.

10 That's what we've tried to do
11 with the stakeholders during our
12 diligence to try to address their

13 questions around sensitivities to the
14 model.

15 Q. And have you presented to any
16 stakeholders any analysis at all showing
17 what would happen to American's metrics
18 if the EBITDAR were slightly lower or the
19 dollar amount of the labor cost reduction
20 was slightly lower?

21 A. If they would have asked those
22 questions, I think we would have tried to
23 address them.

24 Q. Now, do you agree that the
25 role of Rothschild as financial advisor

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2 to the debtor here is to maximize the
3 value of American Airlines for the good
4 of all stakeholders?

5 A. Yes.

6 Q. And is it your opinion here
7 today that American's stand-alone

8 business plan in fact maximizes the value
9 for all stakeholders in comparison to any
10 other alternative including
11 consolidation?

12 A. We have not done that analysis
13 yet.

14 MS. KRIEGER: I'll pass the
15 witness.

16 CROSS EXAMINATION

17 BY MS. LEVINE:

18 Q. Good afternoon, Mr. Resnick,
19 Sharon Levine, Lowenstein Sandler for the
20 Transport Workers Union.

21 Just really quickly. You
22 mentioned earlier that in looking at the
23 bankruptcy cases of Northwest, United, US
24 Airways and Delta each of those airlines
25 went through 1113 processes during the

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2 course of their case and then emerged as

3 stand-alone airlines, do you recall that
4 testimony today?

5 A. Yes.

6 Q. In each of those cases, isn't
7 it true that those debtors were operating
8 under debtor-in-possession financing?

9 A. Yes, I believe that's correct.

10 Q. And isn't it true that those
11 debtor-in-possession financings had
12 either labor concession benchmarks and/or
13 liquidity covenants which influenced the
14 timing of the 1113 processes?

15 A. I don't know. Or I don't
16 recall.

17 Q. But American Airlines right
18 now is not operating under DIP financing,
19 correct?

20 A. That's correct.

21 Q. In addition, isn't it true
22 that the stand-alone business plans that
23 formed the bases of those plans of
24 reorganization were supported by the
25 creditors committees in each of those

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2 cases?

3 A. I just don't recall.

4 Q. You don't recall whether or

5 not the committees actually sent out

6 letters in support accompanying a

7 solicitation package that included the

8 disclosure statement and plans in each of

9 those cases?

10 A. So maybe I didn't understand

11 the question. Is the question that the

12 committee supported the plans of

13 reorganization filed by those companies?

14 Q. Well, let me break it down.

15 The plans of reorganization were based

16 upon each of those debtor's balance,

17 correct?

18 A. Yes.

19 Q. And each of those debtors had

20 a stand-alone business plan that they

21 used in connection with their 1113

22 processes, correct?

23 A. Yes.

24 Q. And in each of those cases,
25 the stand-alone business plan which was

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2 used in connection with 1113 was also the
3 business plan that ultimately was used in
4 connection with the business plan of
5 reorganizations, correct?

6 A. That I don't know. I don't --
7 sometimes they're modified. Adjusted for
8 the 1113 process.

9 Q. Well there's modifications and
10 then there's wholesale changes, correct?

11 A. Possibly.

12 Q. So none of those plans, for
13 example, went from a plan of
14 reorganization that terminated the
15 pensions to a plan of reorganization that
16 froze the pensions; isn't that correct?

17 A. I'd have to look back at each
18 one. I mean I know some terminated, some
19 froze of those three carriers.

20 Q. But my question is more to
21 what the changes were and when those
22 changes were made. So the question
23 really is isn't it true that none of
24 those plans, business plans that were
25 used in connection with the 1113

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2 processes went through radical changes
3 between the time that the 1113 concluded
4 and the time that the plan of
5 reorganization was sent out for
6 solicitation with committee support?

7 A. I just don't know. Sorry.

8 Q. Okay. Are there ad hoc
9 committees in this case representing
10 various holders?

11 A. Recently, yes, an ad hoc

12 committee or potentially committees have
13 organized.

14 Q. There are at least two that --
15 there are at least two that we're aware
16 of?

17 MR. POLLACK: Objection;
18 beyond the scope, Judge.

19 THE COURT: I don't know where
20 we're going with this so I'll allow
21 a few questions on it see if it
22 ties in.

23 Q. Isn't it true at this point in
24 time neither of those two committees
25 support the debtors current stand-alone

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2 business plan as the business plan that
3 should form the basis of the plan of
4 reorganization?

