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10:12:51 2 THE CLERK: All rise.

10:12:53 3 THE COURT: Good morning,

10:12:54 4 please be seated. Welcome back,

10:13:00 5 everyone. Any preliminary business

10:13:05 6 that we need to discuss before

10:13:07 7 proceeding with testimony?

10:13:10 8 MR. MOLLEN: I don't believe

10:13:11 9 so, your Honor.

10:13:13 10 MR. JAMES: Not that I'm aware

10:13:14 11 of, your Honor.

10:13:15 12 THE COURT: All right, call

10:13:16 13 your next witness, or your first

10:13:18 14 witness in this case.

10:13:20 15 MR. JAMES: We agreed to split

10:13:22 16 the opening, your Honor.

10:13:23 17 THE COURT: Fair enough.

10:13:24 18 MR. JAMES: Thank you. Edgar

10:13:27 19 James for the Allied Pilots

10:13:28 20 Association. Your Honor, just a

10:13:30 21 quick roll call of our witnesses.
10:13:32 22 The first witness, and we changed
10:13:33 23 the lineup a little bit. American
10:13:37 24 Airlines informed them last night
10:13:39 25 it will be the negotiating chairman

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10:13:41 2 first, Neil Roghair.
10:13:42 3 The second would be Andrew
10:13:44 4 Yearley who's the managing director
10:13:46 5 of Lazard Freres, then, a Segal
10:13:49 6 company actuary, Chris Heppner,
10:13:52 7 APA's director of industry
10:13:54 8 analysis, Allison Clark. Larry
10:13:56 9 Rosselot, who's chairman of our
10:13:58 10 research department, it's called
10:14:00 11 the technical analysis and
10:14:01 12 scheduling committee. And then Jim
10:14:03 13 eat to know, who's a member of the
10:14:05 14 pilot's bankruptcy advisory
10:14:07 15 committee and our representative on

10:14:09 16 behalf of APA and the unsecured
10:14:12 17 creditors' committee.
10:14:12 18 Just to bring you up to date,
10:14:14 19 your Honor, I think you got some of
10:14:16 20 this when we met in chambers, we
10:14:18 21 met last week, I flew down to
10:14:20 22 Dallas for two days to work with
10:14:22 23 Neil Roghair. I thought that. The
10:14:27 24 Allison Clark is going to go before
10:14:29 25 Chris Heppner, the Segal actuary.

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10:14:33 2 THE COURT: All right.
10:14:33 3 MR. JAMES: I was in Dallas
10:14:36 4 two days last week, worked with our
10:14:39 5 Board of Directors, the officers
10:14:40 6 and the negotiating committee. We
10:14:42 7 met with American Airlines at all
10:14:43 8 levels and talked about a schedule
10:14:45 9 for negotiations and sort of a
10:14:47 10 protocol and understanding of how

10:14:48 11 we would go about that. I think we
10:14:50 12 raised that in a call with you the
10:14:52 13 other day. We're prepared to
10:14:54 14 reengage later this week. You were
10:14:58 15 going to do something and we were
10:14:59 16 going to do something. I think I
10:15:01 17 would say, if I can speak out of
10:15:03 18 school, that what we found is
10:15:05 19 sometimes that the mediator can
10:15:08 20 slow things down and frankly, if
10:15:11 21 the parties have a desire to get
10:15:13 22 together independent of that, they
10:15:14 23 could do that.

10:15:16 24 THE COURT: All right. I
10:15:17 25 don't think we need to get bogged

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10:15:19 2 down in that particular
10:15:20 3 conversation here this morning, but
10:15:21 4 thank you for the update.

10:15:24 5 MR. JAMES: You have our

10:15:25 6 response.

10:15:26 7 THE COURT: Obviously by that
10:15:27 8 I don't mean to say I'm not happy
10:15:29 9 to hear that people are having
10:15:30 10 discussions, because obviously I am
10:15:32 11 very happy about that.

10:15:33 12 MR. JAMES: I understand that,
10:15:36 13 your Honor. We did go through some
10:15:37 14 substantive discussions last week
10:15:39 15 and began the process.

10:15:40 16 You've now had a chance to
10:15:45 17 read our briefs and understand.
10:15:46 18 One of the problems you had before,
10:15:47 19 the way the case was presented,
10:15:49 20 done have the unions's testimony or
10:15:52 21 point of view about the 1113. I
10:15:54 22 think now you've had two different
10:15:55 23 things, one the bench memos going
10:15:59 24 through 1113, the pre filing
10:16:03 25 requirements and the pretrial

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10:16:05 2 requirements. We laid out in our
10:16:10 3 brief 1113 requirements, we believe
10:16:12 4 the company failed to satisfy. We
10:16:16 5 also explain why we believe the
10:16:18 6 company failed to make its case and
10:16:20 7 I just want to go through a quick
10:16:22 8 review of where we are, where we
10:16:24 9 think we are and where our
10:16:25 10 witnesses we hope will take us.

10:16:27 11 We think as a first premise
10:16:32 12 there's a paradigmatic problem here
10:16:34 13 in that the company's case is all
10:16:35 14 about why this collective
10:16:38 15 bargaining agreement will prohibit
10:16:40 16 them from reorganizing. And we
10:16:42 17 think that's the wrong question.

10:16:43 18 That's what the Supreme Court
10:16:46 19 said in Bildisco when they said the
10:16:48 20 question is does the debtor have
10:16:51 21 good reason to reject a collective
10:16:55 22 bargaining agreement, Congress
10:16:56 23 jumps in behind that and says well
10:16:58 24 wait a minute, what you're really

10:17:00 25 doing, with this new statute is

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10:17:03 2 you're putting our term sheet on
10:17:04 3 trial. It's not the collective
10:17:06 4 bargaining agreement, no one on any
10:17:07 5 side of the unions is saying that
10:17:08 6 the status quo contracts are
10:17:10 7 sustainable. That's not what's
10:17:12 8 being litigated here. We moved
10:17:13 9 well off those.

10:17:15 10 The question is is this term
10:17:17 11 sheet necessary to reorganize.

10:17:19 12 And I want to discuss that in
10:17:21 13 a little bit of detail toward the
10:17:23 14 end, just about what's going on in
10:17:24 15 front of the court, but before I
10:17:27 16 get into kind of a wrap-up and I
10:17:32 17 think a major point, I want to say
10:17:34 18 we believe we have good cause to
10:17:36 19 reject the company's proposals. We

10:17:38 20 have two proposals to the company.
10:17:40 21 One is we believe and the virtually
10:17:44 22 every analyst believes that this
10:17:46 23 company in order to succeed is
10:17:47 24 going to have to consolidate.
10:17:48 25 There's going to be a merger in the

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10:17:50 2 industry. There aren't a lot of
10:17:51 3 merger partners out there, indeed
10:17:53 4 there's maybe one merger partner
10:17:55 5 out there. The pilots and the
10:17:57 6 other unions met with the merger
10:17:59 7 partner and said what do you need
10:18:00 8 and we marked ourselves to a market
10:18:03 9 based contract which is very close
10:18:05 10 to what we know from American's
10:18:07 11 internal number of where we are
10:18:08 12 vis-a-vis the other major legacy
10:18:10 13 carriers. They have 259. The US
10:18:13 14 Air term sheet says 240. But the

10:18:15 15 way it was done is, and as I said
10:18:19 16 in the first time I was in front of
10:18:21 17 the court, we have historically
10:18:23 18 been opposed to mergers. Employees
10:18:26 19 get hurt in mergers. There are
10:18:28 20 efficiencies that will occur,
10:18:30 21 dislocations, but frankly, as I
10:18:31 22 said before, I'll say again, the
10:18:33 23 pilots are going to be around this
10:18:35 24 company for 32 years, they have a
10:18:38 25 deep vested interest in a

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10:18:40 2 successful company, so they're
10:18:41 3 willing to go where they have not
10:18:43 4 been willing to go before and say
10:18:44 5 we'll look at a merger, we'll
10:18:46 6 consider a merger, but the term
10:18:48 7 sheet has an opt out clause that
10:18:50 8 says A, we believe this maximizes
10:18:51 9 the return for all stakeholders.

10:18:53 10 If, however, there are
10:18:56 11 developments, there are other
10:18:56 12 plans, there are other ways, we
10:18:58 13 have a fiduciary duty and we will
10:19:01 14 act in accordance with our
10:19:02 15 fiduciary duty, both to the pilots
10:19:04 16 and to the stakeholders in this
10:19:06 17 case.

10:19:06 18 So it's not a -- it's a
10:19:10 19 contingent agreement.

10:19:11 20 The second thing we did is we
10:19:14 21 said we will get as close as we can
10:19:17 22 to the company's ask of 370 and try
10:19:23 23 and mark to their standalone plan.

10:19:25 24 The pilots proposal will
10:19:28 25 explain to you, because I think

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10:19:30 2 there's been some confusing
10:19:32 3 statements about the scope, they'll
10:19:34 4 explain that we believe we've moved

10:19:35 5 to industry competitive scope. We
10:19:38 6 moved on productivity where we knew
10:19:41 7 we had to move, we've known that
10:19:43 8 for years that we need to move on
10:19:45 9 productivity. I explained that
10:19:46 10 before, we got sent off in the
10:19:48 11 wrong track as a result of an
10:19:50 12 executive compensation dispute.
10:19:51 13 And sick leave is another issue we
10:19:53 14 moved on.

10:19:53 15 The 270 gives the company 10
10:19:56 16 million more than it needs to reach
10:19:58 17 market competitive rates. And the
10:20:02 18 company won't accept that. You've
10:20:04 19 heard testimony about the company's
10:20:05 20 position on the 370. We believe
10:20:08 21 that the pilots are being asked to
10:20:12 22 give up more, all the employees,
10:20:15 23 but I'm speaking because I know the
10:20:17 24 pilot situation better, more than
10:20:18 25 is necessary for reorganization.

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10:20:21 2 It's seven times what they thought
10:20:23 3 they needed in November. It's a
10:20:24 4 hundred million, over a hundred
10:20:26 5 million more than they've
10:20:28 6 determined to make their pilot
10:20:29 7 costs competitive at market levels.
10:20:32 8 It's a hundred, roughly the same
10:20:34 9 number, a hundred million more than
10:20:36 10 US Air said it would need in order
10:20:38 11 to bring the pilots to market level
10:20:41 12 in the event of a merger.

10:20:42 13 And they wanted right to run
10:20:44 14 an airline or within a airline
10:20:47 15 under the control and ownership of
10:20:50 16 the company, they want to fly up to
10:20:53 17 850 regional jets with up to 88
10:20:57 18 seats. Now that's four times the
10:20:59 19 size of JetBlue. You'll hear more
10:21:01 20 about scope clause. It's frankly a
10:21:02 21 term that we shouldn't be using.
10:21:05 22 It's just a subcontracting clause

10:21:06 23 and there's a particular history to
10:21:08 24 that arises post deregulation.
10:21:12 25 You'll hear from our represent

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10:21:14 2 tip of Lazard that the company's
10:21:17 3 standalone plan models
10:21:20 4 extraordinary profit levels, levels
10:21:21 5 that no major network carriers
10:21:23 6 achieved in the last decade. And
10:21:25 7 then the company in the term sheet
10:21:26 8 has a number of items for which
10:21:28 9 they assign no cost but they want
10:21:30 10 it.

10:21:31 11 Our position, it's not our
10:21:33 12 position, it's the testimony that
10:21:34 13 the 370 was developed to plug a
10:21:39 14 hole in the business plan and not
10:21:41 15 developed based on looking at
10:21:44 16 competitive market rates. We think
10:21:45 17 that they're overreaching, the

10:21:47 18 company is overreaching. They
10:21:49 19 established the 370 target and
10:21:51 20 they've refused to move off that
10:21:53 21 target. Or have had minor, minor
10:21:57 22 moves within that target. It's
10:21:59 23 basically I want what I want and I
10:22:00 24 want it the way I want it. You'll
10:22:03 25 hear testimony from Neil Roghair

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10:22:06 2 about that that this is not what
10:22:07 3 you call typical good faith
10:22:09 4 bargaining.

10:22:10 5 And there have been valuation
10:22:12 6 disputes at every turn.

10:22:13 7 Now we brought in APA's
10:22:15 8 research department to help with
10:22:17 9 this bargaining and they came out
10:22:19 10 of the room and said you're never
10:22:22 11 going to reach agreement, they've
10:22:23 12 had more valuation disputes than we

10:22:25 13 ever heard of in other bankruptcy
10:22:27 14 and sheer more significant.
10:22:28 15 The bargaining we believe does
10:22:30 16 23409 portray good faith
10:22:33 17 bargaining.
10:22:33 18 American's case, you heard
10:22:35 19 from Dan Kasper. And Dan Kasper's
10:22:39 20 presentation, as I said, in the
10:22:41 21 original opening is very similar to
10:22:43 22 what we had said, the pilots in the
10:22:47 23 2006 time period that internet
10:22:48 24 pricing is having a radical effect
10:22:50 25 on yield in the industry, that low

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10:22:52 2 cost carriers are growing, there's
10:22:54 3 been now you heard from Kasper
10:22:57 4 something that's happened more
10:22:58 5 recently, since 2006. Every major
10:23:00 6 competitor has consolidated yet
10:23:03 7 America west and US Air, United and

10:23:07 8 Continental, Delta and Northwest,
10:23:09 9 the industry has changed
10:23:10 10 significantly as a result of this
10:23:11 11 consolidation. American used to be
10:23:13 12 number one a couple of years ago
10:23:15 13 and now it's fallen to number 3
10:23:16 14 place.

10:23:17 15 You didn't hear Dan Kasper
10:23:19 16 talk about the term sheet because
10:23:20 17 he didn't have an opinion on what
10:23:23 18 was necessary in terms of the labor
10:23:25 19 cuts.

10:23:25 20 You next had Jerry glass with
10:23:27 21 whom we've dealt in a number of
10:23:29 22 other airline negotiations and Mr.
10:23:32 23 Glass basically, he didn't say that
10:23:34 24 the, that the concessions were
10:23:38 25 necessary, he did review the cost

10:23:39 2 proposals or the union's

10:23:42 3 counterproposals, what he did is
10:23:44 4 said if you look at any particular
10:23:45 5 item in the pilot contract or the
10:23:48 6 other union's contracts you can
10:23:50 7 find something in another airline's
10:23:52 8 contract that's more liberal toward
10:23:54 9 the company. We don't dispute
10:23:56 10 that. The question for us is the
10:23:58 11 package labor cost. What are we
10:24:01 12 charging the company on the basis
10:24:03 13 of the pay, the benefits and the
10:24:06 14 work rules and the subcontracting
10:24:08 15 provisions?

10:24:10 16 Mr. Kasper didn't address
10:24:11 17 those. He said as to particular
10:24:13 18 items you can find more liberal
10:24:15 19 provisions in other contracts.

10:24:16 20 You did hear Ms. Goulet who is
10:24:19 21 American's chief restructuring
10:24:21 22 officer and a vice president for
10:24:23 23 corporate development and treasury,
10:24:24 24 she's the one who did formulate the
10:24:26 25 numbers in the business plan. She

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10:24:28 2 said she got lots of inputs from
10:24:30 3 various advisors and the labor cuts
10:24:33 4 were a gap filler in the business
10:24:36 5 plan. I believe it may be Ms.
10:24:37 6 Goulet, but I may have my person
10:24:39 7 wrong who said we basically had a
10:24:42 8 number in the business plan and we
10:24:44 9 went to the labor people and Jeff
10:24:47 10 Brundage and Taylor Vaughn said we
10:24:49 11 were told to model up to those.

10:24:52 12 David Resnick from Rothschild
10:24:54 13 said something that American
10:24:55 14 doesn't need a revolver, doesn't
10:24:58 15 need revolving credit. It probably
10:25:00 16 doesn't need exit financing, it has
10:25:02 17 more money now than when it went
10:25:04 18 in, it has 5 billion in cash. He
10:25:07 19 did say American had a fiduciary
10:25:09 20 obligation to consider
10:25:10 21 consolidation before it exited

10:25:11 22 bankruptcy and I'll explain more
10:25:12 23 about why that's important in a
10:25:14 24 minute.
10:25:14 25 We then had Mr. Vahidi who

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10:25:17 2 explained the five cornerstone
10:25:20 3 business plan which has been the
10:25:23 4 business plan for a number of years
10:25:25 5 and is stumbling along. We don't
10:25:28 6 think it's going to ultimately
10:25:30 7 cause this company to merge as a
10:25:32 8 successful stand-alone, but it is
10:25:34 9 the business plan. He did not
10:25:36 10 understand scope and we'll get into
10:25:38 11 that with Jim Eaton because he said
10:25:40 12 we can't fly certain size planes.
10:25:43 13 That's not right. The question is
10:25:46 14 who flies those planes. At US Air
10:25:49 15 they tend to fly the smaller
10:25:51 16 regional jets. At that point

10:25:53 17 you'll hear more testimony from our
10:25:54 18 side and I'm sure from the company.
10:25:56 19 Alex Dichter from McKinsey
10:26:00 20 spoke about the sophisticated
10:26:01 21 revenue model that McKinsey built.
10:26:05 22 He said in response to questions
10:26:06 23 they've never used that to look at
10:26:08 24 consolidation. And American now
10:26:10 25 owns the model and hasn't run those

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10:26:13 2 projections. In fact when we said
10:26:15 3 where are your comparisons in terms
10:26:17 4 of what's going on in the industry
10:26:18 5 in consolidation, he said we don't
10:26:20 6 have that data.

10:26:21 7 Jeff Brundage just said, Jeff
10:26:26 8 said, you know, the 370, we're hard
10:26:29 9 up on 370, bargaining off 370 and
10:26:31 10 he was given 370.

10:26:32 11 Brian McMenamy, their

10:26:36 12 controller and head of its finance
10:26:38 13 department, really for our purposes
10:26:39 14 talked more about benefits and the
10:26:41 15 two aspects there. One is about
10:26:44 16 the medical benefit for future
10:26:45 17 retirees. We argued he's using a
10:26:49 18 pension based discount rate of 8.25
10:26:51 19 which is way over what it should
10:26:53 20 be, and undervalues the savings.

10:26:56 21 And then he has maintained
10:27:00 22 that if you, even though they're
10:27:02 23 raising the out-of-pocket payables
10:27:04 24 and the premiums for the medical,
10:27:06 25 it will not affect utilization

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10:27:08 2 rates and I think that's contrary
10:27:09 3 to what the healthcare economists
10:27:12 4 would maintain.

10:27:14 5 Finally, you heard Taylor
10:27:17 6 Vaughn who basically in a different

10:27:19 7 fashion but said, look, we did not
10:27:20 8 do the labor ask based on trying to
10:27:23 9 figure out where the flight
10:27:24 10 attendants were in the industry.
10:27:26 11 We had a number given as a result
10:27:28 12 of the restructuring business plan.
10:27:30 13 On our case, you're first
10:27:33 14 going to hear from Neil Roghair.
10:27:35 15 He's chairman of the negotiating
10:27:37 16 committee. He's been doing this
10:27:39 17 for a couple of years. He'll talk
10:27:42 18 about the prepetition, postpetition
10:27:45 19 ask. He'll talk about what we did
10:27:48 20 in terms of concessions pre
10:27:50 21 bankruptcy. And during bankruptcy
10:27:53 22 American moved up to 370. He'll
10:27:56 23 talk about proposals we put on the
10:27:58 24 table. And he'll talk about the
10:27:59 25 valuation disputes although he's

10:28:01 2 really not the lead witness on that
10:28:03 3 point. That's going to be Allison
10:28:05 4 Clark and Larry Rosselot who deal
10:28:07 5 with scheduling models and pricing
10:28:10 6 models, but Neil certainly lived
10:28:12 7 through that.

10:28:13 8 He'll also talk about the US
10:28:15 9 Air negotiations and his point
10:28:16 10 would be my point that if parties
10:28:19 11 wants to reach an agreement they do
10:28:20 12 it very, very quickly.

10:28:21 13 Next you'll hear from Andrew
10:28:23 14 Yearley, the managing director with
10:28:28 15 have and Mr. Yearley will have
10:28:30 16 about how American's business plan
10:28:33 17 aims to hit a profit level that no
10:28:34 18 other airline has reached in the
10:28:37 19 last decade. I think he has
10:28:39 20 exhibits in their frequency
10:28:41 21 histogram and so forth that show
10:28:43 22 that. He'll talk about their
10:28:44 23 efforts to get fleet plan
10:28:46 24 information, the term that came out

10:28:49 25 of American's testimony is that's

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10:28:51 2 part of the -- it wasn't part of
10:28:52 3 the business plan, it's part of a
10:28:54 4 business case they built. We've
10:28:55 5 asked for it repeatedly. We've not
10:28:57 6 been given it.

10:28:58 7 And he'll explain why we
10:28:59 8 believe that's important because
10:29:01 9 it's driving the company's finance,
10:29:03 10 the company's business plan and
10:29:04 11 consequently, the labor ask.

10:29:06 12 Allison Clark is APA's
10:29:11 13 director of industry and analysis.
10:29:13 14 She does, grinds the numbers on the
10:29:17 15 pricing model and she's worked with
10:29:18 16 Larry Rosselot on the scheduling
10:29:22 17 model. She'll explain the pilot
10:29:25 18 proposals, why she believes we have
10:29:28 19 270 million on the table and why we

10:29:33 20 believe that the company's 370 is
10:29:35 21 really 460. If you cost it out and
10:29:37 22 if you've ever looked at the chart,
10:29:38 23 I forget which exhibit it is,
10:29:40 24 because of the way productivity
10:29:42 25 kicks in in negotiations,

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10:29:43 2 American's number begins on year 1,
10:29:46 3 we think it givens at 460 and it
10:29:49 4 quickly gets larger and larger and
10:29:51 5 larger and if you take it out
10:29:53 6 beyond the sixth year it's just
10:29:56 7 stunning how big that number gets.
10:29:58 8 If you start with a higher number,
10:30:00 9 460, you're close to a billion in
10:30:02 10 your sixth year.

10:30:03 11 She'll talk about problems
10:30:05 12 with American. A lot of these
10:30:08 13 valuation disputes, your Honor,
10:30:10 14 they're not number disputes,

10:30:12 15 they're assumption disputes about
10:30:13 16 sick leave, about what's going to
10:30:15 17 happen to medical cost usage if you
10:30:17 18 increase premiums and so forth.

10:30:18 19 So they are assumption driven.

10:30:20 20 And then she'll give a
10:30:23 21 conservative estimate of the cost
10:30:25 22 of the scope concessions to the
10:30:27 23 pilots.

10:30:27 24 Next will be Chris Heppner
10:30:29 25 from the Segal company. You're

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10:30:31 2 going to hear from several Segal
10:30:35 3 people because the APFA have a
10:30:38 4 couple of Segal witnesses. He's
10:30:40 5 going to talk about the medical,
10:30:41 6 the valuation, I forget our number,
10:30:43 7 it's a 44 or 48 million dollar
10:30:46 8 valuation dispute we have with the
10:30:47 9 company on the medical cost

10:30:48 10 savings. And that's driven by the
10:30:49 11 discount rate and what effect
10:30:51 12 raising pricing of medical
10:30:53 13 insurance has on utilization.

10:30:55 14 Next you'll hear from Larry
10:30:57 15 Rosselot. He's the head of our
10:30:59 16 effectively research department.
10:31:01 17 I've worked with Larry for decades.
10:31:03 18 I first worked with him in 1996 and
10:31:05 19 '97.

10:31:06 20 We had a presidential
10:31:08 21 emergency board and Larry worked on
10:31:11 22 labor costing then. In 2003, when
10:31:14 23 we had to go through restructuring
10:31:15 24 talks about American Airlines, we
10:31:18 25 had many, many valuation disputes.

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10:31:20 2 We went through endless teams of
10:31:21 3 company analysts because it's very
10:31:25 4 difficult to model a pilot

10:31:28 5 contract. What happens when a
10:31:29 6 training cycle occurs, what happens
10:31:31 7 when a furlough occurs, what does
10:31:33 8 vacation do, how do you value it,
10:31:35 9 when do those savings occur. Larry
10:31:38 10 worked through that in 2003. And a
10:31:41 11 compliment to the then CEO, Gerard
10:31:44 12 Arpey, he brought in Bain
10:31:46 13 Consulting group and we spent part
10:31:48 14 of the year in 2005 trying to avoid
10:31:50 15 that and was working with American
10:31:52 16 and Larry Rosselot and another
10:31:55 17 pilot who's downstairs, Mickey
10:31:58 18 Mellerski, saying let's get a
10:32:01 19 common language where we talk about
10:32:03 20 methodology and not pertinent to
10:32:04 21 our case, they went on to look at
10:32:06 22 vesting plans, where are we
10:32:08 23 deficient vis-a-vis other airlines
10:32:11 24 and productivity was the big
10:32:12 25 driver.

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10:32:13 2 Next you'll hear from Jim
10:32:14 3 Eaton, he'll talk about the pilots'
10:32:18 4 scope clause and why we believe our
10:32:21 5 proposal is industry standard and
10:32:22 6 gives American the flexibility it
10:32:24 7 needs and puts American on a par
10:32:26 8 with the competitors.

10:32:27 9 I submit that our position is
10:32:28 10 the substance of the term sheet.
10:32:30 11 It asks for more than is necessary.
10:32:32 12 It's unfair and inequitable. The
10:32:35 13 negotiating process does not pass
10:32:37 14 the 1113 test. They made a
10:32:39 15 nonnegotiable demand for 370 and
10:32:42 16 they insist on their specific
10:32:44 17 terms. The equities clearly
10:32:46 18 balance in favor of the pilots.
10:32:48 19 And most importantly, the pilots
10:32:50 20 have good cause to reject the term
10:32:52 21 sheet. We have two alternative
10:32:56 22 proposals, a painful but necessary
10:32:58 23 consolidation proposal we believe

10:32:59 24 and a stand-alone proposal. Ours
10:33:02 25 are based on market based terms not

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10:33:05 2 a hole in the business plan.

10:33:07 3 And we believe they're market
10:33:08 4 tested. US Air said in effect we
10:33:11 5 want to mark you to market, here's
10:33:12 6 what we need. We did a set up in
10:33:14 7 that agreement, a rapid dispute
10:33:16 8 resolution process because we're
10:33:17 9 never going to get complete
10:33:19 10 agreements on valuation, so we
10:33:20 11 brought in a neutral and said once
10:33:22 12 he has a dispute he'll resolve it
10:33:24 13 in 30 days because some person is
10:33:26 14 going have to say look, cut it
10:33:28 15 somewhere, but he's going to have
10:33:30 16 to resolve valuation disputes there
10:33:32 17 inevitably.

10:33:33 18 I want to say two wrap up

10:33:36 19 points that I'm deeply invested in.
10:33:39 20 One, I think what you're getting
10:33:41 21 here is a little different than any
10:33:43 22 other bankruptcy that I'm aware of
10:33:46 23 in the airline industry. You're
10:33:48 24 getting a sequencing of if there is
10:33:50 25 another plan in the background, why

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10:33:52 2 not bring it on now. And you're
10:33:53 3 getting the view, well, it will
10:33:56 4 come on soon, but not too soon and
10:33:59 5 why is that? It's because the
10:34:00 6 Second Circuit, once they said the
10:34:02 7 unions post 1113 lose their
10:34:05 8 unsecured claim and I don't believe
10:34:06 9 you'll find another decision that
10:34:07 10 says that other than a district
10:34:09 11 court case I believe out of the
10:34:10 12 middle district of Tennessee. That
10:34:13 13 has created kind of an odd

10:34:14 14 incentive. Instead of getting on
10:34:16 15 with the bankruptcy, it's let's go
10:34:18 16 through 1113, let's change the
10:34:21 17 denominator in that distribution
10:34:22 18 and take the pilots have
10:34:24 19 historically and Northwest and
10:34:26 20 United, Continental -- another not
10:34:29 21 Continental, Northwest, United, US
10:34:32 22 Air and Delta have had the largest
10:34:34 23 unsecured claims. I don't know
10:34:35 24 where it ranks here, but it's a big
10:34:36 25 claim. It's been one of the things

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10:34:38 2 that's happened facilitate the
10:34:40 3 negotiations and the term sheet,
10:34:41 4 whether it's before 1113 or after.
10:34:44 5 Now, there's a little bit of
10:34:46 6 rope-a-dope going on, let's go
10:34:48 7 through the 1113, we'll get a
10:34:50 8 standalone plan that we can use as

10:34:52 9 a bargaining metric and figure out
10:34:55 10 where we want to go. We can
10:34:57 11 bargain with another airline if
10:34:59 12 we've gone through 1113. I that I
10:35:02 13 claim has taken pressure off the
10:35:05 14 debtor to get something done
10:35:06 15 quickly and it's an odd position.
10:35:08 16 The other thing I'd say is
10:35:10 17 that when Mr. Resnick said you will
10:35:13 18 likely -- a company will explore a
10:35:16 19 consolidation before it exits
10:35:19 20 bankruptcy. What we did not know
10:35:21 21 until roughly midnight on Thursday
10:35:22 22 night is when the company filed
10:35:25 23 supplemental application to expand
10:35:28 24 McKinsey's services, its docket
10:35:31 25 entry 2695, it comes in around, I'm

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10:35:34 2 not a pilot so I don't do 24 hour
10:35:37 3 clocks, but 21:23. It's filed and

10:35:40 4 says oh, by the way, 10 days before
10:35:42 5 we begin our hearing with the
10:35:44 6 union, we've expanded McKinsey's
10:35:46 7 duties to evaluate alternative
10:35:48 8 business plans and work on due
10:35:51 9 diligence requests from the
10:35:52 10 committee.

10:35:52 11 Within a day you get the UCC
10:35:56 12 filing that says we have a protocol
10:35:58 13 with the debtor to look at
10:35:59 14 alternatives, and merger and you
10:36:02 15 have the debtor put in a press
10:36:04 16 statement.

10:36:04 17 This is the odd cases that
10:36:07 18 it's not, this 1113 is not being
10:36:10 19 driven by DIP considerations and I
10:36:12 20 think it's the only one I know of
10:36:15 21 the airline cases that's based on
10:36:17 22 it's driven by a business plan and
10:36:18 23 not some external need for
10:36:22 24 financing.

10:36:22 25 And we submit that the

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10:36:25 2 business plan, to the extent it's
10:36:27 3 the driver, I don't know how we can
10:36:29 4 reach the conclusion that this term
10:36:30 5 sheet is necessary for
10:36:32 6 reorganization when you've all but
10:36:35 7 been told that nobody knows that
10:36:37 8 yet and that will be determined in
10:36:38 9 a short period of time.

10:36:39 10 So we're not arguing, your
10:36:42 11 Honor, that you should deny the
10:36:44 12 1113, what we're arguing is you
10:36:46 13 should deny it pro tem. That
10:36:48 14 happened in Mesaba and Comair, that
10:36:50 15 it is premature. There will come a
10:36:54 16 point when we have to take our
10:36:56 17 medicine, I think we're prepared to
10:36:57 18 take our medicine, but there may
10:36:59 19 come a point when it has to be
10:37:01 20 refiled because we're not doing
10:37:02 21 what people wants us to do, but

10:37:04 22 it's not -- given the reformation
10:37:08 23 of 1113 and the way Congress set it
10:37:11 24 up, it's not whether the status quo
10:37:13 25 is sustainable. We'll concede that

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10:37:15 2 in an instant, I'll stipulate to
10:37:17 3 that. The question is is this term
10:37:18 4 sheet necessary for reorganization?
10:37:20 5 Are there other asks that could be
10:37:23 6 had of the unions that get us a
10:37:25 7 reorganization and the merger one
10:37:27 8 is about a hundred million dollars
10:37:29 9 less. I'm just suggesting that
10:37:30 10 given what's gone on in the last
10:37:33 11 week, we know what McKinsey ten
10:37:36 12 days before we started the hearing,
10:37:39 13 hard to come to the conclusion that
10:37:40 14 this term sheet is necessary to
10:37:42 15 reorganize this company. Thank
10:37:44 16 you, your Honor.

10:37:44 17 THE COURT: Thank you.

10:37:53 18 MR. DALMAT: The APA calls

10:37:55 19 Neil Roghair as its first witness.

10:38:12 20 THE CLERK: Please raise your

10:38:13 21 right hand.

10:38:13 22 NEIL ROGHAIR,

10:38:13 23 called as a witness, having been

10:38:13 24 first duly sworn, was examined

10:38:25 25 and testified as follows:

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10:38:25 2 MR. DALMAT: Good morning, your

10:38:27 3 Honor, Darin Dalmat on behalf of

10:38:29 4 the APA. Before we get started I

10:38:31 5 just wanted to go over a few

10:38:32 6 housekeeping matters. I think you

10:38:33 7 have in front of you and I think

10:38:35 8 counsel also has in front of them

10:38:37 9 binders that reflect the

10:38:42 10 submissions that the APA made last

10:38:45 11 week. These include both a brief

10:38:48 12 at the beginning and then the
10:38:49 13 series of declarations with their
10:38:51 14 associated exhibits.

10:38:54 15 In addition, you'll see that
10:38:57 16 various passages within that
10:39:00 17 material are marked in yellow
10:39:03 18 highlight. Those are the
10:39:04 19 redactions that the debtors have
10:39:07 20 requested that we make. We may
10:39:09 21 have some minor disagreements here
10:39:11 22 and there, but in general we're
10:39:12 23 going to either operate on the
10:39:14 24 assumption that those are
10:39:16 25 confidential material or we will

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10:39:18 2 work it out throughout the course
10:39:19 3 of the hearing with the debtors.

10:39:21 4 THE COURT: Just a note about
10:39:22 5 that. I know that can be
10:39:23 6 challenging to keep that

10:39:25 7 information under wraps and we had
10:39:26 8 a few bumps in the road. Just
10:39:30 9 because it's difficult to do that.
10:39:31 10 So I would ask that if you're
10:39:37 11 concerned that confidential
10:39:39 12 information is about to be
10:39:40 13 disclosed, if the witness is
10:39:42 14 concerned, if the debtor's counsel
10:39:44 15 is concerned, anyone who is
10:39:46 16 representing counsel in this room
10:39:49 17 is concerned, I will not at all
10:39:51 18 mind if someone pops up to bring
10:39:54 19 that out. So that we really can't
10:39:57 20 put this back in the bottle here,
10:39:59 21 so please be sensitive to that.
10:40:01 22 And so given the fact that these
10:40:06 23 confidential information is
10:40:09 24 highlighted here, that hopefully
10:40:11 25 should help us, again, it's a bit

10:40:13 2 of a challenge as witnesses or
10:40:15 3 questions segue from one area to
10:40:16 4 the other.

10:40:18 5 MR. DALMAT: Thank you, your
10:40:19 6 Honor, we'll be mindful. Before we
10:40:22 7 get started I note that the
10:40:24 8 debtor's raised no objections to
10:40:25 9 any of the exhibits associated with
10:40:26 10 Mr. Roghair's declaration except
10:40:29 11 for Exhibit 403. So at this point
10:40:32 12 I'd like to go ahead and move the
10:40:35 13 admission of those exhibits and if
10:40:38 14 the debtor would like to discuss
10:40:39 15 that objection now or we can wait.

10:40:41 16 THE COURT: No, I think what
10:40:42 17 we're going to do for objections is
10:40:43 18 we're going to deal with it after
10:40:45 19 cross which is the way we did it
10:40:47 20 the first week. Because sometimes
10:40:49 21 these objections have to be dealt
10:40:51 22 with and ruled upon. Other times
10:40:53 23 people feel like their cross
10:40:57 24 examination essentially establishes
10:40:57 25 what they need to establish and

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10:40:59 2 they don't need to go forward with
10:41:01 3 their objections. So let's put a
10:41:03 4 pin in that for the moment and
10:41:04 5 we'll deal with that after cross.

10:41:05 6 In part, I found it to be
10:41:08 7 surprising, happily surprising
10:41:11 8 small number of objections that we
10:41:12 9 really had to deal with after cross
10:41:15 10 examination last time we were here.
10:41:17 11 So let's -- don't worry, we'll make
10:41:19 12 sure that all the exhibits get
10:41:21 13 moved in and we'll deem them in.

10:41:24 14 MR. DALMAT: Thank you, your
10:41:24 15 Honor.

10:41:24 16 DIRECT EXAMINATION

10:41:25 17 BY MR. DALMAT:

10:41:25 18 Q. Good morning, Mr. Roghair.

10:41:27 19 A. Good morning.

10:41:27 20 Q. By whom are you currently

10:41:30 21 employed?
10:41:30 22 A. By American Airlines.
10:41:32 23 Q. What is your position with
10:41:39 24 American Airlines?
10:41:39 25 A. I'm a triple 7 first officer.

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10:41:44 2 Q. That's a pilot?
10:41:45 3 A. Pilot, yes.
10:41:46 4 Q. When did you begin as a pilot
10:41:48 5 with American Airlines?
10:41:49 6 A. February 1999.
10:41:50 7 Q. Have you flown for any anyone
10:41:52 8 other than American Airlines?
10:41:53 9 A. United States Air Force.
10:41:56 10 Q. What have been some of your
10:41:58 11 positions in the Air Force?
10:41:59 12 A. I was primarily an F 15 pilot.
10:42:03 13 Flew the Mirage 2000 for the French Air
10:42:07 14 Force for a couple of years. Came to
10:42:09 15 American in 1999. Stayed in the

10:42:11 16 reserves. Went back on active duty in
10:42:13 17 2003 in a nonflying job in Iraq. I was a
10:42:19 18 commander in Baghdad in 2004. And then
10:42:22 19 finished my career as a commander of the
10:42:24 20 Air Force detachment in Fort Sill,
10:42:26 21 Oklahoma, and came back to American in
10:42:29 22 2007.

10:42:32 23 Q. You're also a member of the
10:42:34 24 APA?

10:42:34 25 A. That's correct.

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10:42:35 2 Q. Do you hold any leadership
10:42:36 3 positions with the union?

10:42:37 4 A. I'm the chairman of the
10:42:38 5 military affairs committee and I'm
10:42:42 6 chairman of the negotiating committee.

10:42:43 7 Q. How long have you been
10:42:44 8 chairman of the negotiating committee?

10:42:45 9 A. Just over two years.

10:42:46 10 Q. What are some of your

10:42:48 11 responsibilities in that role?

10:42:49 12 A. Leading a team to negotiate

10:42:54 13 the collective bargaining agreement with

10:42:55 14 the company, that's the primary

10:42:58 15 responsibility.

10:42:58 16 Q. You submitted a written

10:43:03 17 declaration in this case?

10:43:04 18 A. Yes, I did.

10:43:05 19 Q. And is that Exhibit 400-A in

10:43:12 20 fronts of you?

10:43:13 21 A. That's correct.

10:43:13 22 Q. Do you adopt that declaration

10:43:16 23 as your testimony in this case?

10:43:17 24 A. Yes.

10:43:17 25 Q. And the exhibits that follow

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10:43:19 2 it are in the 400 series, do you adopt

10:43:22 3 those exhibits as the exhibits you're

10:43:24 4 sponsoring in this case?

10:43:25 5 A. Yes.

10:43:28 6 Q. Before we get into the
10:43:29 7 substance of some of the negotiations
10:43:30 8 that you handled, I'd like to talk
10:43:33 9 terminology just for a second. I think
10:43:35 10 you used the word terminable with respect
10:43:37 11 to the 2003 agreement in your
10:43:40 12 declaration?

10:43:40 13 A. That's correct.

10:43:41 14 Q. Was that to reflect the APA's
10:43:44 15 position that the contract expired in
10:43:47 16 2008?

10:43:47 17 A. Yes.

10:43:48 18 Q. And since then the pilots have
10:43:50 19 worked under the status quo provisions of
10:43:52 20 the Railway Labor Act?

10:43:52 21 A. That's correct.

10:43:53 22 Q. But if I get a little sloppy
10:43:56 23 and use for shorthand contract, contract
10:43:58 24 term, agreement, things like that, you'll
10:44:00 25 understand that I'm --

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10:44:01 2 THE COURT: Counsel, the issue
10:44:04 3 that was in the adversary
10:44:07 4 proceeding about that, is really
10:44:10 5 unrelated to what's going on here
10:44:11 6 so I don't want to spend a lot of
10:44:13 7 time parsing terms. Just ask the
10:44:14 8 questions, it's not going to affect
10:44:16 9 anyone's legal standing as to what
10:44:18 10 arguments they want to make, not
10:44:20 11 make sheer, on appeal. Whatever it
10:44:22 12 is. So don't worry about that.

10:44:26 13 MR. DALMAT: Thank you, your
10:44:39 14 Honor.

10:44:39 15 THE COURT: Proceed.

10:44:40 16 Q. In a pilot contract is a kind
10:44:42 17 of complex thing. There are a few areas
10:44:45 18 that before we get into the negotiations
10:44:47 19 I'd just like you to give kind of plain
10:44:50 20 introduction into what some of these
10:44:52 21 terms might mean. A scope clause, what
10:44:55 22 is that about?

10:44:56 23 A. As Ed said in his opening

10:45:03 24 remarks, it refers to subcontracting.

10:45:05 25 There was a term where our contract, up

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10:45:07 2 to about 1987, just had the phrase off

10:45:09 3 line, that our pilots did off line on

10:45:11 4 behalf of the corporation all flying.

10:45:14 5 That led to some exceptions for some

10:45:16 6 smaller aircraft, some small 19 seat

10:45:19 7 turboprop, or prop airplanes and there

10:45:22 8 have been exceptions to our scope clause

10:45:24 9 over time where that's expanded

10:45:26 10 significantly to now it involves other,

10:45:30 11 you know, American Eagle in particular

10:45:32 12 which has thousands of employees and

10:45:34 13 hundreds of airplanes.

10:45:35 14 Q. And why are protections

10:45:39 15 against subcontracting important to the

10:45:41 16 pilots?

10:45:41 17 A. Well, it represents our jobs.

10:45:44 18 And it prevents a wholesale outsourcing

10:45:47 19 of our flying in that, in protecting our
10:45:52 20 membership. We'd prefer that the company
10:45:54 21 do, that we do all flying on behalf of
10:45:57 22 the corporation.

10:45:58 23 Q. Sick leave, how does that work
10:46:03 24 under the current contract?

10:46:04 25 A. We accrue 5 hours a month, 60

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10:46:08 2 hours per year. And we can have a
10:46:11 3 maximum bank of a thousand hours and then
10:46:15 4 if we, the pilot calls in particular for
10:46:19 5 a trip, if it's a 15 hour trip, then 15
10:46:22 6 hours is deducted from his sick pay.

10:46:24 7 Q. And there have been some
10:46:26 8 disputes in this area over the last few
10:46:29 9 years?

10:46:29 10 A. It's been a very contentious
10:46:31 11 issue between the company and the union.
10:46:33 12 We've had four arbitrations in which the
10:46:37 13 arbitrators ruled in the union's favor

10:46:39 14 all four times. We had a Department of
10:46:43 15 Labor air 121 case, which ruled in the
10:46:44 16 union's favor. It's been a continuing
10:46:46 17 source of friction, both in the grievance
10:46:50 18 process and also at the negotiating
10:46:52 19 table.

10:46:52 20 Q. What is the substance of those
10:46:54 21 disputes?

10:46:55 22 A. The historically we've not had
10:46:58 23 a substantiation provision in our
10:47:01 24 contract and the responsibilities up to
10:47:03 25 the pilots to determine when they're

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10:47:05 2 sick. By federal law that's one of our
10:47:07 3 responsibilities under Federal Aviation
10:47:10 4 Regulations to determine if we're fit to
10:47:12 5 fly.

10:47:12 6 We want to encourage that for
10:47:14 7 safety reasons. We don't want to set up
10:47:16 8 any system, and this is just not getting

10:47:19 9 into our property, but among the
10:47:21 10 industry's, we don't want to incentivize
10:47:24 11 pilots to fly sick and to not be flying
10:47:28 12 the general public around in a high
10:47:30 13 stress, high responsibility situation if
10:47:33 14 the pilot should not be in the cockpit.

10:47:36 15 Q. And you mentioned a
10:47:37 16 substantiation requirement. How does
10:47:40 17 that fit into American's position?

10:47:41 18 A. The company has long sought a
10:47:44 19 requirement that they could request a
10:47:47 20 doctor's note or substantiation of any
10:47:50 21 sick. And that's something that we have
10:47:55 22 reached out at the negotiating table in
10:47:59 23 this process, which is a new move for us,
10:48:02 24 that sick over 30 days, we had an
10:48:05 25 agreement prior to one of the

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10:48:06 2 arbitrations that was never closed or
10:48:11 3 agreed to and the company decided to go

10:48:14 4 to the arbitration and arbitration went
10:48:16 5 in our favor. We've gone back and
10:48:18 6 resurrected that agreement and
10:48:21 7 incorporated that into our table of
10:48:23 8 position.

10:48:24 9 Q. Now I'd like to bring your
10:48:26 10 attention back to August 2011. Can you
10:48:29 11 describe for me what was going on in
10:48:31 12 bargaining at that time?

10:48:31 13 A. By August of 2011, we'd been
10:48:36 14 negotiating with the company for
10:48:38 15 approximately four years. We had reached
10:48:43 16 agreements in principle on about 35, I
10:48:46 17 would say different areas of the contract
10:48:48 18 that eventually grew to 40 or so, but we
10:48:51 19 were still a long ways apart on a number
10:48:54 20 of important issues, the big issues
10:48:58 21 related to the contract. The company had
10:49:01 22 just completed the largest aircraft order
10:49:05 23 in aviation history with Boeing and
10:49:08 24 Airbus the previous month. And in August
10:49:11 25 of 2011 senior leadership came to us and

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10:49:15 2 wanted to step up the, we'll say the pace
10:49:20 3 and the urgency of negotiations and they
10:49:23 4 framed the discussions as more urgent or
10:49:28 5 the company was going to have to explore
10:49:29 6 some alternative paths if we were unable
10:49:32 7 to reach a deal.

10:49:32 8 Q. And you mentioned senior
10:49:34 9 leadership. Who are you referring to?

10:49:36 10 A. Well, some of the initial
10:49:37 11 meals were with the CEO, Gerard Arpey,
10:49:40 12 with Tom Horton, Mr. Jeff Brundage was
10:49:43 13 involved. And it was at that point where
10:49:46 14 Mr. Brundage became directly involved in
10:49:49 15 negotiations at the table.

10:49:51 16 Q. Was Mr. Brundage the one who
10:49:53 17 discussed with you the three
10:49:54 18 alternatives?

10:49:55 19 A. Yes, along with the CEO and
10:49:58 20 COO at the time.

10:49:59 21 Q. What were those alternatives?

10:50:01 22 A. What they framed is if we were

10:50:04 23 unable to reach an agreement, that there
10:50:07 24 would either be an incremental downsizing
10:50:10 25 of the airline, a merger with another

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10:50:13 2 carrier, most likely US Airways, or a
10:50:16 3 bankruptcy filing.

10:50:16 4 Q. I think it's pretty obvious
10:50:19 5 why downsizing or a Chapter 11 bankruptcy
10:50:23 6 filing would be an unpleasant alternative
10:50:26 7 for the pilots. Why would a merger be an
10:50:28 8 unpleasant, or why would American think,
10:50:31 9 if you know, that a merger would be an
10:50:33 10 unpleasant alternative for the pilots?

10:50:35 11 A. Because we're on a seniority
10:50:38 12 based system, so the airline mergers are
10:50:41 13 notoriously controversial. The seniority
10:50:45 14 integrations are extremely challenging.
10:50:47 15 It's usually, you know, very hard to find
10:50:51 16 people who say they came out better from
10:50:53 17 a pilot perspective in a seniority

10:50:56 18 integration.
10:50:56 19 And the seniority integration
10:51:00 20 at US Airways is especially continues
10:51:03 21 version and has been the subject of
10:51:05 22 enormous litigation and it's put the
10:51:10 23 seniority merger and merger of the
10:51:11 24 airline on hold for a number of years
10:51:13 25 while they're trying to work that out.

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10:51:15 2 Q. At the point when Mr. Brundage
10:51:17 3 got involved in the pilot negotiations,
10:51:19 4 at that point had American put a pay
10:51:23 5 proposal on the table?

10:51:24 6 A. No.

10:51:24 7 Q. When did American first put a
10:51:26 8 pay proposal on the table?

10:51:28 9 A. It was probably not until
10:51:30 10 early October of 2011.

10:51:32 11 Q. Prior to that pay proposal
10:51:40 12 being put on the table, did the APA

10:51:44 13 expect that the negotiations would lead
10:51:46 14 to a contract improvement from the
10:51:49 15 pilot's perspective, or a concession?

10:51:52 16 A. In plight light of the 2003
10:51:54 17 contract, which had substantial
10:51:55 18 give-backs, the 660 million dollars and
10:51:58 19 23 percent pay cuts and the number of
10:52:00 20 other concessions to keep the company out
10:52:05 21 of bankruptcy, there was an expectation
10:52:07 22 that in this contract there were going to
10:52:10 23 be improvements.

