

**In The Matter Of:**  
*ASSOCIATION OF PROFESSIONAL FLIGHT ATTENDANTS AND  
AMERICAN AIRLINES, INC.*

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*INTEREST ARBITRATION*  
*Vol. 2*  
*December 04, 2014*

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1                   BEFORE RICHARD BLOCH, ROBERTA GOLICK,  
2   AND JOSHUA JAVITZ  
3   - - - - - x  
4   IN THE MATTER OF THE INTEREST       :  
5   ARBITRATION BETWEEN               :  
6   :  
7   ASSOCIATION OF PROFESSIONAL       :  
8   FLIGHT ATTENDANTS                   :  
9   :  
10   and                                     :  
11   :  
12   AMERICAN AIRLINES, INC.           :  
13   - - - - - x

VOLUME 2

14                   The hearing in the above-entitled matter  
15   recommenced on December 4, 2014 at 9:41 a.m., at the  
16   offices of O'Melveny & Myers, 1625 Eye Street, NW,  
17   Washington DC.

18   BEFORE:   RICHARD I. BLOCH, IMPARTIAL CHAIRMAN  
19             ROBERTA GOLICK, IMPARTIAL ARBITRATOR  
20             JOSHUA JAVITS, IMPARTIAL ARBITRATOR  
21             PAUL D. JONES, AA BOARD MEMBER  
22             CINDI SIMONE, AA BOARD MEMBER  
              JOE BURNS, APFA BOARD MEMBER  
              ROBERT CLAYMAN, APFA BOARD MEMBER

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P R O C E E D I N G S

1                   ARBITRATOR BLOCH: This is the fourth of  
2                   December, and I'll turn it over to Mr. Siegel.  
3                   Proceed.  
4                   MR. SIEGEL: Before we start with our  
5                   witnesses on the record, I want to thank our court  
6                   reporter, Joey, who has every Christmas season  
7                   always baked incredible cinnamon cake or whatever  
8                   you do, Joey, and it's out there on the counter for  
9                   everybody in the room to enjoy, and I can endorse it  
10                  as being the very best. So thank you very much.  
11                  ARBITRATOR BLOCH: Joey also runs a  
12                  fitness salon.  
13                  (Laughter.)  
14                  MR. POLLAK: We can endorse Joey as being  
15                  the best.  
16                  MR. SIEGEL: This isn't on the record,  
17                  so...  
18                  All right. We call Dr. Darin Lee as our  
19                  first witness.  
20                  ARBITRATOR BLOCH: Welcome, Dr. Lee.  
21                  THE WITNESS: Good morning.  
22

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1 MR. SIEGEL: And I would like to just  
 2 present to the Panel the -- Dr. Lee's resume, which  
 3 I would like to just mark as Company Exhibit 1, and  
 4 that document has been distributed to counsel and to  
 5 the Panel members.  
 6 (Thereupon, Company Exhibit No. 1 was  
 7 marked for identification and received into  
 8 evidence.)  
 9 MR. SIEGEL: And we are going to save  
 10 time. I believe we have a stipulation with Jeff  
 11 that we are proffering Dr. Lee as an expert in  
 12 economics, labor economics, and the economics of the  
 13 airline industry.  
 14 And we would like to proffer him as an  
 15 expert witness at this time.  
 16 MR. FREUND: And we have no objection.  
 17 ARBITRATOR BLOCH: Thank you. Proceed.  
 18 MR. SIEGEL: And I would like to then also  
 19 have -- I think the best way to do this is we have a  
 20 PowerPoint presentation that Dr. Lee will work off  
 21 of.  
 22 And I have distributed that to the Panel

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1 members. And I think perhaps the best way is to  
 2 mark that as Company Exhibit 2. And then, each page  
 3 has page numbers. So we'll be able to identify in  
 4 the record what we're discussing.  
 5 (Thereupon, Company Exhibit No. 2 was  
 6 marked for identification and received into  
 7 evidence.)  
 8 MR. SIEGEL: Also, I know we have given  
 9 hard copies to the Panel members and to counsel, but  
 10 we will also have it up on the screen because I know  
 11 we have an audience in the room, and I don't know  
 12 how visible it is from a distance. But we're just  
 13 putting up on the screen what we're doing in hard  
 14 copy as well.  
 15 And then finally, by procedural agreement,  
 16 we had agreed that testimony could come in on a  
 17 presentation basis, so we won't do a completely  
 18 structured direct exam.  
 19 We'll ask the expert to discuss the  
 20 slides. But I'll -- with some guidance from  
 21 counsel's questions, but not a structured direct  
 22 exam as such.

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1 Thereupon,  
 2 DARIN LEE  
 3 Called for examination by counsel for the  
 4 Union, was examined and testified as follows:  
 5 DIRECT EXAMINATION  
 6 BY MR. SIEGEL:  
 7 Q. So perhaps, Dr. Lee, I can ask -- direct  
 8 your attention to Company Exhibit 2, and ask you to  
 9 look at page 2 and just describe to the Panel  
 10 members what this reflects.  
 11 And please feel free to make a  
 12 presentation based on your PowerPoint slides from  
 13 that point.  
 14 A. Thank you. Good morning.  
 15 If at any time during my presentation any  
 16 of the Board members have a questions, please feel  
 17 free to -- and I know you will interrupt and ask me  
 18 questions.  
 19 So I think a good place to -- a logical  
 20 place to start is kind of where we left off  
 21 yesterday, which is that APFA has already conceded  
 22 that the value of their proposed JCBA, absent the

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1 three contested items that we're here to discuss, is  
 2 \$112 million annually.  
 3 And obviously, everyone in the room is  
 4 aware the \$112 million represents the average over  
 5 the five years over the baseline.  
 6 So I'll just -- I won't state that every  
 7 time. But it's \$112 million is what APFA has  
 8 already agreed to and stipulated as the value of  
 9 their proposed JCBA, absent the three contested  
 10 issues.  
 11 And if you look at how that \$112 million  
 12 annually is broken down, it's broken down into two  
 13 components. There is the \$50 million per year,  
 14 which represents, in APFA's view, the market-based  
 15 in the aggregate value substitute for profit  
 16 sharing.  
 17 And then there's the \$62 million a year,  
 18 which represents the market-based in the aggregate  
 19 value of the comparator contracts, you know,  
 20 vis-a-vis the APFA work group and the Company's  
 21 expected operations over the next five years.  
 22 And so in addition to those two valued

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1 items, the APFA proposal includes two other what are  
 2 known as me-too clauses. There's -- in Parts 3(b)  
 3 and 3(c) there's a profit sharing me-too. And in  
 4 Part 4, Part 4(a), there's a health insurance  
 5 me-too.  
 6 And so what I have been asked to do is to  
 7 provide an economic assessment as to whether or not  
 8 the inclusion of either of the me-too clauses would  
 9 push the value of the proposed JCBA above  
 10 \$112 million.  
 11 But in fact, the question is actually much  
 12 simpler than that.  
 13 Given that APFA has already agreed and  
 14 stipulated to the fact that, absent the two me-too  
 15 clauses, their proposal is valued at \$112 million,  
 16 really the threshold question then becomes, do  
 17 either of these me-too proposals have any value.  
 18 Because if they do, then it falls almost  
 19 definitionally that the value of their proposed JCBA  
 20 would be above \$112 million.  
 21 And that's what we'll discuss for the  
 22 remainder of my presentation.

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1 Q. Dr. Lee, direct your attention to Slide 3.  
 2 Please proceed.  
 3 A. So page 3 is really just a preview of the  
 4 remainder of my presentation. But just by way of  
 5 preview, I thought it would be useful up front to  
 6 summarize my opinions.  
 7 So in a nutshell, there's several reasons  
 8 why the inclusion of either of the me-too proposals  
 9 that are included in the APFA's proposed JCBA would  
 10 push the value above \$112 million, why they have  
 11 value.  
 12 And there's really three main reasons that  
 13 are just grounded in basic economics, basic economic  
 14 theory. The first is that any option, if exercised,  
 15 provides the holder of that option with a value.  
 16 Okay. And so it's reasonable to assume  
 17 that APFA wouldn't exercise either its health  
 18 insurance me-too or its profit sharing me-too unless  
 19 it left them better off than what they would receive  
 20 under the status quo. The status quo being  
 21 \$112 million.  
 22 So if either of the options are exercised,

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1 by definition, APFA could garner greater value than  
 2 the \$112 million.  
 3 But it's actually a little bit more subtle  
 4 than that in another instance.  
 5 So even if the options aren't exercised,  
 6 okay, so, you know, if it's the case that either  
 7 they're not triggered, or APFA has the option to  
 8 invoke me-too but choose not to, okay, even  
 9 unexercised options have value to the holder of that  
 10 option. And that's just a basic fundamental tenet  
 11 of economic theory.  
 12 And then finally, with regard to the  
 13 profit sharing me-too, this is one is -- well, we'll  
 14 discuss this more towards the end of my  
 15 presentation.  
 16 This one is particularly valuable for APFA  
 17 because what it does is it allows APFA to reverse  
 18 the division that it has already made to take  
 19 certain guaranteed CBA improvements, the \$50  
 20 million, in lieu of variable and uncertain profit  
 21 sharing. It allows them to change that decision  
 22 actually up to two times in the future based on new

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1 information which it currently doesn't possess.  
 2 And that -- what's important is that that  
 3 information that they use to make the decision is  
 4 actually the basis of the \$50 million, what I'll  
 5 call the certainty equivalence, the amount that they  
 6 deemed that future uncertain profit sharing was  
 7 worth.  
 8 So there's this informational component  
 9 that, as time passes, APFA will learn additional  
 10 information as to the state of the industry. And  
 11 allowing a party to act on information that it  
 12 doesn't currently have now provides them with  
 13 additional value.  
 14 So these are three very basic -- I should  
 15 really emphasize that these aren't -- these aren't  
 16 just kind of disputed amongst economists' theories.  
 17 These are really basic tenets of economics that any  
 18 economist would also agree to.  
 19 But just putting those aside, I mean, I  
 20 think the very fact that we're here today, the very  
 21 fact that these are contested issues should provide  
 22 even further evidence to the Board that these are

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1 valued by both sides.  
 2 Q. Let me direct your attention to Slide 4,  
 3 Dr. Lee.  
 4 If you would please describe what that  
 5 reflects.  
 6 A. Okay. Well, I thought it would be useful  
 7 to just review the two me-too clauses that are in  
 8 the APFA proposal.  
 9 And so in the context of a labor CBA, a  
 10 CBA between the Union and the Company, we think of  
 11 these as me-too clauses. But the way an economist  
 12 would look at these is that they are options. Okay.  
 13 So they are standard options, and options provide  
 14 value.  
 15 The way that an option works is that the  
 16 holder of the option, okay, is bestowed a right.  
 17 Okay. And here, the right of APFA under any of  
 18 these two options is to have the Company match terms  
 19 on some future event that may happen.  
 20 So, for example, in the profit sharing  
 21 me-too, under Part 3(b), APFA's proposal would say  
 22 that it grants APFA with the option of reversing its

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1 decision to take \$50 million in lieu of variable  
 2 profit sharing if the Company were to negotiate a  
 3 new profit sharing agreement with another work  
 4 group.  
 5 Okay. But what's very important is that  
 6 these are options to APFA. They don't need to  
 7 exercise them. They can always look at the status  
 8 quo and say, Well, you know, actually we prefer the  
 9 decision we made earlier. I can choose not to  
 10 exercise the option, but these are options.  
 11 So like any option, okay, it bestows upon  
 12 the holder of the option a right. But there's a  
 13 counterparty to that option, which is the Company.  
 14 And like any other option, the  
 15 counterparty is essentially conferred with an  
 16 obligation, okay, an obligation that, if that option  
 17 is exercised, they have to do something.  
 18 And so it's just kind of basic option  
 19 economics or option theory that the holder of the  
 20 option is granted value, and that the counterpart to  
 21 that option has an obligation, which comes with a  
 22 cost.

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1 Okay. So there's two components of the  
 2 profit sharing option. The other one, which is  
 3 actually quite interesting as well, is Part  
 4 3(c)(ii).  
 5 So if it were the case that the Union  
 6 exercised its 3(b) option, okay, to reverse its  
 7 earlier decision to take the \$50 million guaranteed  
 8 wages or other CBA or other CBA improvements in lieu  
 9 of profit sharing, if it actually invoked its 3(b)  
 10 option and decided, No, actually, we would prefer to  
 11 go with profit sharing, okay, then subsequently, if  
 12 the profit sharing plan with the other union that  
 13 the Company agreed to ceases to exist, under 3(c) --  
 14 under Part 3(c)(ii), APFA has yet another option,  
 15 okay.  
 16 And, again, what they're allowed to do is  
 17 revisit that earlier decision and, again, go back  
 18 to, if they so desire, taking the \$50 million in  
 19 guaranteed wages or continuing with the profit  
 20 sharing.  
 21 Okay. So I think what's important is that  
 22 we all understand that in the profit sharing,

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1 there's actually not just one option, but there's  
 2 actually two options that could happen in sequence.  
 3 Likewise, in the health insurance, the  
 4 health insurance provides -- which is in 4(b) of  
 5 APFA's proposal, provides APFA with the option, if  
 6 the Company were to agree to a different health  
 7 insurance plan with another union in the future,  
 8 APFA is given the right to have that other health  
 9 insurance plan, or it can stay with its existing  
 10 health insurance plans.  
 11 So those are just the basics of the two  
 12 me-too clauses.  
 13 But what I think is very important is to  
 14 understand that these me-too clauses are really  
 15 options, and that it's just well understood that  
 16 options confer rights and obligations on the two  
 17 parties that are party to the option.  
 18 Q. And let's turn the Slide 5, Doctor.  
 19 Will you please explain what that  
 20 reflects?  
 21 A. Okay. So I think for the rest of my  
 22 presentation, what I wanted to do now is kind of go

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1 back to the three reasons why options have value,  
 2 what I testified to just a few minutes ago on the  
 3 summary of opinion slide.  
 4 So the first one, as you'll recall, is  
 5 that exercised options provide value to the holder  
 6 of that option.  
 7 So it's reasonable to assume that the APFA  
 8 would only exercise either its health insurance  
 9 option or its profit sharing option if it made them  
 10 better off, right, because they always have the  
 11 choice of not -- of staying with the status quo.  
 12 I mean, that's the whole nature of an  
 13 option. It gives you choices.  
 14 So the very fact that you would observe  
 15 APFA choosing to exercise an option means that  
 16 they're better off. That's what economists would  
 17 refer to as revealed preference; right.  
 18 ARBITRATOR BLOCH: As what, please?  
 19 THE WITNESS: As revealed preference.  
 20 ARBITRATOR BLOCH: Thank you.  
 21 THE WITNESS: The very fact that they have  
 22 chosen to exercise the option means that they're

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1 better off.  
 2 So, for example, in the context of the  
 3 healthcare plan, if the Company agreed to an  
 4 alternative healthcare plan with another union, and  
 5 under 3 -- under 4, under 4(a), APFA were to  
 6 exercise its option, it is reasonable to conclude  
 7 that the alternative health insurance plan is more  
 8 valuable to them than their pre-existing health  
 9 insurance plan.  
 10 Okay. Therefore, it must be the case that  
 11 their are left better off; they have more value than  
 12 they do under the \$112 million status quo.  
 13 It's just as simple as that.  
 14 Likewise, with the profit sharing. If  
 15 they were to -- if the Company, hypothetically, were  
 16 to agree to a profit sharing plan with another union  
 17 in the future, and if APFA exercised its right under  
 18 3(c) to elect for profit sharing, what that means is  
 19 that, at that point in time, they view future profit  
 20 sharing to be more valuable than what they're  
 21 currently getting, the \$50 million in certain wages.  
 22 Okay. So they -- otherwise, they wouldn't

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1 choose it. If they felt that they weren't going to  
 2 be better off by electing the alternative profit  
 3 sharing plan, they would stick with the \$50 million.  
 4 So, again, the very fact that the option  
 5 becomes exercised, means definitionally that the  
 6 APFA's value has grown above \$112 million.  
 7 BY MR. SIEGEL:  
 8 Q. Turn to Slide 6, Dr. Lee.  
 9 A. So I mean, I think the previous point  
 10 really is very clear and very easy to understand,  
 11 that exercised options provide the option holder  
 12 with greater value.  
 13 What I think is perhaps a little bit more  
 14 subtle or complicated is the unexercised option.  
 15 Okay. So, you know, APFA, you know, they  
 16 may decide not to exercise an option. The options  
 17 may never even be triggered. And so the question  
 18 is, well, do those options, those me-too clauses,  
 19 here, these options, do they provide APFA with any  
 20 value today?  
 21 And the answer to that question is also  
 22 yes.

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1 And so here, we're going to kind of rely  
 2 on some very basic fundamental finance theory, okay,  
 3 which is that all options, okay -- it's well  
 4 understood that any option, okay, even if it's not  
 5 exercised, provides the holder with value.  
 6 And just by way of reference, what I have  
 7 done here is I have cited from two very well-known  
 8 finance textbooks. So anyone who, you know, may  
 9 have taken basic corporate finance in college or any  
 10 university will be familiar with these concepts.  
 11 And what I should also emphasize, is that  
 12 this -- you know, I did not have to go through  
 13 hundreds of books to find these results. These are  
 14 basic fundamental tenets of finance theory.  
 15 And I also mention that they're  
 16 uncontested. So this is not like we're having a  
 17 debate as to whether or not quantitative easing was  
 18 the right thing to do or whether or not a certain  
 19 type of stimulus program will provide economic  
 20 benefits in the futures, which economists are well  
 21 known to debate over.  
 22 These are really just fundamental results

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1 that any person who studies finance would  
2 understand.  
3 And so the first one, and I'll just read  
4 it aloud.  
5 "If there's a positive probability of a  
6 positive payoff, and if the worst payoff is zero,  
7 then the option must be valuable."  
8 The only thing I want to note is, it  
9 doesn't say that it may be valuable. It says it  
10 must be valuable. Okay.  
11 Likewise, the second quote, also from a  
12 very well-known textbook.  
13 "Since the worst that can happen to a call  
14 option is that it expires worthless, its value must  
15 be positive."  
16 Again, the author here didn't say it may  
17 be positive. It must be positive, okay.  
18 ARBITRATOR BLOCH: Could I just interject?  
19 THE WITNESS: Yeah.  
20 ARBITRATOR BLOCH: I saw that quote a  
21 minute or two ago, and it -- is that -- I understand  
22 where the first one is going.

