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THE CLERK: All rise.

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THE COURT: Good morning.

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Please be seated.

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All right, I think we were

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ready for cross examination unless

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there are any preliminary matters

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we should discuss.

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MR. MOLLEN: We were and there

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are, your Honor.

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MS. LEVINE: Good morning,

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your Honor, Sharon Levine,

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Lowenstein Sandler, for the TWU.

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I apologize to the court, but

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I may have a scheduling conflict on

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Monday. It may be getting resolved

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but I have a scheduling order

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appearance before Judge drain on

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hostess for Monday if it goes

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forward, that would not go past

21 Monday, it would then adjourn to
22 the 29th and 30th. I think I'm
23 working on adjourning that as well
24 and it may go off, but I just
25 needed to tell the court.

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2 THE COURT: I appreciate that.
3 My thought is that I was going to
4 talk about scheduling later in the
5 day which you should bring up then,
6 but that I do have a calendar and a
7 bunch of other things Monday
8 morning that I think in light of
9 our desire to keep moving, there
10 are only so many times I can push
11 people off, I was going to precede
12 with that calendar Monday morning
13 and then resume Monday afternoon at
14 noon. But see where you are and
15 we'll talk about it.

16 At some point I did want to
17 talk to the parties about
18 proceeding forward with little
19 hiccups here and there in terms of
20 scheduling.

21 My guess, and this is a guess,
22 but, is that I imagine we'll be
23 close to being done with all the
24 cases by all the unions on I think
25 Wednesday would be my general

3

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2 guess, and then there's an AMR
3 omnibus on Thursday, which will
4 take the morning at least. And
5 then really then we're into Friday
6 and Tuesday and Wednesday after
7 Memorial Day for any rebuttal,
8 surrebuttal, sur, sur, surrebuttal
9 until we all exhaust ourselves.

10 So we can talk about that in

11 more detail. I don't know when
12 you'll expect you'll have a notion
13 as to whether you have a problem
14 Monday, but certainly you need to
15 be here, you'll be here for the
16 case and I certainly don't want to
17 prejudice your clients by not
18 having you hear.

19 MS. LEVINE: Thank you. I'm
20 hoping within the hour to know.

21 THE COURT: That's fine.
22 You'll be a problem that's resolved
23 very promptly in this case. Thanks
24 for the heads up.

25 MS. LEVINE: Thank you.

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2 MR. MOLLEN: Good morning,
3 your Honor, Neal Mollen, from the
4 debtors. From our perspective,
5 we're very anxious to accommodate

6 Ms. Levine to the extent it becomes
7 necessary, but we're also very
8 anxious to get the hearing
9 concluded as promptly as possible.
10 We'll cross that bridge when we
11 come to it.

12 THE COURT: Exactly. That's
13 why I was going to leave scheduling
14 to the end of the day, but again, I
15 appreciate people giving me a heads
16 up on these things and we'll muddle
17 through.

18 JAMES EATON,
19 resumed, having been previously
20 duly sworn, was examined and
21 testified further as follows:

22 CROSS EXAMINATION

23 BY MR. MOLLEN:

24 Q. Good morning, Mr. Eaton.

25 A. Good morning, sir. How are

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2 you?

3 Q. Very well, and I hope you are
4 as well.

5 A. Thank you.

6 Q. Throughout your direct
7 testimony and in your declaration you use
8 the word or phrase industry standards
9 with respect to scope and I'd like to
10 explore that phrase with you, your
11 understanding of what it means. Was the
12 purpose of APA at the table in
13 negotiation -- I understand you're not on
14 the negotiating committee and you're not
15 currently on the scope committee, but is
16 it your understanding that APA's purpose
17 at the table has been to negotiate
18 industry standard scope provisions?

19 A. No, I think APA's purpose has
20 been to reach an agreement at the
21 bargaining table.

22 Q. So if you have to go beyond
23 industry standards in favor of the
24 company to get an agreement, you're

25 willing to do that? Or are you saying

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2 that industry standards is the polestar,
3 that's the goal that the APA had in
4 negotiations?

5 A. I think APA's view would be
6 that in the bankruptcy we saw ourselves
7 being marked to market, another term for
8 industry standard. And that making
9 proposals that put us in the range of
10 what was industry standard was the
11 objective in bargaining, but we also felt
12 that that was a place where in respect to
13 scope the company could and should be
14 able to go.

15 Q. So the answer to my question
16 is yes, the goal was to bring the
17 agreement into industry standards through
18 this process; is that correct? Pretty
19 simple question I think.

20 A. I'm trying to think it
21 through. I think industry standards I
22 really think APA's goal would be to reach
23 an agreement.