10:52:13 24 And so we had framed our
10:52:15 25 positions that it would be an overall net

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10:52:18 2 improvement. At the same time, we also
10:52:21 3 understood that we were the lowest in the
10:52:22 4 industry when it came to productivity and
10:52:24 5 what the company could schedule us to
10:52:27 6 during a month. So we had reached out
10:52:30 7 and shown flexibility on increasing our

10:52:33 8 monthly schedules. We had tied that to
10:52:36 9 growth. The company had indicated that
10:52:38 10 with the aircraft order there would be,
10:52:40 11 there would be growth along with that, so
10:52:43 12 we tied our productivity to growth.

10:52:45 13 But the anticipation for those
10:52:47 14 places where we were flexible were things
10:52:49 15 that were viewed as concessionary, they
10:52:51 16 said that would be offset by
10:52:53 17 corresponding pay increases.

10:52:54 18 Q. Did your expectation change on
10:52:57 19 this at some point?

10:52:59 20 A. The -- we started to realize
10:53:02 21 that the deal was lower than where we'd
10:53:06 22 previously thought the deal was and we
10:53:09 23 sensed that, you know, with the
10:53:10 24 involvement of senior management, the
10:53:12 25 alternative paths that they were

10:53:14 2 indicating, that the restoration wasn't

10:53:17 3 going to be near what we had hoped for
10:53:19 4 originally entering into the
10:53:22 5 negotiations.

10:53:23 6 Q. Did there some a time when Mr.
10:53:27 7 Brundage explained to you his expectation
10:53:28 8 from American's point of view whether the
10:53:30 9 contract would be concessionary or not.

10:53:33 10 A. In one of the first sessions
10:53:35 11 that he was involved in at flagship he
10:53:36 12 went up to a white board, he drew a check
10:53:39 13 mark which went down and up. And the
10:53:42 14 vector down represented looking for cost
10:53:46 15 savings to get to 2013 and beyond which
10:53:49 16 is when the first aircraft would start
10:53:51 17 arriving.

10:53:51 18 The company wanted to
10:53:55 19 continue, you know, the in ground effect
10:53:57 20 or coasting to get to the aircraft order
10:54:00 21 at which time they would realize
10:54:03 22 substantial fuel savings and maintenance
10:54:05 23 savings once those aircraft arrived and
10:54:06 24 he indicated that improvements to the
10:54:08 25 pilot contract could come after that

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10:54:09 2 point but he was looking for something
10:54:11 3 that was concessionary at first to get to
10:54:14 4 the year and afterwards before any
10:54:14 5 improvements.

10:54:17 6 Q. So based on that conversation
10:54:18 7 with Mr. Brundage, did you have an
10:54:21 8 understanding of the relationship between
10:54:23 9 the fleet order that the company made and
10:54:26 10 the kinds of negotiations or contract
10:54:29 11 that they hoped to achieve from the
10:54:31 12 pilots?

10:54:31 13 A. It was becoming increasingly
10:54:34 14 clear after, you know, four plus years of
10:54:36 15 negotiations that the company was looking
10:54:38 16 for a concessionary contract. But that
10:54:42 17 had never been said explicitly prior to
10:54:44 18 that point.

10:54:45 19 Q. And the relationship to the
10:54:46 20 fleet order?

10:54:46 21 A. Yes, and that it would be
10:54:48 22 concessionary to get to the fleet order.
10:54:50 23 Q. Around this time was there any
10:54:55 24 discussion of the labor cost gap?
10:54:58 25 A. In 2010 and 2011 the company

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10:55:03 2 had been in the press with a headline of,
10:55:06 3 you know, labor costs disadvantage, its
10:55:08 4 wasn't just please pilots it was all
10:55:12 5 employees. It was initially 600 million
10:55:15 6 dollar labor cost disadvantage that they
10:55:18 7 touted and then in the fall of 2011 that
10:55:20 8 became an 800 million dollar labor cost
10:55:23 9 disadvantage.

10:55:23 10 Q. Who explained those numbers to
10:55:27 11 you?

10:55:27 12 A. We discussed that at the
10:55:30 13 table, the lead negotiator, Denny Newgren
10:55:34 14 and their financial analyst, Mike
10:55:38 15 Burtzlaff and his boss, Mark Moesner.

10:55:40 16 Q. Did American provide any
10:55:41 17 explanation for how they derived those
10:55:44 18 numbers?

10:55:44 19 A. Yes, they provided a
10:55:46 20 spreadsheet that had a breakdown of what
10:55:48 21 our contract imposed on our companies or
10:55:51 22 their contracts imposed on our labor
10:55:53 23 group what the differences would be.

10:55:54 24 Q. Did you or your team review
10:55:56 25 those spreadsheets?

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10:55:57 2 A. Yes.

10:55:57 3 Q. Did you draw any conclusions?

10:56:02 4 A. We took exceptions to some of
10:56:04 5 the assumptions, but in general, we knew
10:56:07 6 across the board that it was reasonably
10:56:09 7 in the ball park of where the market was
10:56:10 8 and where we were in relation to the
10:56:12 9 other carriers.

10:56:13 10 Q. And did the company

10:56:15 11 communicate what share of the 600 or the
10:56:19 12 800 million cost gap was attributable to
10:56:23 13 the pilots?

10:56:23 14 A. Yes, as I said, when it was
10:56:26 15 the 600 million dollar number they said
10:56:28 16 it was 230 and then when it ballooned to
10:56:32 17 800 million they said our share was 260
10:56:34 18 million.

10:56:35 19 Q. I think earlier you said that
10:56:39 20 American put a pay proposal on the table
10:56:41 21 around October of 2011?

10:56:43 22 A. Yes.

10:56:44 23 Q. Have you seen a valuation of
10:56:46 24 that proposal?

10:56:47 25 A. Yes.

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10:56:48 2 Q. I'd like to turn your
10:56:51 3 attention to Exhibit, APA Exhibit 406. I
10:56:58 4 think some of the details of this exhibit
10:57:01 5 are confidential, but the bottom line

10:57:04 6 numbers in the bottom right are not is my

10:57:08 7 understanding?

10:57:10 8 MR. MOLLEN: That's right.

10:57:11 9 Q. Do you recognize this

10:57:12 10 document?

10:57:13 11 A. Yes.

10:57:13 12 Q. What is it?

10:57:15 13 A. This is the company's

10:57:16 14 valuation of their proposal after they

10:57:18 15 had put a pay proposal on the table of

10:57:22 16 all their table positions.

10:57:23 17 Q. What is the bottom line on

10:57:25 18 this?

10:57:25 19 A. Is that their table positions

10:57:27 20 would represent an average 5 \$5 million a

10:57:29 21 year savings over a five year span.

10:57:33 22 Q. Did you have an understanding

10:57:34 23 of whether that would be sufficient to

10:57:36 24 avoid the three alternatives they had

10:57:38 25 mentioned earlier?

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10:57:39 2 A. That's the way it was

10:57:42 3 presented, yes.

10:57:42 4 Q. So help me understand.

10:57:44 5 They're asking for 55 million dollars in

10:57:46 6 concessions from the pilots but they've

10:57:48 7 articulated a cost gap of 230 or 260

10:57:52 8 million dollars. How do you square those

10:57:54 9 two?

10:57:54 10 A. The other ski word that was

10:57:59 11 brought up frequently from the company

10:58:03 12 was convergence and that was the

10:58:07 13 expectation that even though there was a

10:58:09 14 Delta between where are and where the

10:58:12 15 some of our competitors are, that over

10:58:15 16 time as those contracts were updated,

10:58:17 17 that their costs would come up to our

10:58:20 18 level or exceed our level.

10:58:23 19 Q. Did APA make any proposals

10:58:25 20 around this time?

10:58:26 21 A. Yes, we did.

10:58:27 22 Q. What were some of the key

10:58:30 23 elements of those proposals?

10:58:31 24 A. The biggest reach-out on our

10:58:35 25 part was the productivity piece which we

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10:58:38 2 knew that was the piece that the company
10:58:39 3 had been seeking the most when we had the
10:58:44 4 initiative in 2005 after our
10:58:46 5 concessionary, or voluntary restructuring
10:58:49 6 in 2003. The company had focused on a
10:58:52 7 productivity increase which was derailed
10:58:55 8 by the executive compensation, I'll say
10:58:59 9 debacle which kind of tainted the
10:59:02 10 relationship. But that fact remained
10:59:04 11 that the company was looking for
10:59:06 12 substantial increases in productivity and
10:59:09 13 we reached out aggressively there. And
10:59:12 14 that was a challenge for us with our
10:59:14 15 membership when we had nearly 2000
10:59:16 16 furloughed pilots and industry leading
10:59:19 17 stagnation that any productivity gives on
10:59:22 18 our part would only exacerbate that
10:59:24 19 situation so it put us in a tough place

10:59:27 20 with our membership.
10:59:28 21 Q. And we don't need to get too
10:59:31 22 down in the Chen chess, but what were
10:59:33 23 some of the key moves on productivity
10:59:35 24 that at that time, October or so, to help
10:59:40 25 get the pilots where they --

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10:59:42 2 A. Well, our current schedules
10:59:43 3 are capped at 78 hour hard cap per month
10:59:46 4 and the industry, that used to be more
10:59:48 5 industry standard, the industry has moved
10:59:51 6 away from industry scheduling into the
10:59:53 7 eighties and so we showed flexibility for
10:59:55 8 the company to schedule into the
10:59:58 9 eighties, be able to schedule a pilot has
11:00:01 10 high as 88 hour month.

11:00:04 11 And that's probably the
11:00:06 12 biggest change.

11:00:07 13 The other developments we have
11:00:08 14 an 83 hour hard cap, most a pilot can

11:00:13 15 pick up to 83 hours and we proposed
11:00:16 16 raising that to a pilot in any given
11:00:17 17 month can fly federal limits which can be
11:00:20 18 as high as a hundred hours a month as
11:00:22 19 long as he maintains a 90 hour average.
11:00:25 20 Even a 90 hour average over a year to put
11:00:28 21 the pilot over the thousand hour federal
11:00:32 22 limit.

11:00:33 23 So it was a significant move
11:00:34 24 on our part to allow pilots to pick up
11:00:37 25 substantially more time if they were so

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11:00:39 2 inclined.

11:00:39 3 Q. Apart from productivity, were
11:00:41 4 there any other areas that in the
11:00:43 5 contract that you made moves in that time
11:00:45 6 frame, fall of 2011?

11:00:47 7 A. In the fall, the company
11:00:50 8 shifted its focus from productivity as
11:00:54 9 its number one interest, more to a code

11:00:57 10 sharing interest and they made that very
11:00:59 11 clear that was their number one must have
11:01:02 12 of the negotiation.

11:01:04 13 Q. And this is another area where
11:01:05 14 the company has raised confidentiality
11:01:09 15 concerns, so I don't want you to name any
11:01:11 16 names of any other airlines and I don't
11:01:13 17 want you to name the number of code
11:01:18 18 sharing agreements that they were
11:01:19 19 seeking, but were they seeking a certain
11:01:21 20 finite number of code sharing agreements?

11:01:24 21 A. Right, and they were clear
11:01:26 22 with us of what was going on in each
11:01:31 23 market, where they saw a code share as
11:01:34 24 essential to, you know, maintaining or
11:01:37 25 recapturing their position where they had

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11:01:39 2 a lot of market share erosion, and so we
11:01:43 3 engaged in those talks and tried to find
11:01:46 4 ways we could allow some code sharing.

11:01:50 5 Q. How did the APA's proposals
11:01:53 6 measure up against the number of code
11:01:55 7 sharing agreements that the company was
11:01:56 8 seeking at that time?

11:01:57 9 A. We engaged on all the code
11:02:00 10 sharing pieces that they were looking
11:02:02 11 for.

11:02:02 12 Q. Sorry, for a non-negotiator
11:02:05 13 what does engaged mean?

11:02:07 14 A. We put tables, positions on
11:02:08 15 the table that would be solutions for
11:02:12 16 each of the code sharing arrangements
11:02:14 17 that they were looking for.

11:02:15 18 Q. How did American respond to
11:02:19 19 the APA's scope proposals and
11:02:25 20 productivity proposals?

11:02:26 21 A. We got closer on productivity
11:02:28 22 in that phase prepetition in October and
11:02:30 23 November. At a couple of points I
11:02:35 24 actually thought there was potential for
11:02:36 25 a deal to come together. We had reached

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11:02:40 2 out on the code sharing piece, but it was
11:02:44 3 never enough from the company perspective
11:02:48 4 and so we ended up, you know, with still
11:02:51 5 a very significant Delta between us and
11:02:54 6 the company.

11:02:55 7 Q. What happened next?

11:02:56 8 A. Negotiations concluded in the
11:03:01 9 middle of November. We went as far as we
11:03:05 10 could go in the middle of November. By
11:03:10 11 November 11th we put what I would say is
11:03:13 12 the last best final offer on the table to
11:03:15 13 the company and we said this is as far as
11:03:17 14 we can go. And we offered the company to
11:03:20 15 put together a last best final offer that
11:03:22 16 we could take back to our Board of
11:03:24 17 Directors.

11:03:24 18 We --

11:03:25 19 Q. Let's start with the union's
11:03:28 20 last best final offer. Did you put a
11:03:30 21 price tag on that?

11:03:31 22 A. Yes.

11:03:31 23 Q. What was that?
11:03:32 24 A. That averaged out to just
11:03:34 25 under 200 million dollars a year average

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11:03:37 2 with the pay raises that we were seeking.

11:03:40 3 Q. That's 200 million a year in
11:03:42 4 increases or --

11:03:43 5 A. In increased cost to the
11:03:45 6 company, yes.

11:03:46 7 Q. And the company put a last
11:03:49 8 best final offer on the table around that
11:03:51 9 time in November?

11:03:52 10 A. Yes.

11:03:53 11 Q. And I'd like to turn your
11:03:56 12 attention to Exhibit 408: Same deal with
11:04:06 13 the previous exhibit, that my
11:04:08 14 understanding is the bottom line numbers
11:04:10 15 on this are not confidential, but the
11:04:12 16 details within it are. Let me just --

11:04:16 17 THE COURT: When you said

11:04:17 18 you're referring to the bottom line
11:04:19 19 numbers I ask because there are
11:04:20 20 certain things at the bottom of the
11:04:21 21 page, just reading the words bottom
11:04:24 22 line literally, that appear to be
11:04:25 23 highlighted. So I just want to
11:04:27 24 make sure, are we talking about the
11:04:29 25 ones that are essentially on the

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11:04:30 2 right-hand side?
11:04:33 3 MR. DALMAT: The highlighting
11:04:34 4 predated any redactions. That came
11:04:36 5 with the exhibit. And the number
11:04:38 6 that is not confidential based on
11:04:41 7 my understanding is the box that
11:04:43 8 says pilot cost impact B/W, with B
11:04:48 9 being better from the --
11:04:51 10 THE COURT: So the letter
11:04:52 11 highlighting is not confidential?
11:04:56 12 MR. MOLLEN: That's correct.

11:04:57 13 THE COURT: Now you've
11:04:58 14 thoroughly confused me. So when I
11:05:00 15 see yellow highlighting in this
11:05:02 16 case in documents when should I be
11:05:05 17 alarmed or not be alarmed?

11:05:07 18 MR. MOLLEN: You should
11:05:07 19 typically be alarmed but not in
11:05:09 20 this instance. The yellow
11:05:11 21 highlighting in this case predated
11:05:12 22 the litigation.

11:05:13 23 THE COURT: I would ask as we
11:05:14 24 go through things there is
11:05:16 25 highlighting, if you could clarify

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11:05:18 2 at the outset just so I can make a
11:05:20 3 notation. Because obviously this
11:05:22 4 will come up in closings, and other
11:05:24 5 witnesses and down the road. So --
11:05:28 6 MR. DALMAT: We'll be happy at
11:05:29 7 the end of the hearing to sort of

11:05:30 8 go through and give a complete list

11:05:32 9 so you have inn it in one place.

11:05:34 10 THE COURT: I know, but it

11:05:36 11 will stick much better in my head

11:05:38 12 and allow everyone to know where we

11:05:41 13 are. At least you all may know,

11:05:43 14 maybe I'm the only one who doesn't

11:05:45 15 know. It would help me. So the

11:05:48 16 yellow highlighting here is not an

11:05:49 17 issue.

11:05:50 18 MR. MOLLEN: In this

11:05:51 19 particular document, your Honor.

11:05:52 20 Q. The top left of this document

11:05:54 21 reads APA comprehensive proposal. Do you

11:05:57 22 understand what that means on this

11:05:58 23 document?

11:05:58 24 A. Yes.

11:06:00 25 Q. Can you explain?

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11:06:01 2 A. This is the company's

11:06:03 3 valuation of their last best offer to us
11:06:07 4 on November 1424 and there was an option
11:06:10 5 A and an option B. They had two sets of
11:06:13 6 proposals that they offered up for us to
11:06:16 7 consider. And this represents the
11:06:18 8 valuation of option A.

11:06:21 9 Q. And what is that valuation?

11:06:22 10 A. 5 \$5 million a year savings to
11:06:25 11 the company.

11:06:25 12 Q. And you mentioned option A and
11:06:28 13 option B. I think if we go to Exhibit
11:06:31 14 409 we'll see option B; is that correct?

11:06:35 15 A. Yes.

11:06:35 16 Q. And what is the valuation --

11:06:38 17 THE COURT: Let's do the same
11:06:40 18 drill here again because these
11:06:42 19 documents say highly confidential
11:06:44 20 restricted dissemination only at
11:06:46 21 the top.

11:06:46 22 MR. MOLLEN: Same issue here,
11:06:47 23 same highlighting, the yellow
11:06:49 24 highlighting predated the
11:06:51 25 litigation and therefore is not to

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11:06:53 2 signify that it's confidential. It
11:06:55 3 in effect is the line that I think
11:06:57 4 we can share.

11:06:58 5 THE COURT: Thank you.

11:07:02 6 Q. So what is the valuation of
11:07:04 7 option B?

11:07:06 8 A. The value on option B is a 47
11:07:07 9 million dollar a year average savings to
11:07:09 10 the company.

11:07:10 11 Q. And this document, like its
11:07:11 12 companion is also entitled "APA
11:07:14 13 comprehensive proposal option B," and
11:07:17 14 what is your understanding of that title?

11:07:18 15 A. That is the company's
11:07:20 16 valuation, the price they put on their
11:07:23 17 option B proposal to us on November 14th.

11:07:26 18 Q. What happened next?

11:07:28 19 A. We took back the company's
11:07:32 20 last best final offer to our Board of
11:07:35 21 Directors. They did not accept the

11:07:40 22 offer, but we did write, our leadership
11:07:45 23 sent a letter to the CEO, Gerard Arpey
11:07:49 24 that they wanted to continue bargaining
11:07:51 25 and pursue a consensual agreement.

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11:07:54 2 Q. Did you receive a response to
11:07:56 3 that letter?

11:07:57 4 A. We did not receive a response
11:07:59 5 and the company filed for bankruptcy 14
11:08:01 6 days later.

11:08:02 7 Q. When was the next round of
11:08:03 8 bargaining?

11:08:04 9 A. February 1st.

11:08:06 10 Q. What happened on February 1st?

11:08:08 11 A. February 1st was a
11:08:10 12 presentation to the unions. It was an
11:08:13 13 auditorium setting where all the
11:08:14 14 representatives inn and advisors were
11:08:17 15 present at flagship and we received an
11:08:19 16 overview from the CEO.

11:08:23 17 Q. What did that overview consist

11:08:25 18 of?

11:08:25 19 A. It was an overview of the

11:08:28 20 restructuring process. Where the company

11:08:30 21 was taking things for, what they had in

11:08:32 22 mind as the business plan and then the

11:08:35 23 overall ask, you know, where the cost

11:08:38 24 cutting and revenue improvements would

11:08:40 25 come from from their perspective.

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11:08:42 2 Q. What was your understanding

11:08:44 3 based on their explanation of how that

11:08:46 4 ask from labor was derived?

11:08:49 5 A. Well, they started with an

11:08:53 6 expected profit or EBITDAR that was the

11:08:56 7 goal of the restructured company. They

11:08:59 8 had some revenue improvement

11:09:02 9 expectations, which were primarily based

11:09:05 10 on changes to the pilot scope clause.

11:09:07 11 There were some non-labor cost cutting

11:09:12 12 which I think -- I don't remember the
11:09:13 13 numbers so I'll leave that out, and then
11:09:17 14 for the rest of it the ask from labor was
11:09:21 15 about \$1.25 billion.

11:09:24 16 Q. Anything else in that overview
11:09:29 17 highlight from Ms. Goulet and the COO,
11:09:36 18 Mr. Horton?

11:09:36 19 A. Not in particular. It was
11:09:37 20 just that we have to get to these numbers
11:09:40 21 to make the restructuring work to get to
11:09:42 22 this profit level.

11:09:43 23 Q. What happened after that
11:09:44 24 overview?

11:09:45 25 A. After the overview we broke

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11:09:47 2 into separate labor groups, so each of
11:09:50 3 the unions had their own negotiation with
11:09:51 4 their primary company negotiator and we
11:09:53 5 were presented the term sheet and we went
11:09:56 6 over the term sheet together for the

11:09:57 7 first time.

11:09:58 8 Q. Who was there on behalf of the

11:09:59 9 company?

11:09:59 10 A. The company lead negotiator,

11:09:59 11 Denny Newgren.

11:10:03 12 Q. What did he say the ask was

11:10:05 13 from the pilots?

11:10:06 14 A. Our share was 370 million.

11:10:09 15 Q. And what does that number

11:10:11 16 represent? Is it a fixed number, is it

11:10:13 17 an average?

11:10:13 18 A. It's an annual average over a

11:10:16 19 six year look.

11:10:18 20 Q. Did Mr. Newgren make any

11:10:22 21 comments about the 370 million number?

11:10:26 22 A. Well, in that session it was

11:10:28 23 we have to get to this number, it's all

11:10:30 24 about getting to this, to this number,

11:10:33 25 and that was backed up repeatedly in

11:10:37 2 subsequent negotiating sessions.

11:10:38 3 Q. Repeatedly by whom?

11:10:39 4 A. By Mr. Newgren and company
11:10:42 5 counsel, Mr. Reinert, who participated at
11:10:45 6 the table in this process.

11:10:47 7 Q. What else did Mr. Newgren say,
11:10:49 8 if anything? Was there anything in the
11:10:55 9 subsequent meetings that clarified his
11:10:57 10 earlier comments?

11:10:57 11 A. Well, it was just that the
11:10:59 12 target was the target and we could move
11:11:01 13 pieces around that we had to find a way
11:11:04 14 to get to that target and we asked Mr.
11:11:08 15 Reinert about it also and he said we
11:11:10 16 don't see that number changing.

11:11:11 17 Q. Since you and I are in this
11:11:16 18 courtroom today, I take it that the APA
11:11:18 19 has not accepted American's proposal?

11:11:20 20 A. That's a safe assumption.

11:11:22 21 Q. Has the APA put proposals on
11:11:25 22 the table?

11:11:25 23 A. Yes, we have.

11:11:26 24 Q. What is the total value of the

11:11:29 25 proposals that the APA has put on the

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11:11:31 2 table?

11:11:31 3 A. From our valuation what we put

11:11:34 4 on the table immediately after the

11:11:38 5 February 1st session, we had all our

11:11:40 6 positions on the table by February 14th,

11:11:43 7 we valued that at 270 million dollar a

11:11:46 8 year annual savings.

11:11:47 9 Q. So how does that compare to

11:11:49 10 the prepetition proposals that you put on

11:11:51 11 the table?

11:11:52 12 A. We knew this was serious and

11:11:55 13 we wanted to show up showing that we were

11:11:57 14 serious about negotiating and getting an

11:12:00 15 agreement, so from where we were

11:12:03 16 prepetition to where we were immediately

11:12:05 17 after the bankruptcy once we started

11:12:07 18 negotiating it was approximately half a

11:12:10 19 billion dollar move, about 470 million

11:12:12 20 dollars change in our positions.

11:12:16 21 Q. I'd like to understand some of
11:12:18 22 the major elements of the proposals that
11:12:22 23 the APA put on the table. Can you give
11:12:25 24 me kind of a high level of what those
11:12:27 25 elements are and then we can discuss some

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11:12:29 2 of them in a bit more detail?

11:12:31 3 A. The productivity we took, we
11:12:34 4 took away the requirement from the
11:12:36 5 company that it be tied to growth. We
11:12:39 6 knew that the company needed to be to be
11:12:41 7 able to flip a switch and turn on the
11:12:43 8 productivity, so we took away that
11:12:45 9 requirement. We knew that would presents
11:12:48 10 challenges with our membership and
11:12:49 11 furloughs and stagnation, but we knew, we
11:12:52 12 understand this process.

11:12:53 13 And we, we put that all up
11:12:58 14 front so that there would be significant

11:13:00 15 productivity enhancements for the
11:13:01 16 company.
11:13:01 17 The other big piece that we
11:13:04 18 wanted to convey to the company that we
11:13:06 19 were serious was transition to a
11:13:09 20 preferential bidding system which that
11:13:12 21 has been a source of contention for
11:13:15 22 decades between the union and the
11:13:18 23 company. It's something the company has
11:13:20 24 always wanted, it's something the union
11:13:22 25 has always resisted and we sat down and

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11:13:25 2 on first day presenting our positions, we
11:13:28 3 told the company that we were expressing
11:13:30 4 an interest in transitioning to
11:13:32 5 preferential bidding.

11:13:33 6 Q. If I could interrupt you there
11:13:35 7 because I'm not a pilot, I'm not a
11:13:37 8 negotiator. What does preferential
11:13:39 9 bidding mean and what was the old system?

11:13:41 10 A. It's a computerized system
11:13:43 11 that brings an enormous number every
11:13:46 12 efficiencies into the scheduling process.
11:13:48 13 Traditionally schedules are pre built
11:13:51 14 where there's a certain number of trips
11:13:52 15 on the schedule and it's preprinted and a
11:13:55 16 pilot bids on those schedules in, it's a
11:13:59 17 known and it's in seniority order whether
11:14:01 18 he wants, schedule 1, schedule 2 or
11:14:04 19 schedule about and preferential bidding
11:14:06 20 is a computerized system where the pilot
11:14:08 21 says I would like to have these days off,
11:14:10 22 I'd like to work on these days, I'd like
11:14:12 23 to sign in earlier, I'd like to go to
11:14:14 24 these cities and it's, I'll say more of a
11:14:18 25 grabbing bag from a pilot perspective of

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11:14:20 2 you're not as sure what you'll get as
11:14:22 3 with traditional line bidding.

11:14:25 4 So for us to offer that up at

11:14:26 5 the beginning we took that as our olive
11:14:31 6 branch to show we were very serious about
11:14:35 7 getting a consensual agreement here
11:14:37 8 because there were just decades of
11:14:39 9 history of resisting that.

11:14:41 10 Q. So you mentioned two
11:14:42 11 components of your productivity
11:14:44 12 proposals, divorcing it in the company's
11:14:47 13 growth, and preferential bidding. Any
11:14:49 14 other major components of your
11:14:51 15 productivity proposal?

11:14:53 16 A. We had presented a number of
11:14:56 17 things related to the new flight time
11:14:58 18 duty time regulations that take effect in
11:15:00 19 2014 that has some relaxations in areas
11:15:04 20 about flight time and we had put that on
11:15:07 21 the table also, where the changes in
11:15:11 22 augmentation requirements inn and showing
11:15:13 23 some of the flexibilities the company
11:15:16 24 would be looking for with those new
11:15:17 25 regulations.

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11:15:18 2 Q. How about scheduling, did you
11:15:21 3 put anything about capping monthly
11:15:24 4 schedules on the table?

11:15:25 5 A. Sure. The increases in what
11:15:28 6 pilots could be scheduled to instead of
11:15:30 7 the 78 hour hard cap, we went to an 81
11:15:33 8 hour average line value, you know, plus
11:15:36 9 or minus seven hours so an individual
11:15:39 10 pilot could be scheduled up to 88 hours
11:15:41 11 in the course of a month.

11:15:42 12 Q. What about volunteer flying?

11:15:44 13 A. And volunteer flying, pilots
11:15:47 14 can pick up the federal aviation, you
11:15:49 15 know, regulation limits which is a
11:15:50 16 hundred hours with an average requirement
11:15:54 17 over a 12 month look.

11:15:56 18 Q. Scope, did you make scope
11:15:59 19 proposals at this time?

11:16:00 20 A. Yes.

11:16:01 21 Q. And I'll begin with the code
11:16:05 22 share and with the same restrictions we
11:16:07 23 discussed earlier, not naming the names

11:16:09 24 of the other airlines, not naming the
11:16:12 25 specific number of code sharing

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11:16:14 2 agreements that you or the company had
11:16:17 3 requested or that you put on the table.

11:16:18 4 Can you describe for me that?

11:16:23 5 A. We took our previous
11:16:24 6 flexibility on the code shares and then
11:16:28 7 went, I'll say the next step as a
11:16:30 8 reach-out to the company to allow them
11:16:33 9 more flexibility on code sharing
11:16:35 10 arrangements. So we, you know, took
11:16:37 11 another step towards the company in those
11:16:43 12 proposals.

11:16:44 13 Q. And again, the number of code
11:16:47 14 share allowances that the APA was willing
11:16:49 15 to grant at that time, how did that
11:16:50 16 measure up to the number of code share
11:16:53 17 requests that American had made at that
11:16:57 18 time?

11:16:57 19 A. I believe we had addressed

11:16:59 20 each one that they were looking for.

11:17:01 21 Q. Regional jet flying, did you

11:17:03 22 address that issue?

11:17:04 23 A. The company had been looking

11:17:06 24 to modernize the airplanes that it has

11:17:10 25 above 50 seats. 50 seats had always been

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11:17:13 2 the hard line for us between what's flown

11:17:16 3 as a mainline or what was flown into

11:17:18 4 regionals. It had an exception for 90

11:17:21 5 specific airplanes that were 70 seats and

11:17:23 6 we expressed an openness with the company

11:17:25 7 to be able to modernize those airplanes

11:17:28 8 because when those agreements had been

11:17:31 9 constructed, we had not put in any

11:17:36 10 provision, we had seen those as

11:17:38 11 temporary. We had not put in an ability

11:17:40 12 to modernize those aircraft or replace

11:17:42 13 those aircraft and we put that on the

11:17:44 14 table that those could replace those

11:17:46 15 aircraft.

11:17:46 16 Q. Have you made any moves on

11:17:48 17 scope since then?

11:17:49 18 A. Well, later in the process

11:17:51 19 we've expanded that where the company

11:17:52 20 could have up to 150 70 seat aircraft

11:17:59 21 which would be more along the lines of

11:18:02 22 the United scope clause. Jim Eaton's

11:18:04 23 testimony will be more, dig deeper into

11:18:07 24 those specifics.

11:18:08 25 Q. Very good. Sick leave, did

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11:18:10 2 you put sick leave proposals on the

11:18:12 3 table?

11:18:12 4 A. Yes. As I mentioned

11:18:14 5 previously, we reached out to the company

11:18:17 6 by introducing the old agreement that had

11:18:19 7 never been consummated. Prior to the

11:18:23 8 arbitration we put the substantiation for

11:18:26 9 sick over 30 days on the table. We
11:18:31 10 proposed a sell-back provision. We
11:18:34 11 proposed a sick cash out at retirement
11:18:40 12 that pilots could convert some of their
11:18:43 13 sick pay into retiree medical because we
11:18:45 14 saw changes to retiree medical coming in
11:18:48 15 this process. And that was in response
11:18:51 16 to the company historically telling us
11:18:53 17 that in the last two years of a pilot's
11:18:56 18 career, and because it applies to all the
11:18:59 19 pilots, is that sick rates or sick usage
11:19:01 20 usually goes up substantially in the last
11:19:04 21 few years prior to retirement, so we
11:19:07 22 thought from our perspective a number of
11:19:09 23 those things are issues that, you know,
11:19:12 24 may be medical procedures that are
11:19:14 25 elective or have been deferred for a long

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11:19:16 2 time, the pilot wanted to be able to stay
11:19:19 3 flying and some of those things are taken

11:19:20 4 care of just prior to retirement. So we
11:19:23 5 put a proposal on the table that would
11:19:25 6 incentivize a pilot to hang on to his
11:19:28 7 sick pay so it would have some value at
11:19:30 8 retirement in order to incentivize lower
11:19:33 9 sick usage in the last couple of years of
11:19:35 10 a career.

11:19:36 11 Q. I'd like to zoom in for a
11:19:37 12 second on the sell-back program you were
11:19:40 13 just discussing. Had the company told
11:19:43 14 you previously its thoughts on how that
11:19:48 15 program alone would affect sick leave
11:19:51 16 usage?

11:19:52 17 A. Prepetition at the table we --
11:19:54 18 we were in agreement on a sick sell-back
11:19:57 19 provision that a pilot could sell back
11:19:58 20 some unused sick time in the course of a
11:20:01 21 year. And we thought that was one of the
11:20:04 22 breakthroughs prepetition and one of the
11:20:06 23 areas where we were making process and
11:20:09 24 we'd been told that the company
11:20:11 25 estimation or assumption on that is that

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11:20:13 2 it would result in a 10 percent decrease
11:20:15 3 in sick usage.

11:20:15 4 Q. Who told you that?

11:20:16 5 A. Their financial analyst, Mike
11:20:19 6 Burtzlaff.

11:20:21 7 Q. Medical proposals, did you put
11:20:23 8 those on the table?

11:20:24 9 A. Yes, we did.

11:20:25 10 Q. What was the substance of
11:20:27 11 those proposals?

11:20:29 12 A. Our current medical system has
11:20:30 13 a mechanism where the company, I'll say
11:20:34 14 eats for lack of a better word, most of
11:20:37 15 the medical inflation, a market share,
11:20:39 16 first 5 percent and then the second 5
11:20:41 17 percent we share in that. So generally
11:20:44 18 the company takes a larger share so it's
11:20:46 19 a downward escalator in terms of cost
11:20:49 20 sharing levels so it increases the cost
11:20:51 21 for the company and our current cost

11:20:54 22 share is at 14 percent and that's
11:20:55 23 projected out to 2016, if nothing
11:20:59 24 changed, that it would be a 9 percent
11:21:02 25 cost sharing which would become more

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11:21:04 2 expensive for the company. So what we
11:21:07 3 put on the table was a 17 percent cost
11:21:11 4 share. And more importantly on that
11:21:13 5 point, what the company had in the term
11:21:18 6 sheet was a 23 percent cost share, but
11:21:20 7 the piece that probably concerned us the
11:21:24 8 most was the extremely high numbers that
11:21:26 9 they had proposed for co-pays,
11:21:29 10 deductibles and out of pocket costs. So
11:21:34 11 we took industry averages and what we
11:21:35 12 deemed as industry appropriate medical
11:21:38 13 plans for pilots in the industry and we
11:21:40 14 included those with our proposals so it
11:21:43 15 would be a, you know, more appropriate
11:21:45 16 medical proposal.

11:21:46 17 Q. Has the company accepted the
11:21:50 18 proposals that the APA put on the table?
11:21:53 19 A. No.
11:21:53 20 Q. How far apart are you on scope
11:21:57 21 right now?
11:21:58 22 A. Very far apart.
11:22:00 23 Q. Can you explain?
11:22:01 24 A. The company's proposal would
11:22:05 25 give them an ability to fly up to 88 C

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11:22:08 2 aircraft and actually build up to a fleet
11:22:10 3 of over 800 aircraft and would be an
11:22:16 4 extremely liberal scope clause adding
11:22:24 5 more after agreements with other carriers
11:22:26 6 would allow 150 aircraft over 50 seats
11:22:29 7 and then a -- they have a very large
11:22:34 8 number of 50 seat aircraft that they can
11:22:37 9 fly.
11:22:38 10 Q. What about code sharing, how
11:22:40 11 far apart are you on code sharing?

11:22:42 12 A. The company's expressed its
11:22:46 13 desire for an essentially unlimited code
11:22:49 14 sharing ability to code share with
11:22:51 15 whoever they want to and --

11:22:53 16 Q. And in contrast the APA gave
11:22:56 17 them the number that they had asked for,
11:22:58 18 the specific number that they had asked
11:22:59 19 for previously?

11:23:00 20 A. We had engaged in each of the
11:23:02 21 arenas which each of the I'll say target
11:23:06 22 carriers we had engaged on each of those
11:23:09 23 to show an openness to code sharing with
11:23:11 24 those carriers.

11:23:13 25 Q. How far apart are you on the

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11:23:15 2 sick?

11:23:15 3 A. Very far apart. The company
11:23:21 4 proposal has a substantiation provision.
11:23:28 5 They want to transfer it to a third party
11:23:30 6 administrator where the pilots would be

11:23:32 7 monitored as soon as they call in sick.
11:23:36 8 And they also wants to go to a system
11:23:38 9 where after the second sick call or a
11:23:40 10 certain number of hours the pilots, pilot
11:23:43 11 for sick calls would only be paid 60
11:23:46 12 percent of his pay rather than full pay.

11:23:49 13 Q. How far apart are you on
11:23:51 14 medical?

11:23:51 15 A. The headline number sounds
11:23:58 16 better than it is. I'd say the company
11:24:01 17 made a move, they started with a 23
11:24:03 18 percent cost sharing and moved to a 21
11:24:06 19 percent cost sharing proposal. So it
11:24:08 20 sounds like our position 17, 21, it
11:24:12 21 sounds closer than it is. But because of
11:24:14 22 the mechanics, the structure of the plan,
11:24:18 23 we asked them when they make the move
11:24:20 24 from 23 to 21 what was the change in
11:24:23 25 valuation and they said there was none,

11:24:26 2 it was essentially the same cost savings
11:24:29 3 to them. So that just showed it was kind
11:24:31 4 of a shell game to move some pieces
11:24:33 5 around as opposed to a legitimate mover
11:24:36 6 at the table.

11:24:37 7 Q. In your view, do you think
11:24:40 8 that the proposals that the APA has put
11:24:42 9 on the table would be sufficient to allow
11:24:44 10 the company to reorganize?

11:24:47 11 MR. MOLLEN: I'll object to
11:24:48 12 the leading question.

11:24:50 13 THE COURT: Is this witness
11:24:53 14 offered for this particular topic?

11:24:56 15 MR. MOLLEN: He is, your
11:24:57 16 Honor, but the question certainly
11:24:58 17 suggests that the answer that was
11:25:00 18 expected --

11:25:01 19 THE COURT: Well, we're going
11:25:02 20 to get there anyway, so you can
11:25:04 21 answer the question.

11:25:05 22 A. Can you state the question
11:25:07 23 again.

11:25:07 24 Q. The question is whether the
11:25:09 25 APA's proposals in your view would be

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11:25:12 2 sufficient to allow the company to

11:25:13 3 reorganize?

11:25:14 4 A. Yes.

11:25:15 5 Q. Why do you have that view?

11:25:17 6 A. We see, we took this very

11:25:21 7 seriously whenever we put proposals on

11:25:24 8 the table that make the pilots

11:25:28 9 competitive in the industry. Where

11:25:30 10 appropriate we thought we went beyond

11:25:32 11 what the company had said prepetition was

11:25:34 12 their labor cost disadvantage and we

11:25:37 13 reached out aggressively in every area to

11:25:40 14 meet their proposals. We thought this

11:25:43 15 was what the company needed and

11:25:45 16 everything, where we are apart, I would

11:25:48 17 frame as overreaching and so we, you

11:25:52 18 know, framed our proposals, we, you know,

11:25:56 19 hoped that the company would take them

11:25:58 20 seriously or view them as seriously as an

11:26:01 21 agreement that we could, you know, reach
11:26:04 22 quickly.
11:26:05 23 And through the month of
11:26:06 24 February I was telling anybody that would
11:26:09 25 listen, I said I see a deal here, I see a

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11:26:12 2 deal here, I think this is going to come
11:26:14 3 together and it wasn't until late in
11:26:16 4 February that I totally changed my stance
11:26:18 5 and said there's no deal here.

11:26:20 6 Q. What made you change your
11:26:22 7 stance?

11:26:22 8 A. Once we had laid out our
11:26:24 9 proposals there was no negotiating going
11:26:26 10 back and forth on proposals. The entire
11:26:29 11 focus of discussions was valuations and
11:26:32 12 arguing the company demanding what value
11:26:35 13 do you put on your proposals. And they
11:26:39 14 were entirely focused on the spreadsheet
11:26:43 15 and getting to the 370 number, and there

11:26:47 16 was no negotiating going on. It was just
11:26:50 17 arguments over valuations and we took
11:26:52 18 those on one at a time, area by area and
11:26:54 19 we were apart on almost every area but
11:26:57 20 the biggest differences primarily were
11:27:00 21 with the scheduling, productivity and
11:27:02 22 sick pieces which are very assumption
11:27:07 23 driven.

11:27:08 24 And we just felt that the
11:27:12 25 process was becoming disingenuous because

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11:27:20 2 it seemed to be an intentional under
11:27:22 3 evaluation of our positions to force us
11:27:24 4 to come to the company positions and it
11:27:26 5 was in late February where we felt that
11:27:28 6 we had 270 million dollars on the table
11:27:33 7 in concessions and the company said their
11:27:35 8 valuation of our proposals was only 140,
11:27:41 9 of our proposals was 140 million dollars
11:27:45 10 savings. At that point it kind of sucked

11:27:47 11 all the air out of the room because
11:27:48 12 everybody realized that the only way, you
11:27:50 13 know, the 370 million was nonnegotiable
11:27:53 14 and the only way to get there was come to
11:27:55 15 the company proposals.

11:27:56 16 Q. To illustrate some of these
11:28:08 17 differences in valuations, did the
11:28:10 18 company put a valuation on preferential
11:28:13 19 bidding prepetition?

11:28:14 20 A. Yes, in the labor cost
11:28:18 21 disadvantage model, the 600/800 million
11:28:23 22 dollar spreadsheet that they had given
11:28:25 23 us, the company had put 18 million
11:28:27 24 dollars across the board in every carrier
11:28:29 25 that that would be the savings compared

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11:28:30 2 to the other carriers if they had
11:28:33 3 preferential bidding.

11:28:33 4 Q. How did that compare
11:28:36 5 postpetition to your entire scheduling

11:28:38 6 package?

11:28:38 7 A. We put preferential bidding on

11:28:43 8 the table and dramatic improvements to

11:28:46 9 productivity that we valued would cost us

11:28:49 10 over a thousand jobs and PBS, or

11:28:52 11 preferential bidding along with offering

11:28:54 12 up efficiencies that could result in a

11:28:57 13 thousand, you know, the company doing the

11:28:58 14 same operation with a thousand less

11:29:00 15 pilots, and they only put 11 million

11:29:03 16 dollars on that. And that was well below

11:29:05 17 the value that they'd put just on

11:29:07 18 preferential bidding prepetition. That's

11:29:09 19 where I think the process just bogged

11:29:14 20 down because there was no way of

11:29:16 21 overcoming the valuation gap and we saw

11:29:21 22 it as a take it or leave it offer and the

11:29:23 23 only way to get there was to come to the

11:29:25 24 company proposals.

11:29:29 25 Q. The APA has entered into an

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11:29:31 2 agreement with US Airways?

11:29:33 3 A. That's correct.

11:29:34 4 Q. How did that come about?

11:29:35 5 A. It started with advisors from

11:29:39 6 US Airways reaching out to advisors for

11:29:42 7 APA.

11:29:43 8 Q. What happened next?

11:29:45 9 A. That led to a meeting between

11:29:48 10 the APA president, Dave Bates, and the

11:29:51 11 CEO of US Airways, and the president of

11:29:56 12 US Airways and that led to some

11:30:00 13 additional discussions, the president

11:30:02 14 came back to our Board of Directors and

11:30:05 15 said they were reaching out to us and our

11:30:07 16 board authorized us to enter into

11:30:09 17 discussions to see what they had to say.

11:30:11 18 Q. How long did you spend on

11:30:13 19 those negotiations?

11:30:14 20 A. There was about a week where

11:30:18 21 we worked on -- where I was personally

11:30:21 22 involved in the negotiations in -- on

11:30:26 23 this term sheet.

11:30:27 24 Q. And where did those
11:30:28 25 negotiations take place?

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11:30:29 2 A. The first four days were in
11:30:33 3 Phoenix, Arizona.

11:30:36 4 Q. Of that time, how much were
11:30:37 5 you physically present in Phoenix?

11:30:40 6 A. I was there one day.

11:30:41 7 Q. And the rest of the time?

11:30:42 8 A. The rest of the time that I
11:30:43 9 was involved was back in Dallas working
11:30:45 10 everything through email and phone call
11:30:47 11 and teleconference.

11:30:49 12 Q. Do you have a view on how a
11:30:53 13 merger with US Airways would affect other
11:30:55 14 stakeholders in this bankruptcy?

11:30:56 15 A. The piece that interests us
11:31:04 16 about a US Airways merger, we, you know,
11:31:07 17 historically pilots resist mergers
11:31:09 18 because the difficult seniority issues,

11:31:12 19 usually there's contraction rather than
11:31:15 20 growth. So we put a lot of thought and
11:31:20 21 in analysis into the business plan and I
11:31:22 22 think the business plan is what appeals
11:31:24 23 to us the most strongly. We look at the
11:31:29 24 American stand-alone business plan that
11:31:31 25 we had put in front of us prepetition,

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11:31:33 2 the five cornerstones. We know we're
11:31:36 3 struggling in New York. We know we're
11:31:38 4 struggling in Chicago.

11:31:41 5 And the US Airways business
11:31:45 6 plan when merged with our business plan
11:31:49 7 we see that as creating an entity that
11:31:52 8 puts us on a scale of Delta or United,
11:31:56 9 and that puts us in a position to compete
11:32:01 10 for corporate accounts because what's
11:32:03 11 really been, you know, driving the
11:32:07 12 decline I'll say of American Airlines the
11:32:11 13 last couple of years has been the

11:32:13 14 migration of corporate accounts over to
11:32:15 15 Delta and United. It's very real and on
11:32:18 16 the revenue side. And we look at the
11:32:20 17 business plan for American Airlines and
11:32:23 18 we want to hitch our careers to a
11:32:25 19 successful and thriving business plan,
11:32:27 20 but it's not just for us. We think this
11:32:30 21 entire process is about maximizing value
11:32:34 22 for all the stakeholders and for us it's
11:32:37 23 very clear after seeing these, you know,
11:32:42 24 doing the initial due diligence and
11:32:46 25 exploration of the business plan, that it

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11:32:48 2 presented a more viable exit from this
11:32:50 3 process that we would support and pursue.

11:32:56 4 Q. Now, did you put a price tag
11:32:58 5 on the conditional labor agreement that
11:33:00 6 you negotiated with US Air?

11:33:03 7 A. Yes.

11:33:03 8 Q. What is that?

11:33:04 9 A. The overall concessions in
11:33:07 10 that agreement amounted to 240 million
11:33:10 11 dollars.

11:33:10 12 Q. And that's in savings or in --

11:33:15 13 A. In savings to the company.
11:33:16 14 It's definitely a concessionary
11:33:18 15 agreement.

11:33:19 16 Q. And without getting too much
11:33:24 17 into the details, but how did the
11:33:25 18 substance of the terms that you offered
11:33:27 19 to US Air compare to the substance of the
11:33:30 20 terms that you put on the table with
11:33:32 21 respect to American?

11:33:32 22 A. It's a bit of an
11:33:34 23 over-simplification, but at the highest
11:33:36 24 level we took the table positions that we
11:33:38 25 had offered to American Airlines in

11:33:40 2 bankruptcy and directly transferred those
11:33:42 3 to US Airways negotiations and put that

11:33:45 4 on the table and that put us in a
11:33:47 5 position to reach a deal with US Airways.

11:33:49 6 Q. And US Airways accepted that,
11:33:52 7 those proposals?

11:33:53 8 A. Yes.

11:33:55 9 Q. Earlier you talked about
11:34:01 10 valuation disputes bogging down the
11:34:04 11 negotiations in bankruptcy with American.
11:34:07 12 How have you addressed that issue with
11:34:09 13 respect to US Airways?

11:34:10 14 A. We put a finite amount of time
11:34:13 15 on the valuation discussion and then we
11:34:16 16 both agreed to a dispute resolution
11:34:18 17 process to finish out or to close any
11:34:23 18 disagreements on valuation.

11:34:24 19 Q. Now that American has
11:34:31 20 concluded -- sorry. Now that the APA has
11:34:34 21 concluded a deal with US Air, are you
11:34:38 22 still willing to negotiate with American?

11:34:40 23 A. If I can for go the cross
11:34:42 24 examination, yes.

11:34:49 25 Q. And even if Mr. Mollen won't

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11:34:51 2 accommodate, are you still willing to
11:34:54 3 negotiate with American?

11:34:55 4 A. Yes, and we're still very
11:34:58 5 willing to meet with the company to
11:35:00 6 negotiate.

11:35:02 7 MR. DALMAT: Just a moment.

11:35:03 8 I'll pass the witness.

11:35:09 9 THE COURT: All right.

11:35:19 10 MR. MOLLEN: Actually, your
11:35:20 11 Honor, I was going to suggest a
11:35:21 12 brief recess so that I can caucus
11:35:24 13 with my colleagues.

11:35:26 14 THE COURT: All right, so
11:35:26 15 let's come back about a quarter to.