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1 But isn't it really dependent on the  
2 positive probability of a payoff?  
3 I mean, if there is no probability of a  
4 payoff, then, at the least, it's fair to say that  
5 the value is considerably diminished.  
6 Isn't that true?  
7 THE WITNESS: Yeah.  
8 That's a very --  
9 ARBITRATOR BLOCH: At least.  
10 THE WITNESS: No. Yeah. That's a very  
11 good question.  
12 And though the pricing of options is a --  
13 again, this is -- now, we're kind of going into a  
14 more technical area of option pricing.  
15 But your point is well taken, that the  
16 price of the option can vary based off a whole  
17 number of things. The amount of time of the option  
18 is exercisable over the probability of certain  
19 events in the future.  
20 And it's absolutely the case that the  
21 price of the option depends on a whole host of  
22 things.

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1 But what the fundamental basic results is,  
2 is that it must be positive. Okay. It's not zero.  
3 Okay. It cannot be zero.  
4 ARBITRATOR BLOCH: Is that because having  
5 it has got to be worth something?  
6 THE WITNESS: Absolutely. So like the way  
7 I like to think about this is, you know, say, for  
8 example, the only thing that you eat in the morning  
9 is Cheerios, and your grocery store has 100  
10 different types of cereal. Right. Okay.  
11 So the very fact that your grocery store  
12 offers 100 varieties of cereal provides you with  
13 some value, even if you only buy Cheerios. For 20  
14 years, all you have eaten are Cheerios.  
15 Okay. The very fact that you can go to  
16 the grocery store and buy granola and corn flakes  
17 and Frosted Flakes actually provides you with some  
18 value because you don't know that someday in the  
19 future you may develop, you know, an aversion to  
20 oats. Right. And you may need to switch from an  
21 oat-based cereal to a corn-based cereal.  
22 Options provide value to people, even if

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1 they don't use them.  
2 Because the future, by its very  
3 definition, is uncertain.  
4 ARBITRATOR BLOCH: Okay. But if I were  
5 offered the option to take the first trip to Pluto,  
6 I probably would not be interested, and I guess what  
7 you're saying is that someone might be.  
8 THE WITNESS: Someone might be.  
9 And in some types of options, there's  
10 well-defined markets where these things are traded  
11 and the prices get determined based off a whole  
12 variety of factors.  
13 Here, this is not a tradeable option.  
14 It's an option between APFA and the Company. And so  
15 pricing the option may be more complicated because  
16 you don't have as many parties interacting in a  
17 market to determine what the price should be.  
18 ARBITRATOR BLOCH: That's my next  
19 question.  
20 THE WITNESS: Yeah.  
21 ARBITRATOR BLOCH: There's no market for  
22 it.

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1 THE WITNESS: There's no market for the  
 2 option.  
 3 But the key factor is that we have -- what  
 4 is very important is that we have a party that gets  
 5 bestowed a right, okay, and a party that is given an  
 6 obligation. Okay. So there's a party and a  
 7 counterparty to every option. Okay.  
 8 So the counterparty here is American  
 9 Airlines. And as the party that has an obligation  
 10 that if the option is exercised has to do something  
 11 that imposes costs. Okay.  
 12 And on the other side of the ledger,  
 13 there's benefits. Okay.  
 14 And this is -- again, this is just basic,  
 15 you know, basic option economic theory that options  
 16 provide value.  
 17 ARBITRATOR BLOCH: Thanks for letting me  
 18 in.  
 19 And I think one of our board members may  
 20 have more.  
 21 ARBITRATOR GOLICK: Excuse my question.  
 22 I'm probably more comfortable with the

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1 Cheerios example.  
 2 I know that you talked about value, and  
 3 certainly one can understand that there's value in  
 4 having a right.  
 5 But for purposes of this case, what we  
 6 want to understand is whether it has economic value,  
 7 you know, or monetary value because that's the  
 8 challenge that we have.  
 9 So are you -- will you be explaining to  
 10 us -- let's even take the Cheerios example -- how  
 11 one attributes an economic value to a right that may  
 12 or may not be exercised?  
 13 THE WITNESS: Well, that's a good  
 14 question.  
 15 So I think what's important is that I have  
 16 not been asked to price the option. Okay.  
 17 And so if you were to ask me, What is a  
 18 price you would put on it? Is it \$5 million? Is it  
 19 \$10 million? Is it \$1 million?  
 20 I haven't been asked to render an opinion  
 21 on that. I would have to give it some thought as to  
 22 what an appropriate value would be.

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1 But I can tell you for sure, okay, with  
 2 100 percent certainty is that it does have value,  
 3 and it does have real economic value.  
 4 And the reason being -- I mean, the easy  
 5 one to kind of thing about -- and I have slides that  
 6 will speak to this.  
 7 And, for example, on the profit sharing,  
 8 to kind of maybe put numbers around it that we can  
 9 maybe jump ahead to that, if you would like.  
 10 But the -- the issue of economic value is  
 11 thinking of it in two ways. So you can look at the  
 12 economic value as what cost does it impose on the  
 13 Company; right?  
 14 And so what is the cost of having these  
 15 me-too clauses would put on the Company.  
 16 So one example is, what it really does is  
 17 it limits the options or limits the flexibility of a  
 18 company going forward to negotiate future CBAs.  
 19 Now, I think we all understand -- and like  
 20 there was testimony yesterday that the Company  
 21 really had no intention -- or they don't want to  
 22 start to have profit sharing for their other unions,

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1 but, you know, life is uncertain; right?  
 2 And as I believe Mr. Glass will testify  
 3 about later, is that, you know, these twists and  
 4 turns that happen in labor negotiations, they're  
 5 really unpredictable.  
 6 And there may be a time in the future  
 7 where another work group is at the point where, you  
 8 know, you're negotiating a contract, and the Company  
 9 may decide that because the other work group was  
 10 willing to trade off wages for a better healthcare  
 11 plan, okay, that it may -- that might be the final  
 12 thing to seal the deal. Right.  
 13 But knowing that, APFA would have the  
 14 right, under 4(a), to receive that better, more  
 15 expensive -- more expensive to the Company  
 16 healthcare plan, okay, really limits the flexibility  
 17 of what the Company can do in its future  
 18 negotiations.  
 19 And that does impose a cost; right? That  
 20 imposes a real economic cost on the Company because  
 21 when you go into negotiations, as Mr. Glass will  
 22 testify, you really need to have all of the



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1 potential -- you know, you don't want to be  
2 restricted in any way.  
3 ARBITRATOR GOLICK: So is that a cost that  
4 can be attributed to the cost of this Collective  
5 Bargaining Agreement?  
6 THE WITNESS: It is a cost that could be  
7 attributed to the proposed JCBA that APFA is putting  
8 forward because it includes these me-too options.  
9 ARBITRATOR GOLICK: Thank you.  
10 ARBITRATOR JAVITS: Could you explain the  
11 size of the pie you make?  
12 \$50 million in wages is a different thing  
13 than profit sharing. Presumably, profit sharing  
14 relates to revenues or how the Company is doing.  
15 If the pie is larger than profit sharing,  
16 it may constitute an equal value, if you will, to  
17 the Company, but a greater value to the Union.  
18 Is that distinction proper?  
19 THE WITNESS: Well, what's important here  
20 is not -- is what APFA has valued profit sharing as.  
21 Now, my understanding is that the Company  
22 has, for the purposes of this arbitration,

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1 acquiesced or agreed to -- and only for the purposes  
2 of this arbitration -- the \$50 million valuation.  
3 But the \$50 million valuation -- and I was  
4 planning on talking about this a couple of slides  
5 down the road -- is what APFA has valued based on  
6 the information it has today, what I would refer to  
7 as the certainty equivalence of taking something  
8 certain today for the next five years, \$50 million a  
9 year, in lieu of uncertain and variable profit  
10 sharing going forward.  
11 ARBITRATOR JAVITS: And well, isn't -- I  
12 mean, I guess your approach presupposes that there  
13 is real value coming if the contingency that another  
14 group takes the profit sharing or healthcare, and  
15 the Union exercises --  
16 THE WITNESS: Well, yeah.  
17 ARBITRATOR JAVITS: -- its option.  
18 But might the Union just take it because,  
19 let's say the pilots or mechanics have it, so that  
20 they are making a decision based on -- not on value,  
21 but on simply what another group has done.  
22 Kind of behavioral economics analysis that

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1 it may not be necessarily in their economic  
2 interest, but, for other reasons, they exercise the  
3 option.  
4 THE WITNESS: Well, you know, you raise an  
5 interesting point.  
6 And so I think what you're asking is  
7 whether or not we would have a reason to believe  
8 that APFA acts -- well, what economists would refer  
9 to as irrational. Right?  
10 So if presented with an option to exchange  
11 profit sharing for the \$50 million, from an  
12 economist's point of view, it is reasonable to  
13 believe that APFA would only exercise that right if  
14 they believed that they would be left better off  
15 with profit sharing, okay, than it would taking the  
16 \$50 million.  
17 I mean, so if you saying, Well, maybe they  
18 just want to do it for some irrational reason --  
19 ARBITRATOR JAVITS: Or political reasons  
20 say, you know, APFA agrees to profit sharing.  
21 THE WITNESS: You know, again, so I'm not  
22 here to -- I really can't speak to the noneconomic

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1 things that are going through APFA's mind.  
2 What I can speak to is that the way that  
3 people would standardly look at the decisions that  
4 are made about certain payments and uncertain  
5 payments is that if all the sudden you switch from  
6 taking the certainty equivalent over the uncertain  
7 payments, that economic logic would dictate that the  
8 value of that uncertain payment, i.e., future profit  
9 sharing from that point forward, would be more  
10 valuable to them than what they had given up, the  
11 \$50 million.  
12 So I think that takes us to Slide 7.  
13 And some of this, now, may be ground that  
14 we have now tread on, but just to kind of go back to  
15 the presentation.  
16 This concept that unexercised options have  
17 value is something that sometimes people might have  
18 a little bit of trouble kind of getting their head  
19 around. So I wanted to just kind of provide a  
20 concrete example.  
21 And one of the important things about  
22 options is that, for future options, is that even if

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1 they're unexercised, all other things equal, the  
 2 unexercised options have the greatest value when  
 3 they're first issued.  
 4 Okay. So here, we're looking five years  
 5 out into the future now. And under APFA's proposal,  
 6 their two options would last for at least five  
 7 years, okay, through the course of the JCBA.  
 8 And this is precisely the time when these  
 9 options have the most value, all other things equal.  
 10 And the reason is that even they're  
 11 unexercised, and end up with having zero value at  
 12 the end of the period for which they could be  
 13 exercised, today these options have value.  
 14 And it's just -- it's a well-known fact,  
 15 in fact, that the greatest value of an option, of a  
 16 call option, okay, which these are to APFA or to any  
 17 option holder, is at the time they're first issued  
 18 because it gives you the most amount of time to  
 19 potentially exercise those options in the future.  
 20 So what I have done here is I have just  
 21 provided an example using a financial option, which  
 22 is an option to purchase common shares in Apple.

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1 Okay. Apple, you know, Apple Computer.  
 2 And these are the prices of various  
 3 options as of yesterday. So the common stock of  
 4 Apple is -- as of yesterday was \$116.  
 5 And what I put here are three options.  
 6 Okay. And they're all -- they all have  
 7 the same what's called -- known as the strike price,  
 8 \$150. But what they have is they have different  
 9 expiration dates.  
 10 Okay. So the first option expires on  
 11 January 17, 2015. The second option expires on  
 12 January 15, 2016, so the next year. And then third  
 13 option expires on January 20, 2017.  
 14 And the point is here -- so just to back  
 15 up. What a call option does is it provides the  
 16 holder of that option with the rights to buy, in  
 17 this case, Apple shares at \$150.  
 18 Okay. So if today Apple is trading at  
 19 \$116, the question is well, how much would you be  
 20 willing to pay for the right to buy Apple at \$150?  
 21 Well, you kind of say, Well, it's only at  
 22 116. So, you know, it really would depend on how

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1 long do I have to exercise that option; right?  
 2 And so if the option expires next month,  
 3 January 17, you're not going to be -- it doesn't  
 4 provide a lot of value.  
 5 And then what you can see here is that  
 6 that option is worth -- is trading at five cents.  
 7 But look what happens as we extend the expiration  
 8 period a year.  
 9 Okay. So for the right to purchase Apple  
 10 shares at \$150 a year from now, okay, what the  
 11 market price is for that option is \$3.75.  
 12 Okay. And then, if you extend the period  
 13 yet another year, okay, is that the market price for  
 14 that option is \$8.70.  
 15 And the reason for why that -- as you go  
 16 out further in time, the option has greater value is  
 17 because there is a greater amount of time where that  
 18 option may be exercised.  
 19 And so here what we're looking at is an  
 20 option -- it may never be the case that American  
 21 offers a profit sharing plan or a health sharing  
 22 plan, which APFA would prefer.

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1 And it could very well be the case that at  
 2 the end of the five-year term of the JCBA, those  
 3 options expire and are not exercised.  
 4 But today, because there's five years  
 5 ahead of us, these options are at their peak value.  
 6 ARBITRATOR BLOCH: But -- and I'm sorry to  
 7 interrupt you. I'm just playing with theories here.  
 8 Isn't there a distinction to be drawn for  
 9 a couple of reasons that occur to me.  
 10 First of all, there -- the option in the  
 11 hands of the flight attendants in -- early on, when,  
 12 in a market situation, I think you correctly  
 13 observed that it's at its highest.  
 14 In this case, that option has no value at  
 15 all unless you have the contingency of the Company  
 16 offering this plan to another group.  
 17 THE WITNESS: No. So that's actually  
 18 incorrect.  
 19 So the time value of an option is positive  
 20 even if that option isn't -- it wouldn't make sense  
 21 to exercise it, or in this case wouldn't be  
 22 exercisable; right?

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1 ARBITRATOR BLOCH: It can't be exercised.  
 2 THE WITNESS: Yeah. So the very fact that  
 3 you have a future option to do something that you  
 4 wouldn't otherwise have the ability to do, by  
 5 definition, means that it has value.  
 6 ARBITRATOR BLOCH: Some value maybe.  
 7 But I guess what I'm just trying to get  
 8 ahold of is, here, I think you postulate a slope  
 9 downward as the expiration date draws closer.  
 10 In this case, wouldn't it go the other  
 11 way?  
 12 THE WITNESS: No. No. Because what we  
 13 have before us, we're -- the JCBA contemplates a  
 14 five-year period.  
 15 My understanding -- and I'm sure Mr. Glass  
 16 can provide additional testimony on this -- is that  
 17 the Company has before it multiple additional CBAs  
 18 that it needs to negotiate because of the merger.  
 19 And these may take time. Okay.  
 20 They may -- some of them might happen next  
 21 year; some of them might happen the year after; some  
 22 of them could drag out for the entire period.

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1 So the great -- all I'm saying here is  
 2 that the greater the time period that is covered,  
 3 okay, by the right, the greater the value must be;  
 4 right?  
 5 And the time that is worth the most, the  
 6 time when it's worth the most is when the amount of  
 7 time ahead of you to potentially exercise that  
 8 option is the longest. All right.  
 9 And so I think what you may be asking is  
 10 well, again, so if they never exercise it, you know,  
 11 how could it have the value?  
 12 But what I'm saying is that, if you accept  
 13 the premise that any option, even if it's  
 14 unexercised has value, which is a fundamental tenet  
 15 of basic finance theory, then all I'm saying in this  
 16 slide here is that the time when the option has the  
 17 maximum value --  
 18 ARBITRATOR BLOCH: Right.  
 19 THE WITNESS: -- is the time when you have  
 20 the greatest amount of time in the future that you  
 21 may potentially exercise that option.  
 22 ARBITRATOR BLOCH: And my only question

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1 was, doesn't that presume that you are able, not  
 2 necessarily rationally, but you are able to exercise  
 3 it at any time during that period?  
 4 THE WITNESS: No.  
 5 It only means that the time at which the  
 6 option could potentially become valuable to you,  
 7 potentially become exercisable to you.  
 8 So like, for example, if you look at this  
 9 Apple thing; right? You know, if you held the  
 10 option to purchase Apple at \$150 a share today, you  
 11 know, you're probably not going to exercise it;  
 12 right? Because you would -- you would buy someone's  
 13 shares at \$150, but the market value is only 117.  
 14 So there's all sorts of options that  
 15 aren't exercised. Right. But that doesn't mean  
 16 that they don't have value.  
 17 ARBITRATOR BLOCH: By that you mean  
 18 effectively un-exercisable.  
 19 THE WITNESS: Exactly. And that doesn't  
 20 mean that they don't have value.  
 21 As we can see, the market is trading at 5  
 22 cents right now. Okay. So the main element -- the

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1 main point of this slide is really just time value.  
 2 Right. Is that the time when the options,  
 3 even those that never end up being exercised, are at  
 4 their peak values when they're first exercised, all  
 5 other things equal.  
 6 ARBITRATOR BLOCH: Okay. And I do  
 7 understand that. I thank you for that.  
 8 But let me just ask one more point.  
 9 THE WITNESS: Okay.  
 10 ARBITRATOR BLOCH: And that is, for  
 11 purpose of this analysis, I take it you do discount  
 12 as irrelevant the absence of a market here.  
 13 None of these options can be traded.  
 14 THE WITNESS: Yeah. Well, it's not like I  
 15 discounted them.  
 16 But I don't know -- they're not relevant  
 17 to the question as to whether or not they have  
 18 value.  
 19 So there's all sorts of financial  
 20 instruments that may not be traded openly in the  
 21 marketplace but nonetheless have value.  
 22 ARBITRATOR BLOCH: Thank you.