24 Q. Whatever it took?

25 A. No, no, I wouldn't want to get

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2 to whatever it took because whatever it
3 took might be simply agreeing to the
4 company's 1113 proposal which we felt was
5 so far outside of the industry standards.
6 So, you know, industry standards, we
7 could get there as an objective to an
8 agreement.

9 Q. So that's yes?

10 A. Sorry for the long answer.

11 Q. That's okay. Thank you very
12 much.

13 In fact, I was interested to
14 see that the heading on just above

15 paragraph 26 of your declaration, you do
16 have that in front of you, don't you?
17 It's Exhibit 500-A.

18 A. Sorry, you said 26?

19 Q. Paragraph 26, it's on page 13
20 of your declaration?

21 A. I have it.

22 Q. The heading of that paragraph
23 is industry standard, do you see that?

24 A. I do.

25 Q. And then the paragraph

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2 proceeds to discuss what the current RJ
3 limits are at the various network
4 carriers against which American competes,
5 do you see that?

6 A. I do.

7 Q. So first we have Delta and
8 this paragraph indicates, and goes back
9 to the chart on the following page, which

10 is Exhibit 513, indicates that Delta can
11 fly up to 255 RJs with up to 76 seats,
12 correct?

13 A. They can fly up to 255 RJs. I
14 don't believe all of those can be up to
15 76 seats. There is a proportion.

16 Q. Yesterday you told me that
17 there is a provision in the agreement
18 that says if certain pilots, that is
19 pilots hired before a certain day are on
20 furlough that some of the RJs that could
21 otherwise be up to 76 seats have to
22 retreat to the 70 line, the 70 seat
23 limit; is that correct?

24 A. My understanding is that if
25 the Delta contract says that if any pilot

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2 hired, it's actually pre-September 1st of
3 2001, but they mark it 9/11, that if any
4 pilot on the list hired prior to that

5 date, any airplanes that were configured
6 at 76 then were reconfigured back to. So
7 it would revert all of them to 70.

8 Q. So dropping back to 70 seats?

9 A. All aircraft would be 70
10 seats.

11 Q. Do you know whether there are
12 any pilots that senior on the seniority
13 list on furlough today at Delta?

14 A. I do not.

15 Q. So you wouldn't know whether
16 you'd have to furlough 700 or more pilots
17 in order to get to the point where that
18 76 seat limit is dropped back to 70?

19 A. I don't know how many pilots
20 Delta would have to furlough.

21 Q. Now, do you consider that 255
22 RJ mark an industry standard?

23 A. I think it's part of what one
24 would use to get to an industry standard.
25 No, I don't think -- we can't just say

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2 that 255 mark is an industry standard.

3 Q. It is a principal component of
4 the scope clause of one of American's
5 principal competitors; is that correct?

6 A. I wouldn't say it's a
7 principal. A principal competitor, yes,
8 not a principal component, but it is a
9 component.

10 Q. It's not a principal
11 component, you think it's sort of a
12 peripheral issue, the size of RJs for one
13 of American's competitors?

14 A. No, I'm talking about the 255
15 number. The number of 255 I'm not trying
16 to argue with you, the 70/76 piece is a
17 principal components of the scope clause.

18 Q. You're saying the 255 number
19 is not the central point, the principal
20 point, it's the seat limits, is that it?

21 A. Yes.

22 Q. So that in negotiations the

23 number, the actual number of RJs in that
24 seat range is not an issue in which APA
25 places great emphasis because as you say,

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2 it's not a principal part of the scope
3 protection, is that what you said?

4 A. That's not what I said. I'm
5 talking specifically the Delta scope
6 clause and when they set a number of 255
7 as their limit, I don't see that as
8 principally defining a component of what
9 we would then take to saying industry
10 standard.

11 Q. So the number of RJs that can
12 be operated at that particular seat range
13 is a principal component of the American
14 scope clause but you don't view it as
15 being a principal part of the Delta scope
16 clause, do I understand your testimony?

17 A. No, I think the number is. I

18 was specifically speaking to the number
19 255. I'm not trying to --

20 Q. Let's go to the United
21 discussion there. Now you testified
22 yesterday that there are no finite limits
23 on the number of RJs that can be operated
24 in the loosely speaking large RJ
25 category, but that there's a block hour

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2 limitation, correct?

3 A. Well, I was -- in a way.
4 There is no hull count limit, what we
5 would call it, so that limit in United is
6 defined by block hours.

7 Q. Now, the total today based on
8 your analysis of the block hours flown by
9 United and the fleet that they've got,
10 all that sort of stuff, is 451, 70 seats
11 or less; is that correct?

12 A. Yes.

13 Q. And then in Exhibit 513 which
14 is the chart, you've divided those up
15 between the 50 seat and the 70 seat
16 categories based on your analysis of the
17 company's actual operations, correct,
18 that was your testimony yesterday, right?