11:55:01 16 (A recess was taken.)

11:55:01 17 THE COURT: All right, cross
11:55:03 18 examination.

11:55:03 19 MR. MOLLEN: Thank you, your
11:55:04 20 Honor, Neal Mollen for the debtor.

11:55:04 21 CROSS EXAMINATION

11:55:06 22 BY MR. MOLLEN:

11:55:06 23 Q. Mr. Roghair, in paragraph 31
11:55:08 24 of your declaration, you referred to a
11:55:10 25 presentation given at the Board of

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11:55:12 2 Directors of American Airlines in
11:55:13 3 November 2011. Do you remember that
11:55:15 4 reference in your declaration?

11:55:17 5 A. Yes, I believe I do remember
11:55:18 6 what you're talking about.

11:55:19 7 Q. In that portion of your
11:55:21 8 declaration you say that according to the
11:55:23 9 presentation, that is the Board of
11:55:25 10 Directors presentation, American's
11:55:27 11 overall labor costs for all employee
11:55:30 12 groups were approximately 625 million
11:55:33 13 dollars per year more than its
11:55:35 14 competitors, Delta, United and US
11:55:39 15 Airways, do you recall that?

11:55:39 16 A. Yes, I do.

11:55:41 17 Q. I'd like you to look at APA

11:55:44 18 Exhibit 410, and unfortunately, this is a
11:55:47 19 relatively long exhibit and it's not
11:55:49 20 paginated so I'm going to ask you to turn
11:55:51 21 eight pages from the back of the
11:55:55 22 document. I think this is the page you
11:55:56 23 were referring to, but I just want to
11:55:58 24 make sure.
11:56:05 25 THE COURT: Can you identify

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11:56:06 2 the heading?
11:56:08 3 MR. MOLLEN: I'm sorry, the
11:56:10 4 title of this page is contractual
11:56:11 5 labor cost gap.
11:56:14 6 MR. DALMAT: In the bottom
11:56:16 7 right you will see pagination.
11:56:18 8 MR. MOLLEN: It is in fact
11:56:19 9 paginated, your Honor. It's
11:56:22 10 410-44.
11:56:23 11 THE COURT: Thank you.
11:56:26 12 Q. Is that the chart you were

11:56:29 13 referring to when you said that
11:56:31 14 American's, that the presentation
11:56:33 15 established American's overall labor cost
11:56:37 16 gap at 625 against those competitors?
11:56:41 17 A. I believe so, yes.
11:56:42 18 Q. Now, the top of that page says
11:56:45 19 contractual labor cost gap. Do you see
11:56:49 20 that?
11:56:49 21 A. Yes.
11:56:50 22 Q. Didn't American in
11:56:51 23 conversations with APA explain that there
11:56:52 24 were other sources of labor cost gap
11:56:55 25 between the company and its competitors

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11:56:57 2 than the terms, the specific terms of the
11:56:59 3 labor agreement?
11:57:00 4 A. I'm not sure where you're
11:57:03 5 leading with that.
11:57:04 6 Q. I'm not being clear. Let's
11:57:06 7 turn one page back. That is to 410-43.

11:57:11 8 Do you see the caption on this, instead
11:57:14 9 of labor contractual gap this says total
11:57:18 10 labor gap valuation. Do you see where I
11:57:20 11 am?

11:57:21 12 A. Yes.

11:57:21 13 Q. This refers to an overall
11:57:23 14 current labor cost gap of a billion
11:57:25 15 dollars. Do you see that?

11:57:26 16 A. Yes.

11:57:26 17 Q. It refers to a 600 million
11:57:30 18 contractual labor cost gap, a 200 million
11:57:34 19 dollar gap in retiree medical and
11:57:36 20 pension, 150 million dollars in
11:57:39 21 seniority, and 200 million dollars in
11:57:41 22 fleet mix and other differences. Do you
11:57:43 23 see that?

11:57:43 24 A. Yes.

11:57:43 25 Q. Often didn't include those

11:57:45 2 figures in your declaration, did you?

11:57:46 3 A. No.

11:57:47 4 Q. Isn't it fair then based on
11:57:50 5 what's in APA Exhibit 410 to say that
11:57:54 6 American's estimate of its total labor
11:57:57 7 cost gap against those competitors was a
11:58:01 8 billion dollars and not 625 million?

11:58:03 9 A. It's the company's estimates.
11:58:07 10 I'm not going to argue with that.

11:58:09 11 Q. Thank you now in paragraph 38
11:58:11 12 of your declaration you say the APA never
11:58:14 13 received any explanation of the source or
11:58:17 14 rationale behind the number that had been
11:58:19 15 assigned for the APA to reach in cost
11:58:24 16 concessions; is that right?

11:58:25 17 A. The explanation that was given
11:58:29 18 to us was based on the business model and
11:58:34 19 getting to a target level of EBITDAR and
11:58:37 20 that was the explanation that we
11:58:41 21 received.

11:58:41 22 Q. But you received substantial
11:58:43 23 explanation, did you not, regarding the
11:58:44 24 business plan itself, how the business
11:58:46 25 plan was derived at, and the role that

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11:58:49 2 the labor ask played in that business

11:58:52 3 plan, did you not?

11:58:53 4 A. Yes.

11:58:54 5 Q. So when after the February 1st

11:58:58 6 session to which you referred, isn't it a

11:58:59 7 fact that APA asked for a one on one

11:59:02 8 meeting with senior corporate executives

11:59:05 9 to have a more detailed analysis given to

11:59:07 10 them of the business plan, the revenue

11:59:09 11 model?

11:59:09 12 A. That's correct.

11:59:10 13 Q. And the labor concessions

11:59:12 14 sought?

11:59:12 15 A. Yes.

11:59:12 16 Q. And at that meeting, you were

11:59:15 17 present and counsel was present and APA's

11:59:19 18 outside advisors were present?

11:59:20 19 A. Yes.

11:59:20 20 Q. And Ms. Goulet was there and a

11:59:23 21 number of the senior officials from the
11:59:25 22 company and the company's advisors were
11:59:27 23 there, correct?
11:59:27 24 A. Yes.
11:59:27 25 Q. At the end of that meeting,

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11:59:30 2 did the company refuse to answer any
11:59:32 3 questions APA might have had regarding
11:59:34 4 the nature of the business plan, the role
11:59:36 5 that labor would play in restructuring
11:59:38 6 the company?
11:59:39 7 A. They answered the questions
11:59:40 8 that we asked at that meeting, yes.
11:59:42 9 Q. Thank you. Now, there's a
11:59:45 10 reference both it was in your direct
11:59:47 11 testimony and also in your declaration to
11:59:49 12 changing valuations through the process.
11:59:53 13 And I was interested to hear part of your
11:59:56 14 direct testimony where you said modeling
11:59:59 15 and valuing concessions or changes to a

12:00:01 16 labor agreement in this industry is very

12:00:03 17 challenging. Is that a fair statement?

12:00:05 18 A. I did not say that, but Ed

12:00:08 19 said that in his opening statement, yes.

12:00:09 20 Q. I thought I heard you say it.

12:00:11 21 Would you disagree with Mr. James's

12:00:13 22 statement that it's extremely challenging

12:00:15 23 to value changes to a labor agreement?

12:00:17 24 A. It does present significant

12:00:18 25 challenges, yes.

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12:00:19 2 Q. So it's not surprising to you

12:00:21 3 then is it that there were changes made

12:00:24 4 acknowledged by the company to the

12:00:26 5 valuations made as the parties went

12:00:28 6 through the process of vetting the

12:00:30 7 proposals coming from either said?

12:00:32 8 A. Yes, there were some changes

12:00:34 9 made, yes.

12:00:35 10 Q. I think you point out in your

12:00:38 11 declaration that some of the necessary
12:00:40 12 changes were pointed out by APA, brought
12:00:42 13 to the company's attention by APA; isn't
12:00:43 14 that right?

12:00:44 15 A. Yes.

12:00:44 16 Q. And some of them were
12:00:47 17 identified unilaterally by the company,
12:00:49 18 they came to you and said we think that
12:00:50 19 this was an error or we have a better set
12:00:53 20 of assumptions underlying this valuation
12:00:55 21 and we think it needs a change?

12:00:57 22 A. Yes.

12:00:57 23 Q. And in some instances those
12:00:59 24 changes were favorable to the company and
12:01:01 25 other instances they were favorable to

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12:01:03 2 APA, correct?

12:01:04 3 A. Yes.

12:01:04 4 Q. And in balance, though, most
12:01:07 5 of the changes both in terms of the

12:01:09 6 number of changes and in magnitude they
12:01:11 7 were favorable to APA; isn't that right?

12:01:13 8 A. Yes.

12:01:13 9 Q. Now, there was a passage in
12:01:16 10 your declaration where you say that the
12:01:18 11 company unfairly and unilaterally decided
12:01:21 12 where those differences would be applied,
12:01:24 13 how they would be applied to the term
12:01:25 14 sheet, correct?

12:01:26 15 A. Yes.

12:01:26 16 Q. Now, when that happened, did
12:01:31 17 you ever suggest alternatives, that is to
12:01:34 18 say instead of applying that changed
12:01:39 19 valuation to reduction in your ask on a
12:01:41 20 duty rig, we would like you to apply it
12:01:43 21 here?

12:01:43 22 A. No.

12:01:45 23 Q. Did you ever express to the
12:01:47 24 company dissatisfaction that the company
12:01:51 25 had applied it in the way that it had?

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12:01:52 2 A. Yes.

12:01:53 3 Q. You did? And to whom did

12:01:56 4 you --

12:01:58 5 A. We had just expressed that

12:02:00 6 they had made unilateral changes and I

12:02:03 7 think because of the small size of the

12:02:07 8 changes and we were so far apart that,

12:02:10 9 you know, it really didn't matter at that

12:02:12 10 point a minor chess board moves that were

12:02:16 11 being made because it didn't bring us

12:02:18 12 anywhere near closer to reaching a deal.

12:02:21 13 Q. So it wasn't of sufficient

12:02:23 14 significance for you to suggest an

12:02:25 15 alternative to the company?

12:02:26 16 A. Well the -- I'd have to go

12:02:29 17 back and reflect on the dates of when

12:02:31 18 those changes were made. There were a

12:02:32 19 couple that were made early? February

12:02:36 20 when we started the process and then a

12:02:38 21 number that came much later in the

12:02:40 22 process just prior to the 1113 filing

12:02:45 23 when the company presented us with an

12:02:47 24 updated term sheet and said here's where

12:02:49 25 we've applied those differences.

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12:02:51 2 Q. Okay. So when they gave you
12:02:54 3 have the updated term sheet and showed
12:02:56 4 you where they had applied the change in
12:02:58 5 valuation, you didn't think that the
12:03:01 6 matter was of sufficient weight for you
12:03:03 7 to say to the company we're not happy
12:03:05 8 that you applied it that way
12:03:08 9 unilaterally, we'd like you to change the
12:03:10 10 way you've applied it?

12:03:11 11 A. No, we did not express that at
12:03:13 12 the time.

12:03:13 13 Q. I'd like to talk to you a
12:03:26 14 little bit about your testimony on the
12:03:28 15 scope changes that have been proposed
12:03:31 16 back and forth, but I'd like to start
12:03:32 17 really with the current book, the current
12:03:36 18 pilot agreement.

12:03:37 19 In paragraph 47 of your

12:03:38 20 declaration you say that American is
12:03:41 21 permitted to outsource hundreds of 50
12:03:43 22 seat jets and up to 90 70 seat aircraft.
12:03:48 23 I'd like to start with your use of the
12:03:51 24 word outsource.
12:03:51 25 Does American currently fly

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12:03:55 2 any 50 seat aircraft at the main line?
12:03:58 3 A. No.
12:03:58 4 Q. Has it flown any 50 seat
12:04:01 5 aircraft at the mainline in decades?
12:04:04 6 A. No.
12:04:04 7 Q. Does Delta fly any 50 seat
12:04:08 8 aircraft at the mainline?
12:04:09 9 A. No.
12:04:10 10 Q. Does United?
12:04:12 11 A. No.
12:04:12 12 Q. Does US Airways?
12:04:13 13 A. No.
12:04:13 14 Q. Now you proposed to fly 51

12:04:16 15 seat aircraft at the mainline. Do any of
12:04:19 16 the other network carriers fly aircraft
12:04:22 17 in that size at the mainline?

12:04:23 18 A. If you're restricted to
12:04:26 19 network carriers then the answer is no.

12:04:28 20 Q. So when you say outsource,
12:04:33 21 what you're not saying is that American
12:04:35 22 is proposing here to take jobs currently
12:04:38 23 performed by APA pilots on the seniority
12:04:41 24 list and give those jobs to someone else?

12:04:43 25 A. I don't know that I totally

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12:04:47 2 agree with you on that because it is a
12:04:48 3 transfer of flying. There's a decision
12:04:51 4 that gets made and gauge that gets put on
12:04:55 5 a market and over the past two decades
12:04:58 6 we've seen a substantial decrease in our
12:05:02 7 domestic flying and a very dramatic
12:05:04 8 increase in that flown by American Eagle
12:05:06 9 and that we see as a transfer of jobs

12:05:09 10 away from our group.

12:05:10 11 Q. Perhaps my question wasn't
12:05:11 12 precise enough. If the company is not
12:05:14 13 performing any 50 seat flying at the
12:05:17 14 company mainline today, then giving that
12:05:20 15 flying to someone in a regional carrier,
12:05:23 16 which is where it currently resides, is
12:05:25 17 not outsourcing, is it?

12:05:28 18 A. It's -- the way you're framing
12:05:33 19 the question I'll say yes.

12:05:34 20 Q. It is outsourcing or it's not
12:05:36 21 outsourcing?

12:05:36 22 A. I see it as a transfer of
12:05:38 23 flying. And we'll have very different
12:05:41 24 perspectives on this, but the way you're
12:05:43 25 asking the question I'd say yes.

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12:05:45 2 Q. In order for it to be
12:05:47 3 transferred doesn't it have to reside
12:05:49 4 with the company, Mr. Roghair?

12:05:50 5 A. For that gauge flying, it's --
12:05:52 6 whether we're moving passengers between
12:05:54 7 cities, if we don't do it at the
12:05:56 8 mainline, it gets outsourced or moved,
12:05:58 9 then from our perspective, and I hope you
12:06:00 10 can appreciate at least the perspective,
12:06:02 11 that's an outsourcing of our flying.

12:06:05 12 Q. Isn't it a fact, Mr. Roghair,
12:06:06 13 that if American is not doing that flying
12:06:09 14 currently and no one in the industry is
12:06:11 15 doing that flying currently and no one in
12:06:13 16 the industry has done that work for years
12:06:16 17 at the mainline, that the notion that
12:06:18 18 you're transferring that flying to
12:06:20 19 somebody else simply is without basis?

12:06:22 20 A. By our contract the way it is
12:06:26 21 written, the current green book is that
12:06:28 22 all flying above 50 seats would be
12:06:30 23 performed by APA, so it requires a
12:06:32 24 contractual modification to transfer that
12:06:34 25 flying to another entity.

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12:06:38 2 Q. Now, you say that American
12:06:40 3 currently is allowed to outsource, using
12:06:43 4 your words, up to 90 70 seat aircraft; is
12:06:47 5 that right?

12:06:47 6 A. Yes.

12:06:48 7 Q. Now 43 of those are turbo
12:06:50 8 props, correct?

12:06:50 9 A. Yes.

12:06:51 10 Q. So we're really talking about
12:06:53 11 47 regional jets?

12:06:55 12 A. Yes.

12:06:55 13 Q. Again, you say that we're
12:06:57 14 talking about outsourcing of that work.
12:07:02 15 American has flown 70 seat aircraft at
12:07:04 16 the mainline for decades, has it?

12:07:07 17 A. That's correct.

12:07:07 18 Q. In fact, no network carrier
12:07:11 19 has flown 70 seats or smaller at the
12:07:14 20 mainline for many, many years; isn't that
12:07:16 21 correct?

12:07:17 22 A. I believe that's true.

12:07:21 23 Q. I'd like to move on to the
12:07:29 24 subject of code sharing. There was a lot
12:07:31 25 of testimony from you about that this

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12:07:33 2 morning and it's in your declaration as
12:07:35 3 well.

12:07:36 4 Now, currently American has
12:07:38 5 one code share relationship and that's
12:07:40 6 with Alaska?

12:07:41 7 A. There's two, Hawaii also.

12:07:45 8 Q. Let's talk about Alaska first.

12:07:47 9 You characterize the Alaska code share
12:07:49 10 relationship as robust in your
12:07:51 11 declaration. Isn't it a fact that the
12:07:53 12 entirety of that relationship, code share
12:07:55 13 relationship, 65 routes, city pairs?

12:07:59 14 A. I'll take your word on that,
12:08:02 15 yes.

12:08:02 16 Q. And those city pairs are
12:08:04 17 specified in a document, it's not as

12:08:07 18 though APA said to American you may code
12:08:10 19 share on 65 routes of your choosing,
12:08:13 20 they're specified, are they not?
12:08:14 21 A. Yes.
12:08:15 22 Q. Now, that compares, for
12:08:24 23 example, to US Airways which currently
12:08:27 24 has code shares on United for up to 251,
12:08:33 25 to 250 flights; isn't that right?

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12:08:35 2 A. I'm not sure of the magnitude,
12:08:37 3 but I do know they have a code share with
12:08:41 4 United, yes.
12:09:11 5 Q. Mr. Roghair, this is an
12:09:13 6 exhibit that's already in evidence in
12:09:14 7 this case. It was part of Mr. Kasper's
12:09:17 8 declaration. I'd like you to take a look
12:09:23 9 at that. The caption shows -- I'm sorry,
12:09:34 10 I neglected to say it was Exhibit 71 to
12:09:36 11 Mr. Kasper's declaration.
12:09:38 12 Does this refresh your

12:09:40 13 recollection as to the scale of the
12:09:44 14 current code share relationship between
12:09:45 15 US and United?
12:09:50 16 A. Yes.
12:09:52 17 Q. So US Airways' code share
12:09:56 18 relationship with United is on the far
12:09:58 19 right of the graph and American is at the
12:09:59 20 far left with 65 markets with class; is
12:10:03 21 that correct?
12:10:03 22 A. Yes.
12:10:04 23 Q. Now this reflects the world as
12:10:08 24 it exists now, the date on the OAG source
12:10:13 25 is July of this year. Have you read Mr.

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12:10:17 2 Eaton's declaration in this matter?
12:10:19 3 A. Pieces of it. On this theme,
12:10:27 4 on scope, if you're going to dig real far
12:10:30 5 into details I'll refer to his testimony
12:10:33 6 because he's dedicated to scope line of
12:10:35 7 questioning.

12:10:35 8 Q. Let's see how far we can get
12:10:37 9 here. Mr. Eaton made a statement in his
12:10:40 10 declaration that the industry has evolved
12:10:42 11 such that code sharing is frequently used
12:10:45 12 to extend the market's presence and
12:10:48 13 sometimes to feed American flights; is
12:10:50 14 that something you can agree with it?

12:10:52 15 A. Yes.

12:10:52 16 Q. In the pre merger environment
12:10:56 17 before Delta and Northwest merged and
12:10:58 18 before United -- I'm sorry, before the
12:11:03 19 two principal mergers in the industry,
12:11:06 20 let's go back to 2006, isn't it a fact
12:11:10 21 American was the big dog, the biggest
12:11:14 22 network?

12:11:15 23 A. Yes.

12:11:15 24 Q. And the other airlines were
12:11:16 25 chasing American Airlines?

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12:11:17 2 A. Yes.

12:11:18 3 Q. And they were using extensive
12:11:21 4 code share networks in order to grow the
12:11:24 5 size of their networks to compete against
12:11:26 6 American, correct?

12:11:26 7 A. There were some code sharing
12:11:30 8 arrangements, yes.

12:11:31 9 Q. There were a huge number of
12:11:32 10 them and they were very large; isn't that
12:11:34 11 right?

12:11:34 12 A. I believe so, yes.

12:12:04 13 Q. The document that I've given
12:12:05 14 you, Mr. Roghair, is also an exhibit to
12:12:07 15 Mr. Kasper's declaration. It's American
12:12:09 16 Exhibit 70. And it reflects the nature
12:12:13 17 of the code sharing relationships that
12:12:15 18 existed in the industry as of July 2006.
12:12:17 19 Do you see that?

12:12:19 20 A. Yes.

12:12:19 21 Q. Does this refresh your
12:12:20 22 recollection as to the robust nature of
12:12:24 23 the code sharing relationships that
12:12:26 24 existed among American's competitors at
12:12:29 25 that time?

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12:12:29 2 A. You know, I'm not the scope
12:12:33 3 expert. There are some subject matter
12:12:37 4 experts on that. But I'll take this at
12:12:38 5 face value that this represents what was
12:12:40 6 going on in the industry in 2006.

12:12:42 7 Q. You've been a player in the
12:12:43 8 industry, you've been a member and an
12:12:45 9 official at APA for some time?

12:12:46 10 A. Yes.

12:12:47 11 Q. And this is not new
12:12:49 12 information to you, is it?

12:12:50 13 A. I'm aware that there were code
12:12:53 14 sharing arrangements going on, yes.

12:12:54 15 Q. But what is happening right
12:12:56 16 now in 2012 is that American has assumed
12:13:00 17 the position that the other carriers held
12:13:02 18 in 2006, that is we're behind in trying
12:13:04 19 to increase the scope of our network and
12:13:06 20 that's what Mr. Eaton was talking about
12:13:08 21 in his declaration; isn't that right?

12:13:10 22 A. Yes.

12:13:24 23 Q. Now I'd like to go back to
12:13:25 24 your characterization of the Alaska code
12:13:28 25 share relationship as robust. You

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12:13:31 2 indicated, acknowledged that it's limited
12:13:34 3 to specific cities spelled out in a
12:13:36 4 document. Isn't it a fact that American
12:13:37 5 has approached APA for permission to
12:13:41 6 extend that relationship even by one city
12:13:44 7 pair and been denied by the APA?

12:13:46 8 A. Yes.

12:13:47 9 Q. So APA has been relatively
12:13:50 10 adamant in foreclosing any growth in that
12:13:53 11 relationship historically; isn't that
12:13:56 12 correct?

12:13:56 13 A. We have shown openness to
12:13:59 14 expanding that based on the growth out
12:14:03 15 of, international growth out on the West
12:14:05 16 Coast.

12:14:05 17 Q. That's since the 1113 process
12:14:08 18 started, you've made a proposal in that
12:14:11 19 respect recently; isn't that right?

12:14:13 20 A. Yes. I believe so.

12:14:14 21 Q. But historically, APA has been
12:14:17 22 very resistant, in fact, adamant that
12:14:19 23 that relationship would not expand; isn't
12:14:21 24 that correct?

12:14:22 25 A. That's true.

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12:14:23 2 Q. You also say in paragraph 47
12:14:28 3 of your declaration that the existing
12:14:31 4 agreement provides an opportunity for
12:14:33 5 American to engage in new code sharing
12:14:37 6 arrangements subject to industry standard
12:14:39 7 job protections; is that right?

12:14:41 8 A. Yes.

12:14:41 9 Q. You're referring there to
12:14:42 10 section 1-H of the agreement, interest
12:14:49 11 arbitration provision?

12:14:50 12 A. I'm not sure of the question.

12:14:54 13 You're asking if the current contract
12:14:57 14 allows that?

12:14:58 15 Q. Correct. So let me rephrase
12:14:59 16 the question so that we're on the same
12:15:01 17 page. We're talking about the current
12:15:03 18 book now, we're talking about the
12:15:04 19 existing agreement. And your declaration
12:15:08 20 said that under the existing agreement
12:15:10 21 there's a provision in that agreement
12:15:12 22 that permits American to expand its code
12:15:15 23 share relationships beyond Hawaiian and
12:15:18 24 Alaska.

12:15:19 25 A. Yes.

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12:15:19 2 Q. So long as it's done
12:15:21 3 consistent with industry standard job
12:15:24 4 protections; is that right?

12:15:25 5 A. That's correct. I'm sorry.

12:15:26 6 Q. So you are referring to 1 H in

12:15:29 7 that regard?

12:15:29 8 A. Yes.

12:15:30 9 Q. Let's make sure that everyone

12:15:32 10 understands what the process is there.

12:15:35 11 It begins with discussions between APA

12:15:37 12 and the company?

12:15:38 13 A. Yes.

12:15:38 14 Q. You just told me that APA has

12:15:41 15 been very resistant, in fact adamant that

12:15:44 16 those relationships not expand at least

12:15:46 17 until the 1113 process, correct?

12:15:48 18 A. Yes.

12:15:49 19 MR. DALMAT: Objection. That

12:15:50 20 mischaracterizes the testimony.

12:15:51 21 Before he was focused only on

12:15:53 22 Alaska, now he's making a general

12:15:56 23 statement about code share.

12:15:57 24 THE COURT: Just ask the

12:15:59 25 question rather than have me go

12:16:01 2 through my notes and figure out his
12:16:03 3 characterization. Just ask the
12:16:04 4 question again.

12:16:05 5 Q. I believe the witness has
12:16:06 6 already answered and the answer was yes.
12:16:08 7 Should I go back?

12:16:09 8 THE COURT: Go back.

12:16:10 9 Q. Isn't it true, Mr. Roghair, as
12:16:12 10 a matter of philosophy that APA has
12:16:15 11 resisted, in fact been adamantly opposed
12:16:18 12 to expanding those domestic code share
12:16:21 13 relationships?

12:16:21 14 A. The Alaska agreement
12:16:23 15 specifically has been more difficult for
12:16:25 16 us, yes. And I believe indirect I
12:16:29 17 communicated that in a couple other
12:16:31 18 settings that even prepetition that we
12:16:34 19 had expressed an openness to work with
12:16:38 20 the company on those code shares. But
12:16:43 21 with Alaska, yes, I agree with that. The
12:16:47 22 answer to that if it's Alaska specific,
12:16:50 23 yes, the answer would be yes.

12:16:52 24 THE COURT: Let me just make a

12:16:53 25 note here. When people wants to

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12:16:55 2 object, I just want the objection

12:16:57 3 and the basis because we can go

12:16:59 4 back and forth all day saying are

12:17:02 5 we talking about Alaska, objection,

12:17:04 6 did you say object, objection,

12:17:06 7 foundation, objection leading, just

12:17:08 8 because I want the record to be

12:17:10 9 clean and both sides have very good

12:17:11 10 and competent witnesses who are

12:17:14 11 plenty knowledgeable to answer the

12:17:16 12 questions. So thank you.

12:17:18 13 MR. MOLLEN: Thank you, your

12:17:19 14 Honor.

12:17:19 15 Q. So let's talk a little bit

12:17:20 16 about the process that's comprehended by

12:17:23 17 section 1-H. Under that process we given

12:17:31 18 with discussions between APA and the

12:17:34 19 company; is that right?

12:17:34 20 A. That's correct.
12:17:35 21 Q. And if APA doesn't agree to
12:17:38 22 add a code share relationship then it
12:17:41 23 goes to an interest arbitration; is that
12:17:44 24 correct?
12:17:44 25 A. That's correct.

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12:17:44 2 Q. And the arbitrator in that
12:17:48 3 interest arbitration is bound to industry
12:17:50 4 comparables and they're listed in the
12:17:52 5 provision, are they not, US Airways,
12:17:56 6 United, Delta, Northwest and Continental?
12:17:59 7 A. I believe so.
12:18:00 8 Q. Now two of those are no longer
12:18:01 9 in existence?
12:18:02 10 A. Right.
12:18:03 11 Q. They've died by merger. And
12:18:05 12 then two of the other three have vastly
12:18:07 13 reduced their reliance on domestic code
12:18:11 14 share because they've achieved network

12:18:13 15 scale through mergers; is that right?

12:18:15 16 A. Right.

12:18:16 17 Q. So since 2006, as the exhibit

12:18:20 18 in front of you shows, Delta's reduced

12:18:23 19 its code sharing from 400 to 104 markets

12:18:27 20 and United has reduced from 200 to 114;

12:18:32 21 isn't that right?

12:18:32 22 A. Right.

12:18:32 23 Q. And you've proposed in your

12:18:36 24 1113 proposal to do away with section 1-H

12:18:40 25 altogether; isn't that right?

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12:18:41 2 A. Yes.

12:18:41 3 Q. And in that instance, American

12:18:43 4 would be limited to any code share

12:18:46 5 relationships that the parties agree to

12:18:49 6 on the three companies that we're not

12:18:50 7 going to name in the courtroom, correct?

12:18:52 8 A. Yes.

12:18:52 9 Q. Now, American's told you

12:18:57 10 during negotiations, has it not, that it
12:19:01 11 wants to use domestic code sharing to
12:19:04 12 feed its hubs with traffic from outlying
12:19:06 13 communities where it either does very
12:19:08 14 little or no business; is that right?

12:19:09 15 A. That's a piece of it. And
12:19:13 16 there's some overlap markets that they
12:19:15 17 also expressed an interest in, yes.

12:19:17 18 Q. But the principal goal of code
12:19:21 19 sharing is to feed hubs from spoke
12:19:23 20 markets; isn't that correct?

12:19:24 21 A. Yes.

12:19:25 22 Q. Now you're familiar with
12:19:28 23 supplement R of the agreement, are you
12:19:31 24 not?

12:19:31 25 A. Yes.

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12:19:32 2 Q. Isn't it APA's position that
12:19:34 3 supplement R of the current agreement
12:19:36 4 prohibits American from using any

12:19:38 5 domestic code share from a spoke to a
12:19:40 6 hub?
12:19:40 7 A. That's correct.
12:19:40 8 Q. In fact, you told the company
12:19:47 9 that you would never agree to interest
12:19:48 10 arbitration, to going into interest
12:19:51 11 arbitration over a possible code share
12:19:53 12 that would entail spoke to hub traveling;
12:19:56 13 isn't that right?
12:19:57 14 A. Yes.
12:19:58 15 Q. Now, I'm going to ask you to
12:20:06 16 look at paragraph 50 of your declaration
12:20:13 17 and here's where it's going to get
12:20:15 18 tricky. We're going to try to do this
12:20:18 19 while avoiding using names. I'd like you
12:20:20 20 actually to draw your attention to the
12:20:22 21 top of page 19. Which is a continuation
12:20:28 22 of that paragraph. Do you see where I
12:20:30 23 am?
12:20:30 24 A. Yes.
12:20:30 25 Q. Now there are three airlines

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12:20:33 2 named there, two in the first line and

12:20:35 3 then one in the third.

12:20:37 4 A. Yes.

12:20:38 5 Q. Do you see it?

12:20:38 6 A. Yes.

12:20:39 7 Q. So we're going to refer to

12:20:40 8 them as airline 1, 2 and 3.

12:20:42 9 A. Okay.

12:20:43 10 Q. Now, as to that first airline,

12:20:53 11 I'd like to talk a little bit about the

12:20:56 12 current position that APA has in the 1113

12:20:59 13 process. As to that first named airline,

12:21:02 14 APA has agreed to a finite number of city

12:21:06 15 pairs, 18 city pairs, and has agreed that

12:21:10 16 it might agree at some later point to two

12:21:12 17 others; isn't that right? Is that the

12:21:14 18 current proposal?

12:21:16 19 A. My -- and I haven't looked at

12:21:17 20 it in some time, but my understanding was

12:21:20 21 that there was a provision tied to growth

12:21:23 22 out of that, that hub that that would

12:21:26 23 allow an expansion on a ratio basis.

12:21:30 24 THE COURT: Counsel, let me
12:21:32 25 just clarify when you say current

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12:21:34 2 proposal, I assume that any
12:21:36 3 discussion of proposals is all
12:21:38 4 before the hearing started and
12:21:39 5 we're not talking about any
12:21:41 6 discussions that have taken place
12:21:43 7 subsequently which are -- 408
12:21:47 8 discussions?

12:21:48 9 MR. MOLLEN: Correct, your
12:21:49 10 Honor, there are ongoing 408
12:21:50 11 discussions that shall no longer be
12:21:52 12 mentioned.

12:21:52 13 THE COURT: I want to make
12:21:53 14 surely the parties understand we're
12:21:55 15 talking about currents. Current
12:21:56 16 has a particular meaning here.

12:21:58 17 MR. MOLLEN: Ambiguous, yes,
12:21:59 18 your Honor, thank you for that

12:22:00 19 clarification.

12:22:02 20 THE COURT: We have enough
12:22:04 21 problems already without going into
12:22:05 22 current discussions.

12:22:06 23 MR. MOLLEN: I understand,
12:22:07 24 your Honor.

12:22:07 25 Q. So it's your understanding

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12:22:08 2 that there is a provision in the APA's
12:22:10 3 proposal that would permit it to growth
12:22:13 4 if there was growth in one of those
12:22:15 5 markets?

12:22:15 6 A. Yes.

12:22:17 7 Q. But the initial proposal on
12:22:19 8 the code share with that carrier would be
12:22:22 9 18 city pairs plus two if APA
12:22:25 10 subsequently agreed to them?

12:22:26 11 A. I believe so.

12:22:27 12 Q. Now, the second named carrier
12:22:31 13 there, APA's proposed that American could

12:22:36 14 code share in three airports but they
12:22:40 15 would have to maintain the specific
12:22:42 16 number of flights that are currently
12:22:43 17 being flown out of those airports and if
12:22:47 18 the company fell below those numbers
12:22:51 19 number of departures, the code share
12:22:52 20 would be threatened; isn't that right?

12:22:54 21 A. Yes.

12:22:54 22 Q. So if American was flying out
12:22:56 23 of one of those airports and found it
12:22:58 24 could no longer operate profitably
12:23:01 25 because of competition or other reasons,

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12:23:02 2 the code share relationship -- it would
12:23:05 3 be put to a choice, it would either have
12:23:07 4 to continue to operate flights on which
12:23:09 5 it can't make any money or it would have
12:23:11 6 to retreat from a code share relationship
12:23:14 7 that was profitable for the company;
12:23:17 8 isn't that right?

12:23:17 9 A. Yes.

12:23:17 10 Q. Now the third carrier

12:23:22 11 mentioned there, the proposal would

12:23:25 12 require American to increase flying out

12:23:29 13 of a specific geographic region by about

12:23:32 14 nine, it's a little less than 9,000 block

12:23:35 15 hours a year in order to add two city

12:23:39 16 pairs; isn't that correct?

12:23:40 17 A. Yes.

12:23:41 18 Q. So let me rephrase that just

12:23:44 19 to make sure that it's clear. For every

12:23:46 20 8800 I think the number is block hours

12:23:49 21 added in that geographic market the

12:23:52 22 company would be permitted to add two

12:23:54 23 markets to code share; is that right?

12:23:56 24 A. Correct. I think that

12:23:57 25 represents one long haul international

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12:24:00 2 flight of growth.

12:24:00 3 Q. Let's go on to paragraph 51 of

12:24:07 4 your declaration. You refer to 150
12:24:13 5 regional jets configured with 50 to 71
12:24:17 6 seats. That's the proposal. But the 150
12:24:23 7 is really 103 incremental, right, it's
12:24:26 8 the 47 existing aircraft?

12:24:28 9 A. Yes.

12:24:28 10 Q. And you're proposing that you
12:24:30 11 would allow American to add 103 aircraft,
12:24:33 12 correct?

12:24:33 13 A. Yes. And the ability to
12:24:35 14 modernize the aircraft that they have,
12:24:37 15 yes.

12:24:38 16 Q. So there's a condition on
12:24:40 17 adding those 103 incremental aircraft; is
12:24:44 18 there not?

12:24:44 19 A. Yes.

12:24:45 20 Q. In order for American to add
12:24:49 21 one more piece of equipment in that
12:24:52 22 category, it has to add a piece of
12:24:56 23 equipment in the 71 to 110 seat range at
12:25:00 24 the mainline; isn't that correct?

12:25:03 25 A. That's correct, yes.

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12:25:04 2 Q. So unless the carrier is
12:25:05 3 willing to add aircraft in the 71 to 110
12:25:09 4 seat category to its mainline operations
12:25:11 5 it's not permitted to add even one
12:25:14 6 regional jet in the 70 seat category; is
12:25:17 7 that right?

12:25:17 8 A. That's correct.

12:25:18 9 Q. Now, does Delta operate any 71
12:25:22 10 to 110 seat aircraft on the mainline?

12:25:24 11 A. No, I don't believe so.

12:25:28 12 Q. Does United?

12:25:29 13 A. They might. I'm not sure.

12:25:32 14 Q. Does US Airways?

12:25:39 15 A. Yes.

12:25:39 16 Q. They operate the E 190; isn't
12:25:43 17 that correct?

12:25:43 18 A. Yes.

12:25:45 19 Q. Now it formerly operated that
12:25:47 20 aircraft through a regional partner, did
12:25:49 21 they not?

12:25:49 22 A. Yes.
12:25:50 23 Q. And they brought it back into
12:25:51 24 mainline operations, am I right?
12:25:53 25 A. Yes.

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12:25:53 2 Q. And they did that in a deal
12:25:55 3 with their unions?
12:25:56 4 A. Yes.
12:25:57 5 Q. They got three specific things
12:25:59 6 in return for doing that; isn't that
12:26:00 7 right?
12:26:00 8 A. I don't know the terms of the
12:26:01 9 deal.
12:26:01 10 Q. Let's see. Do you recall that
12:26:03 11 they, as a quid pro quo for bringing
12:26:06 12 those aircraft back to the mainline, they
12:26:08 13 got the union's agreement to increase the
12:26:12 14 seat limit on the C R J 900 to 90 seats
12:26:15 15 and to be able to fly that through a
12:26:18 16 regional market?

12:26:18 17 A. Okay.

12:26:19 18 Q. Is that your understanding, or

12:26:20 19 you don't know?

12:26:21 20 A. That I don't know.

12:26:23 21 Q. So you don't know any of the

12:26:25 22 terms of the quid pro quo there?

12:26:27 23 A. I know they got a jets for

12:26:30 24 jobs program I believe was the name, but

12:26:32 25 the specific details I wouldn't be the

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12:26:35 2 subject matter expert on that.

12:26:37 3 Q. Delta can operate up to 275 70

12:26:42 4 seat RJs through a partner, can it not?

12:26:44 5 A. I believe so.

12:26:45 6 Q. And United has no fine night

12:26:47 7 limit. There's some A S M guidelines or

12:26:49 8 requirements, but they have no finite

12:26:51 9 limit on the number of large RJs they can

12:26:54 10 operate. Am I right?

12:26:55 11 A. Right. My understanding is

12:26:57 12 the A S M limit equates to about 150

12:27:00 13 aircraft.

12:27:00 14 Q. On their current schedule?

12:27:01 15 A. Yes.

12:27:02 16 Q. And US Airways east can

12:27:03 17 operate 408 aircraft between 51 and 90

12:27:07 18 seats through regional partners; isn't

12:27:10 19 that right?

12:27:10 20 A. There's some provisions to

12:27:12 21 that, but yes.

12:27:12 22 Q. And adding the US west

12:27:18 23 component gives them another 50 aircraft

12:27:21 24 in the 51 to 70 seat range and 38 in the

12:27:25 25 71 to 84 seat range; isn't that right?

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12:27:28 2 A. I believe so.

12:27:28 3 Q. Now, one of the bones of

12:27:33 4 contention at the table with the company

12:27:35 5 has been American's refusal to give APA

12:27:40 6 credit, dollar credit against its savings

12:27:43 7 target for changes to the scope clause;
12:27:46 8 isn't that right?
12:27:47 9 A. That's correct.
12:27:47 10 Q. Isn't it a fact that no value
12:27:51 11 has been given by any airline in any
12:27:53 12 prior bankruptcy for changes to the scope
12:27:55 13 clauses?
12:27:55 14 A. That's correct.
12:27:56 15 Q. And you've said here today
12:28:03 16 earlier and you say in your declaration
12:28:06 17 that APA's proposals have addressed
12:28:09 18 several of American's requests regarding
12:28:12 19 code sharing, or regarding code share,
12:28:15 20 that's right, and we've talked a little
12:28:18 21 bit here today about addressing specific
12:28:20 22 opportunities out of specific airports
12:28:25 23 with specific airlines; is that correct?
12:28:28 24 A. Yes.
12:28:28 25 Q. And if the company were to

12:28:30 2 agree to your proposal with respect to
12:28:33 3 those three opportunities, section 1-H I
12:28:36 4 think you've already said, would go away;
12:28:39 5 is that right?

12:28:39 6 A. Yes.

12:28:39 7 Q. So there would be no way for
12:28:41 8 the company to expand its code sharing
12:28:43 9 beyond those three airlines and those
12:28:45 10 three specific opportunities under that
12:28:48 11 agreement with 1-H out of the picture;
12:28:51 12 isn't that he correct?

12:28:52 13 A. Mutual agreement is always the
12:28:54 14 path we'd prefer and that would still be
12:28:58 15 there.

12:28:58 16 Q. So there is no way for the
12:28:59 17 company at this point to predict, project
12:29:03 18 that it would have the flexibility it
12:29:06 19 needs to respond to opportunities as they
12:29:08 20 arise in the future. For example, if
12:29:11 21 virgin Americas operation out of San
12:29:15 22 Francisco in 2017 looked like a viable
12:29:16 23 opportunity for a code sharing
12:29:17 24 relationship, there would be no provision
12:29:19 25 in the agreement that would permit them

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12:29:21 2 to go after that opportunity?

12:29:22 3 A. We would have to negotiate

12:29:24 4 that, yes.

12:29:34 5 Q. Now, another element of APA's

12:29:37 6 proposal at the table currently on

12:29:39 7 regional flying is to bring all of the

12:29:45 8 flying, 51 seats and above back to the

12:29:47 9 mainline; isn't that correct?

12:29:48 10 A. In our current positions?

12:29:51 11 Q. That has been APA's position?

12:29:53 12 A. Historically, yes.

12:29:58 13 Q. Now you've said in order to

12:30:00 14 get some of that regional flying back at

12:30:02 15 the mainline you'd have a proposal for

12:30:04 16 competitive rates and productivity; isn't

12:30:06 17 that right?

12:30:06 18 A. Yes.

12:30:06 19 Q. Now, the rest of the contract

12:30:11 20 though, the green book, would apply to

12:30:14 21 the pilots in those operations, correct?

12:30:16 22 A. Yes.

12:30:16 23 Q. So the mainline medical,

12:30:20 24 mainline sick, mainline vacation,

12:30:23 25 mainline retirement, all of that would

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12:30:26 2 continue to apply to those pilots; is

12:30:29 3 that correct?

12:30:29 4 A. That's correct.

12:30:29 5 Q. And in each of those

12:30:31 6 categories, American's costs are much

12:30:35 7 greater, are they not, than would be

12:30:37 8 prevalent at a regional airline?

12:30:41 9 A. Particularly with the pension,

12:30:43 10 yes.

12:30:43 11 Q. And vacation, active medical,

12:30:47 12 all of it, right, as a matter of fact?

12:30:51 13 A. I'm not so sure about

12:30:52 14 vacation, but the medical most likely, in

12:30:55 15 most cases, yes.

12:30:56 16 Q. Now, you also say that the
12:30:57 17 other unions joined APA in making a joint
12:31:01 18 proposal to the company to bring all that
12:31:03 19 work back to the mainline; isn't that
12:31:05 20 right?

12:31:05 21 A. We didn't make a joint
12:31:07 22 proposal, but we did meet with the
12:31:08 23 company one time to convey that message,
12:31:11 24 yes.

12:31:11 25 Q. Do you know if either of the

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12:31:14 2 other unions involved made a proposal to
12:31:17 3 the company?

12:31:18 4 A. No, we've not followed up on
12:31:20 5 it.

12:31:20 6 Q. I'd like to move briefly to
12:31:26 7 the topic of sick leave. You talked
12:31:29 8 about that subject in your direct
12:31:31 9 testimony here today.

12:31:32 10 You say in your declaration

12:31:34 11 that American's proposal would pressure
12:31:38 12 pilots to fly when they're not fit. I
12:31:41 13 think you also said this morning that
12:31:44 14 pilots are subject to FAA regulations
12:31:46 15 that prohibit them from going to work
12:31:48 16 when they're not well enough to fly;
12:31:51 17 isn't that right?

12:31:51 18 A. Yes.

12:31:51 19 Q. And they could put their
12:31:53 20 license at risk if they do so; isn't that
12:31:55 21 right?

12:31:55 22 A. That's correct.

12:31:56 23 Q. And American's pilots are true
12:31:59 24 professionals, are they not?

12:32:01 25 A. Yes.

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12:32:01 2 Q. And it's not your testimony,
12:32:03 3 is it, that American's pilots would
12:32:06 4 actually go to work when they shouldn't
12:32:08 5 because they might suffer a diminution in

12:32:11 6 their pay?

12:32:12 7 A. I think it's a very serious

12:32:16 8 concern that you'd have pilots that would

12:32:17 9 be concerned about it and we think that

12:32:20 10 pressure could lead to bad

12:32:24 11 decisionmaking.

12:32:24 12 Q. Do you think, sir, the

12:32:26 13 question I'm asking you is do you think

12:32:28 14 American's pilots will report to work

12:32:31 15 when they're too ill to fly because they

12:32:34 16 will take a 40 percent reduction in

12:32:38 17 hourly sick leave?

12:32:39 18 A. We occasionally have pilots

12:32:40 19 that report to work sick now and the

12:32:42 20 captain removes them from the sequence

12:32:44 21 for making a bad decision and we think

12:32:46 22 there could be other -- you know, not

12:32:49 23 detracting from professionalism, but in a

12:32:52 24 group of 8,000 people you're going to

12:32:53 25 have some people that make some bad

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12:32:55 2 decisions and occasionally we remove
12:32:58 3 pilots from trips for showing up sick and
12:33:00 4 I think if there's a strong financial
12:33:02 5 disincentive, a strong hit, I think it
12:33:06 6 would increase some bad decision making
12:33:08 7 and I think that's a very significant
12:33:10 8 safety concern from our perspective.

12:33:12 9 Q. In the current environment
12:33:15 10 though there is a mechanism for dealing
12:33:17 11 with pilots who report to work when they
12:33:20 12 are too ill to report as you just
12:33:22 13 described?

12:33:22 14 A. Yes.

12:33:26 15 Q. Now the APA's table position
12:33:28 16 in 1115 has been that, and I think you
12:33:31 17 actually testified to this on direct, is
12:33:34 18 that the company could not require any
12:33:36 19 degree of substantiation until the pilot
12:33:38 20 had been on sick for 30 continuous days;
12:33:41 21 is that correct?

12:33:41 22 A. That's correct.

12:33:42 23 Q. And if the company at the

12:33:44 24 conclusion of the 30 day period writes to
12:33:47 25 the pilot to inquire as to the nature of

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12:33:50 2 their absence why they're out, the pilot
12:33:53 3 at that point could report to work, clear
12:33:55 4 the sick list, return to work and the
12:33:58 5 company could make no further inquiries;
12:34:00 6 isn't that right?

12:34:00 7 A. Yes, that's the agreement that
12:34:02 8 we had had, that resurrected.

12:34:05 9 Q. We've talked a little bit
12:34:07 10 about the difficulties in valuing various
12:34:10 11 proposals. This is a particularly thorny
12:34:12 12 one, isn't it?

12:34:13 13 A. Very much.

12:34:13 14 Q. Because both the company and
12:34:15 15 APA are making projections about how
12:34:17 16 pilots, how human beings are going to
12:34:21 17 react to a particular set of
12:34:22 18 circumstances that doesn't currently

12:34:24 19 exist; isn't that right?

12:34:25 20 A. Right.

12:34:25 21 Q. And so both sides are making
12:34:29 22 projections into the future and both have
12:34:31 23 to have some degree of uncertainty as to
12:34:33 24 how accurate those projections are going
12:34:35 25 to be; isn't that right?

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12:34:36 2 A. Yes. That's a big part of the
12:34:40 3 valuation discussion assumptions.

12:34:41 4 Q. Isn't it a fact that some time
12:34:43 5 ago the company offered APA what it
12:34:46 6 called a service level agreement, by
12:34:48 7 which the company agreed to use your
12:34:49 8 assumptions regarding sick for a period
12:34:52 9 of time to see how they tested out in the
12:34:55 10 real world and if they didn't prove to be
12:34:58 11 accurate to revisit the issue and make
12:35:01 12 changes to bring things back into line;
12:35:03 13 isn't that right?

12:35:04 14 A. It wasn't sick-specific. It
12:35:06 15 was productivity service level agreement,
12:35:08 16 but yes, it was a service level agreement
12:35:10 17 on productivity.

12:35:11 18 Q. And APA said no?

12:35:12 19 A. That is correct.

12:35:13 20 Q. Are you aware that pilot sick
12:35:24 21 leave use at American is substantially
12:35:25 22 higher than it is at any of its network
12:35:28 23 competitors?

12:35:28 24 A. I saw that in one of the
12:35:31 25 company exhibits that it is higher, in

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12:35:36 2 one of the charts, yes.

12:35:36 3 Q. Are you aware that there has
12:35:38 4 been a substantial increase in sick leave
12:35:40 5 usage in the last two months?

12:35:41 6 A. Yes.

12:35:41 7 Q. Do you know of any
12:35:44 8 epidemiological reason why pilots are

12:35:47 9 more sick over the last two months?