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1 I apologize for interrupting.  
 2 THE WITNESS: Oh, no. Absolutely.  
 3 ARBITRATOR BLOCH: I appreciate it.  
 4 BY MR. SIEGEL:  
 5 Q. Slide 8, Dr. Lee.  
 6 A. Oh, okay. Slide 8.  
 7 So now, we have covered the first two --  
 8 the first two reasons why options have value.  
 9 The last reason why these particular  
 10 options have value is because of the informational  
 11 component in the profit sharing.  
 12 So just by way of kind of laying some  
 13 groundwork.  
 14 So APFA has determined its valuation for  
 15 uncertain profit sharing is \$50 million a year.  
 16 Okay. So that's the amount that APFA has ascribed  
 17 to the value of future uncertain and variable  
 18 compensation in terms of profit sharing.  
 19 Okay. So what -- what an economist would  
 20 refer to this as is the certainty equivalent. All  
 21 right. So the certainty equivalent is the value of  
 22 taking a certain payment over essentially taking the

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1 gamble of future uncertain payments.  
 2 But what's very important about the  
 3 \$50 million certainty equivalence of APFA is that  
 4 it's based on the information that APFA had as of  
 5 the time of its proposal regarding the future state  
 6 of profitability for the Company and for the  
 7 industry. Okay.  
 8 Now, information, of course, is key to a  
 9 number of -- the value of a number of things. And  
 10 particularly when you think about the airline  
 11 industry and how variable and uncertain and the  
 12 shocks that can happen.  
 13 Future information, additional information  
 14 that you can receive in the future about how well  
 15 the industry is doing, how well the synergies from  
 16 the merger, how they become realized, the price of  
 17 fuel, all of these things, additional information  
 18 that you get in the future could cause you to change  
 19 your value of a certainty equivalence, higher or  
 20 lower, for that matter.  
 21 So I'm just turning now to page 9.  
 22 So when you think about the way that the

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1 profit sharing -- that the profit sharing me-too  
 2 options have been structured, they are structured in  
 3 such a way that it allows APFA to take advantage of  
 4 information that it doesn't currently possess, and  
 5 that was the basis of its \$50 million certainty  
 6 equivalence determination at times in the future to  
 7 its benefit. Okay.  
 8 And so if you look at, for example, at the  
 9 first of the two profit sharing options, 3(a) (sic),  
 10 what it allows APFA to do is at some point in  
 11 future, if the Company were to grant another union a  
 12 profit sharing plan, it allows it to essentially  
 13 revisit the decision it has made today, okay,  
 14 regarding taking \$50 million or uncertain profit  
 15 sharing with the benefit of additional information  
 16 that it doesn't currently have about the state of  
 17 the industry as to, you know, the price of fuel, all  
 18 sorts of things.  
 19 Okay. So that, by definition, is  
 20 providing it with more value because it's allowing  
 21 it to leverage additional information about a  
 22 decision which it's making under uncertainty. Okay.

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1 Now, the second part of the profit sharing  
 2 me-too is kind of more interesting because Part  
 3 3(c)(ii) would allow APFA to, again, switch back to  
 4 taking the certain payments, \$50 million a year, in  
 5 lieu of the profit sharing, which it had previously  
 6 decided that it didn't want, and then it did want,  
 7 and now it can actually switch back to taking a  
 8 certainty equivalent.  
 9 And this one is actually kind of easier to  
 10 see. I think this may address the Board's earlier  
 11 question, which is kind of in terms of dollars, what  
 12 would this mean.  
 13 So just suppose that the Company did,  
 14 hypothetically, propose or offer another union  
 15 profit sharing. And suppose that the APFA exercised  
 16 its rights under its proposed Part 3(b) and took  
 17 that profit sharing and decided to give back the  
 18 \$50 million and choose variable and uncertain profit  
 19 sharing.  
 20 And then further suppose that the other  
 21 profit sharing CBA with the other union expired in  
 22 2017 or some other future date. And now, APFA is

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1 presented, again, with a right to exercise its  
 2 subsequent 3(c)(ii) option.  
 3 If the economy were going into the tank  
 4 into some deep recession or, God forbid, there had  
 5 been another terrorist attack or outbreak of Ebola  
 6 or whatever, the Union would be able to use the  
 7 information at that point in time.  
 8 The information which it currently doesn't  
 9 have, it would be able to use that information at  
 10 that time and make an informed judgment as to  
 11 whether or not it wants to take the \$50 million in  
 12 certainty or give back profit sharing.  
 13 So it could potentially realize  
 14 \$50 million of certain payment instead of -- you  
 15 know, there have certainly been times, 2001, 2002,  
 16 where it was fairly certain that the Company was not  
 17 going to make any money, and the profit sharing  
 18 would be zero.  
 19 And so this option -- the second option,  
 20 the second component of the profit sharing option,  
 21 which essentially allows them to give back the  
 22 profit sharing risk and take the \$50 million

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1 certainty, allows them to leverage this potential  
 2 information about the state of the industry and take  
 3 certain money at a time when they can be fairly  
 4 certain that the Company may not have made any money  
 5 that year.  
 6 So the way I like to think about this is,  
 7 is it's almost like being able to go to Las Vegas  
 8 and sit yourself down at a blackjack table and not  
 9 place your bet until you have been dealt your first  
 10 two cards.  
 11 But that's not how it works; right?  
 12 You put your bet. You get dealt your  
 13 cards. And, you know, the cards that you're dealt  
 14 are the ones that you have to play.  
 15 So the way that the 3(b) and 3(c) profit  
 16 sharing has been structured by APFA, under their  
 17 proposal, essentially allows them to wait until they  
 18 see the cards and then place their bet.  
 19 Okay. And that's not -- that clearly  
 20 provides value above and beyond the \$112 million  
 21 because that's not what the \$50 million certainty  
 22 equivalence represents.

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1 BY MR. SIEGEL:  
 2 Q. Dr. Lee, thank you.  
 3 If I could direct you to Slide 10, and if  
 4 you could summarize your conclusion.  
 5 A. Well, by this time, my conclusions, I  
 6 think, hopefully, are fairly clear, but just in sum.  
 7 Because APFA has already stipulated that  
 8 the value of the JCBA, excluding the me-too options,  
 9 is 112 million; and because that is the market-based  
 10 standard, okay; and because the me-too clauses are  
 11 options that, by definition, by their very  
 12 definition, have value irrespective of whether or  
 13 not they're exercised, it must be the case that the  
 14 proposed JCBA is worth more than \$112 million.  
 15 MR. SIEGEL: Doctor, we thank you for your  
 16 testimony.  
 17 And that concludes the presentation.  
 18 ARBITRATOR BLOCH: Mr. Freund, any  
 19 questions for the witness?  
 20 MR. FREUND: What I would like to do with  
 21 the Panel's permission and Bob's acquiescence, would  
 22 be -- and I do this often with experts, is to maybe

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1 ask a couple of preliminary foundational questions,  
 2 and then maybe take a little break to think about  
 3 what more I might want to ask.  
 4 ARBITRATOR BLOCH: And I have no problem  
 5 with that.  
 6 Proceed.  
 7 CROSS-EXAMINATION  
 8 BY MR. FREUND:  
 9 Q. Dr. Lee, good morning.  
 10 A. Good morning.  
 11 Q. Just -- I think the answer to the  
 12 questions that I'm going to ask are embedded in your  
 13 direct testimony, but I just want to clarify it for  
 14 a moment.  
 15 Before, as you heard, I'm going to take a  
 16 couple of minutes to think about what else I want to  
 17 ask you.  
 18 A. Okay.  
 19 Q. I want to be clear that I understand the  
 20 shape and scope of the assignment that you were  
 21 given in the first instance.  
 22 And I understand that that's, you know,

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1 encapsulated essentially in the last paragraph on  
2 page -- on Slide No. 2.  
3 A. Yes.  
4 Q. And that is that you have been asked to  
5 provide what I think I would describe as a sort of a  
6 economics theory or finance theory on the value of  
7 options; correct?  
8 A. Well, I think that's one component of what  
9 I was asked to do.  
10 I mean, I think the question -- that is a  
11 large part of what I needed to do in order to arrive  
12 to my conclusion.  
13 But, you know, I think what I was asked to  
14 do is to, you know, look at the proposed JCBA, okay.  
15 And, in light of the stipulation, determine whether  
16 or not from an economics point of view the me-too  
17 clauses would result in the economic value of their  
18 proposal exceeding \$112 million.  
19 Now, because APFA has conceded that the  
20 JCBA excluding the me-toos and excluding the back  
21 pay issue is equal to \$112 million, what it  
22 effectively boiled down to was whether or not me-too

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1 clauses provided any economic value.  
2 Q. Right. So at the end of the day, given  
3 the starting point, namely, that there's a  
4 stipulated value to the Joint Collective Bargaining  
5 Agreement and a stipulated value as to what the  
6 Panel's standard is to apply in creating a Joint  
7 Collective Bargaining Agreement, at the end of the  
8 day, what your -- the burden of your testimony is  
9 simply a description of economic theory regarding  
10 the general valuation of options, as opposed to  
11 these particular options?  
12 A. No.  
13 I mean, I think that the context under  
14 which these me-too clauses are being contemplated is  
15 important.  
16 So, you know, you could find thousands of  
17 people who trade options and ask them, do options  
18 have value, you'll get exactly the same answer.  
19 Right. Everyone will tell you -- everyone  
20 will tell you, that has taken any kind of basic  
21 economics or finance class that options have value.  
22 But I think here what's important is to

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1 understand in the context of the Collective  
2 Bargaining Agreement, the proposed Collective  
3 Bargaining Agreement and the context of what else is  
4 going on in the airline industry and at the Company.  
5 Q. But look, I mean, again, just so we're on  
6 the same page, if you had never seen the Collective  
7 Bargaining Agreement and you never knew anything at  
8 all about the Collective Bargaining Agreement, you  
9 would testify, I think, as you just described a  
10 moment ago, that if you were asked at a proceeding  
11 such as this whether options of any kind, whatever  
12 they are, in any context have value, your answer  
13 would be yes, they have value.  
14 How much value they might have is a more  
15 complex issue than one you have ever addressed,  
16 particularly, in this testimony, but you would  
17 testify that options have value.  
18 A. Yeah. I mean, it's always hard to -- you  
19 know, from the point of view of someone who, you  
20 know, just lives in the airline industry, I always  
21 like to have the broader context.  
22 But, you know, I suppose if you were to

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1 say take me outside of this arbitration in the  
2 middle of the street and you say, Do options have  
3 value? I think I would answer that all options have  
4 value.  
5 Q. Okay. That's all I was trying to get to  
6 on that point.  
7 A. Yeah.  
8 Q. And then switching gears just a tad, just  
9 to be clear that I understand what was not within  
10 your bailiwick, and that is you weren't asked to  
11 review any of the costing exercise that was done as  
12 between the parties in connection with the  
13 negotiation of the Joint Collective Bargaining  
14 Agreement, the building of the model and the values  
15 that are contained in the model?  
16 A. Well, what I would say is that as I think  
17 everyone is fairly well aware that the disputed  
18 issues in this particular matter only became known  
19 towards the end.  
20 And I certainly became familiar with and  
21 developed an understanding of the basics of the -- I  
22 mean, I'm certainly not to perhaps the level of

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1 Mr. Akins or the costing team at American, but with  
 2 the general framework.  
 3 Because certainly, we didn't know what the  
 4 disputed issues were going to be. And the disputes  
 5 issues may have had to perform some analysis or  
 6 provide an opinion may have, you know, been beyond  
 7 what I'm here to testify about today.  
 8 Because really, as you know better than  
 9 anyone, the evolution of what we're arbitrating over  
 10 was quite fluid.  
 11 Q. I don't know that I know it better than  
 12 anyone, but I know it at least as well as others.  
 13 So that was a long answer to my question,  
 14 and let me try to narrow it down just a tad.  
 15 You did not participate in any of the  
 16 decision making with respect to either the  
 17 assumptions or the values attached to the  
 18 assumptions that are contained in the model upon  
 19 which is \$112 million number?  
 20 A. That's a fair characterization there.  
 21 MR. FREUND: All right. I think that's  
 22 all I want to do for the moment.

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1 ARBITRATOR BLOCH: All right.  
 2 Let's take a brief recess.  
 3 Any guesstimate on how much time you want?  
 4 MR. FREUND: No. I think I'm only going  
 5 to need 15 minutes, but that means it will probably  
 6 be a half an hour.  
 7 ARBITRATOR BLOCH: Okay. Off the record.  
 8 (A recess was taken.)  
 9 ARBITRATOR BLOCH: Mr. Freund, any  
 10 additional questions?  
 11 MR. FREUND: I have a few.  
 12 BY MR. FREUND:  
 13 Q. Dr. Lee, the Panel asked most of the  
 14 questions that I was interested in from both an  
 15 academic standpoint and a real world standpoint.  
 16 But I want to ask a couple that they may  
 17 have been asked already, just to clarify in my own  
 18 mind, and then a few others that actually touch the  
 19 real world as opposed to the world of theoretical  
 20 economics.  
 21 The Panel asked you questions about  
 22 whether the options that you -- the kinds of options

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1 that you were talking about, for example, the Apple  
 2 option, were the same or different than the option  
 3 contained in APFA's proposal with respect to both  
 4 profit sharing and the medical insurance plan in the  
 5 context of whether they were tradeable.  
 6 And your answer was, Well, there are lots  
 7 of options that are traded. There are options, of  
 8 course, that are traded on broad markets, and then  
 9 there are options that are not traded on broad  
 10 markets but still are traded. And there's a  
 11 mechanism for trading and therefore value; correct?  
 12 A. Yeah. I think I said that there's a lot  
 13 of -- not specifically options, but just financial  
 14 instruments.  
 15 Q. Instruments?  
 16 A. Yeah. That are -- where there's  
 17 well-defined markets.  
 18 And then, there's other types of -- I  
 19 mean, at the end of the day, a financial instrument  
 20 is a contract between two parties; right?  
 21 And so there's all sorts of different  
 22 types of contracts that people enter in that are

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1 bilateral between two people.  
 2 I can have a handshake agreement with my  
 3 neighbor that I'll mow his lawn. And that's not  
 4 really anything I can trade, but it provides him  
 5 with a benefit and imposes a burden on me.  
 6 Q. Well, you could trade and get somebody  
 7 else to mow the lawn.  
 8 And there's a variety of ways --  
 9 A. I suppose I could try to set up a little  
 10 market and get my neighbor's son or somebody to do  
 11 it.  
 12 Q. Right. But the options -- and we'll just  
 13 keep calling them options --  
 14 A. Okay.  
 15 Q. -- for the sake of discussion.  
 16 The options that are contained in APFA's  
 17 proposal have no market and can have no market;  
 18 correct?  
 19 A. Well, I never like to paint things in  
 20 absolutes in that way.  
 21 But I think it's -- I would concede that  
 22 it's unlikely that a market would develop for these

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1 options. But, you know, it's -- one could conceive  
 2 of a market that could develop.  
 3 But I'm not -- I won't, for the point, you  
 4 know -- I'll grant you that there's unlikely to be a  
 5 market in the future for this particular option.  
 6 Q. All right. I'm glad you granted me that  
 7 because if you hadn't, I was going to ask you to  
 8 describe the way that a market would have been  
 9 created.  
 10 And I would have been interested in  
 11 hearing what you say. But now I don't have to.  
 12 And then, I think you also answered this  
 13 question as well, but I would like to probe it a  
 14 little bit further.  
 15 Looking at Slide No. 7, the Apple options,  
 16 at each day of the time period between January --  
 17 between today really, and January 20, 2017, those  
 18 options -- and maybe this is a question that is  
 19 based on the last set of questions I asked you.  
 20 Those options could be traded or  
 21 exercised; correct?  
 22 A. Well, traded and exercised are slightly

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1 two different concepts of an option.  
 2 Q. Okay. Fair point.  
 3 A. So remember that an option is essentially  
 4 either a liability or a commitment. And you can  
 5 trade away that liability or that commitment on the  
 6 open market.  
 7 Exercising is very different. Exercising  
 8 means that you are specifically engaging the rights  
 9 provided to you by that option to force the  
 10 counterparty to essentially make do on that  
 11 commitment.  
 12 So they're a little bit different.  
 13 Q. Okay. Fair point.  
 14 So let's say with exercise because --  
 15 A. Okay.  
 16 Q. -- what's at stake in the APFA options is  
 17 exercise, not trade; correct?  
 18 A. Exercise is the relevant thing here, yeah.  
 19 Q. Okay. So looking at the bar graph on page  
 20 7, just picking by way of example, the January 15,  
 21 2016 option to buy at -- by Apple at \$150 a share.  
 22 Nothing more needs to happen to be able to

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1 exercise that option than getting to January 15,  
 2 2016; correct?  
 3 A. Well, I'm not sure what you say nothing  
 4 more needs to happen, but at any point in what's  
 5 called an American style option, you --  
 6 Q. American, not the airlines, but  
 7 American --  
 8 A. No. American in -- no.  
 9 I don't want to delve into the difference  
 10 between American and European style options, but  
 11 American style options, US, are exercisable at any  
 12 date between the date of issue and the date of  
 13 expiration.  
 14 That's correct.  
 15 Q. And literally, nothing has to happen other  
 16 than the holder of the option choosing to exercise  
 17 it.  
 18 A. That is correct.  
 19 Q. It maybe a bad choice, maybe a good  
 20 choice, but he has the absolute right to exercise  
 21 that option at any point?  
 22 A. That's correct.