5 A. What is true is that neither
6 of those committees hasn't had the

7 ability to do any diligence so they
8 wouldn't be in a position they've a point
9 of view on the debtors's business plan.

10 Q. Isn't it true that the debtor
11 and the committee now have a protocol in
12 place to review and further develop this
13 business plan in addition to other
14 strategic alternatives?

15 A. The debtor and the committee
16 have in place an agreement to do what the
17 debtor said it would do from the outset,
18 which is compare all strategic
19 alternatives against its stand-alone
20 plan.

21 Q. Mr. Resnick, isn't it true
22 that in each of Northwest, United, US
23 Airways and Delta none of the unions
24 actually attacked the debtor's business
25 plan as part of their 1113 case? There

2 were arguments with regard to valuation,
3 there were arguments with regard to what
4 the form of the ask should be, but none
5 of those unions attacked the debtor's
6 business plan?

7 A. I just don't know. I don't
8 recall.

9 Q. All right, well then let's
10 clarify that a little bit. In Northwest,
11 United, US Air and Delta, did any of the
12 unions retain their own investment
13 bankers to offer testimony at the 1113
14 trial?

15 A. I don't recall.

16 Q. Isn't it true in fact that
17 none of the unions offered investment
18 banker testimony in any of those cases?

19 A. I don't -- I don't recall.

20 MR. POLLACK: Objection. No
21 foundation, asked and answered.

22 THE COURT: He either knows or
23 doesn't know and there has been
24 testimony by all sides about the

25 reference to significance of other

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2 bankruptcy proceedings, so proceed.

3 MS. LEVINE: One minute, your

4 Honor.

5 THE COURT: I will comment

6 cross becomes less useful for me

7 when it becomes a memory test as

8 opposed to something we're really

9 getting an opinion, but you can ask

10 the questions however you want.

11 MS. LEVINE: I'm ceding the

12 podium.

13 THE COURT: All right.

14 CROSS EXAMINATION

15 BY MS. PARCELLI:

16 Q. Good afternoon, Mr. Resnick,

17 Carmen Parcelli for the APFA.

18 Now, Mr. Resnick, do you

19 recall that when you appeared before the

20 court before you were offered as a -- as
21 an expert as an investment banker with
22 regard to financing? Do you recall that?

23 A. Yes.

24 Q. And do you recall that
25 specifically you were not offered as an

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2 airline expert? Do you recall that?

3 A. Yes.

4 Q. And you were not offered as a
5 labor expert, do you recall that?

6 A. Yes. Thank goodness.

7 Q. Some of us love it. So on
8 your direct this afternoon you testified
9 regarding certain Wall Street analyst
10 opinions, correct?

11 A. Yes.

12 Q. And now, would it be typical
13 that Wall Street analysts would be given
14 a full confidential version of a business

15 plan to opine on?

16 A. No.

17 Q. Now, I believe you also

18 testified on cross examination with Ms.

19 Krieger that you are aware that American

20 has in other presentations consistently

21 excluded LCCs from its universe of

22 comparators, correct?

23 A. Yes.

24 Q. So then it wouldn't come as

25 any surprise to you, would it, that in a

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2 presentation that American Airlines gave

3 to the TWU in April of 2011 they said the

4 following: "We have included only the

5 other legacy carriers in our analysis

6 because their cost, unit revenue and

7 operating structures provide a more

8 consistent comparison than those of low

9 cost carriers"? That wouldn't surprise

10 you, would it, sir?

11 A. Pre the Chapter 11 filing, it
12 would not surprise me.

13 Q. And sir, you also include
14 Allegiant in your list of comparators; is
15 that correct?

16 A. Yes.

17 Q. And are you familiar with
18 Allegiant's 10-K filings, specifically
19 year end of 2012?

20 A. I have not seen it. My team
21 has looked at it, but I have not.

22 Q. And so would this change your
23 opinion then if you personally had seen
24 and reviewed the following statement from
25 Allegiant in its 10-K: It says "Unique

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2 business model: We have developed a
3 unique business model that focuses on
4 leisure travelers in small cities. The

5 business model has evolved as our
6 experienced management team has looked
7 differently at the traditional way
8 business has been conducted in the
9 airline and travel industry. Our focus
10 on the leisure customer allows us to
11 eliminate the costly complexity which
12 others in our industry are burdened with
13 in their goal to be all things to all
14 customers." Would that change your view,
15 sir?