12:35:49 10 A. I think it's representative of
12:35:52 11 other carriers that have gone through the
12:35:54 12 bankruptcy process, there's an enormous
12:35:56 13 amount of anxiety and depression when
12:35:58 14 people's livelihoods, whether they're
12:36:01 15 going to be furloughed or what's going to
12:36:03 16 happen to their pension and we've even
12:36:05 17 presented the company with charts from
12:36:07 18 the TWA bankruptcy that our TWA pilots
12:36:10 19 provided to us that show a very steady
12:36:12 20 increase as their bankruptcy came to its
12:36:15 21 1113 head and then a very dramatic
12:36:18 22 decrease in sick rates after it was
12:36:20 23 resolved.

12:36:20 24 Q. Are you aware that the company
12:36:22 25 has announced that its had to reduce its

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12:36:26 2 schedule rather substantially because of
12:36:27 3 increased pilot sick usage has meant that

12:36:30 4 it doesn't have pilots to staff its
12:36:32 5 operation?

12:36:33 6 A. I was told they were reducing
12:36:34 7 the schedule. I did not get clarified
12:36:36 8 that it was because of pilot
12:36:38 9 availability.

12:36:38 10 Q. Now, earlier you testified
12:36:40 11 that Mr. Burtzlaff told you at one point
12:36:45 12 that the buy back program that APA had
12:36:47 13 proposed would result in a 10 percent
12:36:49 14 reduction in sick usage; do you remember
12:36:51 15 that testimony?

12:36:52 16 A. Yes.

12:36:52 17 Q. Isn't it a fact that what Mr.
12:36:54 18 Burtzlaff said was that the entire
12:36:56 19 package of terms regarding sick that had
12:37:00 20 been discussed would result in a 10
12:37:03 21 percent decrease in sick usage and that
12:37:05 22 would include dealing with rapid
12:37:07 23 re-accrual, sick if needed and a variety
12:37:10 24 of other aspects of the agreement; isn't
12:37:12 25 that right?

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12:37:12 2 A. That may have been the case.

12:37:14 3 My understanding is that it was just the

12:37:15 4 sell-back provision was equated to a 10

12:37:18 5 percent assumption. That was my

12:37:20 6 understanding of the discussion.

12:37:21 7 Q. Let's talk a little bit about

12:37:27 8 the compensation proposals. The

12:37:31 9 declaration indicates that APA has agreed

12:37:33 10 to the company's 1.5 percent annual wage

12:37:37 11 increases; is that right?

12:37:38 12 A. That's correct.

12:37:39 13 Q. Isn't it a fact that APA has

12:37:43 14 said that it would agree to 1.5 percent

12:37:45 15 annual wage increases, or at the high

12:37:48 16 end of that 1.5 percent figure and an

12:37:50 17 industry average formed by looking at

12:37:53 18 Delta and United?

12:37:55 19 A. Starting in year 3, yes, I

12:37:59 20 believe that's right.

12:37:59 21 Q. And in fact, your proposal is

12:38:01 22 only for a three-year agreement; isn't

12:38:04 23 that right?

12:38:05 24 A. That's correct.

12:38:05 25 Q. So what you're actually

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12:38:07 2 proposing to the company is after the
12:38:09 3 amendable date of the agreement has been
12:38:11 4 reached, and for however long it takes to
12:38:13 5 negotiate an agreement, and as we know
12:38:17 6 recent history it can take many years,
12:38:19 7 that the pilots would continue to get pay
12:38:21 8 raises in each year based on increases
12:38:24 9 either one and a half percent increase or
12:38:27 10 the industry average as based on Delta
12:38:30 11 and United, isn't that right?

12:38:32 12 A. And we'd taken something, we'd
12:38:34 13 gotten some traction with the company on
12:38:36 14 prepetition mechanism, it was more for
12:38:40 15 small jet flying, that the company had
12:38:44 16 expressed industry averaging mechanism
12:38:45 17 and for a longer duration than the

12:38:48 18 contract and that was something that we
12:38:49 19 thought we could come back and hopefully
12:38:51 20 get traction on in this process.
12:38:53 21 Q. Let's go back to your proposal
12:38:55 22 here, the higher of 1.5 percent or of
12:38:58 23 industry average after the amendable date
12:39:00 24 of the agreement.
12:39:01 25 Has that ever been in any

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12:39:06 2 network carrier's collective bargaining
12:39:08 3 agreement, to your knowledge?
12:39:09 4 A. Not that I'm aware of, no.
12:39:12 5 Q. This may be a good time for me
12:39:19 6 to ask you an awful lot in this industry
12:39:22 7 and that is industry leading contract.
12:39:24 8 Now, you could interpret that phrase a
12:39:26 9 number of different ways and I suppose
12:39:28 10 maybe I can ask you what your
12:39:29 11 interpretation of that is. Does it mean
12:39:31 12 that the agreement as a whole, when you

12:39:33 13 look at it as a whole is an industry
12:39:36 14 leading contract or does it mean that the
12:39:37 15 contract is industry leading on every
12:39:40 16 line of every paragraph of every page?
12:39:42 17 A. Are you implying that we're
12:39:45 18 seeking an industry leading contract
12:39:46 19 here?
12:39:47 20 Q. No. Let's take two steps back
12:39:50 21 from the current environment and I'm
12:39:52 22 asking you about this term which I hear
12:39:54 23 in the industry. Does an industry
12:39:58 24 leading contract to you mean one that
12:39:59 25 when you take it as a whole advances the

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12:40:03 2 pilots' interests to some degree across
12:40:06 3 the board and therefore is an industry
12:40:08 4 leading contract? Does it really mean
12:40:10 5 that every provision on every page is the
12:40:12 6 best that exists in the industry?
12:40:13 7 A. It would have to be taken in

12:40:15 8 aggregate.

12:40:16 9 Q. Because it's true, is it not,
12:40:18 10 that in every agreement in this industry
12:40:20 11 there are some provisions where the
12:40:24 12 pilots lead the pack and some in which
12:40:26 13 they're lagging?

12:40:29 14 A. Yes.

12:40:29 15 Q. And that's just the natural
12:40:30 16 outcome of the collectively bargaining
12:40:34 17 process, isn't it?

12:40:35 18 A. Correct.

12:40:36 19 Q. So the company and the union
12:40:38 20 both come to the table with their set of
12:40:40 21 interests and priorities and so there's a
12:40:43 22 tradeoff involved and you'll end up with
12:40:45 23 an agreement that's got outlier provision
12:40:48 24 that were of less concern to one party or
12:40:50 25 the other and allow the parties to reach

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12:40:52 2 agreement; is that right?

12:40:54 3 A. Generally, yes.

12:40:55 4 Q. So when you look at an
12:40:56 5 agreement and you say that this agreement
12:40:57 6 is or is not market competitive, you're
12:40:59 7 not asking whether every element that's
12:41:01 8 in that agreement is in, you know, the
12:41:04 9 middle point of the stack in a bar graph,
12:41:06 10 you're asking whether when taken as a
12:41:09 11 whole that agreement is consistent with
12:41:11 12 what's happening in the market; isn't
12:41:12 13 that right?

12:41:13 14 A. Right. Unless there's a
12:41:14 15 couple of aspects that are real outliers,
12:41:17 16 you know, that stand out as onerous or
12:41:19 17 inappropriate from either party's
12:41:20 18 perspective.

12:41:21 19 Q. Right. So there's a continuum
12:41:24 20 involved, but you're not saying, it's not
12:41:28 21 your position that in order to be market
12:41:30 22 competitive in no respect can it be
12:41:33 23 either leading or lagging the field?

12:41:38 24 A. I'm not sure I followed the
12:41:40 25 question.

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12:41:40 2 Q. All right. Let me see if I
12:41:41 3 can spool that back, unpack it. It's not
12:41:47 4 your position, is it, that in order for
12:41:49 5 an agreement to be market competitive,
12:41:52 6 every element in the contract has to be
12:41:56 7 dead in the middle of the industry
12:41:58 8 average?

12:41:59 9 A. No.

12:41:59 10 Q. Let's talk a little bit about
12:42:05 11 work rules. And actually, I think that
12:42:09 12 there's an error in the declaration, a
12:42:12 13 housekeeping detail I'd like to correct
12:42:17 14 if I could. Could you turn to page 71 of
12:42:19 15 your declaration.

12:42:25 16 THE COURT: You mean
12:42:27 17 paragraph?

12:42:28 18 MR. MOLLEN: Paragraph, thank
12:42:30 19 you, that's correct.

12:42:32 20 Q. Now, when you filed, or your

12:42:44 21 counsel filed on your behalf Exhibit
12:42:48 22 400-A, one of the changes that you made
12:42:50 23 was to reduce the figure that currently
12:42:52 24 shows 67 million from 110; isn't that
12:42:57 25 right?

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12:42:58 2 A. Right.

12:42:59 3 Q. Now, that -- let's see: Now
12:43:15 4 that figure, the 67 million dollar figure
12:43:18 5 includes both APA's work rule and their
12:43:21 6 sick proposals, correct, they're tied
12:43:25 7 together in one figure?

12:43:27 8 A. Yes, I believe so.

12:43:28 9 Q. Okay. Now, let me ask you to
12:43:31 10 look at 418. And I apologize for the
12:43:54 11 microscopic print here, but if you look
12:43:56 12 in the, I suppose it's the second
12:43:59 13 collection of items under work rules,
12:44:06 14 there are two items there, schedule max,
12:44:09 15 work rules and under that sick policy.

12:44:10 16 Do you see that?

12:44:11 17 A. Yes.

12:44:11 18 Q. And do you see in the middle

12:44:14 19 column there under company valuation, one

12:44:17 20 to six, year one to six average, do you

12:44:19 21 see which column I'm looking at?

12:44:21 22 A. Yes.

12:44:21 23 Q. And you follow that down,

12:44:23 24 there are two elevens there, are there

12:44:26 25 not?

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12:44:26 2 A. Yes.

12:44:26 3 Q. Does that mean in paragraph 71

12:44:28 4 of your declarations the figure that

12:44:31 5 currently reflects 11 million should

12:44:34 6 reflect 22 million because it is also a

12:44:42 7 combined figure for work rules and sick?

12:44:44 8 A. I'll say that's possible you

12:44:51 9 can deal with that for Allison Clark and

12:44:53 10 Larry Rosselot to clarify that point.

12:44:57 11 Q. We talked a little bit about
12:44:58 12 this earlier. The work rule area is
12:45:01 13 another area where the companies are both
12:45:04 14 making assumptions about how pilots are
12:45:06 15 going to react in the new world; isn't
12:45:08 16 that right?

12:45:08 17 A. Yes.

12:45:09 18 Q. And one of the difficulties
12:45:12 19 we're having here is that American
12:45:15 20 assumes in an environment where the
12:45:17 21 pilots are already going to be scheduled
12:45:19 22 to work more hours, their willingness to
12:45:24 23 work additional, to pick up additional
12:45:26 24 time is going to be diminished; isn't
12:45:28 25 that right?

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12:45:29 2 A. The company assumptions, yes.

12:45:31 3 Q. Correct. And APA's assumption
12:45:33 4 on the other hand, is that
12:45:34 5 notwithstanding the fact that they're

12:45:36 6 scheduled for more hours, pilots will
12:45:38 7 actually pick up more time in the new
12:45:41 8 environment than they are in the existing
12:45:42 9 environment; isn't that right?

12:45:43 10 A. Yes.

12:45:45 11 Q. And again, we can't now until
12:45:47 12 that world arrives whose assumptions are
12:45:50 13 correct. This is an area in which the
12:45:51 14 company has proposed in the past to do
12:45:54 15 the service level agreement and test the
12:45:56 16 assumptions; isn't that right?

12:45:57 17 A. Prepetition, yes.

12:45:58 18 Q. And APA said that it wasn't
12:46:00 19 interested in that; isn't that right?

12:46:02 20 A. Yes.

12:46:03 21 Q. Now in paragraph 75 of your
12:46:10 22 declaration you have a number of things
12:46:11 23 in bold here, that really jump out at you
12:46:14 24 that American could conceivably schedule
12:46:17 25 a pilot for up to 94 hours. Isn't it a

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12:46:20 2 fact that under the PBS regime, when PBS
12:46:25 3 is implemented, that pilots will have the
12:46:28 4 opportunity to tell the company whether
12:46:30 5 they want to fly low or fly high, that is
12:46:33 6 fly a very active schedule, rich schedule
12:46:35 7 or fly a less aggressive schedule?

12:46:38 8 A. Well, the schedules would be
12:46:40 9 built within a 14 hour range and so
12:46:45 10 there's not really ability to go
12:46:48 11 significantly low or significantly high
12:46:50 12 based on the original schedule.
12:46:52 13 Everybody would be in that window.

12:46:54 14 Q. I took your point of this
12:46:56 15 paragraph to mean that the company could
12:46:57 16 essentially force a pilot to fly a 94
12:47:00 17 hour schedule when that wasn't their
12:47:03 18 desire?

12:47:03 19 A. Yes.

12:47:07 20 Q. My question to you isn't that
12:47:09 21 the whole purpose of PBS, or one of the
12:47:11 22 purposes of PBS to allow pilots to
12:47:14 23 determine whether they want to fly a lot
12:47:15 24 or a little, within the window that's

12:47:18 25 permitted?

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12:47:18 2 A. I'm not even aware of that as
12:47:22 3 one of the options since all the lines
12:47:24 4 can be built in inside that. It could be
12:47:26 5 one of the -- depending how it's set up.
12:47:29 6 The decision to fly more or less is more
12:47:33 7 tied to the elimination of line holder
12:47:35 8 guarantee, that if a pilot, as opposed to
12:47:38 9 our current contract, if a pilot wants to
12:47:40 10 drop trips if he can find somebody else
12:47:42 11 to do that flying then he just gets paid
12:47:44 12 less, where now there's a guarantee and
12:47:47 13 if you can get below that you still get
12:47:50 14 paid guarantee and that's a huge interest
12:47:52 15 the from a company perspective that we've
12:47:54 16 engaged on, we've always been in
12:47:56 17 agreement on fixing that point. And then
12:47:58 18 we've expressed an openness if a pilot
12:48:00 19 wants to fly up to FAR limits he also has

12:48:04 20 that ability to do that.
12:48:05 21 Q. Isn't it a fact that every
12:48:08 22 other network carrier has a higher
12:48:12 23 schedule max than either the current book
12:48:14 24 at American or APA's current proposal
12:48:21 25 today? I'm talking about schedule max?

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12:48:23 2 A. Schedule max and 81 plus or
12:48:25 3 minus 7 could be to 88. The lines could
12:48:28 4 be scheduled to 88. US Airways has a
12:48:31 5 hard 85 hours I believe, United has a
12:48:34 6 hard 85 hours international, 90 domestic,
12:48:38 7 but it's in the zone of where the other
12:48:41 8 carriers are.

12:48:42 9 Q. It's in fact at the bottom of
12:48:43 10 the stack of the other carriers, isn't
12:48:45 11 it, Mr. Roghair?

12:48:45 12 A. It's in that window and if you
12:48:50 13 want to say it's at the lower end of that
12:48:52 14 window, that would be, yes.

12:48:54 15 Q. You testified in your direct
12:49:05 16 about your relationship with US Airways
12:49:09 17 and the negotiation of the term sheet
12:49:11 18 that's been produced in evidence. You
12:49:14 19 say in your declaration that that was
12:49:16 20 intensive and very time consuming; isn't
12:49:19 21 that right?

12:49:20 22 A. Yes.

12:49:20 23 Q. That process began in March;
12:49:22 24 is that right?

12:49:22 25 A. Extremely late March. It was

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12:49:27 2 a handful of days either side of Easter
12:49:31 3 weekend.

12:49:31 4 Q. Extremely late March, is that
12:49:33 5 what you said?

12:49:33 6 A. Yes.

12:49:33 7 Q. So I had heard March 22nd. Is
12:49:37 8 that accurate or --

12:49:38 9 A. That's not when the

12:49:39 10 negotiations began. I think that's when
12:49:41 11 the initial reach out. I don't have an
12:49:44 12 exact timeline of when the advisors met
12:49:46 13 here in New York.

12:49:47 14 Q. But in any event, it would
12:49:48 15 have been around the same time that the
12:49:50 16 company filed its 1113 on March 27th;
12:49:53 17 isn't that right?

12:49:54 18 A. That's correct.

12:49:54 19 Q. As the APA's chief negotiator,
12:50:03 20 I assume you played a principal role in
12:50:05 21 negotiating the term sheet?

12:50:06 22 A. Yes.

12:50:07 23 Q. Can you estimate since March
12:50:11 24 27th how many hours your negotiating team
12:50:15 25 has spent collectively on the US Airways

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12:50:17 2 process?

12:50:18 3 A. We brought in another pilot
12:50:19 4 who had previously been on the committee

12:50:22 5 specifically to lead this effort. He
12:50:23 6 reports to me, but he has the lead on
12:50:25 7 that project because obviously I'm spread
12:50:28 8 across other areas. But there's been two
12:50:36 9 pilots in particular who focused on this.
12:50:39 10 I'd say as a primary focus since the end
12:50:42 11 of March. So whatever four weeks of
12:50:45 12 work.

12:50:46 13 Q. Four weeks of work mostly full
12:50:48 14 time?

12:50:48 15 A. For those two pilots, yes.

12:50:50 16 Q. And then the time that you've
12:50:52 17 spent is obviously not inconsiderable,
12:50:55 18 correct, you testified about that?

12:50:56 19 A. It was over Easter weekend. I
12:51:00 20 didn't get involved until the Friday
12:51:02 21 before Easter weekend. I went out to
12:51:04 22 Phoenix in person, just a day trip, came
12:51:06 23 back, worked through that weekend and
12:51:08 24 through the next Friday. So there was
12:51:10 25 about six days where it was my -- was my

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12:51:13 2 primary focus. We reached the agreement
12:51:15 3 and then I've only been tangentially
12:51:17 4 involved in that process since then.

12:51:19 5 Q. Isn't it a fact that between
12:51:21 6 March 27th, the day that the section 1113
12:51:24 7 motion was filed in this proceeding and
12:51:26 8 April 19th which was the date on which
12:51:28 9 the term sheets were announced to the
12:51:30 10 public, it was the Thursday before the
12:51:32 11 trial started, that your committee spent
12:51:35 12 less than three hours actually
12:51:37 13 negotiating with American Airlines for a
12:51:43 14 collective bargaining agreement?

12:51:43 15 A. That's probably correct.

12:51:44 16 Q. There are a lot of issues left
12:51:46 17 open still to be decided in that term
12:51:47 18 sheet, are there not?

12:51:48 19 A. Yes.

12:51:49 20 Q. First of all, it's contingent
12:51:51 21 on a merger, is there not?

12:51:53 22 A. You're talking -- a lot of

12:51:54 23 issues left with US Airways?

12:51:56 24 Q. Yes.

12:51:57 25 A. Yes.

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12:51:57 2 Q. Let me spool back and make

12:51:59 3 sure the record is clear. Isn't it a

12:52:01 4 fact that a great many issues are left to

12:52:03 5 be decided between APA and US Airways?

12:52:06 6 A. That's correct.

12:52:07 7 Q. The term sheet explicitly

12:52:09 8 leaves quite a number of issues

12:52:12 9 undecided; isn't that right?

12:52:13 10 A. That's correct.

12:52:13 11 Q. You haven't decided on the

12:52:15 12 costing assumptions or valuations, you

12:52:17 13 talked earlier about an end game process

12:52:20 14 for resolving that, but they haven't been

12:52:22 15 decided, correct?

12:52:23 16 A. No.

12:52:23 17 Q. You haven't agreed on the

12:52:25 18 value for PBS?
12:52:26 19 A. No.
12:52:26 20 Q. Haven't agreed on the duration
12:52:29 21 of or the concessions necessary to fund
12:52:32 22 the pay protections that you have for
12:52:34 23 pilots who are displaced in the merger
12:52:36 24 situation, right?
12:52:37 25 A. We've agreed on the cost for

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12:52:39 2 those, not -- the entire package needs to
12:52:43 3 be valued and agreed to.
12:52:45 4 Q. And the way it's going to be
12:52:46 5 paid for, right, the nature of the
12:52:48 6 concessions that you're going to make in
12:52:50 7 order to pay for it, correct?
12:52:51 8 A. Yes.
12:52:52 9 Q. You haven't decided on how to
12:52:53 10 handle the supplement B issue which is
12:52:55 11 the pilots who have special protections
12:52:58 12 that were hired prior to I think it's

12:53:01 13 November 1983?
12:53:01 14 A. Yes.
12:53:02 15 Q. That's still outstanding,
12:53:03 16 hasn't been touched, correct?
12:53:04 17 A. Yes.
12:53:04 18 Q. You've agreed to reach United
12:53:08 19 or an average of United and Delta levels
12:53:11 20 of productivity, which is not defined and
12:53:14 21 you haven't decided how you're going to
12:53:16 22 get there, correct?
12:53:17 23 A. That's correct.
12:53:20 24 Q. There's a fence agreement
12:53:22 25 mentioned in the document but that says

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12:53:24 2 it's yet to be agreed to, correct?
12:53:26 3 A. That's correct.
12:53:27 4 Q. You mentioned how excruciating
12:53:30 5 seniority integration can be in this
12:53:31 6 industry. Seniority integration has been
12:53:34 7 touched, has it?

12:53:35 8 A. No.

12:53:35 9 Q. Is the seniority integration

12:53:37 10 process completed with respect to the US

12:53:40 11 Airways pilots and the America West

12:53:41 12 pilots?

12:53:41 13 A. No.

12:53:42 14 Q. How long has it been since

12:53:43 15 that merger?

12:53:44 16 A. Seven years.

12:53:45 17 Q. Haven't decided how flying is

12:53:46 18 going to be allocated against the parties

12:53:49 19 to any joint business agreement, correct,

12:53:51 20 or JBA?

12:53:52 21 A. No.

12:53:53 22 Q. In fact, you haven't agreed on

12:53:55 23 the nature or the identity of any of the

12:53:57 24 contractual changes that are going to be

12:53:59 25 necessary in order to reach this 240

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12:54:01 2 million dollar target that you

12:54:04 3 identified; isn't that right?

12:54:05 4 A. That's correct.

12:54:06 5 Q. Let's talk about some of the

12:54:08 6 ideas or the issues that were resolved in

12:54:10 7 that term sheet. The term sheet reflects

12:54:14 8 a six year term, does it not?

12:54:16 9 A. Yes.

12:54:16 10 Q. Your proposal to American is a

12:54:18 11 three year term; isn't that right?

12:54:20 12 A. That's correct.

12:54:20 13 Q. Except you have this

12:54:23 14 sustaining element of pay increases out

12:54:24 15 into the future; isn't that right?

12:54:26 16 A. Yes.

12:54:26 17 Q. You expressly relinquish any

12:54:29 18 claim to value for scope at US Airways

12:54:32 19 but you insist on it at the American

12:54:35 20 table; isn't that right?

12:54:36 21 A. We've not insisted on it.

12:54:38 22 We've made a point of it, yes.

12:54:39 23 Q. Maximum size of regional jets

12:54:42 24 flown at the partners, 81 seats at US

12:54:45 25 Airways, 71 at American; isn't that

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12:54:47 2 right?

12:54:47 3 A. Yes.

12:54:47 4 Q. Maximum number of RJs, US

12:54:51 5 Airways 35 percent of the mainline narrow

12:54:54 6 body fleet; is that right?

12:54:56 7 A. Yes.

12:54:56 8 Q. That number is substantially

12:54:58 9 more than the zero 81 seat terse that you

12:55:01 10 propose to allow American to fly through

12:55:03 11 a partner; isn't that right?

12:55:05 12 A. That's the fundamental piece

12:55:07 13 there is that US Airways management

12:55:09 14 expressed an interest, an openness to

12:55:11 15 agree to the provision that you just

12:55:12 16 mentioned about establishing more 90 seat

12:55:16 17 size airplanes at the mainline. As soon

12:55:18 18 as we got traction on that deal started

12:55:22 19 to come together and we never had

12:55:24 20 transaction on that with American.

12:55:26 21 Q. Isn't it a fact you agreed

12:55:29 22 with US Airways they can fly well over a
12:55:32 23 hundred 81 seat RJs through a regional
12:55:35 24 partner and you made no comparable
12:55:37 25 proposal to the company at American;

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12:55:39 2 isn't that right?

12:55:40 3 A. In exchange for them putting
12:55:42 4 more aircraft at the mainline, yes and
12:55:44 5 we've never gotten transaction on those
12:55:46 6 discussions because the company has
12:55:48 7 always rejected it out of pocket, so
12:55:50 8 that's why we've never gotten anywhere in
12:55:52 9 our scope discussion.

12:55:53 10 Q. You've made a proposal to
12:55:55 11 American to bring some of the larger RJs
12:55:57 12 flying back to the mainline; isn't that
12:55:59 13 right? You talked about it earlier, you
12:56:00 14 made that proposal to American, you can
12:56:02 15 do that flying at the mainline, right?

12:56:05 16 A. Yes.

12:56:05 17 Q. In concert with that, did you
12:56:07 18 also say if you do this we'll give you
12:56:08 19 hundreds of 81 seat aircraft that you can
12:56:11 20 fly for your partners?

12:56:12 21 A. No.

12:56:12 22 Q. Which is what you did at US
12:56:16 23 Airways, correct?

12:56:16 24 A. That's right.

12:56:17 25 Q. Let's talk about domestic code

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12:56:19 2 share. Isn't it a fact that with respect
12:56:22 3 to -- let's go back to that page so we
12:56:25 4 can refer to numbers here. I think it
12:56:27 5 was page 19; that with respect to carrier
12:56:36 6 number 3, that your proposal at American,
12:56:40 7 and we talked a little bit about this
12:56:42 8 earlier, is that the company can add zero
12:56:46 9 new markets unless it increases the block
12:56:51 10 hour flying out of that geographic region
12:56:53 11 and for every 9,000 hours they add they

12:56:56 12 can add two markets, correct?

12:56:58 13 A. Yes.

12:56:58 14 Q. That's the proposal on the

12:56:59 15 table?

12:56:59 16 A. Yes.

12:57:00 17 Q. At US Airways, that particular

12:57:02 18 airline, US Airways can enter into a code

12:57:06 19 share with that airline and it can fly

12:57:08 20 anywhere it wants any time as it wants,

12:57:11 21 as much as it wants as long as it's not

12:57:13 22 to Hawaii; isn't that right?

12:57:15 23 A. That's correct.

12:57:15 24 Q. Let's talk about Hawaii. For

12:57:18 25 years, American has asked you to change

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12:57:20 2 the current terms of that code sharing

12:57:23 3 agreement so that it can have an average

12:57:25 4 of 10 daily flights and therefore trim

12:57:30 5 its schedule when necessary to reflect

12:57:32 6 lower passenger demand and build it back

12:57:34 7 up when there's increased passenger
12:57:36 8 demand; isn't that right?
12:57:38 9 A. Yes.
12:57:38 10 Q. And you've always said no;
12:57:40 11 isn't that right?
12:57:41 12 A. That's correct.
12:57:41 13 Q. And you said yes to exactly
12:57:43 14 that provision for US Airways; isn't that
12:57:45 15 right?
12:57:45 16 A. That's correct.
12:57:45 17 Q. It's now an average at US
12:57:47 18 Airways on that term sheet?
12:57:48 19 A. Yes.
12:57:48 20 Q. As opposed to 10 flights a day
12:57:50 21 every day, 365 days a year?
12:57:50 22 A. Yes.
12:57:57 23 Q. The US Airways term sheet
12:57:59 24 permits US Airways to maintain its very
12:58:02 25 robust can caring with United airlines;

12:58:07 2 isn't that right?

12:58:07 3 A. Say that again.

12:58:08 4 Q. Doesn't the term sheet permit

12:58:11 5 US Airways to retain its robust code

12:58:14 6 sharing with United Airlines?

12:58:16 7 A. Actually the opposite.

12:58:19 8 They're required to terminate the United

12:58:20 9 code share as soon as this plan goes into

12:58:22 10 effect. That was a key provision of the

12:58:25 11 agreement.

12:58:29 12 Q. Let's talk about international

12:58:30 13 code share. One of the problems we're

12:58:32 14 having at the table with American is this

12:58:35 15 threshold, this baseline of international

12:58:37 16 flying. You're familiar with the issue?

12:58:38 17 A. Yes.

12:58:38 18 Q. So under the current agreement

12:58:40 19 there's a baseline of flying that

12:58:42 20 American must maintain in order to

12:58:45 21 continue code sharing in international

12:58:47 22 operations; isn't that right?

12:58:48 23 A. Yes.

12:58:48 24 Q. And every time American adds a

12:58:51 25 frequency, adds a flight internationally,

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12:58:54 2 it incrementally adds hours to that

12:58:57 3 international baseline; isn't that

12:58:58 4 correct?

12:58:58 5 A. Yes.

12:58:59 6 Q. It goes up, it never comes

12:59:01 7 down; isn't that right?

12:59:02 8 A. Yes.

12:59:02 9 Q. Has American approached you to

12:59:06 10 say we'd like to be able to test

12:59:09 11 different markets and see if they work

12:59:12 12 without every time we add a flight

12:59:14 13 building hours into that baseline?

12:59:16 14 A. Prepetition, yes, we had

12:59:18 15 extensive discussions on that.

12:59:19 16 Q. And APA says no, has said no?

12:59:22 17 A. No, we actually showed some

12:59:24 18 flexibility and we were talking about

12:59:26 19 different ratios and different time

12:59:28 20 durations, so we did have those
12:59:30 21 discussions.
12:59:30 22 Q. What American had asked you
12:59:31 23 for was a change to that provision that
12:59:33 24 would allow it to test a particular route
12:59:36 25 without it building time into that

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12:59:38 2 baseline; isn't that correct?
12:59:39 3 A. That's correct.
12:59:40 4 Q. And that's exactly what you
12:59:41 5 agreed to at US Airways; isn't that
12:59:43 6 right?
12:59:43 7 A. That's right.
12:59:44 8 Q. And in fact, that route, that
12:59:46 9 test market can be there for as much as
12:59:48 10 three years without adding to the base
12:59:50 11 line; isn't that right?
12:59:51 12 A. That's correct.
12:59:51 13 Q. Have you ever made that
12:59:52 14 proposal sat American?

12:59:53 15 A. No.

13:00:00 16 MR. MOLLEN: May I have a

13:00:01 17 minute, your Honor?

13:00:02 18 THE COURT: Sure.

13:00:16 19 MR. MOLLEN: The witness has

13:00:17 20 been on the stand awhile, it's one

13:00:19 21 o'clock, can I suggest a short

13:00:21 22 lunch recess and then come back, I

13:00:23 23 think when I come back my continued

13:00:25 24 questioning will be very brief.

13:00:27 25 THE COURT: All right.

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13:00:29 2 MR. DALMAT: That's fine. If

13:00:30 3 you're not done, I was going to say

13:00:33 4 I have less than 10 minutes, but if

13:00:35 5 you're not done, I don't want to

13:00:36 6 interrupt your examination.

13:00:38 7 THE COURT: In the interest of

13:00:39 8 trying to bring it all together,

13:00:41 9 let's take the lunch break and

13:00:44 10 let's come back at 2:15.

13:00:47 11 (Luncheon recess: 1:00 p.m.)

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13:48:52 2 A F T E R N O O N S E S S I O N

13:48:52 3 2:23 p.m.

14:11:47 4 THE CLERK: All rise.

14:12:44 5 THE COURT: Please be seated.
14:23:30 6 Before we resume cross, a matter
14:23:32 7 was brought to my attention during
14:23:33 8 the break about how to proceed with
14:23:35 9 the next witness and a request to
14:23:37 10 have that witness proceed under
14:23:40 11 seal. So I'm not sure exactly who
14:23:44 12 made the request. I remember
14:23:46 13 looking at the declaration thinking
14:23:48 14 that that was probably something we
14:23:51 15 were going to have to address.

14:23:51 16 MR. POLLACK: I believe it's
14:23:55 17 Ms. Krieger's request.

14:23:55 18 MS. KRIEGER: Yes, your Honor,
14:23:57 19 it was Mr. Pollack and I had
14:23:59 20 discussed a possibility since this
14:24:02 21 had been one of the provisions in
14:24:04 22 the stipulated protective order to
14:24:07 23 allow for a witness who was going
14:24:09 24 to be talking about numbers or
14:24:10 25 things that were confidential to

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14:24:11 2 the debtor, to testify coherently
14:24:14 3 without infringing on the
14:24:17 4 confidentiality. If this is a
14:24:18 5 problem we can try to talk around
14:24:20 6 it.

14:24:21 7 THE COURT: I appreciate your
14:24:23 8 concern about speaking coherently
14:24:25 9 and I appreciate the difficulty of
14:24:27 10 maintaining that line and not
14:24:29 11 letting confidential information
14:24:31 12 slip out. My concern is that
14:24:35 13 having somebody testify entirely
14:24:36 14 under seal is really not the best
14:24:41 15 thing to do for this case in the
14:24:44 16 sense of obviously there's a lot of
14:24:45 17 people who are interested and I
14:24:49 18 think it's incumbent upon a court
14:24:52 19 to make as public a record as
14:24:54 20 possible.

14:24:54 21 MS. KRIEGER: Your Honor, I
14:24:55 22 take that and I think we can
14:24:57 23 probably then just he will truncate

14:25:00 24 the testimony, refer in greater
14:25:02 25 detail to the written testimony

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14:25:04 2 which does lay it all out.

14:25:06 3 THE COURT: But here's my
14:25:07 4 suggestion. Which is we'll finish
14:25:09 5 this witness which is an event that
14:25:11 6 you're looking forward to greatly.

14:25:13 7 THE WITNESS: Thank you, your
14:25:14 8 Honor.

14:25:14 9 THE COURT: We'll move on to
14:25:15 10 the next witness. We'll conduct
14:25:17 11 the public part of that testimony.
14:25:19 12 If there are things that you need
14:25:20 13 to ask that do deal with
14:25:22 14 confidential information, at that
14:25:23 15 point at the end we can have a
14:25:25 16 closed session. Because I don't
14:25:26 17 want to certainly make it something
14:25:29 18 that you can't inquire about if you

14:25:31 19 need to do that to make your case.

14:25:33 20 MS. KRIEGER: Thank you.

14:25:35 21 THE COURT: And what I would
14:25:37 22 suggest then is if we do that, for
14:25:39 23 any closed sessions that we have,
14:25:40 24 that we essentially start a new
14:25:42 25 sort of transcript, in other words,

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14:25:44 2 it gets very difficult to start
14:25:46 3 redacting transcripts, whenever we
14:25:49 4 have any sealed session, for this
14:25:51 5 witness or any other witness, we'll
14:25:54 6 have a separate transcript that
14:25:55 7 will be under seal and we can cabin
14:25:57 8 it off that way. So I think that
14:25:59 9 way it allows you to go through
14:26:02 10 your exam and when you feel like
14:26:04 11 you really do need to ask that
14:26:06 12 question or two or three, however
14:26:07 13 many questions it is, that you

14:26:09 14 certainly are not giving up any of
14:26:10 15 your rights. But I certainly
14:26:12 16 think, I took a look at the
14:26:13 17 declaration again, certainly there
14:26:14 18 are large parts that are not under
14:26:18 19 seal and I know sometimes they
14:26:20 20 segue very nicely to everything
14:26:22 21 that is under seal. So I'm not
14:26:24 22 pretending this is an easy thing to
14:26:26 23 figure out how to draw the line.
14:26:28 24 We'll make it as much a part of the
14:26:31 25 record as possible and anything you

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14:26:32 2 really need to delve into as
14:26:34 3 confidential we'll take as a
14:26:35 4 session at the end and that will be
14:26:37 5 true for cross, cross, redirect,
14:26:41 6 anything else that needs to be
14:26:42 7 done.

14:26:43 8 MS. KRIEGER: We appreciate

14:26:44 9 it, your Honor and it may work
14:26:46 10 itself out.

14:26:47 11 THE COURT: That's fine. If
14:26:48 12 you need a break, occasionally
14:26:50 13 counsel have said can we have a
14:26:53 14 break, now is a good time, to
14:26:55 15 figure out where we are and
14:26:57 16 consolidate, that's exactly the
14:26:58 17 kind of circumstance. We'll
14:27:00 18 certainly deal with that as we go,
14:27:01 19 but don't be shy about asking to do
14:27:03 20 that in order to calibrate what you
14:27:05 21 want to do in open court, what you
14:27:06 22 may need to do in a separate
14:27:08 23 session.

14:27:08 24 MS. KRIEGER: Thank you.

14:27:09 25 THE COURT: Thank you.

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14:27:10 2 I appreciate counsel working
14:27:12 3 together on that. I know it's a

14:27:14 4 problem probably everybody wishes
14:27:17 5 they didn't have, but I appreciate
14:27:18 6 it. Proceed.

14:27:21 7 MR. MOLLEN: Thank you, your
14:27:22 8 Honor. Neal Mollen for the debtor.

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

13 CONTINUED CROSS EXAMINATION

14:27:25 14 BY MR. MOLLEN:

14:27:25 15 Q. Mr. Roghair, I promise one
14:27:26 16 topic, just a couple of minutes. Let me
14:27:28 17 ask you if you would to pull out 422 A,
14:27:34 18 APA Exhibit 432 A in the binder in front
14:27:36 19 of you. I'm on page 10 of that exhibit.
14:28:00 20 432-A is the term sheet between APA and
14:28:04 21 US Airways, correct?

14:28:04 22 A. Yes.

14:28:05 23 Q. And there was some testimony
14:28:06 24 about this particular aspect of the term
14:28:08 25 sheet before we broke and I wanted to go

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14:28:12 2 back and make sure that I understood your
14:28:13 3 testimony. Earlier I think you said that
14:28:18 4 once the new collective bargaining
14:28:21 5 agreement became effective the United
14:28:26 6 Airlines code share with US would have to
14:28:28 7 terminate; is that right?

14:28:29 8 A. Yes.

14:28:29 9 Q. That you believe it's going to
14:28:31 10 terminate upon the effective date of the
14:28:34 11 agreement?

14:28:34 12 A. I believe they have to give
14:28:36 13 notice of termination.

14:28:38 14 Q. As I read this, and let's make
14:28:40 15 sure we're on the same page here, there
14:28:41 16 are five different elements to this
14:28:43 17 relatively dense paragraph. The first is
14:28:46 18 that as of the effective date of the
14:28:49 19 agreement the new company, the new
14:28:52 20 American Airlines, that code can be
14:28:54 21 placed without restriction on any and all

14:28:56 22 flights operated by US Airways and any
14:28:58 23 and all flights operated by other
14:29:00 24 carriers that are currently allowed to
14:29:03 25 bear the US code. Do you see that?

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14:29:06 2 A. Yes.

14:29:06 3 Q. That would include both United

14:29:09 4 and America West, wouldn't it?

14:29:11 5 A. The --

14:29:17 6 Q. Wouldn't it?

14:29:19 7 A. We're talking about the

14:29:21 8 sentence that starts "It is understood

14:29:24 9 that" --

14:29:25 10 Q. No, the immediately prior

14:29:26 11 sentence. The first sentence sets the

14:29:29 12 scope of the code sharing that's

14:29:32 13 permissible on the effective date of the

14:29:35 14 agreement and that says, does it not,

14:29:36 15 that the new company can place its code

14:29:38 16 on basically any airline that US Airways

14:29:42 17 is currently code sharing; isn't that

14:29:44 18 what it says?

14:29:44 19 A. Yes.

14:29:45 20 Q. And that would include both

14:29:46 21 America west and United Airlines,

14:29:48 22 correct?

14:29:48 23 A. Yes.

14:29:48 24 Q. And then the second sentence

14:29:50 25 says that it's understood expressly that

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14:29:54 2 United Airlines, that aid adding the code

14:29:58 3 in the case of United Airlines would not

14:29:59 4 have any impact on the 4 percent limit on

14:30:01 5 new code sharing, correct?

14:30:02 6 A. Yes.

14:30:05 7 Q. Okay. And then the third

14:30:07 8 thing it says, it's anticipated that the

14:30:14 9 new company would comply with the

14:30:17 10 termination provisions of the existing

14:30:19 11 code sharing relationship between US

14:30:23 12 Airways and United Airlines, correct?

14:30:26 13 A. I'll defer that to Jim Eaton's
14:30:28 14 testimony. I was not the subject matter
14:30:30 15 expert that negotiated this, but my
14:30:32 16 understanding is that as this goes into
14:30:34 17 effect that that would trigger a
14:30:36 18 termination of the code share with
14:30:38 19 United.

14:30:39 20 Q. The first thing that would
14:30:40 21 happen under this clause -- you were
14:30:42 22 involved in negotiating this term sheet,
14:30:43 23 were you not?

14:30:44 24 A. Yes, but not so much the scope
14:30:46 25 section of that.

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14:30:46 2 Q. Is it your understanding that
14:30:48 3 the first thing that would happen is that
14:30:50 4 within two months of the effective date
14:30:52 5 of the agreement the new company would
14:30:55 6 provide United with notice of intent to

14:30:58 7 terminate that relationship?

14:30:59 8 A. I think we'd be better served

14:31:01 9 if we had somebody that was an

14:31:03 10 appropriate subject matter expert on

14:31:04 11 this.

14:31:05 12 Q. Is this a subject on which you

14:31:06 13 simply are not knowledgeable enough to

14:31:08 14 testify, Mr. Roghair?

14:31:09 15 A. On this particular point, yes,

14:31:11 16 I'll defer that to someone.

14:31:13 17 Q. Earlier you testified though

14:31:14 18 that the agreement contemplated that on

14:31:17 19 the effective date of the new collective

14:31:19 20 bargaining agreement the code share with

14:31:21 21 United Airlines would have to terminate.

14:31:23 22 Isn't it a fact that this paragraph says

14:31:25 23 that it's going to continue for up to two

14:31:27 24 years?

14:31:28 25 MR. DALMAT: I'm going to

14:31:30 2 object to that. I think it's been
14:31:31 3 asked and answered. I think Mr.
14:31:34 4 Roghair gave his answer.

14:31:35 5 THE COURT: Again, I want
14:31:37 6 objections to not be leading
14:31:38 7 because that's the way they're
14:31:40 8 supposed to be. I'm going to allow
14:31:42 9 it. Given the direct testimony if
14:31:45 10 you can answer, you may want to
14:31:47 11 repeat the question. I'll defer
14:31:49 12 that to you as whatever you prefer.

14:31:52 13 Q. Your earlier testimony was
14:31:54 14 that on the effective date of this
14:31:56 15 agreement the code sharing with United
14:31:58 16 Airlines would have to terminate, isn't
14:32:01 17 that what your testimony was?

14:32:03 18 A. That's my understanding, yes.

14:32:04 19 Q. Doesn't this say that that may
14:32:06 20 not happen for up to two years?

14:32:08 21 MR. DALMAT: Objection to
14:32:09 22 form.

14:32:09 23 THE COURT: It's cross.
14:32:11 24 Allowed.

14:32:11 25 A. My understanding, the intents

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14:32:15 2 of my testimony is that once this
14:32:17 3 agreement goes into effect that triggers
14:32:19 4 a sunset clause on that code share.

14:32:21 5 Q. That may not actually sunset
14:32:23 6 for up two to two years?

14:32:25 7 A. It triggers a process and it
14:32:27 8 may take some time, yes.

14:32:28 9 Q. Up to two years?

14:32:30 10 A. But I'm not -- I'd rather have
14:32:32 11 somebody else testify to that.

14:32:34 12 MR. MOLLEN: I have nothing
14:32:35 13 further for this witness, your
14:32:37 14 Honor.

14:32:37 15 THE COURT: All right.
14:32:38 16 Redirect.

14:32:39 17 REDIRECT EXAMINATION

14:32:40 18 BY MR. DALMAT:

14:32:53 19 Q. Good afternoon, Mr. Roghair.
14:32:57 20 Picking up where Mr. Mollen left off with

14:33:01 21 you, do you consider yourself the expert

14:33:04 22 on scope with respect to the APA?

14:33:07 23 A. No, there's a whole separate

14:33:10 24 committee and that team that handles that

14:33:12 25 aspect of the contract.

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14:33:13 2 Q. Can you explain how the

14:33:15 3 negotiating committee of APA is

14:33:18 4 structured?

14:33:18 5 A. We have a core team that

14:33:22 6 varies between four and, we've been up to

14:33:25 7 seven people that perform the task, but

14:33:28 8 we are also supported by all the various

14:33:31 9 committees inside APA and we bring them

14:33:32 10 into the negotiations as it's relevant to

14:33:36 11 their committee's expertise.

14:33:37 12 Q. What are some of those other

14:33:40 13 committees that support the negotiating

14:33:42 14 committee?

14:33:42 15 A. We have a scheduling

14:33:43 16 committee, we have a check airmen
14:33:45 17 committee, we have a training committee,
14:33:46 18 we have a hotel committee, we have a
14:33:48 19 scope committee. There's a long list.
14:33:51 20 Q. Approximately how many people
14:33:54 21 serve on the host of the committees that
14:33:57 22 you just described?
14:33:58 23 A. Well, if I counted all the
14:33:59 24 committees that support negotiations,
14:34:02 25 you're probably talking upwards of 60 to

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14:34:05 2 a hundred people.
14:34:10 3 Q. Has the APA presented a
14:34:12 4 witness in this case to speak to scope
14:34:16 5 issues?
14:34:16 6 A. Yes, that would be Mr. Eaton.
14:34:24 7 Q. Are you aware of whether the
14:34:26 8 prior cases where there was a bankruptcy
14:34:31 9 and scope concessions were on the table,
14:34:34 10 and I think you testified earlier today

14:34:36 11 that those were not valued as part of the
14:34:40 12 bankruptcies, do you know whether those
14:34:42 13 cases ever got litigated on that
14:34:46 14 bankruptcies?

14:34:46 15 A. I'm not aware, no.

14:34:56 16 Q. You listed a number of
14:34:58 17 different committees. Is there a
14:34:59 18 committee that's responsible for
14:35:00 19 valuation?

14:35:00 20 A. Yes, there's an industry
14:35:02 21 analysis committee and we have a director
14:35:04 22 of industry analysis, Allison Clark who
14:35:07 23 will be testifying on that.

14:35:08 24 Q. Do you consider yourself the
14:35:09 25 expert on valuation for the APA?

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14:35:10 2 A. No, that's why I need subject
14:35:15 3 matter experts to support the effort.

14:35:16 4 Q. What is your role on the
14:35:18 5 negotiating committee?

14:35:18 6 A. It's like being a military
14:35:25 7 commander, so orchestra conductor, it's
14:35:25 8 coordinating all the efforts between the
14:35:27 9 parties and interfacing with our Board of
14:35:29 10 Directors and our national officers and,
14:35:31 11 you know, interfacing with the company,
14:35:35 12 say a mile wide and an inch deep on every
14:35:44 13 subject.

14:35:44 14 Q. Mr. Mollen asked you a number
14:35:46 15 of questions about service level
14:35:48 16 agreements in his cross. Did American
14:35:49 17 propose any such agreements to the APA
14:35:52 18 post-petition?

14:35:53 19 A. No.

14:36:04 20 Q. In March of this year the APA
14:36:07 21 wrote a letter to the NMB. Are you aware
14:36:10 22 of that?

14:36:10 23 A. Yes.

14:36:11 24 Q. Do you know the substance of
14:36:13 25 that letter?

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14:36:13 2 A. That was a request for binding
14:36:16 3 arbitration in this process.

14:36:17 4 Q. And does the APA have the
14:36:23 5 power in and of itself to obtain binding
14:36:25 6 arbitration over a labor contract?

14:36:28 7 MR. MOLLEN: Your Honor, this
14:36:29 8 is beyond the scope of this
14:36:31 9 witness' direct examination. There
14:36:33 10 wasn't a mention of this in his
14:36:35 11 declaration.

14:36:36 12 MR. DALMAT: There were
14:36:37 13 numerous questions on cross about
14:36:40 14 interest arbitration and whether or
14:36:41 15 not the parties would be able to
14:36:42 16 conclude the terms of an agreement
14:36:44 17 through an arbitral process.

14:36:45 18 THE COURT: I don't think
14:36:46 19 that's the same thing as I
14:36:48 20 understand it. Why is that,
14:36:50 21 explain to me your position?

14:36:53 22 MR. DALMAT: Well, if the NMB,
14:36:57 23 if American had accepted the

14:36:58 24 arbitral process that the APA had
14:37:00 25 proffered, then there would have

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14:37:02 2 been a process set up that would
14:37:04 3 have had a finite amount of time
14:37:06 4 and all the disputes over
14:37:09 5 valuation, over the terms would
14:37:10 6 have been concluded by a neutral
14:37:13 7 third party.

14:37:13 8 Mr. Mollen asked several
14:37:16 9 questions that suggested that
14:37:19 10 somehow the APA were at fault for
14:37:22 11 not agreeing to interest
14:37:25 12 arbitration that American may have
14:37:27 13 offered at other times.