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1 Q. Okay. That is not the case with the APFA  
 2 options; correct?  
 3 A. Well, I would agree with you that there is  
 4 an additional trigger event that needs to occur.  
 5 I think where your confusion may lie or  
 6 where maybe I wasn't clear in my initial explanation  
 7 is that the options don't have value because they --  
 8 I think it would be easier if we went back to like  
 9 page 6, and we just -- we go back and we read.  
 10 Again, these are the standard most well  
 11 known -- or two of the most well-known books in  
 12 corporate finance.  
 13 It's -- it's the issue of -- if there's  
 14 any positive chance, okay, that at some time in the  
 15 future it could provide you with value, okay, then  
 16 they cannot be worth zero.  
 17 And so you're suggesting well, something  
 18 has to happen. Well, yeah, something has to happen.  
 19 But that doesn't negate the fact that there is still  
 20 a positive probability. Okay. I don't know if it's  
 21 1 percent or if it's 50 percent. But it's nonzero.  
 22 There's a positive probability that APFA



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1 will be given the choice of some time down in the  
 2 future being able to exercise its option, and  
 3 therefore, by definition, it must have positive  
 4 value.  
 5 Q. Okay. I understand what the finance,  
 6 theoretical finance experts have said and what you  
 7 have said, but I just want to make sure that we're  
 8 on the same page.  
 9 If APFA -- if this Panel were to grant the  
 10 options that APFA has asked for, APFA could do  
 11 absolutely nothing with those options, absolutely  
 12 nothing with those options until and unless the  
 13 Company either provided a profit sharing plan on one  
 14 hand or provided a different health insurance plan  
 15 on the other hand; correct?  
 16 A. That is correct.  
 17 But that doesn't affect the fact that they  
 18 have value. It's irrelevant to the question of  
 19 whether or not they have value.  
 20 Q. The \$112 million number that we have been  
 21 bandying about is a number which represents dollars  
 22 and cents in one way or another in the pockets of

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1 the flight attendants; correct?  
 2 A. That is correct.  
 3 Q. The option in the context that I have just  
 4 described and that we would understand it to operate  
 5 if it were to be granted, and if in year one of the  
 6 Collective Bargaining Agreement the Company -- let  
 7 me back up and sort of restructure the hypothetical  
 8 because it's \$112 million on average.  
 9 A. Sure.  
 10 Q. So some years it's less and some years  
 11 it's more.  
 12 But let's pretend that it's actually  
 13 \$112 million each year for five years.  
 14 If the Panel were to grant the requested  
 15 options that APFA has asked for, and in year one of  
 16 the Collective Bargaining Agreement, the Company did  
 17 not provide profit sharing and did not provide a  
 18 different health insurance plan to somebody, the  
 19 valval of the Collective Bargaining Agreement to the  
 20 flight attendants would be -- in terms of in their  
 21 pocket, would be \$112 million; correct?  
 22 A. Well, again, I think what I would say is

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1 that it would still have the option value, okay, so  
 2 it still provides them with a value.  
 3 But in terms of whether wages go up, their  
 4 wages wouldn't go up because the option -- you know,  
 5 they haven't exercised anything. But they would  
 6 still have the option value a year later.  
 7 Now, whether or not it has gone up or  
 8 down, I would tend to think it probably would have  
 9 decreased. But it really would depend on whether or  
 10 not the Company had reached agreements with other  
 11 labor groups by then.  
 12 Q. At the end of the year, would they have  
 13 had any more than \$112 million in their pockets,  
 14 using that as the shorthand, and we know it's a  
 15 billion some odd dollars.  
 16 But would they have any more than 112  
 17 million in their pockets?  
 18 A. They would not have any more dollars than  
 19 112 in their pockets.  
 20 Nevertheless, they would have still  
 21 benefited from that optionality over that period.  
 22 Q. And in year two, if the Company didn't

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1 provide a health -- a different health plan or  
 2 profit sharing plan to any other groups, they would  
 3 still have, in year 2, \$112 million in their pockets  
 4 and not a penny more.  
 5 A. You know, so, again, I will agree with you  
 6 that, unless the wages change or the, you know, the  
 7 benefits were changing, that the amount of actual  
 8 money that's changing hands hasn't changed.  
 9 But, again, what was perfectly clear is  
 10 that the fact that they have had that option  
 11 value -- and, again, you're looking at only -- I  
 12 think another thing that's useful is you're only  
 13 really looking at it from the point of view of the  
 14 value to the flight attendants.  
 15 But remember that there's -- the real  
 16 issue here is if there's value to the flight  
 17 attendants, then there's cost to the Company.  
 18 Q. Believe me, I'm coming to that.  
 19 A. Right. And throughout this entire period,  
 20 this fact that these me-too clauses exist is  
 21 imposing a cost burden on the Company.  
 22 Q. Yeah, okay. But, again, just so we're

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1 cleared up, so we're tied down, you're agreeing with  
 2 me that it would not provide more than \$112 million  
 3 into the pockets of the flight attendants?  
 4 A. Into the -- so form a kind of the  
 5 accounting into the pockets --  
 6 Q. The grocery bag, the ability to go to the  
 7 grocery store.  
 8 A. The ability to go to the grocery store.  
 9 Yeah. If the options aren't exercised,  
 10 the ability to go to the grocery store hasn't  
 11 necessarily changed.  
 12 But nevertheless, those options are  
 13 providing value.  
 14 Q. All right. I think we get each other.  
 15 A. Okay.  
 16 Q. So now let me flip to the other side,  
 17 because you anticipated the next set of questions I  
 18 was going to ask.  
 19 You said that one of the ways in which the  
 20 options have an effect on one or another party's  
 21 economic position is that they, at least in theory,  
 22 impinge on the Company's ability to negotiate

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1 tradeoffs with other work groups that might be  
 2 valuable tradeoffs from the Company's standpoint?  
 3 A. I think that's correct.  
 4 Q. So let's accept that as a proposition that  
 5 they would.  
 6 And that is, let's just assume -- let's  
 7 just take by way of example there's at least one  
 8 collective bargaining agreement that needs to be  
 9 closed at American. And the Company could strike a  
 10 deal with that union, let's assume hypothetically,  
 11 by providing a different health benefits plan, a  
 12 better health benefits plan.  
 13 And in doing so, it would conclude that it  
 14 could save more in wages by providing a better  
 15 health plan. But in thinking about that possible  
 16 transaction, the Company recognizes that if it does  
 17 that in the face of a health benefits me-too, it  
 18 would have additional costs attributed to having to  
 19 meet that with the flight attendants, and,  
 20 therefore, it chooses not to.  
 21 And that's the paradigm that you  
 22 described?

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1 A. Broadly speaking.  
 2 Q. Okay. All right. And so as a consequence  
 3 of that paradigm and as a consequence of that push  
 4 and tug, it winds up reaching the collective  
 5 bargaining agreement with this other Union X or Work  
 6 Group Y that has higher wages.  
 7 And on balance, it's more expensive to the  
 8 Company than it would have been if they had been  
 9 able to make that trade?  
 10 A. I think that's a fair characterization.  
 11 Q. That doesn't put any more than \$112  
 12 million into the pockets of the flight attendants,  
 13 does it?  
 14 A. No.  
 15 But remember that throughout the entire  
 16 hypothetical that you just described, what it has  
 17 done is that it has increased the cost to the  
 18 Company.  
 19 And again --  
 20 Q. I was talking about -- and I don't mean to  
 21 cut you off.  
 22 A. Yeah. So remember that this is an option

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1 where there's two sides to the transaction.  
 2 There's the benefit to APFA, and then  
 3 there's the cost to the Company.  
 4 And throughout this entire hypothetical  
 5 that you just described, where you're reducing the  
 6 choice set of the Company in future negotiations,  
 7 that is imposing a burden and a cost on the Company.  
 8 Q. All right. For purposes of that  
 9 hypothetical, I'll concede that.  
 10 And I simply want to make sure that you  
 11 and I agree that, even in that context, the flight  
 12 attendants don't receive one penny more than  
 13 \$112 million.  
 14 A. In the hypothetical scenario that you  
 15 described, they have not exercised the option.  
 16 That's correct.  
 17 So they did not exercise the option. That  
 18 doesn't change the fact that they have always had  
 19 that option in your hypothetical, which has provided  
 20 them with value.  
 21 Q. Correct. But you -- again, just to be  
 22 clear, you agree that at the end of the day in that

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1 scenario the flight attendants don't receive any  
 2 more than \$112 million in those years?  
 3 A. Yes. You have got to remember this -- I  
 4 mean, this has been -- there's no dispute, right,  
 5 that the parties have agreed that the value of the  
 6 JCBA, absent these three items, is \$112 million.  
 7 All right. So you're creating  
 8 hypotheticals that say okay, well, these other three  
 9 items are kind of nonexistent, more or less, and so  
 10 yes, the value is \$112 million.  
 11 But by including them into the JCBA, it  
 12 increases the value above \$112 million because of  
 13 the fact that their very inclusion, okay, today,  
 14 provides APFA with a positive chance that down the  
 15 road sometime over the next five years they will be  
 16 able to be -- exercise the options and be left  
 17 better off.  
 18 That's kind of just the end of the story.  
 19 I mean, it provides them with value.  
 20 Q. All right. I understand that. I  
 21 understand that's your point.  
 22 I'm just trying to plumb as best I can a

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1 full understanding of what the real world  
 2 implications are because one of the real world  
 3 implications of the option, as you described it, was  
 4 that by granting the option and then concluding that  
 5 the Company is going to abide by the consequences of  
 6 that option, it produces increased cost on the  
 7 Company in connection with its relationship to some  
 8 other work group; right?  
 9 A. Yeah. So I mean, I guess --  
 10 Q. Before you answer, and I want you to  
 11 answer as fully as you want to.  
 12 But is that -- isn't that what you said in  
 13 your direct testimony?  
 14 THE WITNESS: Can I have the question read  
 15 back?  
 16 MR. FREUND: Yeah. You want to read that  
 17 back, Joey?  
 18 MR. SIEGEL: Can I object?  
 19 The question about asking somebody what  
 20 was said in the direct testimony is not a correct  
 21 question. We can -- the question -- whenever he  
 22 said in direct is in the record.

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1 So at this point, questioning someone  
 2 about what they said in their direct testimony, I  
 3 think is just off the mark.  
 4 If this -- the testimony stands for  
 5 itself, and it's in the transcript.  
 6 ARBITRATOR BLOCH: Yeah. But nobody  
 7 remembers what it is.  
 8 We need Joey.  
 9 (The record was read back as requested.)  
 10 THE WITNESS: Oh, so that was just a  
 11 right.  
 12 So I think the answer to that question is  
 13 that was the example I discussed on direct  
 14 testimony; correct.  
 15 BY MR. FREUND:  
 16 Q. Okay.  
 17 A. Yeah.  
 18 Q. Okay. And in that circumstance, abiding  
 19 by -- abiding by the effective constraints of the  
 20 option, while imposing more cost potentially on the  
 21 Company in connection with another work group  
 22 doesn't produce any more dollars than \$112 million

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1 in the pockets of the flight attendants for that  
 2 period of time; correct?  
 3 A. So I actually will need that one read back  
 4 because I'm not sure what the ...  
 5 Q. Well, let me just --  
 6 A. Because I --  
 7 Q. I'll just -- let me just re-ask the  
 8 question.  
 9 MR. FREUND: Actually, I think I have got  
 10 enough on the record. I'm happy where we are on  
 11 that point.  
 12 ARBITRATOR BLOCH: Go ahead.  
 13 BY MR. FREUND:  
 14 Q. So let me change subjects just briefly.  
 15 If I understand another portion of your  
 16 testimony correctly, and Bob is right, your  
 17 testimony will be whatever is written down.  
 18 But just to make sure I understand it,  
 19 the -- one of the values of the option is the  
 20 ability, as you described it, to make a choice based  
 21 on changed information; correct?  
 22 A. That's correct.

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1 Q. And the ability to make a choice based on  
 2 changed information enhances the ability -- would  
 3 enhance the ability in this case of the flight  
 4 attendants to make a choice as between keeping  
 5 \$50 million in value built into the contract, or  
 6 alternatively obtaining the right to a variable  
 7 compensation scheme going forward?  
 8 A. That's correct.  
 9 Q. All right. But you do understand that the  
 10 profit sharing proposal would require -- the flight  
 11 attendants would require APFA to make the choice --  
 12 let's talk about years 1, year 2, year 3, rather  
 13 than calendar numbered years, would require the APFA  
 14 to make a choice in year 1 as to whether in year 2  
 15 it was going to reduce its wage rates by a combined  
 16 value of \$50 million in exchange for profit sharing  
 17 based on the performance in year 2?  
 18 A. Yeah. I think the answer to your question  
 19 is I do understand that it is not a decision that  
 20 APFA is able to first realize, see what the profits  
 21 were, and then look back and say the profits were X.  
 22 But what's important is that the

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1 information regarding future profitability is based  
 2 off information that we have up until this very  
 3 moment. Right.  
 4 Q. I see.  
 5 A. And that right now, as of November 27,  
 6 when they made the proposal, all of the information  
 7 that APFA had up until November 27 went into the  
 8 valuation of -- their valuation of \$50 million.  
 9 And all I'm saying is that I do understand  
 10 that -- that it's not like they can see the profits  
 11 for 2015 and then look at it and make a decision.  
 12 I understand it's not an ex-post decision,  
 13 but the information that you have for subsequent  
 14 years is conditioned on everything you have learned  
 15 up until that point in time.  
 16 So I think that, you know, the easiest way  
 17 to think about it is actually in the 3(c)(ii),  
 18 right, where when you think about 3(c)(ii), where  
 19 they have the option, again, of trading back for the  
 20 guaranteed money. Okay.  
 21 Suppose we were back -- suppose we were  
 22 back in this position in September 12, 2001, okay,

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1 and that right became exercisable then.  
 2 You know, we don't know precisely what  
 3 profits were going to be in 2002 and 2003, but I  
 4 think we had a lot more information then we did on  
 5 September 9, as to what it was going to be.  
 6 And that's precisely the type of  
 7 information that they can leverage under the me-too.  
 8 Q. Well, let's stay with that example for a  
 9 moment because I was going to go there to make -- to  
 10 see if I could understand a point a little bit  
 11 differently.  
 12 So here's a bit of the real world.  
 13 In negotiations that led to a Collective  
 14 Bargaining Agreement with APFA -- between APFA and  
 15 American Airlines in 1999, a Collective Bargaining  
 16 Agreement that failed ratification, APFA made a  
 17 trade of the then existing profit sharing for  
 18 6 percent wage increase.  
 19 Just accept that as correct.  
 20 That Tentative Agreement failed. And  
 21 there was further bargaining and a new Collective  
 22 Bargaining Agreement was achieved in 2001, which

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1 introduced profit sharing.  
 2 Now, whether there was a trade for wages  
 3 and profit sharing in connection with that  
 4 Collective Bargaining Agreement is in a sense beside  
 5 the point.  
 6 But let's assume for the sake of  
 7 discussion that in order to get that profit sharing,  
 8 APFA had to take a lower wage increase and made that  
 9 choice.  
 10 They would have made that choice based  
 11 upon the circumstances that they understood at the  
 12 time; correct?  
 13 A. Correct.  
 14 Q. And the point of fact, that would have  
 15 been -- had they made that choice, would have been a  
 16 poor choice in terms -- as it turned out, in terms  
 17 of providing value to the flight attendants;  
 18 correct?  
 19 A. Ex-post, it would have been.  
 20 Q. Ex-post, it would have been.  
 21 So whatever level of information APFA had  
 22 at the time, didn't ultimately matter when exogenous

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1 events in the real world came into play; correct?  
 2 A. You know, I mean, I think what you're  
 3 suggesting is that information is not valuable.  
 4 And I would argue the opposite, that  
 5 information is valuable.  
 6 It doesn't change the fact that you can  
 7 make decisions that ex-post turn out not to work out  
 8 very well. But always having more information  
 9 provides you -- puts you in a better position that  
 10 gives you a greater probably that your choice will  
 11 turn out to be good.  
 12 Now, of course, in the event of  
 13 September 11, this is an unpredictable shock. No  
 14 one could have predicted that it would have  
 15 happened.  
 16 But that doesn't in one way or another --  
 17 in any way or another alter the fact that having  
 18 more information is always valuable to you when  
 19 you're making a decision based on uncertainty.  
 20 Q. And it sounds, would you agree, again, in  
 21 the real world, having more information in the year  
 22 2000, namely the slope of the economy and the like,

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1 proved to be, in a sense, would have proved to be,  
 2 in a sense worse than having less information as  
 3 things turned out?  
 4 A. I think I would disagree with your general  
 5 proposition that more information is worse than less  
 6 information.  
 7 Q. Even though based on that "more  
 8 information," all right, it would have been held --  
 9 the APFA to make a choice of profit sharing in favor  
 10 of wage increases, and that that choice based on  
 11 that greater information proved to be a poor choice.  
 12 A. So, you know, we cannot change what  
 13 happens in the past. We can only use what we have  
 14 learned from the past to make informed judgments  
 15 about the future.  
 16 So if your proposition is that having --  
 17 making decisions in darkness is better than in  
 18 daylight, then I would disagree with that.  
 19 Q. Well, that really isn't my proposition.  
 20 But my proposition is that, particularly  
 21 in the airline industry, particularly in the airline  
 22 industry, basing future judgments on past events is