16 A. No, I think that's a
17 description of both their business model
18 and I said their business model is
19 different from American's but they do
20 compete in certain markets for leisure
21 travelers and that's why I believe it's
22 appropriate to include them in the
23 comparable set.

24 Q. And let's take a look at your
25 exhibit that you introduced today,

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2 American Airlines 1768. And I believe as
3 Ms. Krieger pointed out that you're doing
4 a slightly different analysis that Mr.
5 Yearley did because you pegged to a
6 different EBITDAR level, correct?

7 A. Slightly different, yes.

8 Q. But let's just take what you
9 have. And so in the top part of the
10 chart where you show leg sees and their
11 historical EBITDAR, okay, so you have
12 there eight circles appearing as
13 corresponding to the target EBITDAR; is
14 that correct?

15 A. Yes.

16 Q. And not that I'm asking you to
17 counts them up, but trust me on this,
18 when you have the LCCs at the bottom part
19 of the chart, we have 36 circles, do we
20 not?

21 A. I trust you.

22 Q. Okay. And that doesn't
23 suggest to you, yes or no, that there's

24 fundamentally something different going
25 on with the LCCs than the network

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2 carriers? Yes or no?

3 A. That's a complicated question
4 to answer yes, yes or no. I think you
5 need to understand the context. My point
6 would be this is the market in which
7 American has to compete to be successful
8 today.

9 Q. But it's also the market that
10 north -- well, United and Delta compete
11 in as well, correct?

12 A. And that's why their
13 projections at the time they emerged are
14 very consistent with American's as our
15 other exhibit indicated.

16 Q. So let's move to that exhibit.
17 And there you're talking about 1770,
18 correct?

19 A. Yes.

20 Q. And I understand we're in a
21 highlighted yellow area so I will proceed
22 with the utmost caution, but directing
23 your attention to the highlighted yellow
24 area. So the next to last column, right,
25 is showing American EBITDAR under the

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2 plan, the business model plan, correct?

3 A. Yes.

4 Q. And the targets that the plan
5 dictates will be issued, correct?

6 A. Yes.

7 Q. Okay. And that assumes
8 realization of the full labor cost target
9 that is baked into the plan, right?

10 A. Correct.

11 Q. Okay. Now, the last column on
12 the page, correct me if I'm wrong, this
13 gives the EBITDAR targets as if American

14 didn't realize any of the labor savings
15 targeted, as if all contracts, all
16 employment terms that are noncontract
17 stayed at status quo, correct?

18 A. That's correct.

19 Q. Okay. So you can do the
20 EBITDAR with full realization of the
21 labor costs, correct? That's second to
22 last column?

23 A. Yes.

24 Q. And you can do the EBITDAR
25 with no realization of any labor cost

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2 savings, correct?

3 A. Yes.

4 Q. But is it your testimony here
5 today that you can't tell us what the
6 EBITDAR would be to fall in the middle of
7 those with some lesser degree of labor
8 cost savings realized in a total target

9 number?

10 A. Well, what I -- what I'd also
11 say about the last column is that --

12 Q. I know -- what's the answer to
13 the question? Can you do that or can you
14 not?

15 A. We could do it but it's
16 complicated and my point is this last
17 column is inaccurate because it doesn't
18 do, it doesn't model all the
19 interrelationships but what would be
20 happening to revenue and other elements
21 of the plan if you weren't able to
22 achieve the labor savings. I'd argue
23 this is overstated because it's too
24 similar police stick for the same reason
25 we talked about earlier.

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2 Q. I guess I'm a little troubled
3 to hear that the exhibit's not accurate,

4 but --

5 MR. POLLACK: Objection to the
6 commentary, Judge.

7 THE COURT: Just ask a
8 question, please.

9 Q. How inaccurate is it?

10 A. This is, this is the simple
11 arithmetic calculation similar to what
12 you're trying to do with EBITDAR, that --

13 Q. So the simple arithmetic
14 calculation can't be done?

15 A. I don't think it reflects the
16 complexities of the business plan when
17 you change certain elements.

18 MS. PARCELLI: Nothing
19 further.

20 THE COURT: Anything else on
21 cross? Redirect?

22 MR. POLLACK: Judge, can I
23 have five minutes?

24 THE COURT: All right, five
25 minutes it is.

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(A recess was taken.)