14:37:28 14 THE COURT: I didn't
14:37:29 15 understand the term interest
14:37:30 16 arbitration to be the same as
14:37:32 17 what's been referenced here which
14:37:34 18 is mandatory arbitration under the

14:37:36 19 railway labor act and that NMB. Am
14:37:40 20 I missing something.
14:37:42 21 MR. DALMAT: The word interest
14:37:44 22 doesn't mean -- it just means that
14:37:47 23 there are interests on both sides,
14:37:48 24 but it's a process for concluding
14:37:50 25 the terms of a labor contract.

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14:37:53 2 THE COURT: Yes, but --
14:37:55 3 MR. MOLLEN: Your Honor, quite
14:37:57 4 apart from that very good point
14:37:59 5 your Honor made, the fact is I
14:38:00 6 never asked this witness about
14:38:02 7 whether they made any offers of
14:38:04 8 interest arbitration.
14:38:05 9 THE COURT: I'm going to allow
14:38:06 10 a question or two subject to
14:38:08 11 somebody connecting it all later,
14:38:09 12 because I'm not, right now I
14:38:10 13 confess I'm not seeing it. But

14:38:12 14 perhaps someone can explain it to
14:38:14 15 me later and I will see it. But
14:38:17 16 I'd make it snappy.

14:38:20 17 MR. DALMAT: Thank you.

14:38:21 18 Q. Did American respond to that
14:38:23 19 letter to the NMB?

14:38:26 20 A. Yes.

14:38:26 21 Q. What was their response?

14:38:28 22 A. They did not accept binding
14:38:29 23 arbitration.

14:38:32 24 Q. Also, I think you have Exhibit
14:38:34 25 432 in front of you. I'd like you to

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14:38:36 2 turn to the last page which is numbered

14:38:39 3 19. Do you see that page?

14:38:46 4 A. Yes.

14:38:47 5 Q. There's a date on the bottom
14:38:48 6 left of that page. Do you see that?

14:38:51 7 A. Yes.

14:38:51 8 Q. What is that date?

14:38:53 9 A. April 13th of 2012.

14:38:55 10 Q. What is the significance of

14:38:57 11 that date?

14:38:57 12 A. That's the date this agreement

14:38:59 13 was concluded or consummated.

14:39:03 14 Q. And how long did you negotiate

14:39:07 15 or did the APA negotiate that agreement?

14:39:10 16 A. Say all told, probably 11 days

14:39:14 17 or so.

14:39:15 18 Q. So I think on

14:39:17 19 cross-examination you testified that

14:39:20 20 those negotiations may have started in

14:39:22 21 March. But now that your recollection is

14:39:25 22 refreshed, that the agreement was

14:39:28 23 concluded on the 13th of April, do you

14:39:31 24 have a sense of when you started the

14:39:33 25 negotiations?

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14:39:33 2 A. I believe it was the Tuesday

14:39:35 3 before Easter, whatever that date is. I

14:39:38 4 think that's April 2nd or 3rd.

14:39:43 5 Q. And again, I think you
14:39:44 6 testified that something on the order of
14:39:46 7 60 to a hundred people support the
14:39:48 8 negotiating committee. How many of those
14:39:52 9 people devoted time to the US Air
14:39:56 10 negotiations?

14:39:57 11 A. We have two primary members of
14:40:02 12 the negotiating team that led this
14:40:04 13 effort. We had a third member that
14:40:09 14 participates somewhat. I covered my
14:40:11 15 participation previously. And we did
14:40:15 16 have our scope committee involved in the
14:40:19 17 drafting of the scope language.

14:40:21 18 Q. Going back for a second to the
14:40:26 19 negotiations between the APA and
14:40:29 20 American, how many people postpetition
14:40:33 21 were involved in negotiations?

14:40:37 22 A. We've had a wide array of
14:40:38 23 people that we've brought to the table,
14:40:40 24 various subject matter experts, our
14:40:42 25 pension committee has been involved since

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14:40:45 2 that's a significant issue. So, you
14:40:48 3 know, there have been a very large number
14:40:50 4 of people that were brought to the table,
14:40:52 5 you know, through the course of meetings.

14:40:53 6 Q. Over a dozen?

14:40:55 7 A. Well over a dozen, yes.

14:40:58 8 Q. Over two dozen?

14:40:59 9 A. Probably in that neighborhood.

14:41:01 10 Q. Can you give me an approximate
14:41:04 11 estimate of the amount of person hours
14:41:06 12 that APA negotiators and support staff
14:41:09 13 have devoted to negotiations with
14:41:12 14 American Airlines since the bankruptcy
14:41:14 15 filing?

14:41:14 16 A. In the month of February we
14:41:18 17 started on February 7th, after the
14:41:21 18 initial presentation of the term sheet on
14:41:23 19 the first, and we met very steadily for
14:41:28 20 I'd say about four weeks, and until the
14:41:31 21 point where it became clear that there
14:41:35 22 was no way we were going to overcome the

14:41:38 23 valuation gap that would result in any
14:41:43 24 meaningful negotiations, we probably
14:41:46 25 regularly had, you know, anywhere from

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14:41:49 2 eight to 12 people that worked full time
14:41:51 3 on this for those four weeks.

14:41:54 4 Q. You testified on direct that
14:42:06 5 the price tag of the concessions between
14:42:09 6 APA and US Air was something on the order
14:42:12 7 of 240 million dollars?

14:42:14 8 A. Yes.

14:42:14 9 Q. And the price tag of the
14:42:17 10 proposals that the APA had put on the
14:42:20 11 table with respect to American was on the
14:42:21 12 order of 270 million dollars?

14:42:25 13 A. Yes.

14:42:25 14 Q. So there's a 30 million dollar
14:42:30 15 difference between the two?

14:42:31 16 A. Yes.

14:42:31 17 Q. Can you explain to me the

14:42:33 18 process that commenced once the APA put
14:42:40 19 proposals on the table with US Airways?
14:42:42 20 Did they respond to those proposals?
14:42:45 21 A. Yes. We've initially laid out
14:42:48 22 a list of concessions that we were
14:42:50 23 willing to make in order to achieve that
14:42:55 24 target, and then we entered into a
14:42:57 25 valuation phase and we've been in, the

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14:42:59 2 two members of our negotiating committee
14:43:01 3 have been involved in regular contact
14:43:04 4 with US Airways as they tried to nail
14:43:07 5 down the open details of this agreement.

14:43:09 6 Q. And US Air made
14:43:12 7 counterproposals to the APA proposals?

14:43:14 8 A. Yes.

14:43:14 9 Q. Did APA then move towards US
14:43:18 10 Air's counterproposals?

14:43:19 11 A. Are you talking about in the
14:43:21 12 negotiation of the term sheet or what's

14:43:23 13 going on right now?

14:43:23 14 Q. I'm talking about the
14:43:25 15 negotiations between the APA and US Air.
14:43:29 16 Mr. Mollen asked you a series of
14:43:31 17 questions about the difference between
14:43:33 18 the terms that the APA offered to --

14:43:38 19 A. Oh, right now. Okay, I
14:43:41 20 misunderstood the question. If you're
14:43:43 21 referring to the negotiations for the
14:43:48 22 term sheet, we made initial proposals and
14:43:52 23 it was very clear in those negotiations
14:43:56 24 we were in a whole different environment.
14:43:58 25 We were with a party that was negotiating

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14:44:00 2 in good faith, that was listening to the
14:44:04 3 things we were asking for or interested
14:44:06 4 in, and we listened to the things that
14:44:09 5 they were interested in. And things
14:44:14 6 moved very quickly and as opposed to
14:44:16 7 going on and on for months and months as

14:44:18 8 we've done in the negotiations with AMR,
14:44:23 9 arguing about little issues, we knocked
14:44:26 10 out some big issues very quickly. We
14:44:28 11 started making moves, they started making
14:44:31 12 moves and it was clear that a deal was
14:44:33 13 coming together in fairly short order.

14:44:35 14 Q. If there's any holdup that
14:44:37 15 prevents the deal from finalizing fully
14:44:41 16 the deal between the APA and US Air, is
14:44:45 17 there a process for resolving those gaps?

14:44:48 18 A. Yes. There's a binding
14:44:51 19 interest arbitration agreement and
14:44:53 20 provisions to resolving outstanding
14:44:56 21 issues.

14:44:56 22 Q. You testified earlier today
14:45:08 23 about some of the seniority integration
14:45:10 24 issues that arise in the context of
14:45:13 25 airline mergers. Do you remember that

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14:45:15 2 testimony?

14:45:15 3 A. Yes.

14:45:15 4 Q. Mr. Mollen asked you some
14:45:17 5 questions about how long the pilots at US
14:45:22 6 Air have been involved in a dispute over
14:45:24 7 seniority integration issues?

14:45:25 8 A. Yes.

14:45:25 9 Q. Are you aware of any change in
14:45:29 10 law since the time that US Air
14:45:33 11 consummated its merger with America West
14:45:36 12 that would affect seniority integration
14:45:38 13 disputes?

14:45:38 14 A. Yes. There's been legislation
14:45:41 15 called Bond-McKaskill, or McKaskill-Bond
14:45:45 16 Act that addresses seniority integration.

14:45:47 17 Q. How would it address that
14:45:48 18 issue?

14:45:48 19 A. Well, there's a mechanism, a
14:45:50 20 process and parameters that are in place
14:45:52 21 to resolve based on a number of, you
14:45:56 22 know, date of hire, career expectations,
14:45:59 23 and a number of other things that
14:46:02 24 ultimately result in arbitration for
14:46:05 25 resolution.

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14:46:06 2 Q. In light of that intervening
14:46:08 3 change of law, do you have a view on
14:46:10 4 whether seniority integration issues
14:46:13 5 would take as long with a potential
14:46:16 6 merger between American and US Air as
14:46:20 7 they have been US Air and America West?

14:46:22 8 A. Well, one of the positives we
14:46:24 9 see for the industry is that it's a
14:46:26 10 chance to resolve that longstanding
14:46:29 11 dispute, that US Airways is working to
14:46:33 12 this, if this comes to fruition, and we
14:46:35 13 think it could be resolved in short order
14:46:38 14 after, through the McKaskill-Bond
14:46:42 15 process, after the agreement comes
14:46:44 16 together.

14:46:46 17 Q. I think we may have covered
14:46:47 18 this, but just to make sure the record is
14:46:49 19 clear, America west is currently part of
14:46:52 20 US Air?

14:46:52 21 A. Yes.
14:46:59 22 MR. DALMAT: One moment. Pass
14:47:00 23 the witness.
14:47:01 24 THE COURT: All right.
14:47:17 25 RE CROSS EXAMINATION

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14:47:19 2 BY MR. MOLLEN:
14:47:19 3 Q. Mr. Roghair, can you go to
14:47:21 4 page 7 of Exhibit 432-A. On redirect Mr.
14:47:28 5 Dalmat asked you a question about the
14:47:35 6 process that's currently underway with US
14:47:38 7 Airways and I think you said that you had
14:47:40 8 provided an initial list of concessions
14:47:44 9 to US Airways and now you were in an
14:47:46 10 evaluation process.
14:47:48 11 A. Yes.
14:47:48 12 Q. Look at the bottom, the last
14:47:49 13 paragraph there on page 7. It refers to
14:47:54 14 an obligation of APA to provide a list of
14:47:57 15 concessions to the company, to US Airways

14:48:00 16 within seven days of the execution of the

14:48:04 17 term sheet. Do you see that?

14:48:05 18 A. Yes.

14:48:05 19 Q. Is that the list that you were

14:48:07 20 referring to?

14:48:07 21 A. Yes.

14:48:08 22 Q. Is it part of this record?

14:48:10 23 A. No.

14:48:13 24 MR. MOLLEN: Your Honor, we'd

14:48:14 25 like to ask that APA produce that

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14:48:15 2 list to us. It's part of the

14:48:17 3 witness' testimony and I'd like to

14:48:19 4 see what concessions they've

14:48:20 5 offered to US Airways. We'd also

14:48:22 6 like to reserve the right to bring

14:48:24 7 back this witness once we've had a

14:48:26 8 look at that document.

14:48:28 9 THE COURT: Response?

14:48:30 10 MR. DALMAT: We did not, we're

14:48:31 11 not currently relying on that
14:48:33 12 document. I think the case
14:48:34 13 management order docket entry
14:48:37 14 number 2121 is quite clear,
14:48:39 15 discovery shall be limited in
14:48:41 16 depositions of parties' experts,
14:48:43 17 this is paragraph 5-A, it goes on,
14:48:46 18 no discovery will be permitted
14:48:48 19 following the commencement of the
14:48:49 20 --

14:48:49 21 THE COURT: I'm not worried
14:48:50 22 about the order, I'm worried about
14:48:52 23 what the record is and if people
14:48:54 24 rely on certain things then there
14:48:55 25 are certain things that go along

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14:48:57 2 with that. So explain to me how --
14:49:04 3 let me hear first, refresh my
14:49:06 4 memory as to what you think has
14:49:07 5 been said that requires this issue

14:49:10 6 to be addressed. This sounds like
14:49:14 7 it may be a longer discussion so
14:49:16 8 what I'm going to ask the witness
14:49:17 9 to do is take a break from that
14:49:19 10 seat, you can wander the halls and
14:49:22 11 get yourself a bring of water and
14:49:24 12 be spared the discussion between
14:49:25 13 myself and counsel which I am sure
14:49:27 14 is riveting to some but perhaps not
14:49:30 15 to all. Knoll.

14:49:33 16 MR. MOLLEN: I probably only
14:49:34 17 have three or four questions for
14:49:36 18 the witness at which point we you
14:49:38 19 can dismiss him and deal with it.

14:49:40 20 THE COURT: My point if there
14:49:41 21 is a document and somebody reserves
14:49:43 22 the right to recall the witness I'd
14:49:45 23 like to run that to ground now
14:49:47 24 because as much fun as this is,
14:49:49 25 it's not fair to leave him in limbo

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14:49:51 2 if we can avoid it. Why don't you
14:49:53 3 take a water break for lack of a
14:49:56 4 better term and somebody will come
14:49:58 5 get you and we'll have a short
14:50:00 6 discussion.

14:50:01 7 (At this time, the witness
14:50:03 8 left the courtroom.)

14:50:07 9 THE COURT: So remind me of
14:50:09 10 the testimony that you're relying
14:50:10 11 on in terms of this particular --

14:50:14 12 MR. MOLLEN: If you recall,
14:50:15 13 your Honor, on cross, I went
14:50:16 14 through a series of questions with
14:50:18 15 the witness about what had not and
14:50:19 16 had not been decided and what had
14:50:23 17 -- what remained to be done with
14:50:24 18 respect to the US Airways term
14:50:26 19 sheet. And one of the things that
14:50:28 20 I asked the witness was whether a
14:50:30 21 list of concessions had been agreed
14:50:32 22 to with US Airways. Now it
14:50:34 23 apparently has not been agreed to,
14:50:36 24 but the document that they're

14:50:37 25 relying on, they put into evidence

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14:50:39 2 explicitly refers to the provision

14:50:41 3 of a list of those concessions to

14:50:43 4 US Airways and on redirect counsel

14:50:45 5 for APA just elicited testimony

14:50:47 6 from the witness about that very

14:50:49 7 document about that process. I'd

14:50:51 8 like to see what the product of

14:50:53 9 that process was.

14:50:54 10 THE COURT: Here's my question

14:50:57 11 for you, which is clearly there has

14:51:01 12 been testimony and argument made

14:51:06 13 that one of the reasons that the

14:51:10 14 debtors can't fulfill 1113 is

14:51:13 15 because they haven't considered a

14:51:15 16 transaction and we haven't really

14:51:18 17 been speaking hypothetically, we've

14:51:20 18 been speaking fairly specifically

14:51:22 19 about this potential transaction

14:51:23 20 and the details of it.
14:51:24 21 And in light of that, and
14:51:26 22 there's been various details that
14:51:28 23 have been provided and I don't
14:51:29 24 think anyone has drawn a clear line
14:51:32 25 as to what details are relevant and

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14:51:34 2 what aren't relevant, but certainly
14:51:37 3 there has been testimony back and
14:51:38 4 forth about what that proposal
14:51:40 5 looks like, why it should be
14:51:42 6 considered, why it shouldn't be
14:51:43 7 considered, premature, not
14:51:45 8 premature.

14:51:46 9 In light of that, why isn't
14:51:47 10 this something that is an
14:51:52 11 appropriate subject of discussion
14:51:53 12 here in terms of completing the
14:51:56 13 circle as to what the status is?
14:52:00 14 I'm not saying it's relevant, I'm

14:52:01 15 not saying it's not relevant. What
14:52:03 16 I'm saying is both parties have --
14:52:05 17 it's been raised and it's been
14:52:07 18 responded to so to the extent that
14:52:09 19 folks want to make that argument
14:52:10 20 and say this is relevant and you,
14:52:12 21 Judge, should deny the 1113
14:52:14 22 application because of this, these
14:52:17 23 discussions and our agreement as
14:52:20 24 showing that they can't meet the
14:52:21 25 statutory standards, why isn't this

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14:52:24 2 not fair game?
14:52:26 3 MR. DALMAT: Sure. Thank you,
14:52:27 4 your Honor. As my colleague, Mr.
14:52:29 5 James, said in his opening
14:52:30 6 statement, 1113 puts the term sheet
14:52:33 7 that American has proposed on
14:52:37 8 trial, not the term sheet that the
14:52:38 9 APA has proposed or the term sheet

14:52:41 10 that the APA has agreed to with US
14:52:44 11 Air.

14:52:44 12 Now, however, US Air is
14:52:46 13 relevant to a number of different
14:52:48 14 issues.

14:52:48 15 First of all, it provides a
14:52:50 16 benchmark for what a market
14:52:52 17 competitive cost would be and we've
14:52:55 18 told you that cost, it's 240
14:52:57 19 million dollars.

14:52:58 20 THE COURT: But, but my
14:52:59 21 question is, to use this sort of
14:53:02 22 trial lawyer's way of looking at
14:53:04 23 it, haven't you opened the door to
14:53:05 24 this topic by making that argument?
14:53:07 25 And I understand that you are

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14:53:09 2 saying that we've given you
14:53:10 3 information that about how to value
14:53:13 4 it, but doesn't that allow the

14:53:14 5 other side to say we have our own
14:53:16 6 arguments we want to make about it?
14:53:19 7 I'm not prejudging the arguments,
14:53:21 8 I'm not smart enough to have gotten
14:53:23 9 to that point yet, but by raising
14:53:25 10 the issue -- and what I prefer to
14:53:27 11 do if the issue is raised we've got
14:53:28 12 to deal with it, to give the
14:53:30 13 document and to address it with
14:53:32 14 this witness before we get out of
14:53:34 15 here, even if we start with another
14:53:35 16 witness and recall him because I
14:53:37 17 can't imagine it's a lengthy
14:53:39 18 subject of discussion.

14:53:40 19 MR. DALMAT: If I may, your
14:53:42 20 Honor, Mr. Mollen asked a number of
14:53:43 21 questions about the valuations of
14:53:45 22 particular terms and whether
14:53:46 23 particular terms that the APA has
14:53:48 24 offered to American, how they
14:53:51 25 square up against the proposals the

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14:53:54 2 APA has made with respect to
14:53:57 3 American.

14:53:57 4 And what the testimony that we
14:54:02 5 have elicited so far today shows is
14:54:05 6 that the deal which is in evidence,
14:54:07 7 it's Exhibit 432-A, describes a
14:54:12 8 process for concluding those
14:54:15 9 disputes.

14:54:16 10 So I don't think that these
14:54:20 11 minor disputes about this term,
14:54:22 12 that term on a term sheet that's
14:54:24 13 not even at trial in this case --

14:54:27 14 THE COURT: I know, but it's
14:54:28 15 been introduced by you and you
14:54:30 16 can't have it both ways. You may
14:54:31 17 say they're minor and you may be
14:54:33 18 right. I may have to write an
14:54:37 19 opinion saying this is completely
14:54:38 20 irrelevant and I don't rely upon it
14:54:40 21 at all.

14:54:41 22 But what I'm saying is if you

14:54:42 23 raise this argument and such that
14:54:45 24 you're relying on it and I'm just
14:54:47 25 looking at the brief where it's

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14:54:48 2 clearly been raised, then you've
14:54:50 3 got to give the other side a chance
14:54:51 4 to make its arguments. If you want
14:54:53 5 to take a minute.

14:54:57 6 MR. JAMES: Let's take a
14:54:58 7 minute. Frankly, I don't think any
14:55:00 8 of us have seen it. Give us two
14:55:02 9 minutes, your Honor.

14:55:02 10 THE COURT: Sure, that's fine.
14:55:04 11 I'll give you five.

14:55:07 12 (A recess was taken.)

14:58:29 13 THE COURT: We're back on the
14:58:30 14 record. In light of discussions
14:58:31 15 amongst counsel about various
14:58:34 16 possible ways of handling this, I'm
14:58:35 17 going to take a short break.

14:58:37 18 There's a document, there are
14:58:39 19 documents we would like to get a
14:58:41 20 printout of it, we're happy to have
14:58:43 21 it sent to us in chambers and we'll
14:58:46 22 print out a copy, bring out copies
14:58:47 23 and then counsel can confer about
14:58:49 24 how you'd like to handle this, but
14:58:51 25 again, my thought is maybe there's

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14:58:53 2 one question, maybe there's two,
14:58:54 3 maybe there's 10 million, but the
14:58:56 4 parties should have a chance to
14:58:58 5 chat first. What I really would
14:59:01 6 like to avoid is having to recall
14:59:02 7 this witness. It seems to be
14:59:03 8 unnecessary given the importance of
14:59:08 9 this topic and sort of how many
14:59:11 10 levels of relevance we have to get
14:59:12 11 to to get there.
14:59:13 12 So let's take a short recess

14:59:15 13 and if the parties will email that
14:59:19 14 to chambers, we'll have your copy
14:59:21 15 shortly.

14:59:22 16 (A recess was taken.)

15:18:17 17 THE CLERK: All rise.

15:18:17 18 THE COURT: Please be seated.

15:18:19 19 All right. What can you tell me?

15:18:21 20 MR. MOLLEN: I can tell you,
15:18:22 21 your Honor, that we have no further
15:18:24 22 questions for this witness. Thank
15:18:25 23 you for your patience. We've
15:18:28 24 looked at the document, we have no
15:18:30 25 questions.

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15:18:30 2 THE COURT: All right, well
15:18:31 3 that was easy. So your walk was
15:18:34 4 well timed.

15:18:38 5 MR. DALMAT: At this point I
15:18:39 6 would like to move into evidence
15:18:41 7 Exhibit 400, APA Exhibit 400 which

15:18:43 8 is Mr. Roghair's declaration and
15:18:44 9 the associated Exhibits 401 through
15:18:47 10 432.

15:18:49 11 MR. MOLLEN: No objection,
15:18:51 12 your Honor.

15:18:51 13 (APA Exhibits 401 through 432
15:18:53 14 were received in evidence.)

15:18:53 15 THE COURT: That was also
15:18:56 16 easy. Your testimony, your direct
15:18:58 17 testimony and all the exhibits are
15:18:59 18 received in evidence. Have a good
15:19:02 19 day.

15:19:04 20 MR. BUTLER: Just so the
15:19:09 21 record is complete, I think I
15:19:13 22 understand the parties to do. The
15:19:14 23 document that caused us to take the
15:19:16 24 recess is not being introduced into
15:19:18 25 evidence. It's not -- neither

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15:19:20 2 party seeks to do that so it's not

15:19:22 3 coming into the court record by
15:19:23 4 agreement of the parties. I just
15:19:24 5 wanted to make sure that --

15:19:26 6 THE COURT: All right, that's
15:19:27 7 fine. Given the many binders I
15:19:29 8 have surrounding the bench I am
15:19:31 9 sure that I can live with one less
15:19:32 10 page. I have not read it yet and
15:19:39 11 because it's not evidence, I'm not
15:19:41 12 going to read it. Next witness.

15:20:08 13 MS. KRIEGER: Good afternoon,
15:20:10 14 your Honor, Kathy Krieger for the
15:20:16 15 Allied Pilots Association. The
15:20:18 16 association calls Andrew Yearley.

17 ANDREW YEARLEY,
18 called as a witness, having been
19 first duly sworn, was examined
20 and testified as follows:

21 DIRECT EXAMINATION

15:20:40 22 BY MS. KRIEGER:

15:20:41 23 Q. For the court reporter's
15:20:43 24 benefit, could you spell your last name?

15:20:45 25 A. Sure, it's Yearley,

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15:20:46 2 Y-e-a-r-l-e-y.

15:20:48 3 Q. Thank you. I apologize for

15:20:49 4 typos.

15:20:53 5 A. That's quite all right.

15:20:54 6 Q. Mr. Yearley, where are you

15:20:55 7 currently employed?

15:20:56 8 A. At Lazard Freres.

15:20:58 9 Q. And what's your position

15:20:59 10 there?

15:20:59 11 A. I am a managing director in

15:21:01 12 the restructuring group.

15:21:02 13 Q. Could you describe for us

15:21:05 14 briefly the nature of Lazard's business

15:21:07 15 and where your group fits in?

15:21:08 16 A. Sure. Lazard has two primary

15:21:11 17 businesses. We're in the asset

15:21:13 18 management business and then the advisory

15:21:15 19 business. I reside in the advisory side

15:21:18 20 of the house. There are two principal

15:21:20 21 activities on that side. One is advice

15:21:23 22 relative to strategic transactions,
15:21:25 23 primarily mergers and acquisitions. And
15:21:27 24 the other is restructuring advice of
15:21:29 25 which I am a member on that side of the

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15:21:31 2 house.

15:21:31 3 Q. What are your responsibilities
15:21:34 4 as managing director on the restructuring
15:21:36 5 advisory part of the house?

15:21:40 6 A. I lead our restructuring
15:21:42 7 practice in North America and run,
15:21:44 8 generally speaking, large complicated
15:21:46 9 restructuring assignments for the firm.

15:21:47 10 Q. Can you give us an idea of
15:21:50 11 primarily who are the clients, what is
15:21:53 12 the nature of the clientele for whom
15:21:55 13 you're providing this advice?

15:21:56 14 A. Sure. We represent a mix of
15:22:00 15 companies, creditor groups, unions, both
15:22:03 16 in in-court and out-of-court

15:22:07 17 restructurings. I would say probably 60
15:22:08 18 to 70 percent of our business is related
15:22:10 19 to company-side work.

15:22:12 20 Q. And how long have you been at
15:22:16 21 Lazard?

15:22:17 22 A. I've been at Lazard for 13
15:22:19 23 years.

15:22:19 24 Q. Do you have longer experience
15:22:21 25 as a financial restructuring

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15:22:22 2 professional?

15:22:23 3 A. I do. I spent about a year
15:22:25 4 and a half in what is the predecessor
15:22:27 5 group to Lazard, which was B T Alex.
15:22:30 6 Brown. I spent five years before that at
15:22:33 7 Ernst & Young in their restructuring
15:22:35 8 practice, and then four years earlier in
15:22:37 9 commercial banking, first at chase and
15:22:40 10 then at Barclays.

15:22:42 11 MS. KRIEGER: Your Honor, Mr.

15:22:43 12 Yearley's declaration is designated
15:22:45 13 as Exhibit 100-A, it's behind that
15:22:48 14 tab in your binder and the
15:22:51 15 associated Exhibits 101 through 105
15:22:54 16 follow his declaration.

15:22:57 17 Q. In order to shorten this up I
15:22:59 18 won't go into lengths into the
15:23:01 19 educational background and other
15:23:03 20 qualifications of Mr. Yearley personally
15:23:05 21 unless counsel is going to raise an issue
15:23:07 22 about his qualifications as an
15:23:09 23 experienced restructuring financial
15:23:11 24 expert.

15:23:15 25 MR. POLLACK: We don't intend

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15:23:16 2 to belabor the point, Judge.

15:23:17 3 Q. Also to clarify, he's not
15:23:19 4 being offered as an airline industry or
15:23:21 5 aviation expert in this particular
15:23:23 6 testimony.

15:23:24 7 THE COURT: All right. So we

15:23:25 8 can cut the preliminaries.

15:23:28 9 Proceed.

15:23:28 10 Q. I would like you to, if you

15:23:30 11 could, explain to us the nature of the

15:23:32 12 team that you put together for this

15:23:34 13 particular engagement and the scope of

15:23:36 14 the engagement with APA?

15:23:37 15 A. Sure. So the team for this

15:23:41 16 engagement is comprised of two groups,

15:23:43 17 and then group of restructuring

15:23:44 18 professionals and then a group of

15:23:46 19 industry experts who have traveled in the

15:23:49 20 airline sector for the better part of 25

15:23:52 21 or 30 years. And so the eight to ten

15:23:55 22 individuals that work on this assignment,

15:23:57 23 again, bring to the table a mix of both

15:24:00 24 relative restructuring experience and

15:24:02 25 airline experience.

15:24:03 2 Q. And what is the -- has your
15:24:06 3 team been involved in airline industry
15:24:09 4 Chapter 11 or bankruptcy issues?

15:24:11 5 A. We have been involved in both
15:24:14 6 bankruptcy related airline restructurings
15:24:16 7 as well as strategic transactions, as my
15:24:19 8 declaration cites, we represented the
15:24:22 9 creditors' committee in Northwest
15:24:24 10 Airlines. We represented Continental in
15:24:26 11 the merger with United and a host of
15:24:29 12 other relevant experience that's cited in
15:24:31 13 my declaration.

15:24:32 14 Q. And explain to us what
15:24:35 15 Lazard's engagement is for the Allied
15:24:38 16 Pilots Association?

15:24:38 17 A. So we were retained in the
15:24:42 18 late November time period by the APA, the
15:24:45 19 Allied Pilots Association, to provide
15:24:47 20 them advice relative to the potential
15:24:50 21 restructuring and subsequent bankruptcy
15:24:52 22 at American. Focusing on both financial
15:24:56 23 and strategic aspects of American's plan,
15:25:00 24 as well as specific labor asks that would

15:25:04 25 be, were anticipated at least to be put

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15:25:08 2 before the APA.

15:25:08 3 Q. What did Lazard, you and your

15:25:11 4 team do in the nature of due diligence

15:25:13 5 when you took on this engagement?

15:25:15 6 A. We started by obviously

15:25:18 7 engaging with our client, the senior

15:25:21 8 leadership at APA, who has a long

15:25:23 9 standing history at operating at the

15:25:25 10 airline. Frankly, it spans generations

15:25:28 11 of management at American and so their

15:25:31 12 perspective on kind of the history and

15:25:33 13 how American got to where it got to was

15:25:37 14 critical for us.

15:25:38 15 And then we obviously had the

15:25:40 16 benefit of our own industry expertise and

15:25:43 17 analysis, especially through our, again,

15:25:46 18 airline practitioners, and so, you know,

15:25:49 19 did a kind of walk on the waterfront of

15:25:52 20 understanding the trends and issues
15:25:53 21 associated with American and its
15:25:56 22 competitors. And then obviously,
15:25:58 23 ultimately engaged with American and its
15:25:59 24 advisers relative to its business plan,
15:26:03 25 its strategic vision, and ultimately the

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15:26:07 2 labor ask.

15:26:07 3 Q. When you mention American's
15:26:09 4 advisors, do they include Rothschild?

15:26:11 5 A. Yes, our primary point of
15:26:14 6 contact was Rothschild.

15:26:15 7 Q. Any other advisors you dealt
15:26:16 8 with in connection with your due
15:26:18 9 diligence and dealings with the debtor?

15:26:20 10 A. Again, a little bit with
15:26:23 11 Mesirow, a little bit with Weil, but
15:26:25 12 primarily we went through Rothschild.

15:26:28 13 Q. As I understand from the time
15:26:34 14 the time the APA has a representative

15:26:36 15 appointed to the unsecured creditors'
15:26:38 16 committee, has Lazard been involved in
15:26:41 17 advising the APA's representative in that
15:26:43 18 capacity as well?

15:26:44 19 A. We have. So the APA is a
15:26:47 20 participant on the UCC. We attend the
15:26:49 21 UCC conference calls, meetings, I also
15:26:52 22 have the benefit of analysis that comes
15:26:54 23 out of the advisor group who represents
15:26:57 24 the UCC.

15:26:57 25 Q. And the financial advisor to

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15:26:59 2 the UCC, who leads that?

15:27:01 3 A. Again, it's Moelis with
15:27:04 4 assistance by Mesirow.

15:27:07 5 Q. Just to make the record clear,
15:27:08 6 from the time you began that work, you've
15:27:10 7 been, Lazard and your team have been
15:27:12 8 treated as covered by the confidential
15:27:14 9 and protective orders entered in this

15:27:16 10 case?

15:27:16 11 A. We have.

15:27:17 12 Q. Let's focus on now what you
15:27:19 13 and your team learned about American's
15:27:22 14 situation and the company's restructuring
15:27:25 15 business plan. As I understand it, there
15:27:26 16 was a rollout that's been mentioned
15:27:29 17 February 1st, but did any of you, your
15:27:33 18 group get a preview of the nature of
15:27:36 19 American's business plan?

15:27:37 20 A. We did. We got an earlier
15:27:40 21 preview, I believe the last week in
15:27:43 22 January, at a presentation provided by
15:27:45 23 Mr. Horton and Ms. Goulet to the
15:27:49 24 Unsecured Creditors Committee, again, of
15:27:50 25 which the APA is a participant and we as

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15:27:53 2 advisor also participate.

15:27:54 3 Q. And again, without getting
15:27:56 4 into any confidential information, can

15:27:58 5 you give us a high level overview of what
15:28:01 6 was presented to you and others in that
15:28:04 7 preview?

15:28:04 8 A. So my recollection is that
15:28:06 9 that presentation, it was less about the
15:28:09 10 numbers relative to that plan and more
15:28:11 11 about the strategic overview. So they
15:28:14 12 spoke, management that is spoke about the
15:28:17 13 cornerstone plan, about some of the
15:28:20 14 opportunities they saw in reducing costs
15:28:22 15 in the bankruptcy both non-labor costs
15:28:25 16 and labor costs. And then again,
15:28:29 17 ultimately, as we'll talk about,
15:28:32 18 subsequently sort of a week later we got
15:28:35 19 more of the details. So I would
15:28:37 20 categorize it as a fairly high level
15:28:39 21 strategic review.

15:28:40 22 Q. Was it your understanding that
15:28:42 23 the industry restructuring business plan
15:28:45 24 that was being previewed, that this was a
15:28:48 25 continuing the cornerstone strategy as

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15:28:50 2 part of that plan?

15:28:51 3 A. I think fundamental to the
15:28:53 4 strategy was the cornerstone. American
15:28:56 5 argued that it was, in my words sort of
15:28:59 6 cornerstone maybe with an asterisk
15:29:01 7 because there was some additional
15:29:03 8 strategies and initiatives, but it was
15:29:05 9 all fundamentally built around the
15:29:07 10 cornerstone strategy.

15:29:08 11 Q. So when I refer to the
15:29:10 12 standalone plan or the restructuring
15:29:12 13 business plan or plan for success, I'm
15:29:14 14 referring to basically the plan that's
15:29:17 15 been rolled out and used as the basis for
15:29:19 16 the labor ask in this case?

15:29:21 17 A. That's correct.

15:29:21 18 Q. Okay. Turning to that, can
15:29:24 19 you focus us on the specific components
15:29:27 20 of American's restructuring business
15:29:30 21 plan. What's your understanding of the
15:29:32 22 assumptions built into that overall plan
15:29:35 23 and how the ask was derived?

15:29:36 24 A. So fundamentally, and in its
15:29:41 25 simplest form it was rolled out to us as

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15:29:43 2 a three part plan. Part one was efforts
15:29:46 3 and initiatives around driving an
15:29:47 4 increase in revenue. The sort of target
15:29:50 5 time period of which, you know, American
15:29:53 6 measured this kind of level of success
15:29:56 7 and profitability was 2017, which was the
15:30:00 8 last year of their forecast period. So
15:30:02 9 stage 1 was we're going to, you know,
15:30:04 10 come back to it, we're going to do some
15:30:06 11 things that are going to drive revenue.
15:30:08 12 We believe that can generate
15:30:10 13 approximately a billion dollars of
15:30:11 14 incremental revenue. Again, generally
15:30:14 15 around the cornerstone plan with some
15:30:16 16 improvement.

15:30:16 17 The second was we think we can
15:30:18 18 go use the benefits of the bankruptcy

15:30:20 19 code and the court to try to extract some
15:30:23 20 reductions in non-labor cost associated
15:30:26 21 with executory contracts and airport
15:30:29 22 leases and the like. And that the sum
15:30:32 23 total of the benefits of those programs
15:30:33 24 was approximately 600 million.

15:30:36 25 So we're now at a billion six

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15:30:38 2 with our numbers.

15:30:39 3 And then essentially that in

15:30:41 4 2017 we want to hit a level of

15:30:43 5 profitability that we believe is both,

15:30:45 6 you know, appropriate and internally

15:30:47 7 generated, and the only means left to

15:30:51 8 essentially get to that level of

15:30:52 9 profitability is to go seek labor

15:30:54 10 concessions and when you sort of did that

15:30:58 11 simple math, the math equated to a

15:31:01 12 billion five of required labor

15:31:04 13 concessions or roughly 3.1 billion total

15:31:07 14 of the benefit derived by 2017.

15:31:10 15 Q. Let me just ask, the pilot
15:31:13 16 component we've heard of the labor ask is
15:31:17 17 370 million per year on average. Before
15:31:21 18 the November 2011 bankruptcy filing, had
15:31:26 19 American Airlines taken any public
15:31:28 20 position to the investment community
15:31:29 21 regarding the magnitude of the labor cost
15:31:32 22 gap?

15:31:32 23 A. They had. It's probably worth
15:31:35 24 stepping back because I know American
15:31:36 25 uses the number 370 and it's been thrown

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15:31:39 2 around a lot in these proceedings and in
15:31:41 3 the papers. I think it's important to
15:31:43 4 recognize the 370 is a six year average
15:31:46 5 of the pilot savings over the life of the
15:31:48 6 plan for success.

15:31:49 7 The reality is, especially
15:31:51 8 with the pilots, there are a number of

15:31:54 9 proposed labor concessions including
15:31:57 10 associated with work rules and
15:31:59 11 productivity that actually come into
15:32:00 12 effect over time. It takes years for
15:32:03 13 these concessions to season.

15:32:05 14 And as a result, by the year
15:32:07 15 2017 it's not 370 million dollars, it's
15:32:10 16 closer to 470 million dollars and
15:32:13 17 frankly, will likely grow from there
15:32:15 18 because again, as this airline grows the
15:32:18 19 productivity and work rule changes
15:32:20 20 proposed will only further deepen that
15:32:23 21 concession.

15:32:24 22 I just want to make sure
15:32:25 23 everyone is clear on that point.

15:32:26 24 Relative to public statements,
15:32:29 25 frankly what was obviously somewhat

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15:32:31 2 surprising and made the labor discussions
15:32:33 3 challenging is in February of 2011 in a

15:32:36 4 10-K filing with the SEC, American
15:32:38 5 outlined its labor cost disadvantage
15:32:41 6 relative to its peers and labeled that
15:32:43 7 number roughly \$600 million. Mr. Horton
15:32:47 8 on the evening of the bankruptcy itself,
15:32:51 9 upped that number to 800 million dollars
15:32:54 10 in terms of public statements relative
15:32:56 11 to, again, the labor concessions that he
15:32:58 12 thought they needed to, quote, unquote,
15:33:00 13 be at market relative to its competitors.

15:33:03 14 Q. Is Lazard aware of American at
15:33:07 15 any time telling the investment community
15:33:08 16 that the labor cost gap was 1.5 billion?

15:33:13 17 A. No. Not to my knowledge.

15:33:15 18 Q. Was it close in the vicinity
15:33:17 19 of 1.25 billion on average?

15:33:20 20 A. No, again, no, in my review
15:33:22 21 and my opinion that the analyst community
15:33:24 22 had always sort of circled around this
15:33:26 23 600/800 million dollar number.

15:33:33 24 Q. Now let's focus on the
15:33:35 25 improved profitability target of 3.1

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15:33:38 2 billion by 2017. Again, how does that
15:33:43 3 drive the labor ask?

15:33:44 4 A. Again, so as I said, there's
15:33:47 5 sort of this three step process, a
15:33:49 6 billion dollars recognized from revenue
15:33:51 7 enhancements, what I would argue are sort
15:33:53 8 of patches to the network. I think as
15:33:56 9 we've all, as I have reviewed the
15:33:59 10 declarations and testimonies in this case
15:34:01 11 and even American's own statement in its
15:34:03 12 plan, it recognizes it has a network
15:34:06 13 deficiency and so what it's done in its
15:34:08 14 plan is we're going to follow the
15:34:10 15 cornerstone and we're going to try and
15:34:12 16 improve as best we can on the network and
15:34:14 17 how do you do that given its resources,
15:34:17 18 you do that by trying to enhance code
15:34:20 19 shares, you do that by trying to e-gauge
15:34:21 20 your fleet, fly some more regionals to
15:34:23 21 better match demand, you do that by

15:34:25 22 trying to increase the number of joint
15:34:26 23 business agreements again in an effort to
15:34:28 24 stretch your existing network.
15:34:31 25 They also obviously plan to

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15:34:33 2 invest both in fleet and in product which
15:34:36 3 I will talk about later, but all of this
15:34:38 4 leads to a billion dollars of what they
15:34:40 5 believe they can drive in revenue by
15:34:44 6 2017. They then as I said, look to this
15:34:46 7 next stage of non-labor cost where they
15:34:49 8 can take advantage of bankruptcy code,
15:34:51 9 again without getting into specifics
15:34:53 10 because I think it's been well
15:34:54 11 documented, that number lands us at about
15:34:57 12 600 million by 2017 and again, that leads
15:35:00 13 to this kind of balancing item which is
15:35:02 14 labor and if you want to target a 3.1
15:35:05 15 billion dollar EBITDAR by 2017 the only
15:35:08 16 thing left in American's sort of box here

15:35:10 17 is to solve this through a labor
15:35:12 18 concession.
15:35:13 19 Q. So just so I understand it, if
15:35:14 20 the target had been chosen to be 2.9
15:35:17 21 billion instead of 3.1 billion in
15:35:20 22 improvements, would that have reduced the
15:35:22 23 total labor cost target number from 1.5
15:35:25 24 to 1.3 billion?
15:35:27 25 A. It appears from their approach

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15:35:29 2 that that would have been the net effect.
15:35:31 3 Q. I'm going to refer the witness
15:35:33 4 and the Judge to paragraph 15 of the
15:35:40 5 declaration at page 12 where we have a
15:35:42 6 redacted EBITDAR level expressed in a
15:35:45 7 percentage which I will not say by number
15:35:47 8 and the witness will not mention that by
15:35:50 9 number. I guess we'll call it the
15:35:54 10 maxi-dar, the high EBITDAR.
15:35:58 11 Is that your --

15:35:58 12 THE COURT: Before you go
15:35:59 13 ahead, your version is, no doubt
15:36:03 14 has yellow highlighting, and I
15:36:04 15 understand yellow highlighting here
15:36:06 16 is confidential information.

15:36:06 17 MS. KRIEGER: Yes, this is the
15:36:06 18 real --

15:36:09 19 THE COURT: This is a real
15:36:11 20 warning should not be disclosed
15:36:12 21 publicly. Earlier we had other
15:36:14 22 yellow highlighting just to make it
15:36:14 23 clear.

15:36:16 24 So if you see a number or are
15:36:17 25 asked to give information that you

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15:36:19 2 think may be confidential, please
15:36:23 3 straighten everybody out, whether
15:36:25 4 it's me, counsel from any side,
15:36:28 5 because we just would prefer not to
15:36:30 6 go there. It may be that we'll

15:36:31 7 have to go there later in closed
15:36:33 8 session, but I just wanted to get
15:36:34 9 that out. I'm sure you probably
15:36:36 10 already heard this speech but
15:36:38 11 better to hear it twice than not
15:36:40 12 hear it at all. Thank you for your
15:36:42 13 assistance.

15:36:42 14 THE WITNESS: I appreciate
15:36:43 15 that.

15:36:45 16 MS. KRIEGER: We may
15:36:46 17 complicate it just because there
15:36:48 18 are some redactions that I think
15:36:49 19 counsel says it's okay we can talk
15:36:51 20 about, but this one we won't.

15:36:54 21 THE COURT: We'll cross those
15:36:55 22 item by item.

15:36:56 23 MS. KRIEGER: Exactly, right.

15:36:56 24 Q. So paragraph 15, does that
15:36:58 25 express your understanding of the target

15:37:00 2 EBITDAR that American used as the basis

15:37:05 3 for the labor ask in this case?

15:37:07 4 A. It does.

15:37:08 5 Q. And again, so we're clear,

15:37:13 6 your understanding and the understanding

15:37:15 7 given to the Lazard team was that that

15:37:17 8 profitability margin was chosen by

15:37:20 9 American's management?

15:37:20 10 A. Yes, we've been frankly a

15:37:23 11 little confused on this topic because

15:37:25 12 we've asked the question a number of

15:37:27 13 times in different ways. The best we can

15:37:29 14 piece together, Ms. Goulet in her

15:37:32 15 presentation of the business plan in

15:37:35 16 early February referred to the derivation

15:37:38 17 of this EBITDAR margin as coming from

15:37:41 18 assistance and help from her advisors.

15:37:43 19 They had guided her to this range and

15:37:45 20 thought it was appropriate. The

15:37:48 21 subsequent, as I have read it at least,

15:37:50 22 declarations and testimony of the various

15:37:52 23 advisors and experts for American has

15:37:57 24 sort of backed off that. I think Mr.

15:37:59 25 Resnick stated they provided lots of

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15:38:00 2 information and data, but it's not their
15:38:02 3 number, it's manage many's number. And I
15:38:05 4 believe the gentleman from McKinsey sort
15:38:07 5 of reached the same conclusion.

15:38:09 6 So candidly, we're not exactly
15:38:11 7 clear where that number was derived from,
15:38:13 8 but somewhere between the intersection of
15:38:15 9 management and the advisors' work.

15:38:18 10 Q. Just again to be clear, Lazard
15:38:20 11 is not aware of any outside financing,
15:38:22 12 any facility, any DIP financing, any
15:38:25 13 other form of exigency that has demanded
15:38:29 14 that this level of profitability be
15:38:31 15 achieved by 2017?

15:38:32 16 A. That's correct.

15:38:32 17 Q. And what's Lazard's assessment
15:38:36 18 of the particular profit margin EBITDAR
15:38:39 19 percentage chosen?

15:38:40 20 A. This would make American the

15:38:44 21 best performing airline in the industry
15:38:46 22 and in the industry by far.
15:38:49 23 Q. Could I refer you to APA
15:38:51 24 Exhibit 101. That's actually in the text
15:38:58 25 of the declaration just following tab 15.

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15:39:01 2 But there's also a separate tabbed
15:39:03 3 exhibit that you can refer to.
15:39:05 4 As I understand, let me just
15:39:06 5 ask you, is any information used in this
15:39:08 6 particular exhibit derived from AMR
15:39:11 7 confidential information in this
15:39:13 8 bankruptcy?

15:39:13 9 A. It's not. It's all based on
15:39:16 10 public filings.

15:39:16 11 MS. KRIEGER: Is there any
15:39:17 12 objection -- I understand there's
15:39:19 13 no objection to us mentioning the
15:39:21 14 actual numbers that are reflected
15:39:22 15 in this chart?

15:39:23 16 MR. POLLACK: Other than the
15:39:24 17 reference to the American number
15:39:26 18 which is in this chart.

15:39:27 19 Q. But again, the American number
15:39:29 20 is derived solely from public
15:39:31 21 information?

15:39:31 22 A. This is historical, so these
15:39:34 23 all come from their 10-K public filings.

15:39:37 24 MR. POLLACK: My only concern
15:39:38 25 relating to 101, counsel, are the

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15:39:41 2 annotations that this witness or
15:39:43 3 Lazard has made to those public
15:39:45 4 filings, if you'll refrain from
15:39:49 5 getting to those.

15:39:50 6 Q. Without mentioning them, the
15:39:52 7 particular numbers that have been circled
15:39:53 8 in that exhibit, but would you walk us
15:39:56 9 through what the exhibit purports to
15:39:58 10 reflect from the public sources and then

15:40:00 11 what the chart, bars and numbers on this

15:40:06 12 chart purport to reflect.

15:40:08 13 THE COURT: Any problem with

15:40:09 14 that, counsel?

15:40:10 15 MR. POLLACK: Not with the

15:40:11 16 question.

15:40:12 17 THE COURT: All right.

15:40:13 18 A. I'll do my best to be

15:40:15 19 consistent to public information. So the

15:40:17 20 information we've shown here tracks back

15:40:20 21 roughly the last decade. So from 2001 to

15:40:23 22 2011 and it outlines the relative EBITDAR

15:40:28 23 margins. So EBITDAR as a percentage of

15:40:30 24 revenue for what we've categorized as

15:40:32 25 network carriers. And so that includes

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15:40:35 2 AMR and it includes Delta, Northwest,

15:40:38 3 United, Continental and US Airways.

15:40:41 4 You'll recognize that the data for both

15:40:43 5 Northwest and for Continental seized

15:40:46 6 after a period of time due to mergers

15:40:47 7 with other airlines.