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1 risky at best.  
 2 A. I mean, I would agree with you that the  
 3 airline industry is highly variable, highly  
 4 unpredictable.  
 5 But just returning back to -- I mean, you  
 6 kind of altered the 9-11 example that I was talking  
 7 about.  
 8 But, you know, in the version of the  
 9 example that I initially proposed, where you're at  
 10 the juncture of 3(c)(ii), okay, you're at the  
 11 juncture of 3(c)(ii) where APFA has the option to  
 12 revert back to certain payments, okay.  
 13 If they have the option to revert back to  
 14 certain payments, and it's clear that the  
 15 industry -- so you clearly don't know when the  
 16 events will happen. But when they happen, we kind  
 17 of know we're in it. Right?  
 18 So if you're at the juncture of 3(c)(ii)  
 19 and you see that the economy is either in turmoil or  
 20 there has been a terrorist attack, or an outbreak of  
 21 Ebola, having that option to take \$50 million in  
 22 certainty over what would, with a high probability,

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1 be zero for the next year or two or three years, I  
 2 believe provides extreme amounts of value to APFA.  
 3 Q. And in that circumstance, if APFA made  
 4 that judgment to -- after having chosen to exercise  
 5 its option under 3(c)(i), now chooses -- because an  
 6 event occurs, namely that group that triggered the  
 7 option has now left profit sharing, APFA has an  
 8 option, under 3(c)(ii), to revert from profit  
 9 sharing back to taking a certainty of \$50 million.  
 10 If it exercised that option, it would be  
 11 right back in the posture that we are in today under  
 12 the Tentative Agreement -- the proposal minus their  
 13 options, namely a value of \$112 million.  
 14 A. Absolutely, not.  
 15 Because the -- remember what the  
 16 50 million represents. The 50 million represents a  
 17 certainty equivalence. It's a trade, okay, for  
 18 taking something in certainty over something which  
 19 is variable.  
 20 Now, the reason why it's \$50 million and  
 21 not some other number is because there's some years  
 22 where it could be zero; there's some years where it

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1 could one \$100 million.  
 2 So if they had chosen to exercise 3(a) --  
 3 or sorry, 3(b), then presumably they made that  
 4 decision based on the fact that that profitability  
 5 was going to be worth more than the \$50 million.  
 6 Q. Well, but --  
 7 A. So they may have had a couple of very good  
 8 years.  
 9 MR. SIEGEL: Wait, Jeff.  
 10 Let him finish.  
 11 THE WITNESS: They may have had extremely  
 12 good years where they were making \$100 million more,  
 13 you know, whatever, you know.  
 14 And so now, you're saying that I can take  
 15 the hundreds or the 95 or the 85s and not take --  
 16 you know, not have the down side risk of taking the  
 17 zeros, that's why it's 50.  
 18 It's this average value of potentially  
 19 what you would earn.  
 20 So you're essentially saying, well, it  
 21 only puts us back to 112. But no, it actually  
 22 doesn't. Because it means that in previous years

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1 you were making well more than 112 because you  
 2 invoked the profit sharing.  
 3 BY MR. FREUND:  
 4 Q. No.  
 5 It doesn't mean you're making -- you made  
 6 more than 112 because you made that choice in year 1  
 7 with respect to profits that would be earned in year  
 8 2 that you didn't -- and you didn't know what those  
 9 profits would be when you made that choice.  
 10 A. No, absolutely not.  
 11 You had greater information -- remember  
 12 that because \$50 million represents today's  
 13 certainty equivalence, today's certainty  
 14 equivalence.  
 15 There's a whole host of reasons why  
 16 \$50 million might not be the right number. I mean,  
 17 it's APFA's number. But the industry could evolve  
 18 in ways that we can't foresee right now.  
 19 That could mean that that \$50 million  
 20 might be too low; right?  
 21 But it could evolve another way where it  
 22 may be too high.

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1 So all I'm saying is that by using the  
 2 additional information in 3(b) to invoke -- to  
 3 switch from certainty to profit sharing means that  
 4 that amount of value that was provided to them from  
 5 that point forward going ahead provides more than  
 6 \$50 million in certainty equivalence.  
 7 Q. But you agreed with me a moment ago that  
 8 when one makes a choice in year 1, to go from a  
 9 guaranteed payment to a variable payment based on  
 10 profit sharing using information available in year  
 11 1, that could easily -- not easily, I don't want to  
 12 characterize, that could turn out to be a bad bet  
 13 because of exogenous events.  
 14 A. It could absolutely turn out to be a bad  
 15 bet, but that doesn't mean it hasn't increased your  
 16 certainty equivalence.  
 17 Q. And if it turns out to be a bad bet and  
 18 later on the ability to trigger the 3(c)(ii) option  
 19 occurs, you would agree with me that, if that option  
 20 is triggered, it would go back -- the payment would  
 21 go back to \$112 million.  
 22 A. No.

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1 So I think what you're confusing is this  
 2 whole concept of certainty equivalence; right?  
 3 So the reason why there's a \$50 million  
 4 equivalent is because we don't know what the future  
 5 is; right? We don't know how much the profits are  
 6 going to be.  
 7 And APFA has made a decision that it  
 8 values \$50 million for certainty more than uncertain  
 9 and variable potential profit sharing; right?  
 10 But if it chooses to reverse that  
 11 decision, by definition, that means that it values  
 12 future profit sharing from that point forward at  
 13 more than \$50 million.  
 14 Now, you're saying well, what if they  
 15 actually didn't get paid \$50 million? Well, that's  
 16 irrelevant at this point, right, because the value  
 17 of the \$50 million is a certainty equivalence.  
 18 Q. I'm talking about, again, in my  
 19 hypotheticals, actual -- again, actual dollars in  
 20 actual flight attendant's pockets.  
 21 And it is correct, is it not, that in year  
 22 1 -- that in year 1, APFA makes it -- would make a

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1 decision to take profit sharing in year 2, and if in  
 2 year 2, profit sharing produces less than  
 3 \$50 million, and if in year 2 the events entitling  
 4 it to go back to \$50 million in year 3 occur, and  
 5 they would make that choice, and in year 3, they  
 6 replaced profit sharing with a \$50 million payment,  
 7 in point of fact, under that set of facts, they  
 8 would not have received in excess of \$112 million  
 9 over the course of those years?  
 10 A. See, the problem with your hypothetical is  
 11 that you're -- I think we have a fundamental  
 12 disconnect between what \$50 million represents.  
 13 So and what \$50 million -- and I'll just  
 14 read from the proposal, \$50 million represents  
 15 market-based in the aggregate value substitutes.  
 16 It's a value substitute for the DL --  
 17 Delta, United, and Continental profit sharing plan.  
 18 Okay.  
 19 So they're taking \$50 million dollars in  
 20 value substitutes. So when they're getting it, it  
 21 is \$50 million cold hard cash in their pocket.  
 22 Q. Absolutely.

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1 A. But when they go to profit sharing, okay,  
 2 we don't know what it's going to be. It could be  
 3 zero. It could be \$100 million.  
 4 Okay. So for you to say well, they chose  
 5 profit sharing, and then it turns out, oh, ah-ha,  
 6 they only turned out to be on average \$35 million.  
 7 They were left worse off. I mean, that's just a  
 8 false proposition.  
 9 I mean, it makes absolutely no sense in  
 10 the context of making an exchange for certain money  
 11 in lieu of variable compensation.  
 12 Q. At the end of the day, you're just  
 13 quarreling with my hypothetical.  
 14 If my hypothetical is, in fact, what  
 15 happens in the real world, the net result of that is  
 16 that the flight attendants in that three-year time  
 17 span that I have described in the hypothetical did  
 18 not obtain more than \$112 million a year --  
 19 A. Again, I think the issue is --  
 20 Q. -- in their pocket.  
 21 A. -- that you're looking ex-post.  
 22 And as we sit here today, we're not in an

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1 ex-post world. We're in what's known as an ex-ante  
 2 world, where we're trying to judge the value of this  
 3 JCBA going forward.  
 4 It's very easy to look back and kind of  
 5 count the beans looking back.  
 6 But that's not the situation that we in.  
 7 We're in a situation where today this Board has to  
 8 decide whether or not the value of the JCBA, going  
 9 forward, for the next five years with uncertainty is  
 10 worth more than \$112 million.  
 11 And what I'm telling is that the option  
 12 value puts it above that.  
 13 So it doesn't make any sense to go back  
 14 five years from now and look back. This is not a  
 15 look-back issue.  
 16 This is -- we're sitting here trying to  
 17 decide how much the contract is worth going forward.  
 18 So looking back at the ex-post analysis  
 19 just doesn't really make any sense.  
 20 MR. FREUND: Well, I think we have  
 21 ventilated this subject enough.  
 22 So that's all I have.

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1 ARBITRATOR BLOCH: Are you done?  
 2 MR. FREUND: Yes.  
 3 ARBITRATOR BLOCH: Anything further?  
 4 MR. SIEGEL: No further questions.  
 5 ARBITRATOR BLOCH: Anything, Gentlemen or  
 6 Lady?  
 7 Dr. Lee, thank you very much for your  
 8 usual endurance and responsiveness.  
 9 THE WITNESS: Thank you.  
 10 ARBITRATOR BLOCH: Off the record for a  
 11 moment.  
 12 (A recess was taken.)  
 13 MR. SIEGEL: I'll turn it over to my  
 14 partner, Mark Robertson.  
 15 MR. ROBERTSON: Yes. The Company calls  
 16 Patrick Gultinan.  
 17 ARBITRATOR BLOCH: Sir, welcome.  
 18 Thereupon,  
 19 PATRICK GULTINAN  
 20 Called for examination by counsel for the  
 21 Company, was examined and testified as follows:  
 22 DIRECT EXAMINATION

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1 BY MR. ROBERTSON:  
 2 Q. Patrick, will you state your name for the  
 3 record?  
 4 A. Yes. My name is Patrick Guiltinan.  
 5 Q. And where are you employed?  
 6 A. I am employed by American Airlines.  
 7 Q. And what is your position at American?  
 8 A. I am a principal in the Labor Financial  
 9 Analysis team.  
 10 Q. And how long have you been there?  
 11 A. I took the position in February of 2014.  
 12 Q. And can you describe in general terms your  
 13 responsibilities?  
 14 A. Yes. In general, I'm responsible for  
 15 evaluation activities for the Flight Attendant  
 16 Collective Bargaining Agreements.  
 17 And then, I also gave a variety of  
 18 ancillary responsibilities related to various ad hoc  
 19 financial analysis related to some of our other  
 20 unionized workers.  
 21 Q. And how long have you been with American  
 22 before you took your current position?

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1 A. Yes. I started in July of 2011.  
 2 Q. And in general terms, can you describe the  
 3 other positions you have held at American between  
 4 2011 and 2014?  
 5 A. Yeah. I started in the IT Finance  
 6 Department. That was in July of 2011.  
 7 And I was in that -- was in a financial --  
 8 financial analyst position. I held that position  
 9 until the end of August in 2012, at which time I  
 10 moved into what was then called the Labor Finance  
 11 and Benchmarking team.  
 12 It was kind of a predecessor to the Labor  
 13 Financial Analysis team.  
 14 I moved there as a senior financial  
 15 analyst, and I held that position until I moved into  
 16 the principal position on the team in February of  
 17 2014.  
 18 Q. And your responsibility to those positions  
 19 in general terms.  
 20 A. Yeah. In IT Finance, I was basically  
 21 responsible for due diligence analysis for various  
 22 IT.

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1 So as our IT portfolios had ideas for  
 2 projects that they wanted to purport, it fell within  
 3 our department to analyze the potential costs and  
 4 potential benefits of those types of projects to  
 5 determine whether or not they would be funded.  
 6 As I moved into Labor Finance and  
 7 Benchmarking, there I took responsibility for the  
 8 valuation activities related to the flight attendant  
 9 union.  
 10 And that primarily consisted of valuation  
 11 activities related to the potential cost impacts of  
 12 the merger and the combined flight attendant  
 13 agreement.  
 14 Q. And briefly, your educational background.  
 15 A. Sure. I graduated from the University of  
 16 Notre Dame with a Bachelor of Science in Mechanical  
 17 Engineering.  
 18 And I later also earned an MBA with a  
 19 concentration in Finance, also from the University  
 20 of Notre Dame.  
 21 Q. Okay. Can you describe for the Panel your  
 22 role in the negotiations that resulted in the

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1 Tentative Agreement that's part of the APFA  
 2 proposal?  
 3 A. Sure. I was the representative from Labor  
 4 Finance that supported the Negotiating Committee for  
 5 the Company.  
 6 So it fell within my responsibility to  
 7 essentially develop the valuation models that were  
 8 used to determine the cost impacts of the proposed  
 9 Tentative Agreement, as well as what the potential  
 10 impacts would be if moving to a market-based in the  
 11 aggregate contract that might be awarded in  
 12 arbitration.  
 13 Q. And did you hear yesterday the testimony  
 14 of Mr. Akins, who talked about the development of  
 15 that valuation model?  
 16 A. Yes, I did. I was present for that  
 17 testimony.  
 18 Q. And do you agree with that testimony in  
 19 terms of how the model was developed?  
 20 A. Yes. I think Dan did a very thorough job  
 21 of explaining the development of that model and  
 22 describing its structure and some of the inputs and



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1 the assumptions that it relied upon as well as the  
 2 valuations that it produced of both the Tentative  
 3 Agreement, as well as the market-based in the  
 4 aggregate scenario.  
 5 Q. Okay. And I would like to talk now about  
 6 the retroactive wage portion of the Union's  
 7 proposal, which is that the wage rates would be  
 8 retroactive to December 2, 2014, back from the  
 9 effective date of the JCBA?  
 10 A. Right.  
 11 Q. And my question is, is there an economic  
 12 cost to the Company if wage rates are made  
 13 retroactive?  
 14 A. Yes. That is correct.  
 15 Q. And how much would that increase the  
 16 average annual cost to the Company?  
 17 A. Yeah. So it depends on the length between  
 18 the time that the awarded JCBA would be -- become  
 19 effective and the time period that they have  
 20 established, December 2, as the date for the  
 21 retroactive payments.  
 22 So the number of months in between the

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1 effective date of JCBA and that December 2 would  
 2 change the valuation.  
 3 But in general, if I jump ahead, it would  
 4 come out to about \$3 million for every month of  
 5 difference between that effective date of the JCBA  
 6 and the retroactive payment date of December 2.  
 7 Q. So I'm going to take the example counsel  
 8 used yesterday of an effective date for the JCBA of  
 9 January 2, 2015.  
 10 A. Uh-huh.  
 11 Q. Is it fair to say that retroactive wage  
 12 rate increase would cost the Company an additional  
 13 \$3 million?  
 14 A. That's correct.  
 15 Q. And then, what would that do to the annual  
 16 average, \$112 million cost, that is agreed to as the  
 17 standard?  
 18 A. Because that would be a one-time  
 19 retroactive payment that would take place as soon as  
 20 the effective date of the contract started.  
 21 It would only apply in year one. So as it  
 22 relates to the average annual incremental value of

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1 112. You would then take the five-year average of  
 2 that \$3 million payment. So it would roughly be  
 3 \$.6 million to that \$112 million valuation.  
 4 So that 112 would increase by .6.  
 5 Q. Okay.  
 6 A. For every month that there was a  
 7 separation between them, the effective date of the  
 8 contract.  
 9 Q. So if it's two months, the total would be  
 10 \$6 million?  
 11 A. Yeah. The total would be a \$6 million  
 12 one-time payment for the retroactive payments, which  
 13 would then affect the overall average cost --  
 14 incremental cost of the contract by \$1.2 million.  
 15 Q. And would making the wage rates  
 16 retroactive affect any other terms of the JCBA, as  
 17 you understand it?  
 18 A. Yes.  
 19 As I understand it, as it was included in  
 20 the proposal for APFA, they also included in their  
 21 rate table the fact that beyond just the effective  
 22 date of the retroactive payments being December 2,

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1 2014, all of the subsequent annual increases would  
 2 occur 12 months from that date.  
 3 So December of 2015, December of 2016, and  
 4 December of 2017.  
 5 The valuation that was established in the  
 6 model assumed that the annual increases would occur  
 7 12 months after the effective date of the contract.  
 8 So to take your example of the contract  
 9 going into effect in January, if we had an effective  
 10 date of January 2 for the contract, but the first  
 11 raise would occur in December of 2015, now you have  
 12 11 months time period in which the flight attendants  
 13 would operate under the first year wage increases  
 14 and then subsequently get another raise on top of  
 15 that.  
 16 So it would increase the overall value by  
 17 bringing forward the annual wage increases for the  
 18 flight attendant.  
 19 Q. And what is the economic cost to the  
 20 Company of that?  
 21 A. So for every month that those wages are  
 22 put forward, it would be a \$2 million increase per

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1 year to that average annual value.  
 2 So going back to the example of there  
 3 being a January 2 effective date with a December 2,  
 4 2015 raise, it would -- in that December 2, '16,  
 5 '17, '18, the 112 million average annual value would  
 6 increase to \$114 million.  
 7 MR. ROBERTSON: Thank you.  
 8 No further questions.  
 9 ARBITRATOR BLOCH: Thank you.  
 10 Mr. Freund.  
 11 CROSS-EXAMINATION  
 12 BY MR. FREUND:  
 13 Q. I have a couple of questions.  
 14 I will start with the substantive subject  
 15 that you talked about, and then I want to circle  
 16 back to your overarching discussion of the modeling  
 17 process.  
 18 I understand the math and the valuation  
 19 that you have attached to a December 2 start date.  
 20 What would be the effect on the average  
 21 annual increase, again, assuming that December 2  
 22 start date for the wage increases, if, as Laura