3

THE CLERK: All rise.

4

THE COURT: Please be seated.

5

Proceed.

6

MR. POLLACK: Judge, we have

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no redirect. At this point we just

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move the admission of our Exhibits

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1768 through 1770.

10

THE COURT: Any objection?

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All right, no objection, they will

12

be admitted.

13

All right, I applaud you in

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your accuracy of your prediction in

15

getting through four witnesses. At

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11:30 this morning I thought that

17

was impossible.

18

So thank you. So tomorrow

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morning we resume with Mr. Dichter

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and then Beverly Goulet and that

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would conclude the rebuttal case?

22 MR. GALLAGHER: It would, your
23 Honor, and I have one more piece of
24 good news. Ms. Levine and I have
25 worked out the issue that was

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2 possibly going to require a 10 page
3 brief by Friday and I'm happy to
4 say we will not be burdening you
5 with that brief on either side.

6 THE COURT: All right, I very
7 much appreciate your efforts. Is
8 there something that you want to
9 introduce in the record to
10 memorialize your situation, it's
11 just best left?

12 MR. GALLAGHER: I think it's
13 best left where it is right now,
14 your Honor. Thank you.

15 THE COURT: That's fine.
16 Thank you for your efforts. I

17 appreciate that. And to the extent
18 that it has to be addressed for
19 purposes of the overall 1113
20 decision, I trust you will tell me
21 what you want to make of it in
22 briefing.

23 All right, there anything else
24 that we need to address today
25 before we adjourn? I think I still

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2 have the supplemental Lynn
3 declaration which I think was the
4 subject of some discussion as to a
5 heading or something simply
6 profound that needed to be
7 addressed.

8 MR. JAMES: We agreed to some
9 edits which they graciously agreed
10 to accept.

11 MR. GALLAGHER: I believe

12 those in in progress, your Honor, I
13 don't know if it's been yet filed.
14 But as long as --

15 THE COURT: I'll hold on to it
16 and we can clean up that issue
17 tomorrow then.

18 MR. JAMES: Can I say one
19 thing. There are a number of
20 things in that declaration we don't
21 agree with but it's nuance, it
22 doesn't make sense to bring her
23 back or burden you, so we're going
24 to not fight over it.

25 THE COURT: That's fine.

1
2 Certainly feel free if you need to
3 make a brief statement on the
4 record as to that, but that's fine.
5 I will not introduce anything into
6 evidence until we have that bit of

7 housekeeping addressed and then we
8 can do it tomorrow at an
9 appropriate time. But let's not
10 forget.

11 MR. GALLAGHER: Your Honor, we
12 don't know whether to anticipate
13 any surrebuttal evidence by the
14 unions at this point.

15 THE COURT: All right. Is
16 there any current thinking on that
17 issue one way or the other?

18 MR. JAMES: Without
19 consulting, I think the answer is
20 no. The answer is yes there's
21 current thinking going on as you're
22 watching it progress and I think
23 we're not going to do surrebuttal;
24 is that right?

25 MR. CLAYMAN: At this point we

2 don't know, your Honor.

3 THE COURT: That's fair
4 enough. I would assume that the
5 intent would be if there is going
6 to be surrebuttal that it will
7 proceed after we finish the other
8 two witnesses. And just in terms
9 of timing, I would imagine we
10 should be able to finish the two
11 witnesses tomorrow morning. So if
12 that's the case, I don't know if
13 there is any surrebuttal and this
14 is an impossible question to
15 answer, so you really don't have to
16 answer it, but I'll try it anyway,
17 if there is a surrebuttal I'm
18 wondering whether it would be
19 something that could be contained
20 tomorrow afternoon or is it going
21 to be something more lengthy?

22 MR. CLAYMAN: No, absolutely
23 it would be contained tomorrow
24 afternoon.

25 THE COURT: Again, I know it's

1

2 not fair to ask you how long it
3 will be if you don't know what it
4 is yet.

5 MR. CLAYMAN: It will not take
6 up an afternoon.

7 THE COURT: That's fine.
8 Anything else we need to discuss
9 before we adjourn. I'll see you
10 tomorrow at 10 a.m. and have a good
11 evening.

12 (Time noted: 5:34 p.m.)

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