15:40:49 8 This straight data you can

15:40:53 9 read yourself, but essentially outlines

15:40:55 10 the ranges of profitability of these

15:40:59 11 airlines over this last 10 years. We

15:41:01 12 have circled in read just the highlight

15:41:05 13 four datapoints over this entire time

15:41:07 14 period where a single carrier actually

15:41:10 15 generated EBITDAR margins in excess of

15:41:13 16 even 15 percent and that's happened only

15:41:15 17 four times, again, over this time period.

15:41:17 18 Q. Actually, to be clear, if it's

15:41:19 19 in excess of 15 it's only three times,

15:41:21 20 correct?

15:41:22 21 A. That is true, one is 15. Fair

15:41:24 22 enough. 15 or greater. Again, and I

15:41:26 23 won't comment any further relative to the

15:41:28 24 margins of American. Suffice it to say

15:41:31 25 that the data speaks for itself.

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15:41:32 2 MS. KRIEGER: And is it okay
15:41:38 3 for me to ask him the average of
15:41:40 4 the EBITDARs achieved historically
15:41:42 5 in that chart?

15:41:43 6 THE WITNESS: That's just
15:41:44 7 averaging public information he so
15:41:46 8 I think that's okay.

15:41:47 9 Q. So what does your figure show?

15:41:49 10 A. Down at the bottom we've shown
15:41:51 11 the average over time for everyone except
15:41:53 12 American and as you will see, again, I
15:41:57 13 will show in a more granular fashion in a
15:41:59 14 minute it ranges from under 4 percent to
15:42:01 15 a high of 14.6, but generally speaking is
15:42:06 16 sort of in a single digit range with the
15:42:08 17 exception of a few years.

15:42:09 18 Q. And for the closest
15:42:12 19 competitors, Delta, United and US Airways
15:42:15 20 in the most recent period, what's been
15:42:17 21 the average?

15:42:18 22 A. So again, if you look at the
15:42:21 23 last three years you're, again, looking

15:42:24 24 at a shade under 10 percent, 14.6 and
15:42:27 25 then 11.6.

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15:42:28 2 Q. Now, if I can refer you to
15:42:31 3 Exhibit 102, which again is, as I
15:42:38 4 understand it, this is based entirely on
15:42:40 5 public information.

15:42:41 6 A. All this is is a
15:42:44 7 recharacterization of the data in Exhibit
15:42:46 8 101 reflected in more of the frequency
15:42:51 9 series.

15:42:51 10 Q. And according to that chart,
15:42:53 11 what's the most common range of profit
15:42:57 12 margin achieved by this comparative group
15:43:01 13 of carriers?

15:43:02 14 A. Again, just to be clear to
15:43:03 15 frame it, so this is the same data from
15:43:05 16 2001 to 2011, EBITDAR margins of the US
15:43:09 17 network carriers and as you can see, the
15:43:11 18 most common range is from zero to 5

15:43:14 19 percent, it's 28 percent of the time over
15:43:16 20 that time period you have seen that
15:43:18 21 margin generated.

15:43:21 22 Q. And second most common?

15:43:23 23 A. Second only to the 5 to 7
15:43:26 24 percent range which comprises another,
15:43:27 25 you know, a little over 18 percent of the

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15:43:29 2 datapoints.

15:43:29 3 Q. Now, again, what is your
15:43:36 4 assessment then of the target EBITDAR
15:43:40 5 that American has chosen vis-a-vis the
15:43:45 6 comparators you're looking at here?

15:43:46 7 A. Again, it seems unreasonably
15:43:48 8 high and unprecedented, frankly, relative
15:43:50 9 to its peers over the time period.

15:43:52 10 Q. And to your knowledge, have
15:43:56 11 the Wall Street analysts been calling on
15:43:59 12 American or other airlines to achieve an
15:44:01 13 EBITDAR at the level that American has

15:44:04 14 targeted?

15:44:04 15 A. My personal opinion is that
15:44:07 16 the analysts would be shocked at this
15:44:09 17 range of profitability as a future
15:44:11 18 projection.

15:44:11 19 Q. Now, let me focus on the
15:44:18 20 statements that American and its advisors
15:44:19 21 have presented to court justifying
15:44:23 22 American's use of this particular
15:44:25 23 profitability margin as a driver of its
15:44:29 24 very hard number of labor ask and in
15:44:31 25 particular the labor ask for the pilots.

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15:44:33 2 Have you reviewed those
15:44:36 3 rationales?

15:44:37 4 A. I have.

15:44:37 5 Q. Do they hold up in your view?

15:44:39 6 A. They don't.

15:44:40 7 Q. Can you explain to us why?

15:44:42 8 A. There's two primary arguments

15:44:44 9 put forth to justify the level of
15:44:47 10 profitability projected by American. The
15:44:50 11 first is that, quote, unquote, comparable
15:44:55 12 airlines generate comparable level of
15:44:58 13 margins and I'll get to that in greater
15:45:01 14 detail in a moment. And the second is
15:45:03 15 they look back to prior airline
15:45:05 16 bankruptcy back in '03 and '05 and '07
15:45:09 17 and argue that the projections for those
15:45:11 18 carriers at that time period, even
15:45:13 19 relative to today, somehow are a
15:45:16 20 reasonable and accurate benchmark of how
15:45:19 21 American should be thinking about its
15:45:20 22 business in 2017.

15:45:22 23 Q. Of those two general
15:45:26 24 rationales, can you talk to us about the
15:45:28 25 first one, the set of comparables? And I

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15:45:31 2 believe you were referring to the metrics
15:45:34 3 used by Mr. Resnick in his testimony?

15:45:37 4 A. I am.

15:45:37 5 Q. Have you attempted to present

15:45:42 6 your view of what the appropriate

15:45:44 7 comparables would be?

15:45:45 8 A. We have. My primary --

15:45:49 9 Q. Can you focus on Exhibit 103

15:45:51 10 in particular. Sorry for the

15:46:01 11 interruption. Just continues.

15:46:02 12 A. 103 is going to be a little

15:46:04 13 bit of a challenge given some of the

15:46:05 14 redactions. But I'll speak to at

15:46:07 15 firsthand some of the issues we have with

15:46:09 16 the comparables.

15:46:09 17 The first is that Mr. Resnick

15:46:13 18 uses seven comparables to benchmark

15:46:17 19 future American relative to, quote,

15:46:19 20 unquote, its competitors. Four of the

15:46:22 21 seven of those benchmarks we believe are

15:46:24 22 inappropriate. They're not network

15:46:27 23 carriers. They operate on a much simpler

15:46:29 24 and different business model. I've

15:46:31 25 outlined them in my declaration. They

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15:46:34 2 include Alaska Airlines, Allegiant
15:46:37 3 airlines, JetBlue and Spirit.

15:46:39 4 Q. Are those the airlines listed
15:46:41 5 at paragraph 17 of your declaration?

15:46:44 6 A. They are.

15:46:44 7 Q. Continue.

15:46:45 8 A. And to give the court a sense
15:46:47 9 of this, these four airlines comprise
15:46:50 10 roughly 10 percent of the entire
15:46:52 11 industry. These four airlines based on
15:46:56 12 2011 revenue comprise 50 percent of the
15:46:58 13 revenue of American. So all four of them
15:47:01 14 combined, 50 percent of the revenue of
15:47:03 15 American and yet they're four of the
15:47:06 16 seven datapoints that are utilized by Mr.
15:47:08 17 Resnick.

15:47:08 18 I think the other very telling
15:47:10 19 factor here is if you go back and look at
15:47:13 20 the comparables that are used by the very
15:47:15 21 management team that put this plan
15:47:17 22 together in its discussions publicly with

15:47:20 23 analysts at high yield conferences, you
15:47:23 24 can go back three years, they use three
15:47:26 25 competitors as their competitor set.

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15:47:29 2 Delta, United and US Airways. Alaska
15:47:34 3 doesn't show up, Allegiant never shows
15:47:36 4 up, never seen JetBlue, never talked
15:47:39 5 about Spirit. It's in eight different
15:47:41 6 analyst presentations. This is the very
15:47:43 7 management team that put this same plan
15:47:45 8 together.

15:47:45 9 So we just don't think it's
15:47:48 10 credible that these airlines at the end
15:47:50 11 of the day should be included as a
15:47:51 12 benchmark against a network carrier.

15:47:53 13 The last thing I will say
15:47:55 14 about this is it will be argued that
15:47:58 15 American competes against these carriers
15:47:59 16 in some of its routes and there's no
15:48:02 17 doubt that's true. American is a network

15:48:04 18 carrier. It competes against a lot of
15:48:06 19 airlines, but it doesn't compete on this
15:48:08 20 model. American is competing as they
15:48:10 21 said to this plan, to try to get the high
15:48:14 22 value added customer who will pay for the
15:48:16 23 network advantages. They're not after a
15:48:18 24 leisure customer. They're not after
15:48:21 25 someone who's going to fly in the last

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15:48:23 2 row of coach for 49 dollars. That's not
15:48:25 3 their business model. It's also not why
15:48:27 4 they're spending the money they're
15:48:29 5 spending to re-fleet and to add products
15:48:31 6 and amenities to be competitive against
15:48:34 7 network carriers.

15:48:35 8 So again, we believe those
15:48:36 9 four airlines are not comparable.

15:48:38 10 Q. So turning to Exhibit 103, if
15:48:42 11 you applied the same set of comparables
15:48:45 12 that American's management has

15:48:47 13 traditionally used in publicizing or
15:48:50 14 talking about its performance to the
15:48:52 15 investment community, can you explain to
15:48:53 16 us what this shows? And again, without
15:48:57 17 talking about the pro forma numbers
15:48:58 18 associated with AMR either for its term
15:49:03 19 sheet or for its 2013 first year of the
15:49:09 20 term sheet?

15:49:09 21 A. So we've listed what we
15:49:11 22 believe and frankly American's management
15:49:13 23 has named as the comparable competitors
15:49:16 24 and that's, I'm sorry, United, Delta, US
15:49:21 25 Air. We included Southwest here because

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15:49:23 2 frankly southwest has historically been
15:49:25 3 the most profitable airline in the
15:49:27 4 industry so we thought that was a kind of
15:49:29 5 interesting metric if you're going to
15:49:31 6 measure yourself. Again, different
15:49:33 7 business model, but they are large and

15:49:34 8 they are the most profitable airline in
15:49:36 9 the industry over the last decade.

15:49:40 10 Those competitors on average,
15:49:41 11 and this is based on 2013 analyst
15:49:44 12 estimates, it's not Lazard's work or
15:49:46 13 American's work, it's the research
15:49:48 14 community, project margins in the range
15:49:50 15 of 13 percent, whether on an average or
15:49:53 16 on a median basis. And you can see the
15:49:56 17 highest in that range is 14, the lowest
15:49:59 18 is 11, but the range is relatively tight.

15:50:01 19 Q. Okay. And looking at Exhibit
15:50:05 20 103, and looking at where American has
15:50:09 21 positioned itself as its target EBITDAR
15:50:12 22 profit margin, what would be the impact
15:50:15 23 of even a small reduction in the
15:50:18 24 percentage for 2017, for example?

15:50:22 25 A. I mean the simple math is a

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15:50:24 2 one percent reduction in margin is

15:50:26 3 roughly 340 million dollars of EBITDAR
15:50:34 4 and if you kind of equate that to the
15:50:37 5 labor ask given that that was the kind of
15:50:39 6 plug in all this, it's roughly a 20
15:50:41 7 percent reduction of labor need for one
15:50:44 8 percent of EBITDAR. So this is
15:50:46 9 incredibly sensitive to, you know, the
15:50:48 10 labor ask in terms of projected
15:50:51 11 profitability.

15:50:51 12 Q. And so I had asked you that
15:50:54 13 vis-a-vis the 2017 projected EBITDAR
15:50:58 14 target. The lower target that's
15:51:00 15 projected for 2013, that same analysis
15:51:03 16 holds if you brought that down by just
15:51:05 17 one percent, the same reduction in labor
15:51:08 18 ask?

15:51:08 19 A. The number in '13 would be
15:51:11 20 lower because this plan, remember, is, I
15:51:14 21 won't get into any more detail because
15:51:17 22 I'm kind of on the border here, but there
15:51:20 23 is growth in the plan. So revenue grows
15:51:22 24 over time and as a result, in '13 the
15:51:25 25 impact is less than it would be in '17,

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15:51:28 2 but still material.

15:51:30 3 Q. Now you also pointed out that

15:51:32 4 American's advisors at Rothschild had

15:51:34 5 given American as guidance the EBITDAR

15:51:39 6 projections that other airlines made

15:51:41 7 several years ago when they emerged from

15:51:43 8 bankruptcy in the period 2003 to 2007.

15:51:45 9 What's your view of that?

15:51:46 10 A. So again, Mr. Resnick argues

15:51:50 11 that the other way to look at this is to

15:51:52 12 go back in time and look at bankruptcy

15:51:54 13 projections contained in the disclosure

15:51:58 14 statements of various airlines as they

15:51:59 15 exit from bankruptcy. This dates back to

15:52:01 16 2003 and 2005 to 2007.

15:52:04 17 We have a couple of problems

15:52:08 18 with that. One we think it's sort of

15:52:10 19 opportunistic to go back ten years and

15:52:12 20 decide this is a good metric relative to

15:52:15 21 where you want to be in 2017 given what's
15:52:18 22 happened in the industry over this time
15:52:20 23 period.

15:52:21 24 We're also believers that
15:52:23 25 look, when many of those projections were

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15:52:25 2 put together they were done so with the
15:52:28 3 benefit of sort of history. History in
15:52:30 4 the 1990s before 9/11 would have
15:52:33 5 reflected the fact that you could have
15:52:34 6 generated these margins; in fact, that
15:52:36 7 was probably more the norm than it was
15:52:38 8 the exception.

15:52:39 9 The reality is since 9/11 that
15:52:41 10 has dramatically changed. The industry
15:52:43 11 has never achieved those margins in the
15:52:45 12 same level of consistency and so it's not
15:52:48 13 relevant to where we stand today.

15:52:50 14 Q. And does the Lazard team have
15:52:52 15 any other quibbles with the metrics

15:52:55 16 provided by the company's advisors or
15:52:58 17 cited in the Rothschild testimony?
15:52:59 18 A. So Mr. Resnick has sort of
15:53:05 19 what I would describe as a second order
15:53:08 20 exercise takes the presumed level of
15:53:11 21 profitability in the plan and then runs a
15:53:14 22 series of metrics essentially then
15:53:16 23 justifying the need for the 1113 labor
15:53:19 24 ask on the basis every those metrics. So
15:53:22 25 first and foremost, there's a premise

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15:53:24 2 here which is if you take the level of
15:53:26 3 profitability that they so desired and
15:53:28 4 then you run it a bunch analytics, it
15:53:31 5 shows that boy, we need this labor ask.
15:53:34 6 Again, go back to my prior --

15:53:37 7 Q. The assumption is --

15:53:38 8 A. The assumption is baked in. I
15:53:40 9 won't repeat my prior testimony but
15:53:43 10 you've got to believe first of all that

15:53:45 11 margin is appropriate because that then
15:53:47 12 gets to the second order effect.
15:53:48 13 The second order effect then
15:53:50 14 looks at credit statistics, leverage
15:53:53 15 statistics, potential ratings for the
15:53:55 16 airline, liquidity and makes the
15:53:57 17 arguments that frankly in the most
15:54:00 18 simplest form you'd rather have a lot of
15:54:02 19 liquidity, you'd rather have really good
15:54:05 20 ratings and you'd rather have less debt
15:54:07 21 if you will a choice because you want to
15:54:08 22 be a feasible airline. Hard to disagree
15:54:11 23 with any of those notions. What we do
15:54:13 24 disagree with is the tie that Mr. Resnick
15:54:15 25 has made that those conclusions somehow

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15:54:18 2 justify the ask which was the first
15:54:20 3 premise of all this.
15:54:23 4 Secondarily, we have problems
15:54:25 5 with the way he's actually done his

15:54:27 6 calculations in terms of just the
15:54:28 7 approach.

15:54:29 8 Q. What are the problems you
15:54:30 9 have?

15:54:30 10 A. So let's just start with a few
15:54:32 11 of them. Mr. Resnick focuses on the
15:54:35 12 notion of ratings and says essentially
15:54:38 13 that, again, better ratings are a more
15:54:42 14 positive outcome than lower ratings,
15:54:44 15 which we would agree with. The problem
15:54:46 16 is in his analysis he uses Moody's as a
15:54:50 17 guideline and takes four of Moody's 11
15:54:53 18 characteristics to determine the relative
15:54:55 19 ratings for an airline and decides to
15:54:59 20 exclude the other seven.

15:54:59 21 He actually never concludes
15:55:02 22 what the rating would be for American
15:55:05 23 under this plan, so there's not even a
15:55:07 24 conclusion in his declaration other than
15:55:11 25 we'd rather be stronger versus weaker.

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15:55:14 2 I suspect that that's because
15:55:16 3 I don't know how he would ever get to a
15:55:19 4 conclusion frankly relative to ratings,
15:55:21 5 relative to liquidity, relative to level
15:55:23 6 of debt when we don't know a bunch
15:55:27 7 things. One, Mr. Resnick at one point in
15:55:29 8 time said we were going to have a rights
15:55:31 9 offering. I won't mention the number,
15:55:33 10 but there was going to be a rights
15:55:35 11 offering a certain amount of size. That
15:55:36 12 rights offering number changed in his
15:55:39 13 subsequent declaration, or I should say
15:55:42 14 really in the subsequent model because
15:55:44 15 it's revised. And then in his
15:55:46 16 supplemental declaration he moved off the
15:55:47 17 rights offering. He actually said I
15:55:49 18 don't know if we're going to need one or
15:55:51 19 not need one, so I'm not going to -- I'm
15:55:53 20 not going to provide testimony relative
15:55:56 21 to that.

15:55:56 22 So I don't know how as a
15:56:00 23 matter you can tie all these statistics
15:56:02 24 to the need for a labor ask when you

15:56:04 25 can't even tell me how much capital

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15:56:06 2 you're going to bring into the business.

15:56:08 3 What if you bring in a 10 billion dollar

15:56:10 4 rights offering, I'm just being absurd,

15:56:13 5 his entire set of facts changes.

15:56:15 6 THE COURT: Can I ask you a

15:56:16 7 question, a top level question

15:56:17 8 which is that you made the

15:56:19 9 following statement that you

15:56:21 10 disagree that this justifies the

15:56:25 11 ask before you got into details.

15:56:28 12 Could you just explain what you

15:56:29 13 meant by that particular statement?

15:56:31 14 THE WITNESS: Sure. So the

15:56:33 15 premise of Mr. Resnick's

15:56:35 16 calculations on credits statistics

15:56:37 17 and ratings and liquidity is all

15:56:39 18 based on the fact that American's

15:56:41 19 plan will be its plan. So it will

15:56:43 20 generate the margin as shown in my
15:56:45 21 declaration by 2017, that that
15:56:47 22 level of profitability is
15:56:49 23 appropriate, and as a result to get
15:56:51 24 there you need this billion five of
15:56:53 25 labor savings. So what he never

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15:56:55 2 did is say, what if that margin was
15:56:59 3 one point less and the labor
15:57:01 4 savings were 20 percent less. What
15:57:03 5 do all these calculations look
15:57:05 6 like. They didn't run a single, he
15:57:06 7 did not run a single sensitivity
15:57:08 8 relative to any change in that
15:57:10 9 margin. He adopted the margin,
15:57:12 10 that was American's plan, ran all
15:57:14 11 the scenarios, and said boy it
15:57:17 12 looks like we need to be this
15:57:19 13 strong so that labor ask must be
15:57:21 14 appropriate.

15:57:22 15 Q. Is that the approach that the
15:57:24 16 Lazard team would make in advising a
15:57:26 17 restructuring client?

15:57:27 18 A. We would not.

15:57:29 19 Q. And again, to your knowledge,
15:57:32 20 have any Wall Street analysts been
15:57:34 21 calling on AA to target a particular
15:57:37 22 number in any of those metrics that have
15:57:39 23 appeared in these declarations?

15:57:41 24 A. Not that I'm aware of, no.

15:57:42 25 Q. Let's turn for a moment to the

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15:57:44 2 issue of consolidation in the airline
15:57:46 3 industry. Does the Lazard team have any
15:57:49 4 understanding of American having any
15:57:51 5 position about consolidation prior to the
15:57:53 6 petition?

15:57:54 7 A. American and its management
15:57:58 8 team over the course of the last decade
15:58:01 9 has certainly entertained the idea of

15:58:05 10 consolidation, it's obviously been a very
15:58:07 11 active industry and has been shown many
15:58:09 12 of its competitors have subsequently
15:58:12 13 merged and American, my understanding is
15:58:15 14 was at least party here at interest in
15:58:18 15 some of those consolidation plays.

15:58:21 16 Q. Regarding the most recently
15:58:24 17 publicized active interest of US Airways
15:58:27 18 in exploring the possibility of
15:58:29 19 consolidation with American, did you
15:58:31 20 evaluate that prospect for the Allied
15:58:35 21 Pilots Association?

15:58:35 22 A. We were asked to do that and
15:58:37 23 we did do that, yes.

15:58:38 24 Q. Well then what perspective did
15:58:40 25 you give the pilots on that possibility?

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15:58:42 2 A. Look, at the end of the day,
15:58:45 3 this is an 1113 obviously litigation
15:58:48 4 around a labor ask. So it's probably not

15:58:51 5 the forum to necessarily, you know, weigh
15:58:53 6 the benefits and challenges of US Air
15:58:57 7 consolidation, but having said that, I
15:58:59 8 think we all have to have our eyes open
15:59:02 9 that American admittedly has a network
15:59:05 10 problem. It's seeking to solve it
15:59:06 11 through a cornerstone strategy and some
15:59:08 12 other initiatives. But it's always been
15:59:12 13 our view that it's not a matter of if but
15:59:14 14 when American would transact given the
15:59:18 15 challenges it faces and we believe can't
15:59:21 16 necessarily easily overcome without some
15:59:24 17 sort of strategic transaction.

15:59:26 18 So in that context, you know,
15:59:29 19 we took the meeting with US Air, we heard
15:59:32 20 what they had to say about their view of
15:59:35 21 the world in terms of the opportunities
15:59:38 22 and the benefits of a merger, and we
15:59:41 23 provided our advice to both the APA and
15:59:44 24 the board relative to, you know, the pros
15:59:47 25 and cons and the like.

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15:59:48 2 Q. And then I understand that APA
15:59:53 3 subsequently, as you heard this morning,
15:59:55 4 did pursue at least a tentative
15:59:58 5 understanding as to what the labor
16:00:00 6 concessions, what labor concessions would
16:00:03 7 be workable in the context of a potential
16:00:06 8 merger scenario, I guess an exercise in
16:00:08 9 modeling, what is your perspective on
16:00:10 10 that, on those negotiations and how were
16:00:12 11 you involved?

16:00:12 12 A. So I guess in two ways. One,
16:00:17 13 the US Airways advisors reached out to us
16:00:21 14 initially and so Lazard, myself and a
16:00:24 15 team of my associates met with the US Air
16:00:26 16 management team just to hear them out on
16:00:28 17 what they're strategic vision was for the
16:00:30 18 combination.

16:00:31 19 That eventually, as you heard
16:00:34 20 through testimony, led to more direct
16:00:36 21 discussions between the APA leadership
16:00:39 22 and US Air and culminated in a series of

16:00:42 23 in person meetings in Phoenix of which I
16:00:44 24 participated, which essentially involved
16:00:47 25 the ongoing, you know, arm's length

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16:00:52 2 negotiation on the terms of a potential
16:00:54 3 labor agreement in connection with a
16:00:57 4 transaction with American.

16:00:58 5 Q. And do you have a sense of the
16:01:03 6 outcome of that?

16:01:05 7 A. Again, I participated in most
16:01:07 8 of the back and forth. I can tell you
16:01:12 9 that they weren't easy discussions. They
16:01:14 10 were hard fought. They went well into
16:01:17 11 the night. They extended for days, into
16:01:19 12 the weekends, you know, the spirit of the
16:01:22 13 discussion was very constructive and it
16:01:24 14 was largely based on what is a market
16:01:28 15 level of labor concessions that are
16:01:30 16 required. US Air isn't an airline that
16:01:34 17 just showed up yesterday. It had been in

16:01:36 18 the business for a long time.
16:01:37 19 They obviously have a strong
16:01:42 20 interest in being a profitable airline
16:01:44 21 going forward and as a result, they
16:01:46 22 negotiated, you know, in a fashion you
16:01:48 23 would expect them to. So it was a
16:01:50 24 difficult negotiation.

16:01:52 25 But what struck me was, beside

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16:01:54 2 the fact that it was constructive and
16:01:55 3 they went back and forth, is that
16:01:59 4 ultimately this deal was going to be an
16:02:02 5 intent to be tied to American's two
16:02:05 6 biggest competitors and that was Delta
16:02:06 7 and United, and so you will see in the
16:02:09 8 agreement after year 3 and after year 5
16:02:12 9 relative to both productivity and pilot
16:02:15 10 wage scales, they all tie themselves into
16:02:17 11 a weighted average of Delta and United
16:02:20 12 and we didn't walk in a room and say we

16:02:22 13 want to combine the airline to have an X
16:02:25 14 percentage margin and what does that
16:02:27 15 mean, we walked in and said how can we
16:02:29 16 constructively get to a market based
16:02:31 17 number.

16:02:31 18 Q. Is it your understanding that
16:02:32 19 at least on the other side of these
16:02:34 20 negotiations that US Airways had done its
16:02:36 21 own modeling and evaluation to test and
16:02:39 22 find those assumptions workable?

16:02:41 23 A. I mean US Air had a full labor
16:02:43 24 group involved. So the labor folks did
16:02:47 25 their labor thing and yes, there was an

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16:02:50 2 informed negotiation.

16:02:54 3 Q. I want to turn to an
16:02:56 4 additional subject that you've addressed
16:02:59 5 at some length in describing your attempt
16:03:02 6 to do due diligence and help the APA
16:03:04 7 understand American's business plan.

16:03:06 8 Particularly, if you can,
16:03:09 9 beginning at paragraph 29 of your
16:03:10 10 declaration you discuss the role of
16:03:17 11 American's planned capital expenditures
16:03:19 12 for re-fleeting and how that affects the
16:03:23 13 labor ask. Can you walk us through that,
16:03:26 14 please.

16:03:26 15 A. I will and I will try to be
16:03:28 16 careful as well. To the confidential
16:03:31 17 information.

16:03:31 18 Q. The number that you have
16:03:33 19 assigned, your Honor, the number that has
16:03:35 20 been assigned as the estimated amount of
16:03:37 21 capital expenditures required we're going
16:03:39 22 to try not to mention that specific
16:03:41 23 number, just refer to it as a
16:03:43 24 particularly large number I guess for
16:03:45 25 now.

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16:03:45 2 A. Yes. So critical to the

16:03:48 3 company's plan and by default its labor
16:03:51 4 ask is a plan to essentially re-fleet
16:03:54 5 much of the airline. This involves a
16:03:58 6 publicly announced very large order with
16:04:02 7 Boeing and Airbus which comprises both
16:04:05 8 the re-fleeting of the narrowbody fleet
16:04:07 9 as well as the regional fleet, and in
16:04:10 10 conjunction, as well, the spending of
16:04:13 11 capital on improving the product. So
16:04:16 12 examples would include life-like seating,
16:04:20 13 DirecTV, access, amenities that frankly
16:04:23 14 many of American's competitors already
16:04:25 15 have today.

16:04:26 16 And as you might imagine,
16:04:28 17 again, given the size of this order as
16:04:32 18 well as the size of the capital being
16:04:35 19 spent to improve the product over the
16:04:37 20 life of the forecast period, it's an
16:04:39 21 enormous use of cash flow and as a
16:04:42 22 result, by default, you know, some of
16:04:47 23 this falls, if not much of it falls on
16:04:49 24 the backs of labor given that at least
16:04:52 25 close to half of the overall

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16:04:54 2 profitability target in 2017 is derived

16:04:57 3 from labor.

16:04:58 4 Q. And again, just without giving

16:05:01 5 a specific number, but is there any other

16:05:03 6 component as you understand the business

16:05:05 7 plan that accounts for the magnitude of

16:05:07 8 capital expenditures or the effect on

16:05:10 9 American's liquidity?

16:05:12 10 A. Again, I think I've covered

16:05:13 11 it, but it's probably done in a couple of

16:05:15 12 ways just mechanically. One is the

16:05:17 13 purchase of planes, we actually have to

16:05:19 14 buy the plane itself. Two, it's the

16:05:21 15 leasing of planes and so you have an

16:05:23 16 increasing lease expense over the time of

16:05:25 17 the forecast. And then the last is

16:05:28 18 again, just direct capital in terms of

16:05:29 19 upgrading the product itself.

16:05:31 20 Q. And as I understand it,

16:05:34 21 although American didn't announce the

16:05:36 22 details of this back in July 2011, did
16:05:39 23 they make some pronouncements about the
16:05:41 24 general order of magnitude of this fleet
16:05:43 25 order?

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16:05:43 2 A. Yes, the public number is 460
16:05:46 3 mainline aircraft and that's from both
16:05:51 4 Boeing and Airbus and frankly that even
16:05:53 5 overwhelms the size of the current fleet
16:05:56 6 of US Air to give you a sense of the size
16:05:58 7 of this order.

16:05:59 8 Q. So as a financial advisor
16:06:01 9 trying to do due diligence on this plan
16:06:02 10 and understand the appropriateness of the
16:06:06 11 labor ask component, what information did
16:06:08 12 you need from American and explain why
16:06:10 13 you needed that information?

16:06:11 14 A. So just as a premise, American
16:06:17 15 argues that this is a program that is
16:06:20 16 very much needed for a couple of reasons.

16:06:23 17 One, it's going to reduce maintenance
16:06:25 18 expense given the older aircraft.
16:06:27 19 Two, it's going to reduce fuel
16:06:29 20 expense just given the efficiency of the
16:06:32 21 new planes.
16:06:33 22 And three, if you're trying to
16:06:34 23 win back the high value customer you need
16:06:36 24 to have a better product to do so.
16:06:38 25 We don't disagree with any of

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16:06:40 2 those conclusions. Our frustration was
16:06:44 3 trying to get behind the numbers given
16:06:46 4 the size of this order to understand how
16:06:49 5 American and its management and its
16:06:51 6 advisors came to the conclusion that this
16:06:53 7 was the right set of planes and the right
16:06:57 8 time frame, etc. .
16:06:58 9 So the questions that we asked
16:07:01 10 were can you show us return on capital
16:07:04 11 analysis to demonstrate that you're

16:07:06 12 generating a return on these -- on this
16:07:09 13 re-fleeting that's in excess of your cost
16:07:11 14 of capital. Have you looked at
16:07:13 15 alternatives. Some of American's
16:07:15 16 competitors, namely Delta, have done this
16:07:18 17 a little bit differently, so they've
16:07:21 18 retrofitted some planes or gone to some
16:07:23 19 older planes as kind of a stop gap to get
16:07:26 20 to the next generation.

16:07:27 21 Look, maybe the business case
16:07:28 22 for American says that doesn't make
16:07:31 23 sense, but have you thought about the
16:07:32 24 alternative.

16:07:33 25 And then lastly, have you

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16:07:35 2 thought about just changing the timing a
16:07:37 3 little bit. I mean if you move this back
16:07:39 4 one year, you spread it over nine years
16:07:42 5 versus eight, you know, spread it over
16:07:45 6 four versus eight, what does that do to

16:07:47 7 the relative cash flows and as a result
16:07:49 8 yield to output in the model.
16:07:52 9 I have to be candid. I don't
16:07:53 10 think we've seen a single sensitivity
16:07:55 11 analysis on the company's business plan
16:07:57 12 since it was produced. Not a single one.
16:07:59 13 And so given the size and magnitude of
16:08:03 14 this, you know, fleet investment, those
16:08:05 15 -- that was the kind of information we
16:08:07 16 were hunting for.
16:08:08 17 Q. Is this something that you
16:08:09 18 would expect to find regardless of what
16:08:11 19 kind of company you're analyzing for due
16:08:14 20 diligence purposes?
16:08:14 21 A. Yes.
16:08:15 22 Q. And did the company present
16:08:18 23 any of that information you've
16:08:21 24 categorized for us at the time it
16:08:23 25 presented its restructuring business plan

16:08:25 2 to APA and the Lazard team?

16:08:27 3 A. The only thing it provided
16:08:29 4 was, again, sort of high level benefits
16:08:32 5 of the re-fleeting program relative to,
16:08:35 6 you know, savings in maintenance cost and
16:08:37 7 savings in fuel efficiency and although
16:08:40 8 not directly tied, it was obviously also
16:08:43 9 one of the factors that hopefully will
16:08:45 10 improve capture of the high value
16:08:49 11 customer.

16:08:49 12 Q. Did you ask for the analysis
16:08:51 13 underlying that?

16:08:52 14 A. We did.

16:08:52 15 Q. And have you ever gotten that?

16:08:55 16 A. No.

16:08:56 17 Q. And again, just to close the
16:08:59 18 door here, to your knowledge, was any of
16:09:02 19 that information presented to the APA
16:09:04 20 contemporaneously with its term sheet
16:09:07 21 proposals?

16:09:08 22 A. Not to my knowledge. Look, I
16:09:10 23 want to, I want to be very clear in my
16:09:12 24 answer, so the questions we asked we

16:09:14 25 never got answered in the way that I

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16:09:15 2 thought was appropriate. We got two
16:09:17 3 pieces of data and had one conference
16:09:20 4 call. The first piece of data was a
16:09:24 5 board presentation heavily redacted that
16:09:27 6 was provided to the board in July,
16:09:29 7 presumably to justify, I think it was
16:09:31 8 July, to justify the actual re-fleeting
16:09:34 9 program. The level of redacting in that
16:09:36 10 presentation was such that it was
16:09:37 11 impossible for us to understand the
16:09:39 12 business case.

16:09:40 13 After, it's in my declaration,
16:09:45 14 but a few months, we did get a one-page
16:09:48 15 analysis on the return analysis for the
16:09:50 16 re-fleeting with no assumptions and no
16:09:53 17 support, just eight numbers on a page.

16:09:55 18 Q. As I understand that came
16:09:57 19 after the hearings started in this case?

16:09:58 20 A. That came after the hearing
16:10:00 21 started. And then we lastly had a
16:10:02 22 subsequent call with some finance people
16:10:03 23 at American who essentially argued that
16:10:06 24 they weren't really responsible for the
16:10:09 25 re-fleeting program. That had been done

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16:10:10 2 by the fleet crew back in July. That
16:10:13 3 analysis was not available. That they
16:10:17 4 could talk to us a little bit about the
16:10:19 5 fundamentals of the return, but in no
16:10:21 6 great detail.

16:10:22 7 Q. So in other words, we're
16:10:23 8 talking about a post hoc analysis that
16:10:26 9 was presented?

16:10:27 10 A. I believe this was last week.

16:10:32 11 MR. POLLACK: Objection.

16:10:33 12 THE COURT: Sustained.

16:10:34 13 Q. To your knowledge, the one
16:10:35 14 page that was provided after April 23rd,

16:10:37 15 that was not something that existed
16:10:39 16 contemporaneously with the fleet purchase
16:10:42 17 order?
16:10:42 18 A. Right, that was provided after
16:10:45 19 the commencement of the 1113, I believe.
16:10:48 20 Q. Do you know who prepared that,
16:10:49 21 what was representative of it?
16:10:51 22 A. We thought it was prepared by
16:10:53 23 American's advisors, but not entirely
16:10:55 24 clear on that.
16:10:55 25 Q. Finally, American has

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16:10:58 2 suggested that in order to restructure
16:11:00 3 successfully that it has an urgent need
16:11:02 4 to get a ruling that abrogates its union
16:11:07 5 contracts in the next few weeks and begin
16:11:09 6 to implement its term sheets, what's your
16:11:13 7 reaction to that claim?
16:11:13 8 A. I've never understood that
16:11:14 9 claim frankly because it runs in the face

16:11:16 10 of the facts of the case.

16:11:17 11 Q. What particular factors lead
16:11:19 12 you to that conclusion?

16:11:20 13 A. So unlike most airline
16:11:24 14 bankruptcies, American doesn't have a
16:11:26 15 debtor in possession financing agreement
16:11:29 16 that it entered into when it filed. It
16:11:31 17 filed with roughly 4 billion dollars of
16:11:32 18 cash and that cash has only increased.
16:11:36 19 The last time I looked it was just south
16:11:38 20 of 5 billion. There's no covenants as a
16:11:40 21 result. There's no triggers, there's no
16:11:42 22 mechanisms that somehow create a time
16:11:45 23 deadline that otherwise suggests that
16:11:47 24 this has to be rushed through the court.

16:11:48 25 Again, close to \$5 billion of

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16:11:53 2 cash and we were benefit of a company
16:11:56 3 presentation just a few weeks ago where
16:11:58 4 we were told that the airline has never

16:12:01 5 been operating better. And we're heading
16:12:03 6 into the strong spring and summer
16:12:05 7 seasons.

16:12:06 8 Q. Just so I understand, that's
16:12:07 9 operating under current labor conditions?

16:12:10 10 A. That's operating as we speak.
16:12:12 11 And so again, the notion that this
16:12:14 12 somehow needs to be rushed through this
16:12:15 13 court is confounding to me.

16:12:18 14 Q. And I think you've seen
16:12:21 15 testimony from American's advisors that
16:12:24 16 if required, American within maybe a
16:12:28 17 period of a few weeks could model
16:12:29 18 alternate scenarios using some of the
16:12:32 19 business modeling apparatus that it's
16:12:35 20 acquired through this, through McKinsey?

16:12:39 21 MR. POLLACK: Objection;
16:12:40 22 mischaracterizations.

16:12:41 23 THE COURT: Let's try the
16:12:43 24 question --

16:12:44 25 Q. Okay. It may take a long time

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16:12:45 2 for American to run some alternative
16:12:46 3 financial scenarios through the
16:12:48 4 projection?

16:12:49 5 MR. POLLACK: Same objection.

16:12:51 6 THE COURT: I think you have
16:12:52 7 foundation problems. Let's ask a
16:12:54 8 few questions before we get to that
16:12:55 9 and then we'll see where we are.

16:12:57 10 Q. Do you have any understanding
16:12:57 11 of whether it would be possible in a
16:13:00 12 period of one month or two months for
16:13:02 13 American to run some of these alternative
16:13:06 14 financial projections that you've
16:13:07 15 mentioned?

16:13:07 16 A. So American and its advisors
16:13:09 17 have characterized the model as very
16:13:12 18 complicated and based on lots of
16:13:14 19 different assumptions and I think the
16:13:16 20 advisors even split some of the tasks, so
16:13:20 21 McKinsey had involvement in certain areas
16:13:22 22 and Rothschild others and other experts
16:13:24 23 and others and it all sort of comes

16:13:27 24 together in a model, such that to make a
16:13:29 25 change to one variable would require, you

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16:13:32 2 know, weeks, not days to actually run the
16:13:34 3 model. Just based on, you know, route
16:13:39 4 issues and fleet issues and a whole list
16:13:40 5 of other issues.

16:13:41 6 So at least what we've been
16:13:44 7 told was it's not an easy exercise and
16:13:46 8 frankly not one that American has wanted
16:13:48 9 to embark on.

16:13:48 10 Q. And they've had several weeks
16:13:50 11 since the beginning of this petition to
16:13:52 12 do that?

16:13:54 13 A. That's true.

16:13:55 14 THE COURT: Is that a question
16:13:57 15 or is that a statement? So let's
16:14:00 16 ask him a question. He has enough
16:14:03 17 things to talk about.

16:14:05 18 MS. KRIEGER: I'll withdraw

16:14:06 19 it.

16:14:06 20 Q. Is there any looming crisis or
16:14:09 21 deadline that you know of within the next
16:14:11 22 four to six weeks that requires American
16:14:13 23 to abrogate its contracts with the
16:14:15 24 unions?

16:14:15 25 A. No.

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16:14:17 2 MS. KRIEGER: No further
16:14:18 3 questions right now. I pass the
16:14:20 4 witness.

16:14:25 5 THE COURT: All right. I hate
16:14:40 6 to interrupt your answer. I know
16:14:42 7 the questions that don't actually
16:14:44 8 require any thought are the easiest
16:14:46 9 to answer. So I hate to interrupt
16:14:49 10 you with a softball.

16:14:59 11 CROSS EXAMINATION

16:15:02 12 BY MR. POLLACK:

16:15:02 13 Q. Good afternoon, Mark Pollack

16:15:05 14 for the debtor. Good afternoon, Mr.

16:15:15 15 Yearley.

16:15:16 16 A. Good afternoon.

16:15:53 17 Q. Mr. Yearley, in your view, the

16:15:58 18 earnings margins targeted in American's

16:16:02 19 business plan are above those of what you

16:16:04 20 have identified to be the appropriate

16:16:07 21 comp set; is that right?

16:16:08 22 A. That's correct.

16:16:09 23 Q. And before we get into what's

16:16:16 24 the appropriate comp set might be,

16:16:18 25 conceptually, is it fair to say that you

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16:16:20 2 agree that targeted earnings margins

16:16:26 3 consistent with industry norms would be

16:16:27 4 acceptable for American?

16:16:29 5 A. See I don't know if that's

16:16:35 6 really fair. We've talked about this a

16:16:37 7 lot on our team, because American has a

16:16:39 8 revenue cost, a revenue yield

16:16:41 9 disadvantage today to its current
16:16:44 10 competitors and so to sort of leapfrog
16:16:47 11 the competitor by even being equal to
16:16:50 12 them on this model would be even a
16:16:52 13 challenge.

16:16:53 14 Q. I'm referring to, do you have
16:16:55 15 your declaration?

16:16:57 16 A. It's in here somewhere.

16:17:03 17 MS. KRIEGER: 100-A.

16:17:05 18 Q. It's Exhibit 100-A. Just for
16:17:07 19 this purpose I'm referring to paragraph
16:17:09 20 15.

16:17:17 21 A. Did you say 108?

16:17:19 22 Q. 100-A.

16:17:22 23 A. Got it.

16:17:22 24 Q. Paragraph 15. The first
16:17:29 25 sentence you state there in your opinion

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16:17:31 2 to support an asserted labor savings need

16:17:34 3 that is truly necessary, American must be

16:17:36 4 targeting a profitability level that,
16:17:38 5 among other things, is consistent with
16:17:40 6 the norms of the US airline industry. Do
16:17:42 7 you stand by that opinion in court today?

16:17:44 8 A. I do.

16:17:44 9 Q. And it's your opinion that the
16:17:49 10 appropriate comp set are the major
16:17:52 11 network carriers as you delineated in
16:17:54 12 your Exhibits 101 and 102 as you
16:17:57 13 testified earlier this afternoon, right?

16:17:58 14 A. Yes, that's shown in my
16:18:01 15 exhibit.

16:18:01 16 Q. And you specified those today
16:18:03 17 are Delta, United and US Airways,
16:18:07 18 correct?

16:18:07 19 A. Correct.

16:18:07 20 Q. Now, each of those three
16:18:13 21 carriers emerged from bankruptcy within
16:18:17 22 the last ten years, haven't they?

16:18:19 23 A. I believe that's true.

16:18:20 24 Q. US Airways more than once,
16:18:22 25 right?

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16:18:22 2 A. Twice.

16:18:22 3 Q. And you've reviewed plans of

16:18:24 4 reorganization that those airlines filed

16:18:26 5 in their bankruptcy?

16:18:27 6 A. I reviewed the financial

16:18:29 7 projections that Mr. Resnick cited. I

16:18:32 8 didn't review the full plan of

16:18:34 9 reorganizations.

16:18:35 10 Q. Fair enough. And you

16:18:37 11 testified today consistent with your

16:18:39 12 declaration as to why you don't believe

16:18:41 13 the specific earnings numbers or any of

16:18:44 14 the metrics, for that matter, that were

16:18:46 15 targeted back in those plans are relevant

16:18:48 16 to what American is trying to do,

16:18:50 17 correct?

16:18:50 18 A. I don't know if that was my

16:18:53 19 exact testimony, but I don't think it's a

16:18:55 20 good barometer of what American should be

16:18:57 21 projecting.

16:18:57 22 Q. I want to come at this from a
16:19:00 23 little bit of a different perspective
16:19:02 24 with you. You testified that you did
16:19:03 25 review the numbers that Mr. Resnick used

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16:19:06 2 in his declaration, right?

16:19:07 3 A. Which numbers?

16:19:08 4 Q. The plan of reorganization
16:19:10 5 earnings numbers for the other airlines?

16:19:12 6 A. Correct.

16:19:12 7 Q. So to have those in minds.
16:19:16 8 I'm going to give you those exhibits for
16:19:17 9 reference.

16:19:24 10 MR. POLLACK: May I approach,
16:19:26 11 Judge?

16:19:27 12 THE COURT: Certainly.

16:19:28 13 MR. POLLACK: For the record,
16:19:29 14 I'm handing the witness Exhibits
16:19:31 15 318 through 320. For the records,
16:19:58 16 these are American Airlines

16:20:01 17 Exhibits 318 through 320.
16:20:02 18 Q. I'm going to go through them
16:20:04 19 one at a time but I wanted you to have
16:20:06 20 them in front of you for efficiency
16:20:07 21 purposes.
16:20:08 22 Let's start with Exhibit 318.
16:20:14 23 That's United's plan of reorganization,
16:20:18 24 correct?
16:20:19 25 A. It's the financial projections

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16:20:20 2 in the United POR.
16:20:22 3 Q. And you note that footnote 41
16:20:25 4 indicates that these were filed as part
16:20:27 5 of a disclosure statement in October
16:20:29 6 2005, yes?
16:20:30 7 A. That's what it says.
16:20:31 8 Q. Now as reported in its
16:20:36 9 disclosure statement in the fall of 2005,
16:20:40 10 United was projecting EBITDAR margins for
16:20:44 11 that year, 2005, and the ensuing five

16:20:47 12 year period, correct?

16:20:48 13 A. That's correct.

16:20:49 14 Q. Those margins begin at 5

16:20:52 15 percent for the current year, jump up to

16:20:54 16 12, 14 and up to 16 percent ultimately by

16:20:58 17 2010, right?

16:20:59 18 A. That's what it shows.

16:21:01 19 Q. Now, have you compared about

16:21:03 20 American -- excuse me, what United was

16:21:05 21 projecting in 2005 with what you

16:21:08 22 characterized as the historical industry

16:21:10 23 norms as of that date?

16:21:11 24 A. I don't recall if I did that.

16:21:14 25 Q. Well let's do it now. Let's

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16:21:16 2 take a look at your Exhibit 101 that

16:21:18 3 reflects those historical industry norms.

16:21:20 4 A. I'm looking at it.

16:21:21 5 Q. Take a look at the years

16:21:25 6 leading up to 2005 and you can include

16:21:27 7 2005 if you wish, you've identified there
16:21:32 8 the non-American averages for all of
16:21:34 9 those years ranging from 3.8 percent on
16:21:38 10 the low end up to 8 percent on the high
16:21:41 11 end, correct?

16:21:42 12 A. That's correct.

16:21:43 13 Q. And if you include American it
16:21:45 14 might adjust those numbers but not
16:21:48 15 appreciably so, do you agree?

16:21:49 16 A. That's probably a fair
16:21:51 17 statement. I haven't done the math.
16:21:53 18 I'll take your word for it.

16:21:54 19 Q. So is it also a fair statement
16:21:56 20 that as of United's plan of
16:21:58 21 reorganization filed in October of 2005
16:22:00 22 it was projecting margins appreciably
16:22:03 23 above the industry norms as they existed
16:22:05 24 at that time?

16:22:06 25 A. That's what those numbers

16:22:10 2 show, yes.

16:22:10 3 Q. Any reason to dispute the
16:22:12 4 numbers?

16:22:12 5 A. No.

16:22:13 6 Q. Let's look at Exhibit 319
16:22:18 7 which is Delta's plan of reorganization.

16:22:22 8 A. If I could just clarify though
16:22:24 9 that my --

16:22:25 10 Q. You'll be given every
16:22:26 11 opportunity to clarify on redirect.

16:22:28 12 A. I'll do it then.

16:22:29 13 Q. Delta's numbers. These were
16:22:31 14 filed in their disclosure statement in
16:22:34 15 February 2007. Do you see that?

16:22:35 16 A. Yes, I do.

16:22:38 17 Q. And they in the same fashion
16:22:40 18 as United projected EBITDAR margins for
16:22:46 19 2006 through 2010 starting at 10 percent,
16:22:49 20 moving up to 15 and ultimately 18
16:22:52 21 percent, right?

16:22:52 22 A. That's correct.

16:22:53 23 Q. And if you would do the same
16:22:56 24 exercise, go back to your numbers that
16:22:58 25 you have reported in your Exhibit 101, if

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16:23:01 2 you look at the industry norms through
16:23:04 3 February of 2007, do you agree that what
16:23:08 4 Delta was projecting in its
16:23:09 5 reorganization plan were earnings margins
16:23:13 6 appreciably above the historical industry
16:23:16 7 norms?