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1 Glading suggested in her testimony, the amendable  
 2 date of the Collective Bargaining Agreement was  
 3 moved back an equal period, let's assume a month?  
 4 A. Right.  
 5 So if you were to take the hypothetical  
 6 and say that -- let's say that the contract had gone  
 7 into place as anticipated with the ratification in  
 8 November of, you know, 2014, and that became  
 9 effective at that point, you know, your hypothetical  
 10 scenario would retain the same economics that we had  
 11 initially modeled.  
 12 However, as we understand it, the proposal  
 13 that was included in the APFA proposal was to have  
 14 the effective date of the December 2 date via a  
 15 retroactive payment and not necessarily to be the  
 16 effective date of the contract.  
 17 And I think you could also make the  
 18 argument that, at this point, it being December 4,  
 19 now, if you take a five-year period, it will end up,  
 20 you know, from the today or whatever the effective  
 21 date becomes, it will increase our cost obligation  
 22 because we are now going back to two days prior and

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1 making higher payments that we otherwise would not  
 2 have been.  
 3 Q. I'm not sure I followed.  
 4 So I want to assume -- I will ask you to  
 5 assume the following.  
 6 Assume that the Panel were to award  
 7 retroactive payments back to December 2, 2014,  
 8 pursuant to the wage tables that are contained in  
 9 the agreement, and set an amendable date of the  
 10 agreement as December 2, five years down the road.  
 11 A. Right. So your hypothetical scenario is  
 12 essentially making what would have been in place had  
 13 the contract been ratified.  
 14 Q. Correct.  
 15 A. And I would agree that it would produce a  
 16 over that time frame a similar \$112 million  
 17 valuation.  
 18 But as I stated earlier, I also -- as I  
 19 understand it, that was not what was included in the  
 20 APFA proposal.  
 21 Q. I understand that.  
 22 But you did hear Ms. Glading testify about

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1 the prospect of moving an amendable date backward.  
 2 A. She may -- yes, I heard her say a comment  
 3 to that effect.  
 4 Q. All right. I want to switch subjects back  
 5 a bit to the broader task that you have testified  
 6 about briefly, namely the modeling exercise that you  
 7 did and that Dan Akins participated in.  
 8 That exercise, as Dan described it and as  
 9 you described it, was designed to establish various  
 10 values of the market-based contracts, namely United,  
 11 Continental, and Delta, as applied to the American  
 12 population, and as well the baseline values of the  
 13 US Airways and the legacy American Collective  
 14 Bargaining Agreements, also as applied to the new  
 15 American; correct?  
 16 A. Can you say that one more time, please?  
 17 Q. I don't think so.  
 18 Let me break it up into a couple of  
 19 questions.  
 20 A. Sure.  
 21 Q. It was designed to establish the market  
 22 value of the United, Continental, and Delta work --

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1 well, Continental contracts and Delta work rules,  
 2 the value of those contracts if applied to the  
 3 American work force?  
 4 A. That's correct, so yeah.  
 5 Q. And then it was designed to establish the  
 6 value of the legacy US Airways flight attendant  
 7 contract as applied at American and the legacy  
 8 American contract as applied at American?  
 9 A. No. We did not do that exercise.  
 10 We did not try to apply the existing  
 11 legacy US flight attendant contract to the  
 12 population of legacy AA.  
 13 Flight attendants, in totality, and vice  
 14 versa, we did not take the legacy US flight  
 15 attendants and try to determine what the cost impact  
 16 would be of applying the current active contract,  
 17 like the TA, to the legacy US flight attendants.  
 18 What we did was we determined the value of  
 19 what the proposed JCBA would be as compared to the  
 20 current active contracts at each carrier.  
 21 Q. And in doing that exercise, you assigned  
 22 values to all of the terms of the Collective

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1 Bargaining Agreement that -- of the United  
 2 Collective Bargaining Agreement, the Continental  
 3 Collective Bargaining Agreement, the Delta work  
 4 rules, and the base contracts that -- that have  
 5 value; correct?  
 6 A. Yes. That was the exercise.  
 7 We tried to apply the terms of the  
 8 agreements that had economic value to the flight  
 9 attendant population.  
 10 Q. And in the course of considering various  
 11 proposals for a new agreement during the course of  
 12 bargaining, you assigned values, both puts and  
 13 takes, increased costs, and savings from proposals  
 14 that one side or the other made across the table;  
 15 correct?  
 16 A. That's correct.  
 17 Q. So that if something that had previously  
 18 been in the US Airways contract was -- if a proposal  
 19 was made to reduce that value, that was "a savings,"  
 20 that could then be spent later on by a term that  
 21 would create additional value?  
 22 A. Yes. I mean, I would just -- rather than

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1 think of it as, you know, savings and spending, I  
 2 would look at it in totality.  
 3 What the \$112 million -- or, for the  
 4 purposes of the, you know, the Tentative Agreement  
 5 valuation, the 193 that Dan has quoted -- that 193  
 6 represents in totality both the incremental costs in  
 7 specific terms and the incremental savings of  
 8 specific terms.  
 9 So where the value of a particular item  
 10 has been reduced and it saves the Company money,  
 11 that would reduce that 193.  
 12 Q. Right. Right. Yeah. Obviously, it was  
 13 always looked it in the totality, but the totality  
 14 is made up of the various puts and takes that come  
 15 through the process of bargaining.  
 16 A. Yes. Yes, I agree.  
 17 Q. Okay. And similarly, I think you answered  
 18 this, but just to make sure.  
 19 The 60, now, \$2 million mark of value was  
 20 based upon the analysis of the value of those  
 21 comparator contracts measured against the value of  
 22 base comparators.

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1 A. Yes. The way to look at it is we would  
 2 take the models of our, you know, the individual  
 3 work groups, the legacy US flight attendants and the  
 4 legacy AA flight attendants, and try to determine  
 5 what the overall incremental costs would be if we  
 6 were to apply a combination of, you know, the Delta,  
 7 Continental, and United terms to those work rules --  
 8 to those work groups.  
 9 MR. FREUND: Maybe someone can take this  
 10 down to the witness.  
 11 Pass this to the Board, and there should  
 12 be a couple of copies left for Bob.  
 13 Mark this as Union Exhibit 1.  
 14 (Thereupon, Union Exhibit No. 1 was marked  
 15 for identification and received into evidence.)  
 16 MR. FREUND: All right. I'll represent,  
 17 obviously subject to Bob's checking it back against  
 18 the contracts, that this is the list of me-toos that  
 19 are contained in the Tentative Agreement that was  
 20 reached and contained in the -- definitionally, then  
 21 also contained in the APFA proposal.  
 22

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1 BY MR. FREUND:  
 2 Q. Patrick, do you have that list?  
 3 A. Yes, I do.  
 4 Q. So I'm going to just tell you that I don't  
 5 know if you're familiar with these particular  
 6 contract terms or the contract section numbers that  
 7 are next to it, but I'll just represent to you that  
 8 these are a series of ten me-too provisions in the  
 9 Tentative Agreement and in the APFA proposal that  
 10 are me-toos with the pilots.  
 11 That is to say, if the pilots obtain  
 12 something different or better than is contained in  
 13 the Collective Bargaining Agreement, flight  
 14 attendants get the benefit of that.  
 15 Can you accept that for the set of  
 16 questions that I'm about to ask you?  
 17 A. I will take that for the set of questions  
 18 that ...  
 19 Q. Okay. Were any of these ones -- any of  
 20 these items valued in the valuation process?  
 21 A. We did not place specific value to the  
 22 me-too element of these items.

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1 Q. So you have got some big exhibit books in  
 2 front of you, two volumes, I think, down there to  
 3 your left. And if I could ask you to turn to Tab 7  
 4 of Volume 1, please.  
 5 Just to make sure you're looking at the  
 6 same document I'm looking at, the one I'm looking at  
 7 at Tab 7, Volume 1 is the US Airways Flight  
 8 Attendant Collective Bargaining Agreement.  
 9 A. Yes.  
 10 Q. Do you have that as well?  
 11 A. That's what I have.  
 12 Q. And this would have been the Collective  
 13 Bargaining Agreement that was used for the costing  
 14 model?  
 15 A. Yes.  
 16 Q. So if you could turn, please, to page  
 17 26-12, don't look about 26 pages are the front.  
 18 It's actually pretty far in the back.  
 19 A. Yes.  
 20 Q. Paragraph I on that page reads: "If more  
 21 favorable Medical/Dental Plan terms, policies, or  
 22 arrangements are instituted for any other union

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1 groups, such terms, policies, or arrangements will  
 2 be provided to the Flight Attendants. Any dispute  
 3 regarding the interpretation or application of this  
 4 Paragraph shall be resolved through arbitration  
 5 under the provisions of [Article] 30."  
 6 Do you see that?  
 7 A. I do.  
 8 Q. And that's a me-too clause?  
 9 It's not on the list of me-too clauses,  
 10 but you understand the me-too clause?  
 11 A. It sounds like something that could be  
 12 interpreted as a me-too clause.  
 13 Q. And when -- this clause does not appear in  
 14 the Tentative Agreement; does it?  
 15 A. Correct.  
 16 Q. All right. So when this clause was  
 17 removed from the -- effectively from the US Airways  
 18 flight attendant contract for purposes of creating a  
 19 new contract, was any value attributed to -- back to  
 20 the Union to be able to spend elsewhere?  
 21 A. No.  
 22 We did not specifically apply any value to

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1 it.  
 2 Q. Okay. Let's turn to Volume 2.  
 3 Let's look at -- first at Tab 9.  
 4 Do you have it?  
 5 A. Yes.  
 6 Q. Tab 9, in my book, is -- it's titled  
 7 United, but you understand that to be the  
 8 Continental -- the legacy Continental contract that  
 9 you noted?  
 10 A. Yes.  
 11 Q. And that was the legacy Continental and  
 12 United contract that was used for costing exercises?  
 13 A. That is correct.  
 14 Q. I'm sorry?  
 15 A. That is correct.  
 16 Q. And if I could ask you to turn to page  
 17 24-1, which is Section 24, is the benefit section.  
 18 That reads: "Each Flight Attendant  
 19 covered by this Agreement shall be eligible to  
 20 participate in certain Company wide benefit programs  
 21 made available to other employees of the Company on  
 22 the terms and conditions established in the benefit

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1 programs for flight attendants' participation, and  
 2 pursuant to the terms of such programs. Before any  
 3 changes are made to such programs, the Company will  
 4 notify the Union in writing in advance of the  
 5 effective date of such change(s). Upon request by  
 6 the Union, the Company will meet to explain the  
 7 change(s). The Company wide benefit programs  
 8 presently include:"  
 9 And then there's a listing of programs and  
 10 it includes medical programs; correct, medical  
 11 indemnity programs, health maintenance organization  
 12 programs; correct?  
 13 A. Yeah. That's -- are you asking me what it  
 14 says?  
 15 Q. I, mean, yeah.  
 16 And I -- I guess I'm asking if you're  
 17 seeing the same words.  
 18 A. I'm seeing the same thing.  
 19 Q. Okay. And in valuing the base -- not the  
 20 baseline. In establishing the market value of the  
 21 United and Continental contracts, did you value in  
 22 the model -- did you assign any value in the model

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1 to the fact that in the United contract, the United  
 2 flight attendants -- I'm sorry.  
 3 In the United contract, the Continental  
 4 flight attendants had a provision, which guaranteed  
 5 them the same medical benefits as other work groups?  
 6 A. Well, it seems to me that this provides  
 7 for a single Company plan in that the Union would be  
 8 notified in writing upon the changes to that plan.  
 9 Q. Right. So that if they -- but if they  
 10 changed -- if they changed the -- if the Company  
 11 chose to change, for example, the pilot plan, if  
 12 everyone started out on a single plan, and they  
 13 chose to change that plan for the pilots to  
 14 something better, under this provision, do you  
 15 understand that to mean that a single Company plan,  
 16 that the flight attendants would have to migrate to  
 17 that plan?  
 18 A. I'm not sure I'm drawing the same  
 19 conclusion you are on this one.  
 20 It says that there's a company-wide  
 21 benefit plan and that, before the Company makes any  
 22 changes to that plan, they would notify the unions

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1 and need to explain the changes.  
 2 I'm not interpreting this to mean that  
 3 they are giving the flight attendant the choice to  
 4 participate in this plan or a different plan.  
 5 Q. Well, let me ask the question this way,  
 6 and maybe you're not the right person to ask, but  
 7 we'll try it anyway.  
 8 Would you understand the promise in this  
 9 clause for a single Company plan to mean that if --  
 10 whatever that plan was, if a work group negotiated a  
 11 better plan, then the promise of a single Company  
 12 plan would result in that -- in the flight  
 13 attendants migrating to the plan?  
 14 A. I would refer to --  
 15 MR. SIEGEL: Please, don't answer,  
 16 Patrick. I want to object.  
 17 He's asking this witness for his  
 18 interpretation of a Collective Bargaining Agreement,  
 19 and there's no foundation for that.  
 20 This witness is not -- and first of all,  
 21 the issue of interpretation of the Collective  
 22 Bargaining Agreement is not before this Panel.

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1 And this -- and the question is seeking a  
 2 legal conclusion about the meaning of a labor  
 3 contract from this witness.  
 4 So I'm going to object to the line of  
 5 questioning.  
 6 MR. FREUND: I'm sorry. I'll withdraw the  
 7 question and rephrase it.  
 8 BY MR. FREUND:  
 9 Q. I would like you to assume for the  
 10 purposes of this question -- whether it's right or  
 11 not, someone else can decide.  
 12 But I would like you to assume for the  
 13 purposes of this question that, under this clause,  
 14 if the pilots, for example, were successful in  
 15 negotiating a better medical insurance plan, that  
 16 the flight attendants would migrate to that plan.  
 17 I just want you to assume that. It may be  
 18 right. It may be wrong. I just want you to assume  
 19 that.  
 20 On that assumption, did you include in the  
 21 market -- did you assign in determining the market  
 22 in the aggregate value of the Continental and United

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1 plans any value to that?

2 A. Well, we did not assign a hypothetical as

3 the value to a hypothetical assumption of a contract

4 that I'm not interpreting on.

5 Q. All right. Fair enough.

6 While we're in that same book, let's go

7 back one tab to Tab 8.

8 And you understand that to be -- in my

9 book, it's the United flight attendants -- the

10 legacy United flight attendants' contract at United.

11 Is that what's in your book as well?

12 A. Yes. Yes.

13 Q. And that's the United contract that was

14 used for purposes of ascertaining the market value

15 in the aggregate of United, Continental, and

16 Delta --

17 A. Yes.

18 Q. I would like to ask you to turn to page

19 222, please.

20 I don't think there's any ambiguity in the

21 clause that I'm going to ask you to look at.

22 Do you have that page?

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1 A. 222?

2 Q. Yeah. Do you have it?

3 A. Yes.

4 Q. I would like you to look at the second to

5 last paragraph on that page, it's subparagraph "x",

6 which reads: "If, during the term of this Agreement

7 (2012-2016), the Company agrees to improvements for

8 any employee group (union or nonunion) in the terms,

9 other than employee contributions, of the medical

10 coverage ascribed in this Section 33, such

11 improvements will also be provided to active Flight

12 Attendants and Flight Attendants retiring on or

13 after July 1, 2003."

14 Did you assign any value to that?

15 Is that the -- strike that.

16 That is plainly a me-too clause, as you

17 understand it; correct?

18 A. Yes.

19 Contingent on the fact that it appears to

20 be just on plan design and not necessarily on

21 employee contribution.

22 Q. Correct. Correct. But it is what it is.

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1 Did you assign any value to that me-too

2 clause in ascertaining the market value as

3 determined by the combination of United,

4 Continental --

5 A. We did not place a specific value on the

6 me-too element of their medical plan.

7 Q. Let me ask you in the broadest possible

8 terms.

9 In designing the model to ascertain either

10 the market value in the aggregate or to measure the

11 puts and takes from changes to the existing US

12 Airways and American Collective Bargaining

13 Agreements, did you assign any value at all to any

14 me-too clause?

15 A. Any me-too in general?

16 Q. Correct.

17 A. We did not.

18 However, I would add that, you know,

19 looking through this list of the ten me-toos that

20 you have included, you know, as you look through the

21 300 page documents and I see items such as substance

22 testing, there are certainly elements within these

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1 me-too components that we would consider to have de

2 minimis economic value.

3 And there are various other components

4 within the contract that we may have exclusively

5 identified within the model as having substantive

6 economic value that were not considered.

7 So I would say that, even though we don't

8 necessarily assign a value to the me-too clause, it

9 was -- you know, a variety of these things that were

10 in the agreement were part of essentially what our

11 valuation of the proposed JCBA would be.

12 Q. Well, the items, for example, hotels,

13 obviously hotels had a value; correct?

14 A. Correct, they did.

15 Q. Okay. And you assigned a value to hotels;

16 correct?

17 A. Correct.

18 Q. But if I understand your testimony

19 correctly, you didn't assign any value to the me-too

20 component of the contracts?

21 A. We did not explicitly separate the me-too.

22 However, with items such as the hotel

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1 policy, where there may be an operational reason  
 2 that we would not get away from assigning the  
 3 different hotels to the flight attendants and  
 4 pilots, the -- I think the consideration would be  
 5 that that small -- probably -- you know, microscopic  
 6 probability that we would get away -- that me-too  
 7 would ever be triggered was not something that was  
 8 substantive enough to assign a specific economic  
 9 value to.