16:23:16 8 A. That appears to be the case.

16:23:17 9 Q. Lastly, please take a look at
16:23:21 10 320, which is Northwest Airlines EBITDAR
16:23:24 11 projections, filed in March of 2007. You
16:23:32 12 can see the data reflects that Northwest
16:23:34 13 was projecting EBITDAR margins recorded
16:23:37 14 for 2006 at 12 percent, projecting 18, 19
16:23:40 15 and 20 percent for the ensuing period,
16:23:43 16 correct?

16:23:43 17 A. That's correct.

16:23:46 18 Q. And you would agree with me,
16:23:48 19 would you not, that those projections
16:23:50 20 that were filed by Northwest in its

16:23:52 21 bankruptcy filing were in excess of the

16:23:54 22 industry norms as of 2007?

16:23:56 23 A. Correct.

16:23:57 24 Q. Now let's talk about the comp

16:24:05 25 set for a moment. In your view, as you

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16:24:07 2 testified, what have been characterized

16:24:11 3 as low cost carriers in this proceeding

16:24:13 4 are not appropriate comparators for

16:24:16 5 American, fair?

16:24:18 6 A. I think it's a fair statement.

16:24:19 7 Q. You've testified that you've

16:24:25 8 reviewed many analyst reports that have

16:24:29 9 addressed not only American, but the

16:24:32 10 industry writ large, right?

16:24:34 11 A. I don't think I said that, but

16:24:35 12 I have.

16:24:36 13 Q. You're familiar with the

16:24:37 14 analyst reports?

16:24:38 15 A. I am.

16:24:38 16 Q. And you know that the analysts
16:24:40 17 when they track the US airline industry,
16:24:43 18 track all publicly traded US airlines,
16:24:46 19 don't they?

16:24:46 20 A. I think that's kind of their
16:24:47 21 job, yes.

16:24:49 22 Q. So their reports look at the
16:24:50 23 metrics, EBITDAR and others, not only for
16:24:53 24 the network carriers but for all of the
16:24:56 25 low cost carriers, don't they?

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16:24:57 2 A. I think they look across the
16:24:59 3 industry.

16:24:59 4 Q. When you criticize Mr.
16:25:01 5 Resnick's and Rothschild's methodology
16:25:04 6 you suggest they should not have included
16:25:07 7 those low cost carriers in their
16:25:09 8 analysis, right?

16:25:09 9 A. I did say that, yes.

16:25:11 10 Q. Did you review the testimony

16:25:12 11 that Mr. Resnick provided in this court
16:25:14 12 in his declaration as to why he included
16:25:16 13 those carriers?

16:25:17 14 A. Yes.

16:25:17 15 Q. You understand that in his
16:25:20 16 view he was -- the approach that
16:25:23 17 Rothschild took was to look for data on
16:25:25 18 all public US airlines where data was
16:25:29 19 across the metrics that they were
16:25:31 20 evaluating?

16:25:32 21 A. I didn't -- was that a
16:25:33 22 question? I'm sorry, I didn't follow it.
16:25:35 23 It sounded like a statement.

16:25:36 24 Q. That was a very poorly worded
16:25:38 25 question. Let me rephrase. Based upon

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16:25:40 2 your review, do you understand that
16:25:43 3 Rothschild's methodology was to include
16:25:45 4 in their data set all publicly traded US
16:25:50 5 airlines where the data was available?

16:25:52 6 A. I don't -- I don't recall
16:25:56 7 frankly whether he included all publicly
16:25:58 8 traded. I think my recollection is he
16:26:00 9 included these four low cost carriers
16:26:03 10 because he thought those were
16:26:04 11 appropriate.

16:26:06 12 Q. Now, in connection with the
16:26:07 13 work that you and your team did, did you
16:26:10 14 review any of the bankruptcy filings that
16:26:16 15 these other network carriers made in
16:26:21 16 2001, 2003 and 2005 as you referenced
16:26:23 17 them earlier?

16:26:24 18 A. Again, as I said earlier, I
16:26:27 19 looked at the financial projections
16:26:29 20 associated with those disclosure
16:26:33 21 statements that Mr. Resnick used in this
16:26:36 22 declaration, or highlighted in his
16:26:40 23 declaration.

16:26:40 24 Q. Are you aware that the other
16:26:41 25 airlines, the other network carriers,

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16:26:43 2 excuse me, referenced the low cost
16:26:45 3 carriers in their comp set in their
16:26:48 4 filings with bankruptcy courts?

16:26:49 5 A. I am aware in certain cases
16:26:51 6 they did, yes.

16:26:51 7 Q. And in particular, are you
16:26:52 8 aware that Delta Airlines in its 2005
16:26:56 9 proceeding referenced the low cost
16:26:59 10 carriers?

16:26:59 11 A. Again, I don't recall the
16:27:02 12 specific ones, but yes, they did use some
16:27:04 13 of them.

16:27:04 14 Q. Let me try to refresh your
16:27:08 15 memory.

16:27:19 16 MR. POLLACK: May I approach
16:27:21 17 again, Judge?

16:27:23 18 THE COURT: Sure.

16:27:26 19 Q. So for the record, I've handed
16:27:28 20 you what we've marked for identification
16:27:31 21 as American Airlines Exhibit 1704.

16:27:34 22 MR. POLLACK: This document
16:27:34 23 has not yet been moved into

16:27:36 24 evidence, Judge.

16:27:42 25 Q. I'll represent to you that

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16:27:44 2 this is a declaration submitted in
16:27:47 3 support of Delta Airlines' efforts to --
16:27:52 4 for distressed termination of their
16:27:54 5 pilots' pension plan. You can see that
16:27:57 6 time stamp across the top of this
16:27:59 7 document, it was publicly filed on August
16:28:01 8 4th, 2006. I take it you haven't
16:28:03 9 reviewed this particular document before?

16:28:05 10 A. No.

16:28:05 11 Q. I'd like to very quickly then,
16:28:08 12 I'll give you every opportunity you like
16:28:09 13 to do so, but I would like to direct your
16:28:11 14 attention to page 16 of the document.

16:28:25 15 A. Your Honor, I'm happy to look
16:28:26 16 at page 16 but is this is an 18 page
16:28:29 17 document with no context for me.

16:28:30 18 THE COURT: Let's see what the

16:28:31 19 question is and I'm sure that
16:28:33 20 people will pop up their views from
16:28:35 21 counsel table shortly.
16:28:37 22 Q. The only context that I'm
16:28:38 23 asking you is your recollection of their
16:28:42 24 reference to low cost carriers as
16:28:43 25 relevant to their bankruptcy proceeding.

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16:28:45 2 For that I'm directing your attention to
16:28:47 3 page 16. Particularly the -- sixth line
16:28:53 4 down.

16:28:54 5 MS. KRIEGER: I'm going to
16:28:55 6 object; foundation.

16:28:56 7 THE COURT: I don't believe
16:28:58 8 he's testified that he has a
16:28:59 9 recollection. So I don't know that
16:29:01 10 there's anything for him to
16:29:03 11 remember. So I'll sustain the
16:29:04 12 objection to that question.

16:29:07 13 Q. Let me rephrase the question.

16:29:08 14 You said that you don't remember the
16:29:09 15 extent to which Delta Airlines relied
16:29:13 16 upon low cost carriers in its filings; is
16:29:17 17 that right?

16:29:17 18 A. I said that I had read the
16:29:19 19 projection financial section of the
16:29:20 20 disclosure statement associated with Mr.
16:29:23 21 Resnick's citing of it as a rationale for
16:29:26 22 the margin. So that's the extent of what
16:29:29 23 I've read. This is a declaration
16:29:30 24 completely separate and apart from that
16:29:33 25 disclosure statement. So I've never read

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16:29:36 2 this document.

16:29:36 3 Q. Do you have a recollection
16:29:37 4 sitting here today of whether Delta
16:29:41 5 Airlines relied upon the performance of
16:29:44 6 low cost carriers in support of its
16:29:46 7 bankruptcy proceeding?

16:29:47 8 A. Again, I'm not trying to be

16:29:49 9 difficult. I answered before that I
16:29:50 10 believe there were a few that they used
16:29:52 11 as LCCs, I just couldn't recall the
16:29:54 12 specific ones.

16:29:54 13 Q. So I want you to read with me
16:29:56 14 the line beginning on page 16 --

16:30:00 15 MS. KRIEGER: Objection; your
16:30:01 16 Honor, beyond the scope of the
16:30:03 17 direct.

16:30:03 18 THE COURT: I'm just --

16:30:05 19 MS. KRIEGER: This is a
16:30:06 20 pension plan termination.

16:30:08 21 THE COURT: I think he's given
16:30:12 22 you an answer to your question. So
16:30:16 23 I'm not quite sure what more you're
16:30:18 24 going to get out of this witness.
16:30:23 25 I'm not saying there isn't a way to

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16:30:27 2 phrase the question where there is
16:30:29 3 another minor point or two, but I'm

16:30:30 4 not sure. He hasn't read this
16:30:32 5 document and doesn't seem really to
16:30:35 6 disagree with you to the details he
16:30:38 7 just doesn't know.

16:30:39 8 So I'm a little concerned that
16:30:43 9 we're not going to be spending
16:30:45 10 meaningful time discussing this,
16:30:48 11 but I'll give you another question
16:30:50 12 or two and we'll see where we end
16:30:51 13 up.

16:30:53 14 Q. The last question I was going
16:30:54 15 to ask is whether the line that begins
16:30:56 16 recent airline industry trends would
16:30:58 17 refresh your recollection as to whether
16:31:00 18 Delta in fact relied upon the LCCs in
16:31:04 19 support of its petition.

16:31:05 20 A. Again, I just don't recall
16:31:08 21 other than what I've previously said and
16:31:10 22 this appears also to be a declaration in
16:31:13 23 support of a pension termination where
16:31:15 24 they're making arguments around the fact
16:31:17 25 that the LCCs don't have defined benefit

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16:31:19 2 plans. So the context of this could be,
16:31:22 3 frankly, very different.

16:31:23 4 Q. It doesn't aid your
16:31:24 5 recollection one way or the other,
16:31:26 6 correct?

16:31:26 7 A. Correct.

16:31:27 8 MR. POLLACK: We will move on
16:31:28 9 and offer this document later, your
16:31:32 10 Honor.

16:31:45 11 Q. Have you reviewed the
16:31:46 12 testimony of Mr. Kasper that's been
16:31:48 13 offered in this proceeding?

16:31:48 14 A. I reviewed this declaration
16:31:52 15 and parts of his testimony. I don't know
16:31:53 16 if I've done all of it.

16:31:55 17 Q. And based upon the review that
16:31:56 18 you did conduct, do you understand Mr.
16:31:59 19 Kasper's testimony that American Airlines
16:32:03 20 faces, American Airlines today faces an
16:32:04 21 increasing degree of competition from the
16:32:07 22 low cost carriers than did the network

16:32:11 23 carriers in prior years?

16:32:12 24 A. I recollect that's his

16:32:14 25 testimony.

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16:32:14 2 Q. Do you have in mind his

16:32:16 3 testimony that today American Airlines

16:32:19 4 faces competition from low cost carriers

16:32:21 5 on 49 of its top 50 domestic routes?

16:32:25 6 A. Again, I believe that was his

16:32:27 7 testimony.

16:32:27 8 Q. I take it from what you

16:32:28 9 testified in your direct earlier today

16:32:30 10 you have no reason to dispute the fact of

16:32:33 11 that LCC competition, right?

16:32:35 12 A. I don't think on direct I

16:32:38 13 anything about 49 of 50 routes. That's

16:32:40 14 his fact. I wouldn't dispute the notion

16:32:42 15 that there is competition from LCCs.

16:32:44 16 Q. Would you dispute Mr. Kasper's

16:32:48 17 testimony that as of the end of 2011, 78

16:32:53 18 percent of American's domestic passengers
16:32:57 19 had the opportunity to fly on an LCC on
16:33:00 20 their particular route?
16:33:01 21 A. Again, not surprising.
16:33:03 22 American is a network carrier who
16:33:05 23 competes against lots of folks. It
16:33:06 24 doesn't mean I believe that LCCs are
16:33:09 25 comparable.

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16:33:09 2 Q. Now, you testified that the
16:33:20 3 EBITDAR margin sought by American in this
16:33:23 4 proceeding would make it, the best
16:33:26 5 performing airline in the industry, in
16:33:29 6 the industry by far, that was your
16:33:31 7 testimony, wasn't it?

16:33:31 8 A. Yes.

16:33:31 9 Q. And when you made that
16:33:33 10 statement, you did not intend to include
16:33:37 11 anything about the other three network
16:33:38 12 carriers; is that fair?

16:33:40 13 A. That's a fair statement.

16:33:41 14 Q. So you were excluding all

16:33:43 15 other domestic -- all other US airlines,

16:33:47 16 weren't you?

16:33:47 17 A. No, I was excluding Allegiant,

16:33:49 18 Alaska, JetBlue, and Spirit.

16:33:55 19 Q. Southwest?

16:33:56 20 A. Its margins are even better

16:34:00 21 than southwest, which is remarkable.

16:34:02 22 Q. Are there any airlines that

16:34:03 23 you were including beyond US Airways,

16:34:07 24 Delta, American -- excuse me, US Airways,

16:34:10 25 Delta and United?

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16:34:12 2 A. Those were the primary.

16:34:13 3 Q. Now, with respect to your

16:34:15 4 Exhibit 101, if you expanded your comp

16:34:21 5 set to include the universe that

16:34:23 6 Rothschild included, would you

16:34:26 7 acknowledge that those -- the few entries

16:34:33 8 that you have annotated with circles

16:34:35 9 would be considerably more?

16:34:38 10 A. Yes. I mean we could look at

16:34:41 11 the Resnick declaration because I think

16:34:43 12 that's his data set, so yes, there would

16:34:45 13 be more.

16:34:46 14 Q. Have you attempted to do that

16:34:47 15 analysis?

16:34:48 16 A. Well I reviewed the Resnick

16:34:50 17 declaration so I saw those numbers.

16:34:51 18 Q. I'm asking have you attempted

16:34:53 19 to rework your Exhibit 101 by expanding

16:34:56 20 the data set?

16:34:57 21 A. No, because as I argued we

16:34:59 22 don't believe those are comparables.

16:35:00 23 Q. Similarly for your Exhibit

16:35:04 24 102, this is limited to the airlines that

16:35:08 25 you denote there, correct?

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16:35:09 2 A. That's correct.

16:35:10 3 Q. And if you expanded the
16:35:13 4 universe of airlines that you considered
16:35:15 5 to include the data set that Rothschild
16:35:17 6 looked at, do you acknowledge that this
16:35:20 7 picture would look appreciably different?

16:35:22 8 A. I haven't done it, but it
16:35:24 9 would look different, yes.

16:35:37 10 Q. You're aware of the analyst
16:35:38 11 projections for the US airline industry
16:35:40 12 for 2013?

16:35:43 13 A. Generally speaking, yes.

16:35:45 14 Q. You've reviewed those
16:35:46 15 forecasts, haven't you?

16:35:47 16 A. Generally, yes.

16:35:48 17 Q. Based on your review and your
16:35:50 18 understanding, you accept that the
16:35:53 19 analysts are projecting increased
16:35:55 20 earnings for the airlines in general
16:35:57 21 going through 2013, correct?

16:35:59 22 A. That's generally true.

16:36:24 23 Q. Now you spoke briefly in your
16:36:25 24 testimony about some of the other metrics
16:36:26 25 that Mr. Resnick and Rothschild team

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16:36:29 2 utilized in reference to liquidity,

16:36:32 3 credit ratings and so forth, right?

16:36:33 4 A. Yes.

16:36:33 5 Q. You dealt with some of those

16:36:35 6 in your declaration, correct?

16:36:37 7 A. I did.

16:36:37 8 Q. Let me see if we can find some

16:36:39 9 common ground on a few items before we

16:36:42 10 wade into this?

16:36:43 11 A. That would be great.

16:36:44 12 Q. All right. With respect to --

16:36:46 13 first let me ask your conceptual

16:36:48 14 question.

16:36:48 15 I take it you agree that it's

16:36:50 16 appropriate to step back and look at a

16:36:52 17 variety of financial metrics in assessing

16:36:54 18 an airline's performance as opposed to

16:36:56 19 isolating one or two?

16:36:57 20 A. I think that's a fair

16:36:58 21 statement.
16:36:58 22 Q. With respect to liquidity, you
16:37:03 23 understand that analysts generally have
16:37:06 24 identified a liquidity level of 20
16:37:09 25 percent, cash to revenue, as appropriate

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16:37:11 2 for the US airlines?
16:37:13 3 A. It's a metric they use, yes.
16:37:15 4 Q. Aside from the metric, I'm
16:37:18 5 asking you now specifically about
16:37:20 6 specifically to the quantum that they've
16:37:23 7 identified as appropriate. Do you
16:37:24 8 understand that to be 20 percent?
16:37:25 9 A. It is. The only caveat I
16:37:28 10 would say is the point in time quantum,
16:37:30 11 right, because markets change and fuel
16:37:32 12 prices change and airlines change and
16:37:35 13 consolidate. So yes, I think today
16:37:38 14 that's a reasonable assumption.
16:37:39 15 Q. And you just said you yourself

16:37:42 16 view that as a reasonable assumption
16:37:44 17 today in today's market, correct?
16:37:46 18 A. In today's market, yes.
16:37:55 19 Q. Again, broadly speaking and
16:37:58 20 conceptually, if American found itself in
16:38:00 21 a position where it needed to raise
16:38:01 22 capital, you don't dispute that its
16:38:03 23 performance relative to its peers would
16:38:06 24 impact its ability to access the capital
16:38:08 25 markets on competitive terms?

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16:38:11 2 A. I think that's true for equity
16:38:14 3 and to some degree for unsecured debt.
16:38:16 4 Maybe a little less true for secured debt
16:38:19 5 since it's generally financed by
16:38:21 6 aircraft.
16:38:21 7 Q. Let's talk about secured debt.
16:38:24 8 We spoke of this last week in your
16:38:26 9 deposition. You recognize that relative
16:38:28 10 to other network carriers, American has a

16:38:31 11 much greater percentage of secured debt

16:38:32 12 today?

16:38:33 13 A. That's correct.

16:38:33 14 Q. And you accept what has been

16:38:36 15 testified in this record that today

16:38:38 16 American has readily few remaining

16:38:43 17 unencumbered assets?

16:38:44 18 A. Yes, I guess I would make two

16:38:47 19 comments.

16:38:47 20 Q. Do you accept that statement?

16:38:48 21 A. I don't.

16:38:49 22 Q. You don't.

16:38:50 23 A. Well, let me caveat that.

16:38:53 24 Today, yes. At the conclusion of this

16:38:56 25 bankruptcy, not so sure.

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16:38:57 2 Q. We're talking about today?

16:38:58 3 A. If the question was today,

16:39:00 4 then yes, I agree with you, yes.

16:39:02 5 Q. And you also accept that

16:39:06 6 American's ability to obtain or access a
16:39:09 7 revolving credit line likely would
16:39:13 8 require unencumbered assets, correct?

16:39:15 9 A. I would think it would require
16:39:17 10 some collateral, yes.

16:39:17 11 Q. And today, you don't think
16:39:19 12 that -- you agree American doesn't have
16:39:22 13 the ability to do so, right?

16:39:23 14 A. As we sit in this courtroom,
16:39:25 15 that's right. But I don't think that may
16:39:26 16 be the case in six months.

16:39:28 17 Q. And with respect to unsecured
16:39:29 18 debt, conceptually, you agree that the
16:39:34 19 better one's credit rating, the better
16:39:36 20 their borrowing costs, right?

16:39:38 21 A. That's generally true.

16:39:39 22 Q. Switching gears for a moment
16:40:09 23 and talking about the amount of requested
16:40:11 24 labor cost savings. You've testified
16:40:14 25 that -- well, you accept that based on

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16:40:19 2 the review that you and your team
16:40:21 3 conducted, American's current labor costs
16:40:24 4 are above market when compared to its
16:40:27 5 competitive peers, right?

16:40:27 6 A. Yes, I don't think there's any
16:40:30 7 disagreement that American's labor costs
16:40:32 8 are above market.

16:40:34 9 Q. And in your comparison you
16:40:35 10 looked at Delta, United and US Airways?

16:40:38 11 A. That was our primary focus.

16:40:39 12 Q. And you advised the APA of
16:40:41 13 your view that American's labor costs
16:40:44 14 were in excess of its competitive peers,
16:40:46 15 didn't you?

16:40:46 16 A. Yes, though they could have
16:40:48 17 advised us. Yes, they understand that.

16:40:50 18 Q. And again, conceptually you
16:40:53 19 agree that aligning labor costs to one's
16:40:56 20 competitive peer group is necessary for
16:40:58 21 sustaining profitability, don't you?

16:41:00 22 A. Could you repeat that.

16:41:01 23 Q. Conceptually you agree that
16:41:03 24 aligning labor costs with one's

16:41:06 25 competitive peer group is necessary for

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16:41:08 2 profitability?

16:41:08 3 A. What I would say is we advice,
16:41:12 4 have advised our client that marking your
16:41:17 5 labor contract to the appropriate market
16:41:19 6 based on your competitors is a reasonable
16:41:21 7 outcome.

16:41:21 8 Q. The US airline industry in
16:41:24 9 particular it's important that one has a
16:41:26 10 competitive labor group, yes?

16:41:27 11 A. I think that's true.

16:41:28 12 Q. For airlines the two largest
16:41:31 13 cost components are fuel and labor?

16:41:33 14 A. That's generally correct, yes.

16:41:36 15 Q. You accept that fuel is by and
16:41:37 16 large outside of their control, yes?

16:41:39 17 A. Yes, that's generally the
16:41:42 18 case.

16:41:42 19 Q. It's important to control what

16:41:43 20 you can, isn't it?
16:41:44 21 A. I guess that's true, yes.
16:41:46 22 Q. Now, if you assume,
16:41:52 23 hypothetically, that the EBITDAR target
16:41:55 24 on which American's business plan is
16:41:57 25 based is appropriate, I know you disagree

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16:42:00 2 with that, but I want you to --
16:42:05 3 A. Still sitting here.
16:42:06 4 Q. Would you agree that its
16:42:08 5 stand-alone business plan requires the
16:42:10 6 labor concessions in order to meet that
16:42:12 7 target?
16:42:13 8 A. Not necessarily, right.
16:42:16 9 They've made a series of assumptions
16:42:18 10 around revenue and other labor costs,
16:42:20 11 non-labor costs that form the basis for
16:42:24 12 the labor ask. So what's to say they
16:42:26 13 couldn't generate a billion two in
16:42:28 14 revenue. I mean what their judgment

16:42:30 15 changed.

16:42:30 16 Q. Let's talk about it.

16:42:32 17 A. They've essentially argued
16:42:34 18 that labor is controllable and the other
16:42:35 19 two are items that they can, you know,
16:42:38 20 fit certain numbers to.

16:42:40 21 Q. In the course of your work,
16:42:42 22 you have not identified any other
16:42:44 23 non-labor costs that American can extract
16:42:48 24 beyond those contained in its business
16:42:51 25 plan, have you?

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16:42:51 2 A. That's not true.

16:42:52 3 Q. Well I'll give you your
16:42:56 4 deposition transcript.

16:42:56 5 A. Sure.

16:43:36 6 Q. I want to direct your
16:43:37 7 attention in your transcript to page 28.
16:43:53 8 You were deposed just last week, five
16:43:56 9 days ago, right?

16:43:56 10 A. Yes, that's right.

16:43:57 11 Q. Were you asked this question

16:43:58 12 and did you give this answer question,

16:44:01 13 line 13: "Did Lazard attempt to identify

16:44:04 14 additional opportunities for non-labor

16:44:05 15 cost savings at American Airlines?"

16:44:08 16 Answer, "We did not."

16:44:10 17 Was that your sworn testimony

16:44:11 18 five days ago?

16:44:11 19 A. It was. Just to be clear, the

16:44:16 20 context of that was relative to the

16:44:18 21 company's plan, right, so they had given

16:44:20 22 us the plan with a series of assumptions

16:44:22 23 and output, and as I stated earlier, they

16:44:24 24 told us you couldn't run sensitivities,

16:44:27 25 you couldn't change the model, you

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16:44:29 2 couldn't adjust one line item because it

16:44:32 3 was a model that took two weeks to then

16:44:34 4 rerun.

16:44:35 5 So our ability to come up with
16:44:36 6 a different set of revenue or non-labor
16:44:38 7 cost assumptions was near impossible.

16:44:42 8 MR. POLLACK: Judge, I'd ask
16:44:44 9 that that all be stricken as
16:44:46 10 nonresponsive to the question.

16:44:47 11 THE COURT: Well I'll just say
16:44:48 12 if you expand your answers beyond
16:44:51 13 the question, we may be here a
16:44:53 14 very, very long time. So I would
16:44:54 15 just leave that to your counsel to
16:44:56 16 do on redirect. There may not be
16:45:01 17 enough days in this calendar year
16:45:03 18 for the trial then.

16:45:03 19 THE WITNESS: Okay, fair
16:45:05 20 enough.

16:45:05 21 Q. You identified the first
16:45:06 22 component as revenue, right?

16:45:08 23 A. Where?

16:45:09 24 Q. Well, when I asked you the
16:45:11 25 predicate question as to if you assume

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16:45:14 2 the reasonableness of the EBITDAR target,
16:45:19 3 which is the labor ask necessary, you
16:45:20 4 said that you might want to reexamine
16:45:22 5 revenues and non-labor cost
16:45:25 6 opportunities, right? Now I'll ask you
16:45:27 7 what you did around the revenue
16:45:29 8 opportunity.

16:45:29 9 And you will agree with me,
16:45:30 10 would you not, that you have not
16:45:34 11 identified additional incremental revenue
16:45:37 12 opportunities beyond the billion dollars
16:45:38 13 of incremental revenue that is projected
16:45:41 14 in American's business plan?

16:45:43 15 A. In the interest of time I will
16:45:45 16 say yes.

16:45:45 17 Q. Now is it fair to say that
16:45:58 18 your criticism of the business plan is
16:45:59 19 that on the one hands, as it relates to
16:46:01 20 the cornerstone strategy, that American
16:46:05 21 is following too much of the same, and on
16:46:11 22 the other hand, with respect to its fleet

16:46:13 23 plan, that American is looking to do too
16:46:16 24 much differently?
16:46:19 25 A. I don't think that's a fair

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16:46:20 2 characterization.
16:46:20 3 Q. Let's unpack it and talk about
16:46:23 4 each one in turn. I first want to talk
16:46:26 5 to you about the cornerstone strategy.
16:46:28 6 You say in your declaration,
16:46:30 7 and I'll refer you to paragraph 11 at
16:46:33 8 page 8, that "American's business plan
16:46:43 9 largely reflects the same, generally
16:46:45 10 speaking, unsuccessful cornerstone
16:46:47 11 strategy paired with the unprecedented
16:46:47 12 aircraft purchase order."

16:46:52 13 Is it your view that the
16:46:55 14 business plan is premised, and I believe
16:46:58 15 you gave this testimony just an hour ago,
16:47:00 16 is predicated on the same unsuccessful
16:47:03 17 cornerstone strategy that it's pursued

16:47:05 18 for the last three years?
16:47:06 19 A. I do believe it's
16:47:09 20 fundamentally premised on the cornerstone
16:47:11 21 strategy.
16:47:12 22 Q. And it's your view that that
16:47:15 23 same fundamental strategy will not
16:47:17 24 succeed as a stand-alone plan, right?
16:47:19 25 A. Over the long term, that's

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16:47:21 2 correct.
16:47:21 3 Q. I think in response to one of
16:47:28 4 Ms. Krieger's questions you testified
16:47:30 5 that you put an asterisk next to your
16:47:33 6 characterization of the business plan as
16:47:34 7 the same cornerstone strategy, right?
16:47:35 8 A. Yes.
16:47:36 9 Q. So I want to focus on what
16:47:38 10 that asterisk denotes in your mind. You
16:47:43 11 recognize and accept that it is not the
16:47:45 12 same strategy for American to attempt to

16:47:48 13 re-gauge its fleet through the increased
16:47:50 14 utilization of large regional jets,
16:47:53 15 correct?
16:47:54 16 A. Again, we can parse words, but
16:47:57 17 it's an incremental step relative to the
16:48:00 18 cornerstone strategy designed to maximize
16:48:02 19 that network.
16:48:03 20 Q. Nor is it the same strategy
16:48:04 21 that American has pursued to date to
16:48:07 22 expand its domestic code sharing
16:48:11 23 relationships to increase fees across its
16:48:15 24 principal gateways, correct?
16:48:16 25 A. That is correct, but the

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16:48:18 2 caveat is that they don't have any code
16:48:20 3 shares aligned today. That all has to
16:48:22 4 happen.
16:48:22 5 Q. Nor is it the same strategy
16:48:24 6 for American to attempt to consider to
16:48:27 7 increase its international flying through

16:48:29 8 the completion of JBAs and other means;

16:48:32 9 is that fair?

16:48:32 10 A. It's an incremental

16:48:34 11 initiative, I would agree.

16:48:35 12 Q. And finally, would you agree

16:48:37 13 that it is an incremental initiative for

16:48:40 14 American to plan to reinvest in its fleet

16:48:42 15 and products and service offerings where

16:48:44 16 it hasn't been able to do so in the past?

16:48:45 17 A. That's right. I think that's

16:48:47 18 -- the characterization of the

16:48:48 19 cornerstone plus a massive re-fleeting is

16:48:51 20 accurate.

16:48:51 21 Q. And in fact, you understand

16:48:55 22 that the cumulative impact of these

16:48:57 23 various new initiatives and business plan

16:49:01 24 are projected collectively to generate a

16:49:03 25 billion dollars of annual incremental

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16:49:06 2 revenues by 2017, right?

16:49:08 3 A. Correct.

16:49:10 4 Q. I want to break down the
16:49:12 5 revenue assumptions and ask you about the
16:49:14 6 work that Lazard did around each of
16:49:17 7 those.

16:49:17 8 And we'll start with the
16:49:20 9 re-gauging. You don't dispute that
16:49:25 10 American currently has far fewer large
16:49:27 11 regional jets and by large I mean no more
16:49:30 12 than 50 seats in its fleet than its
16:49:32 13 competitors, correct?

16:49:33 14 A. That's generally correct, yes.

16:49:34 15 Q. Nor do you have any basis to
16:49:37 16 doubt that the increased utilization of
16:49:39 17 large regional jets as presupposed in the
16:49:42 18 business plan, will increase American's
16:49:45 19 revenues, do you?

16:49:45 20 A. I think as I stated, at least
16:49:48 21 in our deposition, my deposition, that's
16:49:52 22 an assumption American's plan. We've
16:49:55 23 taken that at face value. We don't have
16:49:57 24 the ability to analyze that. We don't
16:50:00 25 have the detailed analysis that sits

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16:50:02 2 behind it.

16:50:03 3 Q. So as stated in the business

16:50:05 4 plan, you are neither agreeing or

16:50:08 5 disagree with the revenue assumption as

16:50:09 6 relates to increased regional jet

16:50:12 7 utilization?

16:50:12 8 A. That's fair.

16:50:13 9 Q. You have no basis to dispute

16:50:14 10 it?

16:50:15 11 A. I don't have any basis to be

16:50:17 12 able to judge it.

16:50:18 13 Q. Were there particular requests

16:50:20 14 around the utilization of regional jets

16:50:22 15 that you've not received?

16:50:24 16 A. We've asked for information

16:50:26 17 around the revenue tie-in to the, you

16:50:28 18 know, the benefit of increasing revenue

16:50:31 19 relative to the regional up gauging and

16:50:35 20 have not received any significant details

16:50:38 21 around that.

16:50:38 22 Q. Next with respect to the code
16:50:46 23 sharing assumptions in the business plan.
16:50:49 24 You likewise have no basis to dispute
16:50:52 25 that the increased code sharing that is

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16:50:55 2 built into the business plan would
16:50:56 3 increase American's revenues, right?
16:50:58 4 A. I guess. In fairness, that
16:51:00 5 one is incredibly difficult to gauge
16:51:05 6 because you actually have to have a code
16:51:07 7 sharing agreement which they don't have.

16:51:08 8 Q. And you've done no analysis as
16:51:10 9 to American's ability to expand its code
16:51:15 10 sharing relationships, have you?

16:51:17 11 A. We haven't, but I think you'd
16:51:19 12 be hard pressed to do that in a vacuum.

16:51:22 13 Q. I believe it was your
16:51:25 14 testimony that you also accept on its
16:51:27 15 face that the business plan increased
16:51:32 16 international flying assumptions will

16:51:34 17 lead to increased revenues, correct?

16:51:36 18 A. Yes. If they're able to
16:51:37 19 achieve what's in the plan it should lead
16:51:41 20 to increased revenues.

16:51:43 21 Q. And you've acknowledged here
16:51:45 22 today as well that American's product
16:51:47 23 offerings and service amenities are
16:51:49 24 subpar, in your terms, relative to its
16:51:50 25 peers?

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16:51:51 2 A. Yes, I would agree with that.

16:51:52 3 Q. You'd also agree that those
16:51:54 4 amenities and products offerings are
16:51:56 5 particularly relevant to the high value
16:51:58 6 customer that American's business plan is
16:52:00 7 targeted at, correct?

16:52:01 8 A. That's correct.

16:52:02 9 Q. And conceptually you don't
16:52:09 10 dispute the premises that restoring the
16:52:13 11 fleet and adding such products and

16:52:18 12 services will help American compete for
16:52:22 13 the business of the high value customer,
16:52:25 14 do you?

16:52:25 15 A. Again, I don't -- adding new
16:52:32 16 aircraft and new amenities should help
16:52:34 17 with the high value customer.

16:52:36 18 Q. Let's talk about the fleet
16:52:38 19 plan itself and the re-fleeting order
16:52:41 20 that you testified to. As you said, the
16:52:45 21 business plan assumes a substantial
16:52:47 22 acquisition of new aircraft, doesn't it?

16:52:49 23 A. It does.

16:52:50 24 Q. That includes both replacement
16:52:53 25 of existing and aging aircraft and in the

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16:52:55 2 later years of the business plan
16:52:57 3 expansion of the fleet itself, right?

16:53:00 4 A. That's correct.

16:53:00 5 Q. And you're aware that Mr.
16:53:03 6 Horton has characterized the re-fleeting

16:53:05 7 plan as transformative?

16:53:07 8 A. Yes, I'm aware, yes.

16:53:09 9 Q. And you yourself have

16:53:12 10 characterized the plan as the largest

16:53:15 11 aircraft purchase in aviation history,

16:53:18 12 haven't you?

16:53:18 13 A. I have.

16:53:18 14 Q. You heard Mr. James this

16:53:21 15 morning refer to it in the same terms,

16:53:23 16 right?

16:53:23 17 A. I did.

16:53:24 18 Q. Now again I hope to find a few

16:53:30 19 areas of common ground before we wade

16:53:32 20 into this. You accept that -- as we just

16:53:37 21 discussed you accept the fleet is subpar

16:53:39 22 relative to its peers, right?

16:53:41 23 A. It's an aged fleet, yes.

16:53:42 24 Q. You also accept that the aged

16:53:44 25 fleet has fuel and maintenance costs in

16:53:47 2 excess of those of its peers?

16:53:49 3 A. I agree.

16:53:53 4 Q. You further agree that the
16:53:54 5 introduction of new replacement aircraft
16:53:58 6 will appreciably reduce those fuel and
16:54:02 7 maintenance costs that American is now
16:54:03 8 facing, right?

16:54:04 9 A. It's your view of appreciably.
16:54:07 10 Yes, there's an assumption in the plan
16:54:08 11 that there will be reduced maintenance
16:54:10 12 and increased fuel savings which seems
16:54:12 13 reasonable given the introduction of a
16:54:14 14 new fleet.

16:54:15 15 Q. Now you have testified as in
16:54:18 16 your declaration that American has not
16:54:20 17 provided you and your team with
16:54:21 18 sufficient data to properly evaluate the
16:54:24 19 fleet plan content in relation to
16:54:27 20 potential alternatives?

16:54:28 21 A. Correct.

16:54:29 22 Q. First let me understand your
16:54:32 23 role in this process. Were you
16:54:33 24 personally involved in all of the

16:54:35 25 correspondence up and back with

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16:54:37 2 American's representatives, or was that

16:54:39 3 your team?

16:54:39 4 A. It was a mix. Certain

16:54:42 5 meetings and correspondence I was

16:54:43 6 involved and others it was members of my

16:54:45 7 team.

16:54:46 8 Q. Were there certain members of

16:54:47 9 your team that were principally

16:54:49 10 responsible for that correspondence?

16:54:50 11 A. I would say more of it fell to

16:54:53 12 my associate Ben Tisdale.

16:54:58 13 Q. And I gather that in preparing

16:55:01 14 your declaration --

16:55:02 15 A. I'm sorry, one other member,

16:55:04 16 Andrew Chang.

16:55:04 17 Q. I don't want to slight

16:55:06 18 anybody?

16:55:06 19 A. Yes. It's his big moment in

16:55:09 20 the public record.
16:55:09 21 Q. In preparing your declaration,
16:55:15 22 and particularly appendix B to your
16:55:17 23 declaration, where you recite what you've
16:55:21 24 characterized as the history of Lazard's
16:55:23 25 diligence requests, you conferred with

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16:55:25 2 your colleagues, Mr. Chang and Mr.
16:55:27 3 Tisdale to ensure that this was accurate
16:55:29 4 and comprehensive?

16:55:31 5 A. Yes, I believe so.

16:55:32 6 Q. And you're vouching for the
16:55:35 7 accuracy and comprehensive nature of this
16:55:37 8 appendix in court today, aren't you?

16:55:39 9 A. I am.

16:55:40 10 Q. Now you testified on direct
16:55:50 11 that today Lazard is subject to the same
16:55:52 12 protective order that applies to the
16:55:54 13 parties in this proceeding, right?

16:55:56 14 A. That's correct.

16:55:56 15 Q. You recognize that it took
16:55:59 16 several weeks in February for the lawyers
16:56:01 17 to negotiate the terms by which Lazard
16:56:04 18 would be bound by that protective order,
16:56:06 19 due?

16:56:06 20 A. It did.

16:56:07 21 Q. It wasn't until the end of
16:56:08 22 February in fact when that agreement was
16:56:10 23 reached, right?

16:56:11 24 A. That's correct.

16:56:11 25 Q. So the requests that Lazard

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16:56:17 2 first made in early February you were
16:56:20 3 involved in the production of that due
16:56:24 4 diligence request, correct?

16:56:24 5 A. That's correct.

16:56:26 6 Q. And based on your personal
16:56:29 7 involvement, you know that a lengthy
16:56:32 8 seven page list of information requests
16:56:34 9 was provided to American Airlines on

16:56:37 10 behalf of the APA, right?

16:56:38 11 A. It was seven pages, yes.

16:56:40 12 Q. Is it fair to say --

16:56:43 13 A. We can debate about lengthy.

16:56:44 14 Q. Is it fair to say that that

16:56:46 15 list included more than 60 separate

16:56:48 16 information requests?

16:56:48 17 A. It wouldn't surprise me.

16:56:50 18 Q. And among the items included

16:56:56 19 in that request was a particular request

16:56:58 20 that related to the fleet order, wasn't

16:57:00 21 there?

16:57:00 22 A. That's correct.

16:57:01 23 Q. And I want to be very precise

16:57:04 24 as we were in discussions last week about

16:57:06 25 this. I'm going to give you the

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16:57:08 2 opportunity to review the document which

16:57:09 3 is in evidence as American Exhibit 1550.

16:57:36 4 I'm going to direct your attention to

16:57:37 5 page 4, numbered page 4 of the diligence
16:57:40 6 list.
16:57:41 7 A. Okay.
16:57:52 8 Q. And what I'm going to direct
16:57:55 9 you attention to is small (e) about a
16:57:57 10 third of the way down that page which
16:57:59 11 reads "Copy of a" -- and I'm quoting
16:58:03 12 literally from the request here, "copy of
16:58:06 13 six year model with new aircraft as capex
16:58:09 14 instead of operating leases in order to
16:58:09 15 understand the return on incremental
16:58:11 16 invested capital."
16:58:13 17 Is that the request that
16:58:16 18 Lazard made of American and its
16:58:19 19 representatives in February relating to
16:58:21 20 the fleet order?
16:58:22 21 A. That's the request in this
16:58:24 22 document. There were obviously
16:58:25 23 subsequent requests.
16:58:26 24 Q. With respect to this
16:58:27 25 particular document, were there any other

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16:58:29 2 requests relating to the fleet order?

16:58:30 3 A. I don't believe so.

16:58:31 4 Q. Now you understand that the

16:58:37 5 business plan is predicated on the

16:58:39 6 assumption that a significant percentage

16:58:42 7 of the new aircraft will be leased as

16:58:44 8 opposed to purchased, right?

16:58:46 9 A. Correct.

16:58:47 10 Q. We're not going to get into

16:58:50 11 the specific percentages because those

16:58:52 12 are confidential, but what Lazard is

16:58:54 13 asking for by this request is to remodel

16:58:58 14 the plan on the assumption that all of

16:59:00 15 the aircraft are to be purchased, right?

16:59:02 16 A. That's correct.

16:59:03 17 Q. And in response to that

16:59:09 18 request, American through its

16:59:13 19 representatives told you that no such

16:59:16 20 modeling or analysis existed because that

16:59:18 21 was not the way on which the business

16:59:20 22 plan was predicated, didn't they?

16:59:22 23 A. A familiar answer, yes, that's

16:59:25 24 what they answered.

16:59:26 25 Q. You have testified and in your

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16:59:36 2 declaration you specifically address an

16:59:42 3 analysis on the return on investment

16:59:43 4 associated with the aircraft order,

16:59:46 5 correct?

16:59:46 6 A. Correct.

16:59:47 7 Q. And that is commonly referred

16:59:50 8 to as a ROIC analysis, a return on

16:59:54 9 invested capital analysis?

16:59:55 10 A. That's right.

16:59:55 11 Q. Now, that particular request

17:00:00 12 for a ROIC analysis was first put in

17:00:03 13 writing in late March of this year,

17:00:06 14 wasn't it?

17:00:06 15 A. No, I think it's in page 4-G

17:00:10 16 we just looked at, return on invested

17:00:14 17 capital, I presume.

17:00:14 18 Q. I see. So --

17:00:21 19 A. In order to understand the
17:00:22 20 return on incremental invested capital.
17:00:25 21 Q. You remember that in late
17:00:26 22 March your team provided what they
17:00:28 23 characterized as a supplemental diligence
17:00:31 24 request to American Airlines, didn't
17:00:35 25 they? You can look at your appendix B.

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17:00:37 2 A. Yes, that's correct.
17:00:38 3 Q. In fact, of your declaration,
17:00:42 4 which has an entry for March 26th,
17:00:44 5 doesn't it?
17:00:45 6 A. It does.
17:00:46 7 Q. And in particular I'm
17:00:49 8 referring to the entry that Mr. Tisdale
17:00:51 9 sends an email to Mr. Chou of Rothschild
17:00:54 10 with an APA supplemental diligence
17:00:56 11 request on March 26th, right?
17:00:58 12 A. Correct.
17:00:59 13 Q. Did you review the

17:01:02 14 correspondence around that supplemental

17:01:04 15 request?

17:01:05 16 A. I believe so, but I don't

17:01:07 17 recall.

17:01:07 18 Q. Let me try to refresh your

17:01:09 19 memory. I'll give you what has been

17:01:25 20 marked as American Exhibit 1707. So

17:01:37 21 we're grounded, this is an email from Mr.

17:01:39 22 Tisdale, your colleague, to Mr. Chou on

17:01:41 23 March 26th. It shows that you among

17:01:43 24 others were copied. Do you see that?

17:01:44 25 A. I do.

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17:01:45 2 Q. Do you recall this email?

17:01:47 3 A. Let me just read it quickly.

17:01:58 4 Yes, I believe I've seen this.

17:01:59 5 Q. And read along with me. In

17:02:03 6 his request to Matt and James, your

17:02:06 7 colleague writes, "We have added two new

17:02:08 8 items highlighted in yellow in the

17:02:10 9 attached," doesn't he?

17:02:12 10 A. That's what it says, yes.

17:02:13 11 Q. Those are items 5 and 6,

17:02:15 12 correct?

17:02:15 13 A. Correct.

17:02:16 14 Q. Those requests, and I'm

17:02:19 15 paraphrasing but you can characterize it

17:02:22 16 as you wish, those requests, the

17:02:24 17 investment analysis, refer to the product

17:02:25 18 enhancements in the first instance and

17:02:28 19 for the aircraft purchase in the second,

17:02:30 20 don't they?

17:02:30 21 A. They do, yes.

17:02:32 22 Q. And he refers to an attachment

17:02:34 23 which I'll direct your attention to the

17:02:35 24 third page of Exhibit 1707. Do you see

17:02:44 25 the two items that are highlighted? On

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17:02:46 2 this they're just in gray, not in yellow,

17:02:48 3 they correspond to his email?

17:02:50 4 A. Yes, though I can't really

17:02:52 5 read them, but.

17:02:54 6 Q. Can you make it out?

17:02:55 7 A. I assume it's referencing the

17:03:00 8 same statements in the email.

17:03:02 9 THE COURT: Counsel, I can't

17:03:03 10 read it either, maybe you just want

17:03:05 11 to read those highlighted portions

17:03:06 12 into the record, we trust you.

17:03:09 13 MR. POLLACK: I will represent

17:03:09 14 that the highlighted portions are

17:03:11 15 as quoted in the email itself,

17:03:13 16 number 5, "please provide all

17:03:15 17 analyses (including management and

17:03:17 18 board presentations) that relate to

17:03:19 19 the projected return on investment

17:03:21 20 associated with proposed (i.e., in

17:03:25 21 the business plan) and in-process

17:03:29 22 (e.g., seat purchases) product

17:03:30 23 enhancements."

17:03:32 24 Number 6, "please provide all

17:03:34 25 analyses (including management and

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17:03:36 2 board presentations) that relate to
17:03:38 3 the projected return on investment
17:03:40 4 associated with planned widebody
17:03:42 5 and narrowbody aircraft purchases."

17:03:45 6 Your Honor, we will provide a
17:03:47 7 more legible copy.

17:03:49 8 THE COURT: That's fine. I
17:03:50 9 didn't realize the text was
17:03:52 10 actually in the email. So I think
17:03:53 11 that's fine.

17:03:54 12 Q. But what I want to direct your
17:03:56 13 attention to on the attachment if you can
17:03:58 14 make it out is the second column
17:04:01 15 captioned date of request.

17:04:04 16 A. Yes.

17:04:04 17 Q. What is the date of request
17:04:06 18 associated with items 5 and 6?

17:04:08 19 A. 3/26.

17:04:09 20 Q. And you can see that for many
17:04:11 21 of the items that are on this

17:04:12 22 supplemental diligence list there are
17:04:15 23 dates of request that go back to February
17:04:17 24 9th, aren't there?
17:04:18 25 A. Not -- oh -- not on this list

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17:04:20 2 because it's only one page. On the
17:04:22 3 original list, yes, that's correct.
17:04:23 4 Q. No, I'm asking you for -- if
17:04:26 5 you look at the date of request column,
17:04:27 6 they're variable, some start in February,
17:04:29 7 others go through March?
17:04:31 8 A. Oh, there's one in February I
17:04:32 9 see, yes, that's right.
17:04:33 10 Q. This one, for these two
17:04:35 11 particular requests, they're dated March
17:04:38 12 26th, aren't they?
17:04:39 13 A. Yes.
17:04:40 14 Q. Now, in response to Mr.
17:04:50 15 Tisdale's email to Mr. Chou in late
17:04:53 16 March, the company through its

17:04:56 17 representatives advised Lazard that this
17:04:59 18 type of ROIC analysis did not exist,
17:05:03 19 didn't they?
17:05:03 20 A. They did.
17:05:05 21 Q. They told you that they
17:05:06 22 couldn't provide the analysis in the form
17:05:09 23 it was requested, didn't they?
17:05:10 24 A. That's correct.
17:05:12 25 Q. And they further advised you

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17:05:14 2 that the analysis implicated confidential
17:05:18 3 pricing information related to the
17:05:20 4 various components of its fleet order,
17:05:23 5 didn't they?
17:05:23 6 A. They told us there was some
17:05:28 7 confidentiality concerns with Boeing and
17:05:30 8 Airbus.
17:05:31 9 Q. As you testified at
17:05:32 10 deposition, you accepted and acknowledged
17:05:33 11 that reality, didn't you?

17:05:35 12 A. I had no reason to doubt them

17:05:37 13 on that.

17:05:37 14 Q. To protect the confidentiality

17:05:40 15 of that pricing information from its

17:05:43 16 manufacturers, what American told you

17:05:45 17 they would do would be to provide a ROIC

17:05:47 18 analysis of the larger business plan

17:05:51 19 without getting into the details of the

17:05:53 20 fleet order, didn't they?

17:05:54 21 A. No, that's not my

17:05:57 22 recollection.

17:05:57 23 Q. That's not your memory. Do

17:06:00 24 you recall that they told you they would

17:06:01 25 give you a ROIC analysis on a macro level

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17:06:03 2 for the business plan as opposed to the

17:06:05 3 level you asked for?

17:06:06 4 A. No. In fact, going back to

17:06:10 5 217, in the meeting with Bev Goulet where

17:06:13 6 I was there in person, we asked for this

17:06:15 7 analysis again and she actually said I'm
17:06:19 8 sure we have that available and we
17:06:21 9 subsequently found out they did not have
17:06:23 10 it available and would need to create it.

17:06:26 11 MR. POLLACK: Judge, I would
17:06:27 12 ask again that the witness be
17:06:29 13 admonished.

17:06:30 14 THE COURT: Again, it's now
17:06:32 15 five after five, I don't see an end
17:06:34 16 in sight to this particular
17:06:35 17 witness. So please just answer the
17:06:38 18 question. It's a yes or no
17:06:39 19 question. So the answer is yes,
17:06:41 20 no, I can't answer that yes or no.
17:06:44 21 Again, your counsel will get a
17:06:46 22 chance to get up and ask you
17:06:47 23 questions if they need to.

17:06:50 24 THE WITNESS: Fair enough.

17:06:52 25 THE COURT: And probably look

17:06:53 2 forward to that opportunity, so you
17:06:54 3 wouldn't want to deprive them.

17:07:00 4 MR. BUTLER: Judge, would it
17:07:01 5 make any sense at all to take a
17:07:02 6 five minute bio break?

17:07:06 7 THE COURT: Let me ask how
17:07:08 8 much longer do we have? If the
17:07:10 9 answer is five minutes, then --

17:07:13 10 MR. POLLACK: I will not
17:07:14 11 finish this evening I can tell you
17:07:16 12 that.

17:07:18 13 THE COURT: So --

17:07:20 14 MR. POLLACK: Let me rephrase
17:07:21 15 that, this afternoon. I don't know
17:07:23 16 how late the court wants to go.

17:07:25 17 THE COURT: Let's take a five
17:07:26 18 minute break in light of that
17:07:29 19 welcome news and we'll talk about
17:07:31 20 it afterwards.

17:22:43 21 (A recess was taken.)

17:22:44 22 THE COURT: Please be seated.
17:22:45 23 All right. The first thing I want
17:22:47 24 to talk about is scheduling, how
17:22:48 25 much more you think you have?

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17:22:49 2 MR. POLLACK: I took advantage
17:22:56 3 over the break to try to reduce, so
17:22:58 4 I am cautiously optimistic. By
17:23:02 5 6:15, between 6 and 6:15 I can pass
17:23:05 6 the witness back.

17:23:06 7 THE COURT: All right, let's
17:23:08 8 try to do that.

17:23:10 9 And let me just understand the
17:23:12 10 rest of the case that's to be
17:23:15 11 presented, how many more witnesses
17:23:16 12 we have. I think we originally had
17:23:19 13 four. So I think when I had said
17:23:22 14 last week or the week before that
17:23:24 15 we'd go to two witnesses a day
17:23:27 16 route and people said no, we'll be
17:23:29 17 faster than that, I think we're on
17:23:30 18 the two witnesses a day route if
17:23:32 19 we're lucky. So we're really
17:23:35 20 looking at the earliest as being

17:23:38 21 done the end of the day Wednesday.

17:23:41 22 Is that a safe assumption?

17:23:45 23 MS. KRIEGER: I think that

17:23:45 24 would be a good conservative

17:23:47 25 assumption that we could finish by

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17:23:49 2 Wednesday.

17:23:51 3 THE COURT: Oh. All right, I

17:23:51 4 was afraid you were going the other

17:23:52 5 way with that, and by good

17:23:53 6 conservative assumption you mean

17:23:54 7 that it's likely.

17:23:56 8 MS. KRIEGER: I'm still

17:23:56 9 hopeful we can go quicker.

17:23:58 10 THE COURT: Oh, I was afraid

17:23:59 11 you were going the other way and

17:23:59 12 your conservative assumption saying

17:24:03 13 that it's iffy.

17:24:03 14 MR. JAMES: I'm told that they

17:24:04 15 filed a motion to strike one of our

17:24:05 16 witnesses. I haven't gotten the
17:24:06 17 electronic motion yet, but I heard
17:24:06 18 it from another lawyer here, so
17:24:08 19 we're going to have to go back and
17:24:10 20 brief that, a couple of us.

17:24:12 21 THE COURT: What witness is
17:24:14 22 that?

17:24:16 23 MR. JAMES: Heppner. John is
17:24:18 24 nodding.

17:24:21 25 MR. POLLACK: The witness is

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17:24:23 2 Heppner.

17:24:24 3 MR. JAMES: Segal.

17:24:26 4 THE COURT: An exceedingly
17:24:28 5 narrow subject of testimony, but
17:24:31 6 that's fine.

17:24:31 7 So in light of that that will
17:24:36 8 also take time out of the trial
17:24:37 9 day. So I guess we'll deal with
17:24:39 10 that. When do you want to respond

17:24:41 11 to that?

17:24:42 12 MR. JAMES: I don't even have

17:24:44 13 it yet, your Honor.

17:24:46 14 THE COURT: He's scheduled as

17:24:47 15 the fourth witness, so he would be

17:24:51 16 up by my calculation sometime

17:24:54 17 tomorrow afternoon. Certainly we

17:24:56 18 could move people around so that we

17:24:58 19 can push him off till Wednesday.

17:25:00 20 MR. JAMES: Absolutely.

17:25:01 21 THE COURT: You could get me

17:25:02 22 something as late as Wednesday

17:25:03 23 morning or Thursday, I'm sorry,

17:25:06 24 Wednesday morning or late Tuesday

17:25:08 25 night so we can talk about it

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17:25:09 2 before he goes on.

17:25:10 3 MR. JAMES: That's certainly

17:25:12 4 possible, doable.

17:25:14 5 THE COURT: All right. The

17:25:15 6 other thing is I'm happy to go
17:25:18 7 late. I don't have the force of
17:25:20 8 personality of one of the judges
17:25:22 9 that I clerked for, Judge Richey in
17:25:24 10 the district court in DC who had a
17:25:27 11 very unusual knack of moving things
17:25:30 12 along by sheer force of
17:25:33 13 personality, but I'm happy to go
17:25:36 14 late. So let's see where we are
17:25:37 15 and how long redirect might take at
17:25:39 16 that point because I'm always
17:25:42 17 concerned about letting a witness
17:25:44 18 go over the evening because having
17:25:47 19 in the not too distant past been in
17:25:50 20 your shoes, all lawyers pride
17:25:52 21 themselves on creative things they
17:25:53 22 can think about overnight and
17:25:55 23 additional questions that might be
17:25:56 24 asked and I won't blame anyone for
17:25:58 25 that. It's a temptation, so maybe

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17:26:02 2 we can see if we can cut that off.

17:26:04 3 With that said, let's proceed

17:26:05 4 and see where we end up about 6:15

17:26:08 5 or 6:30.

17:26:09 6 MR. POLLACK: Thank you,

17:26:10 7 Judge, and I will do my best to

17:26:12 8 accommodate the court and the

17:26:13 9 witness's desire to conclude this

17:26:15 10 this evening.

17:26:16 11 Q. I believe you testified

17:26:17 12 shortly before the -- on direct

17:26:20 13 examination with Ms. Krieger, that Lazard

17:26:22 14 was unable to run any sensitivity

17:26:24 15 analysis around the business plan,

17:26:25 16 correct?

17:26:26 17 A. I think what I testified to is

17:26:30 18 that we had asked the company to run it

17:26:31 19 and they were unable to do so given the

17:26:34 20 complexity of the model.

17:26:35 21 Q. Let me ask you about what the

17:26:37 22 company told you around running

17:26:40 23 sensitivity analyses. First of all, were

17:26:43 24 you present when the topic was discussed
17:26:46 25 with company representatives?

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17:26:47 2 A. I don't recall. I was at a
17:26:54 3 meeting in February, as I said earlier,
17:26:58 4 with Bev Goulet and the topic may have
17:27:01 5 come up, I just don't recall.

17:27:02 6 Q. Well, you testified about what
17:27:04 7 the company did or didn't provide
17:27:07 8 regarding the sensitivity analyses. Have
17:27:10 9 you been briefed by your team on this
17:27:12 10 topic?

17:27:12 11 A. I have.

17:27:13 12 Q. So you have an understanding
17:27:14 13 of what the company advised you and your
17:27:16 14 team, do you not?

17:27:16 15 A. I do.

17:27:18 16 Q. So let me probe that
17:27:19 17 understanding. The company told your
17:27:25 18 team that it was possible to run a

17:27:28 19 variety of different types of sensitivity
17:27:30 20 analyses around the business plan, didn't
17:27:32 21 they?
17:27:33 22 A. I don't recall that, no.
17:27:37 23 Q. Do you recall that they told
17:27:40 24 you that it would be possible to change
17:27:43 25 any number of inputs into the business

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17:27:45 2 plan and evaluate the outputs?
17:27:52 3 A. Again, I don't recall that
17:27:54 4 relative to the analyses that we wanted
17:27:56 5 run.
17:27:56 6 Q. Do you recall specifically
17:27:57 7 that the company told the Lazard
17:27:59 8 representatives, and let me clarify when
17:28:03 9 I'm referring to the company, I'm
17:28:04 10 including the McKinsey team as well as
17:28:08 11 part of this discussion, do you recall
17:28:11 12 that the company along with McKinsey
17:28:14 13 advised Lazard that a variety of

17:28:17 14 variables could be tested for, including
17:28:19 15 things such as changing the GDP growth
17:28:23 16 assumptions to the business plan?

17:28:25 17 A. There may have been some very
17:28:29 18 macro level assumptions, you know,
17:28:32 19 economic, environment, industry, those
17:28:34 20 kinds of things that could be changed,
17:28:35 21 but that's not where we were probing in
17:28:37 22 terms of the sensitivity analyses.

17:28:39 23 Q. Did they tell you that you
17:28:40 24 could change the capacity assumptions
17:28:42 25 related to the airlines?

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17:28:45 2 A. Again, I would categorize that
17:28:47 3 as kind of the macro industry
17:28:49 4 environment. So yes, I did understand
17:28:51 5 that.

17:28:51 6 Q. Did they also tell you you
17:28:53 7 could change the yield growth assumptions
17:28:55 8 in the business plan?

17:28:56 9 A. That one I don't recall.

17:28:57 10 Q. Do you recall whether they

17:28:58 11 told you you could change the passenger

17:29:00 12 growth assumptions of the business plan?

17:29:02 13 A. I don't recall.

17:29:02 14 Q. You could change the fuel

17:29:04 15 price assumptions and retest the business

17:29:07 16 plan?

17:29:07 17 A. That one my recollection is

17:29:13 18 that they came back and said if we did

17:29:14 19 that we would then potentially change how

17:29:17 20 we'd utilize our fleet and utilize routes

17:29:20 21 and so that got into the complication of

17:29:22 22 difficulty in running it, that was my

17:29:25 23 recollection.

17:29:25 24 Q. So let's explore that for a

17:29:27 25 moment. Do you accept the logic that if

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17:29:29 2 fuel prices are doubled, for example,

17:29:31 3 that that could have an impact on fare

17:29:33 4 prices?

17:29:33 5 A. Sure.

17:29:34 6 Q. And that if fare prices are

17:29:36 7 changed, that could have an impact on

17:29:39 8 passenger demands and revenues?

17:29:41 9 A. It could have an impact on

17:29:44 10 lots of things, yes.

17:29:44 11 Q. And you're familiar with the

17:29:46 12 testimony that Mr. Dichter of McKinsey

17:29:48 13 and Mr. Resnick of Rothschild gave on the

17:29:50 14 concept generally of interaction between

17:29:53 15 the cost and revenue sides of the models?

17:29:55 16 A. I'm generally aware of that,

17:29:57 17 yes.

17:29:57 18 Q. And conceptually, do you

17:29:59 19 accept the logic of those interaction

17:30:02 20 effects?

17:30:02 21 A. Hard to know, frankly, without

17:30:07 22 being inside the guts of the model, but

17:30:09 23 that's -- that's their declarations.

17:30:10 24 Q. Do you have any reason to

17:30:12 25 dispute that sitting here now?

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17:30:13 2 A. I don't.

17:30:13 3 Q. Now what the company told you

17:30:16 4 was that what they couldn't do would be

17:30:18 5 to rerun a network plan or to rerun a

17:30:21 6 fleet plan, didn't they?

17:30:22 7 A. No, I don't recollect it was

17:30:26 8 that specific.

17:30:27 9 Q. By the way, with regard to the

17:30:31 10 interaction effects, you testified on

17:30:34 11 your direct examination that if you

17:30:37 12 reduced the targeted EBITDAR margin by

17:30:41 13 one percent you could reduce the labor

17:30:43 14 ask by the same one percent; that was

17:30:47 15 your testimony, wasn't it?

17:30:48 16 A. I think what I said, or at

17:30:50 17 least what's in my declaration is all

17:30:53 18 else being equal a one percent change in

17:30:55 19 margin reduces the labor ask one percent.

17:30:58 20 Q. And as we discussed last week,

17:31:00 21 all else is not equal, is it, precisely

17:31:03 22 for the interaction effects?

17:31:05 23 A. I guess that depends.
17:31:07 24 Q. If labor costs go up, which
17:31:09 25 forces the airline to raise its fares,

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17:31:11 2 certain routes may no longer be
17:31:13 3 profitable, right?
17:31:14 4 A. Right, but you just gave me
17:31:15 5 another example, what if the
17:31:17 6 macroeconomic factors changed one
17:31:18 7 percent -- you increased your margin by
17:31:19 8 one percent, that doesn't have any
17:31:22 9 interaction effect. My only point is
17:31:23 10 there's lots of variables.

17:31:25 11 Q. I accept there are many
17:31:27 12 variables. And my point is do you accept
17:31:28 13 that you can't look at any one of those
17:31:30 14 variables in a vacuum?

17:31:31 15 A. I don't think that's correct.

17:31:32 16 Q. You --

17:31:34 17 A. I just said I think the

17:31:36 18 macroeconomic variables you could
17:31:37 19 probably look at on a one-off basis.
17:31:40 20 Q. With respect to the labor cost
17:31:42 21 in particular, if labor costs assumptions
17:31:46 22 in particular, if labor costs are assumed
17:31:46 23 to increase by one percent, is it your
17:31:48 24 testimony that they will have no impact
17:31:50 25 on revenue?

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17:31:50 2 A. If labor costs increase by one
17:31:55 3 percent have no impact on revenue? No, I
17:32:00 4 don't think they have impact on revenue.
17:32:02 5 It has impact on cost.

17:32:03 6 Q. You don't have to examine the
17:32:04 7 collateral effects of increased labor
17:32:06 8 costs on things such as fares, passenger
17:32:09 9 demand and revenues?

17:32:10 10 A. I don't think a one percent
17:32:12 11 increase, no.

17:32:13 12 Q. Okay. Now, stepping back from

17:32:18 13 the specific data requests, it's your
17:32:21 14 contention that Lazard just hasn't
17:32:24 15 received sufficient information to
17:32:25 16 evaluate the fleet order; is that right?

17:32:27 17 A. Correct.

17:32:28 18 Q. You're aware, are you not,
17:32:30 19 that the APA has had no difficulty in
17:32:34 20 evaluating the fleet order, right?

17:32:36 21 A. I don't think that's true.

17:32:37 22 Q. Well, let me give you what
17:32:41 23 I'll mark as Exhibit 1706. For the
17:33:05 24 record, your Honor, this is a statement
17:33:07 25 of APA president Captain David Bates

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17:33:11 2 given at a Dahlman Rose transportation
17:33:13 3 conference on September 7th of 2011.

17:33:16 4 Have you seen this before,
17:33:19 5 sir?

17:33:19 6 A. I have not.

17:33:20 7 Q. I want to ask you only about a

17:33:22 8 particular statement that Captain
17:33:22 9 Bates --

17:33:25 10 MS. KRIEGER: Objection to
17:33:26 11 foundation if he hasn't seen it.

17:33:28 12 THE COURT: I need to hear the
17:33:30 13 question first.

17:33:31 14 Q. I want to direct your
17:33:32 15 attention to the bottom of numbered page
17:33:36 16 4 onto page 5 of Captain Bates'
17:33:41 17 statement.

17:33:48 18 MR. POLLACK: We will offer
17:33:49 19 this into evidence in our rebuttal
17:33:52 20 case at an appropriate time, your
17:33:53 21 Honor.

17:33:53 22 Q. At this point my only question
17:33:55 23 for the witness is having had an
17:33:57 24 opportunity to review what Captain Bates
17:33:59 25 said in September publicly, do you

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17:34:01 2 acknowledge that the APA enthusiastically

17:34:04 3 endorsed the fleet order?

17:34:06 4 THE COURT: What phrase in
17:34:08 5 here would you like to draw his
17:34:09 6 attention to?

17:34:11 7 MR. POLLACK: Thank you, I'll
17:34:12 8 be more specific.

17:34:13 9 Q. At the bottom of numbered page
17:34:14 10 4, the paragraph that runs onto page 5.

17:34:17 11 THE COURT: I would just read
17:34:19 12 it so that we know exactly what
17:34:20 13 you're asking the witness about.

17:34:22 14 Q. So the record is clear, read
17:34:23 15 along with me, "On the plus side, I can
17:34:26 16 tell you the APA is very enthusiastic
17:34:28 17 about the re-fleeting that American
17:34:31 18 Airlines announced last month. We
17:34:32 19 recognize that the quality of the
17:34:34 20 customer experience, ranging from cabin
17:34:36 21 amenities to schedule reliability, needs
17:34:37 22 improving. The magnitude of the order
17:34:40 23 American Airlines announced was the kind
17:34:41 24 of bold stroke that once characterized
17:34:43 25 our airline. We're hoping it's a

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17:34:46 2 harbinger of things to come."

17:34:48 3 Were you aware this was

17:34:50 4 Captain Bates' and the APA's position

17:34:51 5 last September?

17:34:52 6 A. No, I wasn't.

17:34:55 7 Q. Now, it was your testimony on

17:35:03 8 direct examination that in your opinion

17:35:05 9 consolidation of American Airlines is

17:35:07 10 inevitable, correct?

17:35:08 11 A. I think I said it's not a

17:35:10 12 matter of --

17:35:11 13 Q. If but when?

17:35:12 14 A. If but when, yes.

17:35:15 15 Q. And I believe you explained

17:35:17 16 that due to their network problem, was

17:35:19 17 the phrase you used, that it could not

17:35:24 18 operate as a stand alone business?

17:35:26 19 A. I think I said in the longer

17:35:28 20 term, that's correct.

17:35:29 21 Q. Fair enough. And I take it
17:35:32 22 that when you are referencing their
17:35:35 23 network problems it's in relation to the
17:35:37 24 larger networks of Delta and United
17:35:45 25 Airlines?

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17:35:45 2 A. That's correct.

17:35:46 3 Q. You accept that network size
17:35:48 4 and reach are not the sole determinants
17:35:49 5 of a network carrier's ability to
17:35:53 6 succeed, correct?

17:35:54 7 A. That's correct.

17:35:54 8 Q. A smaller carrier can maintain
17:35:57 9 a profitable operation over the long run,
17:36:02 10 can't it?

17:36:03 11 A. Yes, with a different business
17:36:05 12 model.

17:36:05 13 Q. You don't have to look beyond
17:36:08 14 US Airways' example, do we? You know
17:36:13 15 that US Airways is appreciably smaller in

17:36:17 16 network size and reach than American
17:36:18 17 Airlines isn't it?
17:36:19 18 A. And I would argue the model --
17:36:20 19 Q. Please answer the question.
17:36:22 20 Do you acknowledge that US Airways is
17:36:23 21 appreciably smaller in network size and
17:36:27 22 reach than is American Airlines?
17:36:28 23 A. I would agree.
17:36:29 24 Q. You'd also agree that it's
17:36:29 25 appreciably smaller in network size and

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17:36:30 2 reach than United and Delta?
17:36:32 3 A. That's true.
17:36:32 4 Q. And they've been operating at
17:36:34 5 a profit despite that network size and
17:36:36 6 reach disadvantage, haven't they?
17:36:38 7 A. A small level of profit, yes.
17:36:40 8 Q. And as I think you were about
17:36:42 9 to tell me, they have a different model,
17:36:45 10 don't they?

17:36:45 11 A. Somewhat.

17:36:46 12 Q. In particular, their labor

17:36:48 13 costs are appreciably below those of the

17:36:51 14 other network carriers, aren't they?

17:36:52 15 A. They are lower, yes.

17:36:53 16 Q. And you acknowledge that with

17:36:55 17 lower labor costs a network of smaller

17:36:57 18 size and reach can be quite profitable,

17:37:00 19 don't you?

17:37:00 20 A. That's one factor.

17:37:02 21 Q. And in fact, Lazard has made

17:37:07 22 no effort to evaluate how American's

17:37:11 23 performance would have been over the past

17:37:13 24 three years had it been able to implement

17:37:15 25 the relief that it's now seeking in its

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17:37:18 2 1113 motion; isn't that right?

17:37:20 3 A. I don't believe we've done

17:37:21 4 that analysis, no.

17:37:22 5 Q. With respect to consolidation,

17:37:38 6 you're aware of the protocol agreement
17:37:43 7 that Mr. James referenced earlier this
17:37:45 8 morning that has been entered between
17:37:47 9 American Airlines and the unsecured
17:37:50 10 creditors' committee?

17:37:50 11 A. I am aware of it, yes.

17:37:51 12 Q. And you're aware that pursuant
17:37:53 13 to that agreement the debtors and the
17:37:55 14 committee have agreed to explore
17:37:58 15 strategic alternatives, including
17:37:59 16 possible consolidation before a plan of
17:38:02 17 reorganization is formulated in the case,
17:38:05 18 right?

17:38:05 19 A. I'm aware of that, yes.

17:38:06 20 Q. Is it fair to say that where
17:38:09 21 the APA and the debtors diverge is on the
17:38:13 22 proper sequencing of these events?

17:38:15 23 A. That's a fair statement.

17:38:23 24 Q. You're aware that the debtor's
17:38:26 25 position has been that they need to

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17:38:29 2 develop a consensus around a robust
17:38:32 3 stand-alone plan before evaluating
17:38:35 4 alternatives to that plan, correct?

17:38:36 5 A. I've heard them say that, yes.

17:38:39 6 Q. And you've reviewed the
17:38:40 7 testimonies of Mr. Resnick and Mr.
17:38:42 8 Dichter around that subject, haven't you?

17:38:46 9 A. I don't remember reading all
17:38:48 10 of it but I'm aware that's generally
17:38:50 11 their position.

17:38:51 12 Q. Are you aware of Mr. Resnick's
17:38:52 13 testimony that based upon his investment
17:38:55 14 banking experience that it is customary
17:38:57 15 to first develop consensus around a
17:39:00 16 robust standalone plan before evaluating
17:39:03 17 alternatives to the plan?

17:39:04 18 A. I'm aware of that testimony.

17:39:05 19 Q. Are you aware of Mr. Dichter's
17:39:07 20 testimony that engaging in a merger
17:39:09 21 negotiation with higher labor costs can
17:39:11 22 generate what he characterized as cost
17:39:13 23 dyssinergies?

17:39:15 24 A. I don't recall that.

17:39:16 25 Q. As we discussed, there's no

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17:39:22 2 dispute here that today American's labor

17:39:25 3 cost are well above that are its network

17:39:28 4 peers, right?

17:39:29 5 A. I don't think I said well

17:39:30 6 above, but above.

17:39:31 7 Q. They're well above the cost of

17:39:32 8 US Airways in particular, are they not?

17:39:34 9 A. Well if they're above United

17:39:36 10 and Delta, they're a little bit more

17:39:38 11 above that of US Airways.

17:39:42 12 Q. With regard to your review of

17:39:49 13 the other network bankruptcies over the

17:39:53 14 past decades, you're aware that they

17:39:56 15 adopted the very same sequencing that

17:39:59 16 American is proposing in this proceeding,

17:40:02 17 aren't you?

17:40:02 18 A. I'm not aware of that

17:40:04 19 actually.

17:40:04 20 Q. Let's break it down. You're
17:40:07 21 aware that before night airlines merged
17:40:11 22 with continental it went through a
17:40:13 23 bankruptcy proceeding and obtained
17:40:15 24 section 1113 relief not once but twice,
17:40:18 25 didn't it?

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17:40:18 2 A. Honestly, I just don't recall
17:40:20 3 that, but.

17:40:20 4 Q. Do you recall that before
17:40:22 5 Delta merged with Northwest Airlines it
17:40:24 6 also went through bankruptcy and obtained
17:40:26 7 section 1113 relief?

17:40:28 8 A. I thought frankly -- well,
17:40:31 9 maybe -- okay. The way I thought about
17:40:33 10 it was they negotiated a consensual deal
17:40:36 11 after an 1113 action.

17:40:38 12 Q. And before US Airways and
17:40:44 13 America West merged, US Airways went
17:40:46 14 through bankruptcy not once, but twice,

17:40:48 15 didn't it?
17:40:49 16 A. That's correct.
17:40:49 17 Q. You're also aware that US
17:40:55 18 Airways attempted to merge with Delta
17:40:58 19 Airlines, didn't they?
17:40:59 20 A. Generally aware of that, yes.
17:41:00 21 Q. That was not successful, was
17:41:02 22 it?
17:41:02 23 A. Obviously not.
17:41:04 24 Q. You're aware that US Airways
17:41:05 25 also attempted to merge with United

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17:41:08 2 airlines, didn't it?
17:41:09 3 A. There were discussions, yes.
17:41:10 4 Q. Not successful, were they?
17:41:11 5 A. It doesn't appear that way.
17:41:13 6 Q. As we sit here today, there is
17:41:17 7 no one can predict the outcome of any
17:41:19 8 potential consolidation between American
17:41:21 9 and US Airways, can they?

17:41:22 10 A. I think that's very true.

17:41:24 11 Q. And I want to turn your
17:41:41 12 attention now to one of the exhibits that
17:41:44 13 is addressed in your declaration, Exhibit
17:41:47 14 104 if you could turn to that.

17:41:54 15 A. Okay.

17:41:55 16 Q. It's on page 26. This was one
17:42:00 17 of the exhibits that you did not address
17:42:02 18 in your direct testimony this morning --
17:42:07 19 this afternoon, excuse me?

17:42:08 20 THE COURT: I'm sorry, Exhibit
17:42:10 21 104?

17:42:12 22 MR. POLLACK: It's Exhibit 104
17:42:13 23 on page 26 of Mr. Yearley's
17:42:16 24 declaration.

17:42:16 25 THE COURT: All right.

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17:42:19 2 A. I'm sure I was aware of this,
17:42:20 3 but the data relative to fleet cost is
17:42:23 4 confidential.

17:42:23 5 Q. I don't think there was a
17:42:24 6 question. Thank you. We won't get into
17:42:30 7 the particular numbers.

17:42:31 8 I do want to direct your
17:42:33 9 attention to footnote 43 where you define
17:42:35 10 the methodology by which you evaluated,
17:42:38 11 calculated the fleet costs. You explain
17:42:42 12 there that it's mainline and regional
17:42:44 13 aircraft and aircraft-related rent,
17:42:47 14 capital expenditure and interest expense;
17:42:49 15 is that accurate?

17:42:50 16 A. Just a clarification. In my
17:42:52 17 document it's 42.

17:42:55 18 Q. All right, well I can't
17:42:57 19 explain that discrepancy. But in any
17:43:00 20 event, the definitional footnote to your
17:43:02 21 exhibit?

17:43:02 22 A. Yes.

17:43:03 23 Q. Did I define that accurately?

17:43:05 24 A. You did.

17:43:05 25 Q. And sitting here today, by the

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17:43:08 2 way, you vouch for the accuracy of this
17:43:10 3 exhibit, do you not?

17:43:11 4 A. I do.

17:43:11 5 Q. Now among the items included
17:43:17 6 in the fleet cost, as you describe here,
17:43:19 7 are interest expense, are they not?

17:43:21 8 A. Yes, that's correct.

17:43:22 9 Q. And you know that included in
17:43:25 10 that fleet cost calculation are interest
17:43:28 11 expense for a variety of matters that
17:43:30 12 have nothing to do with the aircraft
17:43:32 13 purchase; isn't that correct?

17:43:34 14 A. There's interest on debt
17:43:37 15 unrelated to the aircraft purchase.

17:43:39 16 Q. For example, you included in
17:43:40 17 the fleet cost column interest expense
17:43:43 18 that are tied to debt tied to slots,
17:43:47 19 gates and routes for American Airlines,
17:43:49 20 right?

17:43:49 21 A. That's correct.

17:43:49 22 Q. And you included in the fleet

17:43:52 23 cost column interest expense for other
17:43:54 24 forms of debt unrelated to the aircraft
17:43:57 25 purchase order, right?

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17:43:58 2 A. There is some other debt, yes.

17:44:02 3 Q. Have you calculated the total
17:44:04 4 cumulative amount of the interest expense
17:44:07 5 included in the fleet cost column
17:44:09 6 unrelated to the aircraft order?

17:44:11 7 A. I have not.

17:44:12 8 Q. Do you have any basis to --
17:44:16 9 well, let me ask the question this way.
17:44:18 10 Would your opinion as expressed on this
17:44:19 11 exhibit be influenced in any way, if I
17:44:23 12 represented to you that more than \$1.2
17:44:28 13 billion of non-fleet related interest
17:44:30 14 expense was included in your
17:44:31 15 calculations?

17:44:32 16 A. I'm sorry, I missed the front
17:44:34 17 end of the question.

17:44:35 18 Q. Would the opinion that is
17:44:37 19 expressed on your Exhibit 104, the fleet
17:44:40 20 costs absorbed 90 percent of the free
17:44:47 21 cash flows under the business plan, would
17:44:49 22 your opinion be influenced in any way if
17:44:52 23 I represented to you that your fleet cost
17:44:56 24 calculation included more than a billion
17:44:58 25 two dollars of non-fleet related interest

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17:45:02 2 expense?

17:45:02 3 A. No, it would not.

17:45:03 4 Q. Similarly, when you calculated
17:45:08 5 the total cost attributable to the new
17:45:10 6 fleet order, you failed to reduce that
17:45:13 7 cost by the sale leaseback proceeds
17:45:16 8 projected in the business plan for the
17:45:17 9 leased aircraft, didn't you?

17:45:19 10 A. I didn't fail to. I didn't
17:45:20 11 include it. I was aware of that.

17:45:22 12 Q. And I asked you about the

17:45:24 13 treatment of the sale leaseback costs

17:45:27 14 last week in your deposition, do you

17:45:28 15 remember that?

17:45:28 16 A. I do.

17:45:30 17 Q. You testified five days ago

17:45:32 18 that you didn't know whether they were

17:45:33 19 included or not; is that right?

17:45:34 20 A. I thought I said I didn't

17:45:36 21 recall.

17:45:36 22 Q. Sitting here today, your

17:45:38 23 testimony is you know they are not

17:45:40 24 included; is that right?

17:45:40 25 A. That's correct.

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17:45:42 2 Q. And have you made any effort

17:45:45 3 to identify the amount of sale leaseback

17:45:49 4 proceeds that are not included in your

17:45:50 5 calculation?

17:45:51 6 A. I've not.

17:45:53 7 Q. Do you agree conceptually that

17:45:56 8 sale leaseback proceeds will reduce the
17:45:59 9 net cost of the leased aircraft to
17:46:04 10 American Airlines?

17:46:04 11 A. It's a form of financing.

17:46:08 12 Q. Would it influence your
17:46:11 13 opinion, again as stated on Exhibit 104,
17:46:13 14 if I represented to you that the net
17:46:16 15 netting of the sale leaseback proceeds
17:46:18 16 will reduce American's total lease cost
17:46:21 17 over the six year period captured here by
17:46:24 18 more than \$2.5 billion?

17:46:25 19 A. It would not.

17:46:26 20 Q. Would it influence your
17:46:27 21 opinion in any way if the combined impact
17:46:29 22 of the non-aircraft related interest
17:46:32 23 expense and the sale leaseback proceeds
17:46:34 24 reduced the fleet costs reflected on this
17:46:37 25 exhibit by more than 3.7 billion dollars?

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17:46:39 2 A. It would not.

17:46:40 3 Q. You testified, you concluded
17:46:52 4 your direct examination by offering the
17:46:54 5 opinion that there is no exigency behind
17:46:57 6 American's motion, right?

17:46:58 7 A. Correct.

17:47:00 8 Q. You're aware that American is
17:47:02 9 the only network carrier which continues
17:47:04 10 to be unprofitable, aren't you?

17:47:05 11 A. I'm aware of that, yes.

17:47:07 12 Q. You're aware that last year,
17:47:08 13 in 2011, American lost more than a
17:47:11 14 billion dollars?

17:47:11 15 A. I'm aware of that, yes.

17:47:13 16 Q. In a year when every other
17:47:16 17 network carrier made money?

17:47:17 18 A. Yes, I'm aware of that.

17:47:19 19 Q. You're aware that American's
17:47:20 20 losses over the past decade have exceeded
17:47:23 21 10 billion dollars?

17:47:24 22 A. I'm generally aware of that,
17:47:26 23 yes.

17:47:26 24 Q. You're aware that in the first
17:47:27 25 quarter of this year, American's losses

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17:47:30 2 aggregated 240 million dollars?

17:47:32 3 A. I don't recall that number

17:47:35 4 specifically, but I'll take your word for

17:47:36 5 it.

17:47:38 6 MR. POLLACK: Thank you,

17:47:39 7 Judge, if I could just have a

17:47:40 8 moment to confer.

17:47:41 9 Nothing further at this time,

17:47:54 10 Judge.

17:48:03 11 MS. KRIEGER: Your Honor, if

17:48:04 12 we can have about 10 minutes I

17:48:06 13 think we can conclude the redirect

17:48:07 14 very efficiently.

17:48:08 15 THE COURT: All right. We'll

17:48:09 16 come back at six o'clock on the

17:48:11 17 dot.

17:48:12 18 (A recess was taken.)

18:02:50 19 THE COURT: Please be seated.

18:02:53 20 Let me ask a question about whether

18:02:58 21 we have a need for a closed

18:03:00 22 proceeding because there are
18:03:02 23 courtroom personnel who would be
18:03:03 24 needed to make things happen who
18:03:06 25 are graciously standing by to make

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18:03:08 2 it happen if necessary.

18:03:09 3 MS. KRIEGER: Thank you. I

18:03:11 4 don't anticipate any on redirect.

18:03:13 5 MR. POLLACK: Not from our

18:03:15 6 perspective either.

18:03:16 7 THE COURT: All right. So

18:03:17 8 give me one minute. So we're going

18:03:19 9 to release those folks so that if

18:03:23 10 they're hanging around they're not

18:03:25 11 hanging around for this. All

18:03:27 12 right, thank you.

18:03:31 13 Proceed.

18:03:32 14 REDIRECT EXAMINATION

18:03:34 15 BY MS. KRIEGER:

18:03:34 16 Q. Mr. Yearley, I just want to

18:03:36 17 revisit just a few points on redirect.
18:03:40 18 As I understand it, in you and the Lazard
18:03:43 19 team worked with APA from the very
18:03:45 20 beginning of the unsecured creditors'
18:03:48 21 committee process?
18:03:48 22 A. We did.
18:03:49 23 Q. And was there any withholding
18:03:52 24 of any information from you based on the
18:03:53 25 fact that it took some time to get

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18:03:57 2 particulars worked out as to who had to
18:04:01 3 sign particular documents?
18:04:02 4 A. No. We had full access to
18:04:04 5 information during the intervening time
18:04:06 6 we were negotiating the protective order.
18:04:09 7 Q. So you were treated as subject
18:04:11 8 to the confidentiality and protective
18:04:14 9 order from the very beginning?
18:04:15 10 A. We were.
18:04:16 11 Q. On cross examination you were

18:04:18 12 asked some questions about American
18:04:21 13 Airlines Exhibit 318 involving a plan of
18:04:26 14 reorganization projections for United
18:04:29 15 Airlines. And I believe when answering a
18:04:32 16 question you indicated that you wanted to
18:04:36 17 clarify your answer or add some
18:04:39 18 clarification to what your reaction was
18:04:42 19 to this exhibit. Is there anything you'd
18:04:43 20 like to add?

18:04:44 21 A. I don't recall. It seems like
18:04:53 22 it was yesterday.

18:04:54 23 Q. Yes, it was a long time ago.

18:04:57 24 A. Oh, I now remember. The point
18:04:59 25 I wanted to make is in all of these

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18:05:01 2 projections, frankly, the United,
18:05:03 3 Northwest and Delta, none of these
18:05:04 4 projections were met, obviously based on
18:05:07 5 the historical data that we showed
18:05:09 6 earlier in our exhibit largely as a

18:05:12 7 result of a dramatic increase in fuel
18:05:14 8 prices over this time period which
18:05:16 9 continue today.

18:05:17 10 So the world changed pretty
18:05:20 11 dramatically from the time these
18:05:21 12 companies put these projections together
18:05:23 13 relative to fuel price.

18:05:24 14 Q. Thank you. I also recall that
18:05:27 15 on cross you were asked about American,
18:05:32 16 the extent of any unencumbered assets
18:05:34 17 available or any collateral available for
18:05:36 18 raising a revolver or other funding and
18:05:39 19 you said not today, things could change.
18:05:42 20 Could you explain what you mean by that?

18:05:43 21 A. Well, there's certainly the
18:05:45 22 opportunity in bankruptcy to challenge
18:05:51 23 liens and there's certainly at least one
18:05:53 24 financing that American has related to
18:05:56 25 gates and slots that has been subject to

18:05:58 2 some discussion as to whether those liens
18:06:02 3 will be challenged and if so, again, it
18:06:04 4 would free collateral as just one
18:06:06 5 collateral.

18:06:06 6 Q. And do you have any sense of
18:06:09 7 the amount or the significance of the
18:06:11 8 collateral that could potentially become
18:06:13 9 available?

18:06:13 10 A. It's significant enough again
18:06:16 11 it would support potentially a revolver.

18:06:19 12 Q. Thank you. Now at several
18:06:22 13 points you were asked whether Lazard had
18:06:24 14 tested various assumptions that were
18:06:27 15 built into the re-fleeting plan, for
18:06:31 16 example, whether high value customer
18:06:34 17 revenue would be achieved through
18:06:36 18 increase in the appeal and so on. Do you
18:06:40 19 have the data available to evaluate
18:06:43 20 whether the assumptions of increased
18:06:45 21 revenue are balanced by -- outweigh the
18:06:49 22 cost of capital, for example?

18:06:50 23 A. We don't. The only data we
18:06:52 24 have is the one page analysis that I

18:06:55 25 referred to in my direct testimony that

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18:06:58 2 just gives us numbers on a page relative

18:07:00 3 to returns on investment. My

18:07:01 4 understanding is it was again created,

18:07:05 5 you know, postpetition in response to our

18:07:08 6 questions.

18:07:08 7 Q. Okay. Now, you referred to

18:07:12 8 also an in-person meeting in addition to

18:07:15 9 the email exchange and other written

18:07:19 10 presentations of due diligence packages

18:07:21 11 to American. Can I draw your attention

18:07:23 12 to the February 17th, 2012 meeting you

18:07:26 13 mentioned with Bev Goulet and others and

18:07:29 14 could you just explain what you discussed

18:07:31 15 there with regard to the information

18:07:37 16 needed to evaluate the re-fleeting?

18:07:38 17 A. I attended this meeting in

18:07:40 18 Dallas, it was a request of the company

18:07:42 19 to get a walk-through of the business

18:07:43 20 plan with the benefit of doing it in
18:07:45 21 person with all of our -- APA advisors
18:07:48 22 and so Bev led the discussion. She was
18:07:52 23 joined by some of her finance colleagues,
18:07:54 24 by a representative from Rothschild, and
18:07:56 25 by representatives from McKinsey and it

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18:07:58 2 was also an opportunity for us to have a
18:08:01 3 Q&A on the business plan as well as to
18:08:06 4 reinforce the areas of information that
18:08:08 5 we still required to do our analysis for
18:08:14 6 our client.

18:08:15 7 And I specifically, as well as
18:08:16 8 my partner, Harry Pinson, asked a number
18:08:19 9 of questions around the re-fleeting
18:08:21 10 program and our frustration with a lack
18:08:23 11 of information to support it and again,
18:08:26 12 Bev had the benefit of both finance,
18:08:30 13 Rothschild and McKinsey said she would
18:08:32 14 look into it but she was sure there was

18:08:34 15 analysis and presentations that would be

18:08:35 16 responsive and they would get on it.

18:08:37 17 Q. Okay, thank you. Now, with

18:08:39 18 respect to Exhibit 104, you were asked

18:08:46 19 about the failure to breakout non-fleet

18:08:49 20 related interest expenses.

18:08:53 21 A. Correct.

18:08:53 22 Q. Do you know is there a -- was

18:08:56 23 there in fact a detailed debt schedule

18:08:58 24 provided by AMR as part of its business

18:09:01 25 plan or information sharing that broke

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18:09:04 2 down the fleet and non-fleet related

18:09:06 3 interest expenses?

18:09:07 4 A. I don't believe there was.

18:09:09 5 Q. And finally, just before we

18:09:13 6 conclude and because I've had you sitting

18:09:15 7 here for a long time, is there anything

18:09:17 8 about any of your answers that you wanted

18:09:19 9 to clarify for the record before we

18:09:22 10 conclude today?

18:09:22 11 A. No, I think my testimony

18:09:26 12 stands as stated.

18:09:27 13 MS. KRIEGER: Thank you very

18:09:27 14 much.

18:09:28 15 THE COURT: All right. Any

18:09:32 16 recross?

18:09:40 17 MR. POLLACK: I'll do it in

18:09:41 18 less than one minute, your Honor.

18:09:43 19 THE COURT: All right.

18:09:43 20 RE CROSS EXAMINATION

18:09:47 21 BY MR. POLLACK:

18:09:47 22 Q. Ms. Krieger asked you about

18:09:54 23 the extent of unencumbered assets

18:09:58 24 available to American today and you just

18:10:00 25 testified that things could change,

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18:10:01 2 right?

18:10:01 3 A. Correct.

18:10:04 4 Q. If we have to evaluate a

18:10:06 5 business plan today, do you agree with me
18:10:10 6 that you have to look at the reality as
18:10:11 7 it exists today?

18:10:13 8 A. I mean that's a tough one
18:10:18 9 because there is a number of assumptions
18:10:20 10 in the American plan, scope as one
18:10:23 11 example, that they don't -- they've
18:10:25 12 assumed there's revenues as they were
18:10:27 13 scope and they don't have any additional,
18:10:29 14 you know, new scope.

18:10:31 15 I think Mr. Resnick was
18:10:34 16 appropriate based on the information he
18:10:36 17 had today to conclude that there would be
18:10:38 18 no revolver available, but the point of
18:10:40 19 my testimony was, again, this is a moving
18:10:43 20 process and there are things in action
18:10:44 21 that could change that.

18:10:46 22 MR. POLLACK: Nothing else,
18:10:47 23 your Honor.

18:10:48 24 THE COURT: All right. You're
18:10:49 25 excused.

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18:10:50 2 THE WITNESS: Thank you.

18:10:52 3 MS. KRIEGER: Your Honor.

18:10:54 4 While the witness is still here I

18:10:55 5 would like to --

18:10:56 6 THE COURT: All right, not so

18:10:58 7 fast.

18:10:58 8 MS. KRIEGER: I would like to

18:10:59 9 move into evidence the declaration

18:11:01 10 of Andrew yearly APA Exhibit 100-A

18:11:08 11 and all the associated Exhibits 101

18:11:10 12 through 105.

18:11:11 13 THE COURT: Any objection?

18:11:13 14 MR. POLLACK: No objection,

18:11:14 15 Judge.

18:11:14 16 (APA Exhibits 100-A, 101

18:11:15 17 through 105 received in evidence.)

18:11:15 18 THE COURT: And you are done

18:11:16 19 and all that evidence is received.

18:11:18 20 THE WITNESS: Thank you.

18:11:27 21 THE COURT: So the plan

18:11:29 22 tomorrow is to start with the next

18:11:33 23 witness would be?

18:11:36 24 MR. JAMES: Allison Clark.

18:11:37 25 THE COURT: Allison Clark.

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18:11:39 2 And from the references that I've
18:11:40 3 heard to her name, I would imagine
18:11:42 4 that will at least take the
18:11:45 5 morning, perhaps into early
18:11:46 6 afternoon. And then in light of
18:11:48 7 the motion which I have not yet
18:11:50 8 seen, as to the witness from Segal,
18:11:53 9 then the idea would be to proceed
18:11:55 10 with --

18:11:56 11 MR. JAMES: Larry Rosselot.

18:12:01 12 THE COURT: So everybody knows
18:12:02 13 what we're doing tomorrow. Let me
18:12:04 14 just, I just wanted to share one
18:12:06 15 observation, I've seen this come up
18:12:08 16 with witnesses on both sides.
18:12:12 17 There's obviously excellent counsel
18:12:14 18 here and I'm just trying to find

18:12:16 19 ways to move things along, but you
18:12:18 20 all know that a witness will never,
18:12:20 21 ever, ever, an expert witness will
18:12:23 22 never agree with your view of the
18:12:24 23 universe and so to that end, I
18:12:33 24 strongly urge folks really to keep
18:12:36 25 their questions pointed to, all

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18:12:38 2 litigators know, you either have it
18:12:40 3 or you don't have it or you know
18:12:41 4 you're asking a question that you
18:12:42 5 don't know the answer to and it's
18:12:44 6 fine to do the last thing as long
18:12:46 7 as you know that you're doing that.
18:12:47 8 So I think that that may help us
18:12:50 9 speed things along.
18:12:52 10 And again, I know if you have
18:12:56 11 jury trials there's a benefit to a
18:12:59 12 petition and people don't have
18:13:00 13 briefs and all sorts of things, but

18:13:02 14 I can't say that I lack any paper
18:13:06 15 here. I have paper stacked up all
18:13:09 16 over the place. So I certainly
18:13:10 17 have the benefit of lots of
18:13:13 18 excellent legal briefing and
18:13:14 19 argument that people provided.

18:13:16 20 So you certainly don't have to
18:13:18 21 connect the dots with every witness
18:13:20 22 especially when that witness has
18:13:22 23 basically told you there's no way
18:13:23 24 I'm going to agree with the factual
18:13:25 25 predicate of your question.

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18:13:26 2 So I just pass that along.
18:13:28 3 I'd like to think that I'm paying
18:13:29 4 attention to everything you're
18:13:31 5 presenting. So let's just try to
18:13:33 6 keep it moving.

18:13:34 7 So with that said, we will
18:13:36 8 convene tomorrow morning with Ms.

18:13:40 9 Clark and there are other cases
18:13:45 10 that are clamoring for some
18:13:46 11 attention I've cancelled or moved a
18:13:48 12 bunch of my calendar on Thursday,
18:13:51 13 but I do have an omnibus hearing in
18:13:52 14 a fairly large 11 that I'm going to
18:13:55 15 start at 9 and I hope to have it
18:13:57 16 done by, say, 10:30, so I would --
18:14:01 17 so Thursday morning I think we will
18:14:03 18 start a little bit later. I'm
18:14:05 19 going to ask those folks how long
18:14:07 20 they expect to go and if there's
18:14:11 21 any luck there's no evidentiary
18:14:12 22 matters that need to be discussed,
18:14:14 23 but I will keep you posted but I
18:14:16 24 don't expect we'll start on time on
18:14:18 25 Thursday if we need to go longer.

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18:14:20 2 My thought would be to keep it to a
18:14:22 3 two-day schedule so we can keep

18:14:25 4 things moving, but just we may have
18:14:27 5 a little extra time on Thursday
18:14:29 6 morning.

18:14:30 7 MR. BUTLER: Judge, just one
18:14:31 8 question. Looking beyond Friday,
18:14:34 9 has the court given any thought
18:14:36 10 maybe we're talking about later in
18:14:38 11 the week what happens after Friday?
18:14:40 12 There are --

18:14:41 13 THE COURT: I do think we need
18:14:42 14 to have a chat about that. My
18:14:44 15 thought would be to have a chat
18:14:46 16 about that off the record unless
18:14:48 17 parties have an incredible desire
18:14:50 18 to discuss that on the record and
18:14:52 19 burden the transcript with
18:14:53 20 additional pages that are of
18:14:55 21 probably no interest. So why don't
18:14:57 22 we chat briefly in about five
18:15:00 23 minutes in chambers just to get a
18:15:03 24 sense of those things and we'll
18:15:05 25 certainly do, I'm sure everybody

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18:15:07 2 will appreciate it and certainly I
18:15:09 3 would because I know there are
18:15:10 4 other cases that are trying to get
18:15:12 5 trial dates in other things that
18:15:14 6 are, you know, they're entitled to.
18:15:17 7 So to the extent I can accommodate
18:15:19 8 them. Sole we're concluded today.
18:15:21 9 I will see everybody tomorrow
18:15:23 10 morning. Thank you.

18:15:29 11 (Time noted: 6:15 p.m.)

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