10 And I think that's substantially different  
 11 than something such as a profit sharing or a medical  
 12 plan that is a much more significant item of the  
 13 contract.

14 Q. Well, I'm really not asking you to value  
 15 the likelihood or the size of the consequence of a  
 16 particular me-too.

17 My fundamental question is whether you  
 18 assigned any value at all to the me-too component of  
 19 these clauses, the me-too component of the United  
 20 health insurance clause, and the me-too component of  
 21 the lost US Airways me-too clause.

22 A. We did not assign specific values to

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1 these.

2 Q. And you pointed out to -- you pointed out  
 3 the eighth of the ten me-too clauses when you talked  
 4 about the substances testing me-too.

5 The crew meals provision surely could have  
 6 economic value; correct?

7 A. Well, it can, but the assumption that we  
 8 were acting under was that the way that the model  
 9 was valued, assumed that flight attendants and  
 10 pilots were receiving the same -- we used the cost  
 11 for the pilot meals.

12 And, therefore, we felt that we were  
 13 capturing the economic impact of the meal policy.  
 14 In the off chance that there might be a change up or  
 15 down to those -- to the types of meals that were  
 16 provided was de minimis in nature, and not something  
 17 that we would specifically identify within our  
 18 valuations.

19 Q. So you assumed -- you assumed that the  
 20 Company would never be in a position to have to act  
 21 on the me-too provision?

22 A. That's not necessarily true.

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1 If it had to act, the Company would have  
 2 had to act. But we felt that the potential change  
 3 there was small enough that it wasn't something that  
 4 we would necessarily need to specifically value as a  
 5 component of the valuation.

6 As you page through 300 pages of each of  
 7 these contracts, there are probably some items in,  
 8 you know, in Delta, United, Continental's, legacy  
 9 US, or legacy AA that are very small in nature.

10 And to get to a valuation model that would  
 11 capture every single minor economic impact would be  
 12 prohibitively long in terms of how long it would  
 13 take to be able to come up with a comprehensive  
 14 valuation.

15 So there are things that we do not include  
 16 in the model that we don't consider to be  
 17 substantive or we didn't consider to be -- de  
 18 minimis.

19 And these are things that, you know, are  
 20 the collaborative efforts that we had with Dan to  
 21 make sure that the items that we had identified that  
 22 were substantive, and we had valued them correctly,

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1 are things that we had walked through with Dan.

2 He had the opportunity.

3 We had numerous sessions where we sat down  
 4 together. We had conversations over the phone. We  
 5 tried to resolve all of the differences in the  
 6 modeling methodologies, in the inputs, and the  
 7 assumptions that we used when we came up with the  
 8 valuation of both the market-based in the aggregate  
 9 contract as well as the contract, the proposed  
 10 Tentative Agreement.

11 And so if there were certain items such as  
 12 a me-too for crew meals that we felt were  
 13 substantial enough that needed to be included, at  
 14 that opportunity, we would have tried to include  
 15 them in the model.

16 Q. And so if I understand your testimony,  
 17 it's not that a change in the crew meals would have  
 18 a de minimis -- would necessarily have a de minimus  
 19 effect, but that the likelihood of triggering that  
 20 was limited.

21 A. Well, no.

22 It's a -- you know, Dr. Lee talked

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1 about -- a little bit about option theory.  
 2 And some of the valuation of something  
 3 like a me-too that gets triggered and then goes into  
 4 effect ends up being discounted by the fact that  
 5 there is the possibility that that triggering event  
 6 may never occur.  
 7 So if you were to try to come up with an  
 8 accurate valuation of something that we don't know  
 9 necessarily is going to occur sometime in the  
 10 future, it would have a discounted economic impact.  
 11 And so I could speculate all day about  
 12 what -- would we get some famous chef to, you know,  
 13 come up with new food arrangements that we're  
 14 providing our pilots, which would then trigger the  
 15 me-too to be provided to the flight attendants,  
 16 which would triple the cost of the value, the value  
 17 of the meals that we provided.  
 18 Yes. That would certainly potentially  
 19 have the ability to increase the economics beyond  
 20 something that's just a rounding error. But part of  
 21 the kind of theoretical finance option theory of  
 22 trying to establish a valuation for those types of

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1 events relies upon the fact that you have to  
 2 discount some -- you know, that specific valuation  
 3 because of the uncertainty, so...  
 4 Q. And the Company has stated in -- I'm not  
 5 asking you to testify about anything that went on  
 6 during the negotiations between APFA and the  
 7 Company.  
 8 External to those negotiations, the  
 9 Company has stated plainly and publicly that it  
 10 intends to have a single health plan for all of its  
 11 employees; correct?  
 12 A. Publicly, as I understand it, the goal is  
 13 to get all of the employees to a single health plan.  
 14 Q. And it has stated publicly that it does  
 15 not intend to provide variable compensation through  
 16 profit sharing to its workers.  
 17 A. Yes. They have stated publicly that the  
 18 goal is to have fixed pay for all employees.  
 19 Q. And so the unlikelihood of either of those  
 20 happening is de minimis as well; correct?  
 21 A. I would not draw that conclusion because  
 22 with elements such as a profit sharing plan or a

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1 medical plan, I view those items to be economically  
 2 impactful enough that if there had been a me-too  
 3 component to either the medical plan or the  
 4 profit -- you know, a me-too with profit sharing  
 5 included in the JCBA at the time that the JCBA -- or  
 6 the Tentative Agreement had been reached, it would  
 7 certainly have been something that we -- I don't  
 8 necessarily know how we would value that me-too, but  
 9 it would absolutely have played into the  
 10 decision-making process as to whether that was an  
 11 agreement that we were agreeable to.  
 12 Q. So you're distinguishing medical and  
 13 profit sharing. But just to be clear, you earlier  
 14 testified that you didn't assign any value to the  
 15 loss of the US Airways me-too on medical in the  
 16 costing exercise; correct?  
 17 A. We did not apply specific value to that.  
 18 Q. And you didn't assign any value in setting  
 19 the market in the aggregate to the existence of the  
 20 me-too clause in the United flight attendant on  
 21 medical?  
 22 A. We did not apply specific value to the

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1 me-too.  
 2 Q. And assuming for the sake of discussion,  
 3 without arguing what the clause means, assuming for  
 4 the sake of discussion that the clause I pointed to  
 5 in the Continental agreement is also a me-too on  
 6 healthcare for the Continental pilots, you didn't  
 7 assign any value for that.  
 8 A. Well, we didn't assign any value to that  
 9 me-too.  
 10 MR. FREUND: All right. That's all I have  
 11 got.  
 12 MR. ROBERTSON: Nothing further.  
 13 ARBITRATOR BLOCH: Thank you very much,  
 14 sir.  
 15 Appreciate your help.  
 16 (The witness stood down.)  
 17 ARBITRATOR BLOCH: Anything else,  
 18 gentlemen?  
 19 MR. ROBERTSON: We have another witness.  
 20 (A discussion was held off the record.)  
 21 MR. GLASS: Good afternoon.  
 22 ARBITRATOR BLOCH: Good afternoon,



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1 Mr. Glass.  
 2 Thereupon,  
 3 JERROLD GLASS  
 4 Called for examination by counsel for the  
 5 Company, was examined and testified as follows:  
 6 DIRECT EXAMINATION  
 7 BY MR. ROBERTSON:  
 8 Q. Mr. Glass, would you state your name for  
 9 the record.  
 10 A. Jerrold A. Glass.  
 11 Q. And where are you employed?  
 12 A. F&H Solutions Group.  
 13 Q. And what is F&H Solutions Group?  
 14 A. It's a management, labor relations, and  
 15 human resources consulting firm.  
 16 Q. And what is your role at F&H Solutions?  
 17 A. I'm the president of the company.  
 18 Q. And how long have you been president of  
 19 F&H?  
 20 A. Well, there was a predecessor company to  
 21 F&H Solutions Group, which was called J. Glass and  
 22 Associates. And that started in 1989.

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1 So I'm celebrating my 25th anniversary of  
 2 being in business.  
 3 Hard to believe.  
 4 Q. And can you describe in general your  
 5 responsibilities as president of F&H?  
 6 A. Well, it's to obviously manage the  
 7 business.  
 8 And my specialty area is in labor  
 9 relations and contract negotiations.  
 10 My company, we have 17 employees that  
 11 cover a variety of labor and HR areas.  
 12 I have, just on the labor practice, I  
 13 think there are four or five people that work for  
 14 me.  
 15 Q. And I understand you worked at US Airways  
 16 at some point.  
 17 Can you tell the Panel about your  
 18 experience there?  
 19 A. Yes. I was the -- I started out as the  
 20 Senior Vice President of Employee Relations at US  
 21 Airways in April of 2002, and then became Executive  
 22 Vice President and Chief Human Resources Officer.

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1 And I was -- I held that position until  
 2 the merger with America West Airlines in  
 3 September 2005.  
 4 Q. And in your role that US Airways and F&H  
 5 Solutions, have you been involved in negotiations  
 6 for collective bargaining agreements?  
 7 A. Yes, I have.  
 8 Q. And over the course of your career,  
 9 approximately how many?  
 10 A. Probably about 150 contracts.  
 11 Q. And of those 150 contracts, approximately  
 12 how many were you the chief negotiator?  
 13 A. Oh, gosh.  
 14 I would say probably at least 145 because,  
 15 generally, I'm the chief negotiator.  
 16 Q. And were you involved in the negotiations  
 17 that resulted in the Tentative Agreement that is  
 18 Joint Exhibit 2?  
 19 A. Yes, I was.  
 20 Q. What was your role in those negotiations?  
 21 A. I was the chief negotiator for the  
 22 Company.

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1 Q. Let me ask you, if it's still up there, to  
 2 look at Union Exhibit 1.  
 3 A. I think I have over here.  
 4 Yes. I have it.  
 5 Q. Okay. And are you familiar with these  
 6 clauses in the Tentative Agreement?  
 7 A. Yes, I am.  
 8 Q. And can you describe for the Panel, from  
 9 your perspective, what types of issues these  
 10 provisions address?  
 11 A. These primarily address operational  
 12 issues, and what I would call fairness issues with  
 13 respect to, you know, one specific group, which  
 14 would be the pilots.  
 15 Q. Okay. And do any of these items give rise  
 16 to a significant economic impact?  
 17 A. No, none of them do.  
 18 Q. And do you consider these ten items on  
 19 Union Exhibit 1 to be different than a, for example,  
 20 profit sharing me-too or health insurance me-too?  
 21 A. Very different, yes.  
 22 Q. And is that difference primarily because

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1 of the economic impact?

2 A. It's different because of the economic

3 impact, and it's different because of the scope, the

4 depth and the breadth of the me-too proposal by the

5 Union.

6 While these items cover just me-toos with

7 pilots, the proposals on profit sharing and on the

8 medical cover any employee group of the Company.

9 Q. And we heard some questions from opposing

10 counsel about some me-toos in the current US Airways

11 CBA.

12 And I'm wondering -- my question is, did

13 any -- do any of those have a significant economic

14 value from your standpoint?

15 A. Could you ask that again? I'm sorry.

16 Q. In the legacy US Airways contract, are you

17 aware of any me-toos that have significant economic

18 impact in your opinion?

19 A. Yes. One, for example, would be per diem.

20 The current legacy US contract has a

21 me-too with the pilots on per diem.

22 Q. And did that -- that or any other me-toos

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1 in the current legacy US Airways and legacy American

2 CBAs make it into the Tentative Agreement?

3 A. No, none of them did.

4 Q. And based on your experience over these

5 150 negotiations, do me-toos of the type being

6 proposed by the Union, profit sharing and health

7 insurance, have the potential to create labor

8 relations issues going forward?

9 A. Yes, they do.

10 Q. And how so?

11 Can you explain that to the Panel?

12 MR. FREUND: I guess I'm going to object

13 on the grounds that what's at stake is either the

14 standard -- that is whether the me-toos meet the

15 standard or don't meet the standard, or bust through

16 or don't bust through the standard -- I'll put it

17 that way -- and/or specifically -- or additionally

18 with respect to the health me-too, whether there's a

19 separate promise with respect to that health

20 insurance plan.

21 It may or may not have labor relations

22 consequences elsewhere, but I don't see how that

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1 fits into this debate.

2 MR. ROBERTSON: Well, it fits in because

3 it gives rise to costs on the Company, which Dr. Lee

4 has talked about, and impacting the Company's

5 flexibility to negotiate imposes a cost on the

6 Company.

7 And this testimony is relevant to that.

8 ARBITRATOR BLOCH: Well, I think it's fair

9 game to talk about costs rather than the more

10 general labor relations impact.

11 We assume that costs would have such an

12 impact.

13 BY MR. ROBERTSON:

14 Q. From your perspective, Mr. Glass, and

15 based on your experience, does the -- a profit

16 sharing me-too and a health insurance me-too impose

17 costs on Company in terms of its negotiating

18 flexibility?

19 A. Yes, it does, in that if I know, as the

20 chief negotiator, I have a me-too on profit sharing

21 or healthcare, it impacts my ability to do a couple

22 of things.

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1 Number one, it impacts my ability to solve

2 another union's problem, in that even though -- and

3 let me just say this up front.

4 And what Doug Parker and Scott Kirby have

5 said is accurate. That has been my instructions

6 that our goal is to get all of the employee groups

7 under the same medical plan and not to have profit

8 sharing.

9 But the fact of the matter is, if you are

10 in a section -- and let me give a real life example

11 of something that could happen.

12 If I'm in a Section 6 negotiation under

13 the Railway Labor Act, and that union happens to be,

14 for example, the dispatchers union. So there are,

15 what, I don't know, 300 or 400 dispatchers. And the

16 dispatchers decide that for whatever reason they are

17 willing to pay any amount of money to keep the

18 current legacy US medical plan.

19 And I'm in a cooling-off period. And I'm

20 approaching midnight of the last day of the

21 cooling-off period.

22 If I end up because of the situation I'm

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1 in under the Railway Labor Act with a deadline and a  
 2 possible strike because you can't replace  
 3 dispatchers, and I have to do -- I have to give them  
 4 that medical plan, which will have a small financial  
 5 impact on the dispatchers, 300, but then I have a  
 6 me-too that applies to 25,000 people, that's a  
 7 major, major problem for the Company.  
 8 And that's one of the reasons that a  
 9 me-too on that kind of a significant item is such a  
 10 huge problem for a negotiator.  
 11 Q. Moving away from the me-toos and talking  
 12 about the retroactive wage rate of the Union's  
 13 proposal.  
 14 Does the Tentative Agreement that is Joint  
 15 Exhibit 2 provide December 2 or any other specific  
 16 date for the wage rates to go into effect?  
 17 A. No, it does not.  
 18 Q. And what does it provide?  
 19 A. As somebody -- I think Laura already  
 20 testified, it states that the pay increase will go  
 21 into place the first day of the bid month following  
 22 ratification, which in this case didn't occur.

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1 Q. And what was the Company's position on  
 2 whether wage rates should be retroactive to  
 3 December 2?  
 4 A. Our view is they should not be  
 5 retroactive.  
 6 Q. And what's the basis for that?  
 7 A. Well, number one, that is what was  
 8 negotiated.  
 9 Secondly, there are two existing  
 10 Collective Bargaining Agreements in place. And both  
 11 of those agreements, if they continue for any period  
 12 of time, still have regular pay increases in them.  
 13 So for those two reasons alone, there's  
 14 really no justification for retroactivity.  
 15 MR. ROBERTSON: Thank you.  
 16 CROSS-EXAMINATION  
 17 BY MR. FREUND:  
 18 Q. Starting with your last point first, you  
 19 said there are two reasons why the Company doesn't  
 20 think retro is appropriate.  
 21 One is because that's not what was  
 22 negotiated in the Tentative Agreement; right?

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1 A. Yes.  
 2 Q. But we're here to create an agreement  
 3 through this Panel; correct?  
 4 A. Well, the agreement is largely created.  
 5 Q. Yes. But we're here to have this Panel  
 6 finalize and impose, I don't mean that pejoratively,  
 7 but to actually create and establish what will be  
 8 the Collective Bargaining Agreement between the  
 9 Company and the Union; correct?  
 10 A. Correct.  
 11 Q. So the fact that something was or was not  
 12 negotiated in the Collective Bargaining Agreement  
 13 with respect to retroactivity really is beside the  
 14 point for purposes of what this Panel's authority  
 15 and jurisdiction is it, isn't it?  
 16 A. I'm not going to speak for what the Panel  
 17 is going to do.  
 18 My opinion is that when the parties agreed  
 19 to the first day of the bid month following  
 20 ratification, they did so for a reason.  
 21 And the reason they did that is there is a  
 22 long history, at least on the legacy US side, of

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1 doing exactly that.  
 2 So, for example, when we negotiated the  
 3 legacy US contract, the last standalone, there  
 4 were -- there was a Tentative Agreement reached.  
 5 And that first Tentative Agreement called  
 6 for the pay increase to go into effect on the first  
 7 day of the bid month following ratification.  
 8 That agreement was rejected.  
 9 Some months later, we reached a second  
 10 Tentative Agreement.  
 11 That second Tentative Agreement stated  
 12 that the pay increase will go into effect on the  
 13 first day of the following bid month. The first day  
 14 of the month -- the first -- you see, even I get  
 15 confused saying it. I know everybody does.  
 16 The first day of the bid month following  
 17 ratification.  
 18 The second Tentative Agreement was  
 19 rejected. There was no retroactive pay given after  
 20 the second Tentative Agreement.  
 21 A third Tentative Agreement was reached,  
 22 and the parties had an agreement that a pay raise

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1 would go into effect on the first day of the bid  
 2 month following ratification. That third agreement  
 3 was ratified, and there was no retroactivity.  
 4 The fact of the matter is that this  
 5 Tentative Agreement is largely based -- the majority  
 6 of this agreement is based on legacy US language.  
 7 So I think there is tremendous  
 8 justification for us to say that that isn't what the  
 9 parties, you know, ended up agreeing to. They  
 10 didn't end up December 2. They ended up doing what  
 11 had been done previously legacy US, like many of the  
 12 provisions.  
 13 Q. Absolutely. I don't quarrel with you one  
 14 bit.  
 15 A. Good.  
 16 Q. But the fact remains, does it not, that  
 17 what we're here to do yesterday and today is to  
 18 actually create the Collective Bargaining Agreement?  
 19 And what you're describing is all the  
 20 reasons why you think it's a bad idea to have  
 21 retroactivity.  
 22 But it is certainly something what the

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1 Union in this interest arbitration can propose and  
 2 ask the Panel to impose; isn't it?  
 3 A. Absolutely.  
 4 Q. Okay.  
 5 A. Yes.  
 6 Q. And then your second reason for not  
 7 wanting -- not thinking that retroactivity is  
 8 appropriate is that there are extant Collective  
 9 Bargaining Agreements in place that provide wage  
 10 scales and presumptively -- not presumptively,  
 11 actually wage increases in them; correct?  
 12 A. Correct.  
 13 Q. But, again, that was a product of prior  
 14 collective bargaining.  
 15 And we're now engaged in collective  
 16 bargaining with respect to this contract; correct?  
 17 A. Correct.  
 18 Q. I'm having trouble reading my own  
 19 handwriting, which is really a problem, so I'll skip  
 20 over this question.  
 21 I'll skip over this question for a moment  
 22 and hope that I can get back to reading my

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1 handwriting and ask you to follow me.  
 2 You described in response in direct  
 3 examination about a legacy US me-too on a per diem  
 4 that is -- that the flight attendants had a me-too  
 5 to the pilots on per diem?  
 6 A. Correct.  
 7 Q. And that did not make it into the new  
 8 Tentative Agreement; correct?  
 9 A. Correct.  
 10 Q. And you understand we're not proposing a  
 11 me-too on per diem as part of the APFA's proposal;  
 12 correct?  
 13 A. Correct.  
 14 Q. Okay. Do you know whether the abandonment  
 15 of that me-too in the US Airways Collective  
 16 Bargaining Agreement coming over to the Joint  
 17 Collective Bargaining Agreement was assigned any  
 18 value in the costing model?  
 19 A. Yes. It would have been to the extent --  
 20 I'm going to try and say it slowly so I can try and  
 21 articulate it properly.  
 22 To the extent that any of the legacy US

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1 per diem rates, since they were all tied to the  
 2 pilots, that value of that me-too would have been  
 3 incorporated into the baseline model for the JCBA.  
 4 So the answer is yes.  
 5 Q. Well, I'm not sure I -- let's make sure we  
 6 understand each other.  
 7 Are you telling us that the -- that the  
 8 then existing value of the per diem was included in  
 9 the baseline?  
 10 A. Yes.  
 11 Q. But you're not telling me, are you, that  
 12 any value attributable to the loss of the right to  
 13 me-too future increases in the pilot's per diem was  
 14 included in the costing?  
 15 A. It was included in the costing.  
 16 Q. It was included in the costing?  
 17 A. Yes. And let me explain how.  
 18 I know there are a lot of heads looking  
 19 up, so let me explain how.  
 20 Going into the contract, there was a  
 21 me-too with the pilots. The pilots entered into the  
 22 Merger Transition Agreement, the MOU, and they had

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1 established future rates. So we knew that if we  
 2 followed those rates, it would cost the flight  
 3 attendants X during the JCBA.  
 4 Knowing that it would cost X, the decision  
 5 was made that it was too expensive, and the flight  
 6 attendants elected not to do it and have a different  
 7 set of per diem rates than the pilots.  
 8 So in the sense of calculating what an  
 9 ultimate cost would be based on proposals that were  
 10 made, that would have been included, valued, and  
 11 then assessed by the Union.  
 12 Q. But the loss -- so the rates were actually  
 13 and the -- the rates were included in the costing.  
 14 And the difference in what the incremental  
 15 rates would have been had me-toos been -- had  
 16 me-toos been exercised was included in the costing  
 17 of those two; correct?  
 18 A. Yes.  
 19 Q. But to the extent that the me-too --  
 20 giving up the me-too also gave up the right to  
 21 me-too any yet future as yet un-negotiated increases  
 22 with the pilots.

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1 That was not included in the costing, was  
 2 it?  
 3 A. It wouldn't be.  
 4 Q. Right. The example that you gave with  
 5 respect to the dispatchers -- hypothetical  
 6 dispatchers negotiations.  
 7 A. Yes.  
 8 Q. That hypothetical could have -- well, let  
 9 me go at it a slightly different way.  
 10 You were here when I was asking Patrick  
 11 about me-too clauses in the legacy US Collective  
 12 Bargaining Agreement, specifically the me-too on  
 13 healthcare; correct?  
 14 A. Yes.  
 15 Q. And you're undoubtedly familiar with that  
 16 one as well.  
 17 A. Yeah.  
 18 Q. Okay. The identical hypothetical that you  
 19 provided us in connection with the dispatchers, the  
 20 hypothetical dispatchers collective bargaining could  
 21 have occurred at legacy US; correct?  
 22 A. Yes. It could have.

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1 Q. And to whatever extent -- to whatever  
 2 extent the me-too on healthcare in the legacy US  
 3 contract may or may not have impeded -- interfered  
 4 with your flexibility at US Airways, US Airways  
 5 nevertheless agreed to and was prepared to live by  
 6 the me-too in the flight attendants' contract;  
 7 correct?  
 8 A. Correct. And there was a reason for that.  
 9 Back in 2002, when I came to the Company,  
 10 there were either 18 or 22 different medical plans,  
 11 and we negotiated it down to one.  
 12 So we already had a very long history of  
 13 having a single medical plan for all the employees.  
 14 So from our standpoint, there wasn't a  
 15 risk because everybody was already and for many  
 16 years had been covered under that single plan.  
 17 It's very different here because we have  
 18 not yet concluded negotiations with our CWA, IBT  
 19 union or the TWU or IAM.  
 20 So we have potentially, hypothetically,  
 21 significant exposure still with these Collective  
 22 Bargaining Agreements that haven't been completed.

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1 And as a negotiator, you have to weigh all  
 2 of that.  
 3 When we had the me-too in the legacy US,  
 4 we weighed the risks. But we already had a single  
 5 plan for every single employee for years and years  
 6 and years.  
 7 Very different than the situation that  
 8 we're faced with now.  
 9 Q. And part of the objective -- part of the  
 10 objective as legacy US with respect to me-too  
 11 clauses in the flight attendants contract and  
 12 actually -- let me pause for a moment.  
 13 Do you know, sitting here today, whether  
 14 you had similar me-too clauses on health insurance  
 15 in all of the other work group collective bargaining  
 16 agreements?  
 17 A. I don't off the top of my head, but it  
 18 wouldn't surprise me if we did.  
 19 Q. Part of the objective of the me-too clause  
 20 with the flight attendants and any other work group  
 21 that you might have it with, part of that objective  
 22 was to act, in fact, as a governor on the Company's

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1 conduct with respect to bargaining?  
 2 A. It would be, yes.  
 3 And in fact, because we did this  
 4 originally in 2002 during the restructuring,  
 5 everybody wanted to make sure, you know, the pilots  
 6 went first.  
 7 They wanted to make sure they weren't  
 8 going to be out there alone with one plan with a  
 9 very significant employee contribution and that  
 10 everybody would do it.  
 11 Once we got that in place, again, those  
 12 contracts existed with the same medical plan for 10,  
 13 12 years, completely, completely different than the  
 14 situation we are in now.  
 15 Q. Yeah, great. So let's go back to 2002.  
 16 2002, when the pilots went first, the  
 17 me-too -- they negotiated the health insurance plan.  
 18 And they negotiated a me-too to act as a governor on  
 19 the one hand and protection on the other hand just  
 20 to ensure that everybody in the Company had the same  
 21 health plan; correct?  
 22 A. Correct. And all those negotiations were

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1 done almost simultaneously.  
 2 We're not in the same situation because we  
 3 are first starting with CWA and IBT later this  
 4 month. And we have no idea when we're even going to  
 5 start with TWU or -- and IAM.  
 6 So -- there was great comfort back then  
 7 because we were negotiating them simultaneously.  
 8 Here, the situation is, again, totally  
 9 different.  
 10 Q. The flight attendants here in 2014 have  
 11 exactly the same interests in maintaining parity  
 12 with the other work groups on health insurance as  
 13 the pilots did at US Airways in 2002?  
 14 A. They have the same interests, but the  
 15 difference is that here we have negotiated and  
 16 agreed to a market rate of \$112 million.  
 17 Q. Well, that's a --  
 18 A. Okay. And if, in fact, going back to the  
 19 hypothetical, where the TWU keeps the legacy US  
 20 plan, we're not talking about a million or two  
 21 million dollars difference.  
 22 We're talking about a very significant

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1 difference in the cost.  
 2 Q. Well, that's an interesting answer, and I  
 3 understand that and appreciate your observation.  
 4 But in fairness, that's both a legal  
 5 question for the Panel to decide whether our  
 6 health -- our promises with regard to health  
 7 insurance are separate from the valuation questions,  
 8 number one.  
 9 And number two, whether in fact a me-too  
 10 as written by the parties has any value.  
 11 But my point -- now I'll ask the question.  
 12 MR. SIEGEL: Could we move to strike the  
 13 closing arguments?  
 14 MR. FREUND: Might as well hear it now.  
 15 It's more effective in the middle of the  
 16 case than it is at the end.  
 17 BY MR. FREUND:  
 18 Q. But my question to you is the same.  
 19 And I think you would agree with me;  
 20 right, that whatever the timing differences might or  
 21 might not have been in the 2002 US Airways pilots  
 22 negotiations as compared to 2014 flight attendant

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1 negotiations, the fact remains that the pilots'  
 2 interests in maintaining uniformity of health  
 3 insurance plans is identical to the flight  
 4 attendants' interest now in maintaining the single  
 5 area of health insurance plans.  
 6 A. There's no question that on this  
 7 particular, I agree with you.  
 8 In fact, the Company's interests are  
 9 aligned as well. That's what we want, too.  
 10 Q. Well, we're trying to help you.  
 11 A. I appreciate that.  
 12 Q. By having a Panel put the me-too in.  
 13 A. Look, we are aligned. We have said it.  
 14 There's no question about it.  
 15 My only point, Jeff, is that we're not in  
 16 total control of a situation when we're in a Section  
 17 6 negotiation and faced with a possible strike.  
 18 That doesn't mean we don't want to do it; we're not  
 19 going to try as hard as humanly possible.  
 20 But I can't predict what would happen in  
 21 that situation.  
 22 And if I have to do it or the Company

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1 directs me to do it, meaning agree to a different  
 2 plan that could end up costing tens of millions of  
 3 dollars because I have to me-too it with the flight  
 4 attendants, that is something as a negotiator on the  
 5 behalf of the Company I have to be concerned with.  
 6 Doesn't mean we don't have any  
 7 disagreement on what we want to do and what we're  
 8 trying to do and what the flight attendants want  
 9 done.  
 10 No disagreement.  
 11 It's just a fact of reality that as a  
 12 negotiator, under a Section 6 in the Railway Labor  
 13 Act, I don't have total control.  
 14 I have got the Mediation Board. I have  
 15 got the mediators. I have got the pressure that is  
 16 put on that can -- that can happen to make an  
 17 agreement.  
 18 And so all of those factors do come into  
 19 the play. That's all I'm saying.  
 20 Q. And I would say the same -- I would ask  
 21 the same question, and I suspect you would give the  
 22 same answer with respect to profit sharing.

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1 That is, the flight attendants have the  
 2 identical interest to see to it that they are not  
 3 treated any differently than any other work group at  
 4 that point; correct?  
 5 A. Correct.  
 6 MR. FREUND: One second. That's all I  
 7 have got.  
 8 ARBITRATOR BLOCH: Mr. Robertson, anything  
 9 else?  
 10 MR. ROBERTSON: No.  
 11 ARBITRATOR BLOCH: Mr. Glass, thank you as  
 12 well for your participation -- I'm sorry. Excuse  
 13 me.  
 14 Give me just a moment, please.  
 15 MR. SIEGEL: That's our case.  
 16 ARBITRATOR BLOCH: Let me excuse the  
 17 witness before you think of something.  
 18 Thank you very much, Mr. Glass. We  
 19 appreciate it.  
 20 THE WITNESS: Thank you.  
 21 (The witness stood down.)  
 22 ARBITRATOR BLOCH: Now, could we take a

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1 brief break with the Board here before we wind it  
 2 up.  
 3 MR. FREUND: Well, let's just see where we  
 4 are.  
 5 I take it that's your last witness?  
 6 MR. SIEGEL: That's our last witness.  
 7 And so hopefully that's the last witness  
 8 in for the day.  
 9 MR. FREUND: And maybe, I think we want to  
 10 take advantage of that break to confirm on our own  
 11 to decide whether there's anything else we want to  
 12 do.  
 13 ARBITRATOR BLOCH: That's fine.  
 14 (A recess was taken.)  
 15 ARBITRATOR BLOCH: One note as a result of  
 16 conversation between Joey, our court reporter, and  
 17 me a few moments ago, and I think a testament to his  
 18 excellence and caring on the stuff.  
 19 Joey indicates that in yesterday's  
 20 transcript, he had heard in the course of our  
 21 testimony in conversations reference to the "United  
 22 Continental" contract as to combined

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1 United/Continental contract as distinguished from  
 2 what was intended was the Continental and the United  
 3 contracts.  
 4 And so he had erroneously represented that  
 5 with a slash instead of a comma or a dash. And he  
 6 informs me that, of course, that will be corrected  
 7 in the final version that's coming out very quickly.  
 8 So, Joey, I really thank you for your  
 9 observation and your caring. That's a big deal.  
 10 Appreciate your bringing it to our attention.  
 11 I am going to suggest to the parties that  
 12 number one, as anticipated, your presentations have  
 13 been comprehensive and very responsive to the job  
 14 that this Board needs to perform.  
 15 And I'm saying that not solely to warm  
 16 your hearts, but to tell you that I think I am  
 17 convinced, and I know my colleagues feel the same  
 18 way, that we do not need closing arguments, per se.  
 19 MR. FREUND: That's because I have already  
 20 given closing argument in cross-examination.  
 21 ARBITRATOR BLOCH: I was about to say  
 22 "again."

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1 But with obvious thanks for the  
 2 comprehensiveness of the presentations themselves.  
 3 And with this one request: We would  
 4 welcome a short -- and by that I mean, five pages or  
 5 less -- discussion of the one, call it, legal,  
 6 contractual question that we have discussed during  
 7 the course of the hearing.  
 8 That is the contractual basis, contractual  
 9 commitment, as has been represented by the Union,  
 10 underlying the single health system.  
 11 And I'm referring, at least, to the CLA  
 12 and the December 31 clarifying document.  
 13 So if you could do that, my understanding  
 14 from your representations is that we could have a  
 15 brief on that a week from today, if that's okay.  
 16 MR. FREUND: Yes.  
 17 MR. SIEGEL: Yes.  
 18 ARBITRATOR BLOCH: And I would ask, if you  
 19 don't mind, send copies directly to all of the Board  
 20 members, as well, of course, as to exchange between  
 21 yourselves.  
 22 We are going to -- the Board is going to

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1 convene right after this to discuss our own  
 2 calendars because all of us recognize, not only the  
 3 serious nature of the issues that have been brought  
 4 forth, but the advisability of getting a response to  
 5 this just as quickly as we possibly can.  
 6 So consistent with the requests that I  
 7 made to counsel on the quick briefing, we would be  
 8 looking to give you an equally quick response, and  
 9 we will know a lot more after we have a little  
 10 lunch.  
 11 So let me just inquire from counsel, and  
 12 also my colleagues whether there is anything else I  
 13 should know?  
 14 Gentlemen, anything else?  
 15 MR. FREUND: Nothing for us.  
 16 MR. SIEGEL: No.  
 17 ARBITRATOR BLOCH: So in addition to  
 18 extending my thanks on behalf of all of us to the  
 19 counsel, to the witnesses, I thank you all for your  
 20 endurance and patience in sitting through this.  
 21 And we look forward to getting back to you  
 22 as quickly as possible.

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1 MR. SIEGEL: And certainly thanks to  
 2 the -- I'm sure Jeff agrees -- thanks very much to  
 3 the Panel.  
 4 It's a lot of information, and it's an  
 5 expedited process, and we very much appreciate your  
 6 dedication and professionalism.  
 7 MR. FREUND: Agree absolutely.  
 8 ARBITRATOR BLOCH: Thanks again.  
 9 And I'll close the record.  
 10 (Whereupon, the proceedings in the above-captioned  
 11 matter were concluded at 1:57 p.m.)  
 12  
 13  
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1 CERTIFICATE OF REPORTER  
 2 I, Joseph A. Inabnet, do hereby certify  
 3 that the transcript of the foregoing proceedings was  
 4 taken by me in Stenotype and thereafter reduced to  
 5 typewriting under my supervision; that said  
 6 transcript is a true record of the proceedings; that  
 7 I am neither counsel for, related to, nor employed  
 8 by any of the parties to the action in which these  
 9 proceedings were taken; and further, that I am not a  
 10 relative or employee of any attorney or counsel  
 11 employed by the parties thereto, nor financially or  
 12 otherwise interested in the outcome of the action.  
 13  
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\_\_\_\_\_  
 Joseph A. Inabnet  
 Court Reporter



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