19 A. What I did was divide up, I
20 took the limit of 451 and attempted to
21 make a representation of what United does
22 today in respect to where it has 50 and
23 70 or 70 and above.

24 Q. So it was your best estimate
25 of what a sensible allocation of that 451

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2 was based on their current operations?

3 A. I'm not going to qualify them
4 as saying sensible, but it is their
5 allocation or a representation of their
6 allocation.

7 Q. But from a contractual

8 standpoint, if United wanted to, it could
9 fly all 451 of those aircraft at 70
10 seats, correct?

11 A. If they decided to do it, they
12 would still have to ground existing 50
13 seat airplanes which would be a problem,
14 but contractually they could do it.

15 Q. But it wouldn't make any sense
16 for them to do that, would it? The whole
17 point of a RJ fleet from a major
18 carriers's perspective is to find the
19 right gauge of aircraft to fly through a
20 partner in the right markets, correct?

21 A. You want to say that one
22 again.

23 Q. Sure, sure. You have, I know
24 that, again, you're not on the
25 negotiating committee currently, but

3 company about its goals for the use of
4 RJs flying through partners, correct?

5 A. Yes.

6 Q. And in those discussions
7 they've made it clear to you that the
8 whole purpose of this exercise from their
9 perspective is to put the right size
10 airplane in the right markets so that
11 they have the right capacity to match the
12 demand in that market, correct?

13 A. I'm not sure that's the entire
14 goal. There may be some other pieces in
15 there.

16 Q. That's fair enough. But
17 that's one of the principal goals, is it
18 not, as it's been explained to you?

19 A. Yes.

20 Q. So from your perspective it
21 probably wouldn't make sense, even if the
22 contract gave United in this case, or any
23 carrier the right to operate all of their
24 RJs through partners at the maximum seat
25 limit, it probably wouldn't make any

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2 sense for them to do that economically
3 because again the whole point is to right
4 size the aircraft in the market, right?

5 A. I think they would have to
6 make that decision based on their view of
7 their markets and needs, fuel costs, etc.

8 Q. I'm not trying to get you to
9 make the decision for them, I think
10 they'd probably be pleased to hear I'm
11 not trying that.

12 A. I'd be pleased too.

13 Q. Yes, I suspect that's right.
14 But from what you heard the company say,
15 it makes perfect sense for the company to
16 approach this by finding the right size
17 aircraft, putting it in the right market
18 and be less concerned with maximizing the
19 number of aircraft they can fly at the
20 top of the range permitted under the
21 collective bargaining agreement; isn't

22 that right?

23 A. I think that from a company's
24 perspective they are going to match the
25 airplane with the market. It may not

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2 necessarily be driven by demand, it may
3 be a product piece and that would be
4 consistent across all markets, not just
5 limited to the region.

6 Q. In any event, the 271 aircraft
7 that you show in Exhibit 513 for United
8 in the 70 seat range, would you say
9 that's an industry standard?

10 A. No, I wasn't trying to
11 represent United in this respect as an
12 industry standard at 271 or any
13 particular number because United has that
14 block hour piece which again I was really
15 just trying to get -- and I debated
16 really to just simply put with United an

17 asterisk on the chart, but I thought that
18 would be a little bit confusing so try to
19 -- was not trying to imply that 271 in
20 the case of United was a standard.

21 Q. I'm sort of confused though,
22 because I'm looking at a paragraph that's
23 headed industry standards and now we've
24 talked about two of the principal
25 competitors against which American

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2 competes in the marketplace and you told
3 me that you don't view either one of
4 those as an industry standard. So I'm
5 hoping that you can direct me in
6 paragraph 26 to what you do believe is an
7 industry standard.

8 A. Oh, well, you know, I -- in
9 the case of Delta, as I looked at an
10 industry standard, you know, Delta is
11 really in that range, 70 to 76 seats.

12 Q. Okay.

13 A. In terms a size of airplane.
14 United, 70 seats, that's right there in
15 the range.

16 Q. Okay, good. That leaves us
17 with US Airways.

18 A. US Airways.

19 Q. Let's talk about US a little
20 bit. Now, if there's one question that I
21 think I'm likely to get an unqualified
22 and simple yes from you I think this is
23 it.

24 THE COURT: Don't be too sure.

25 MR. MOLLEN: Thank you, your

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2 Honor for that.

3 THE COURT: I'm not impugning
4 your integrity.

5 MR. MOLLEN: Suitably
6 chastened, your Honor, I'll

7 proceed.

8 THE WITNESS: I'm not going to
9 be led by the lawyer either.

10 THE COURT: That's fair.

11 Q. Scope clauses are complicated,
12 are they not, Mr. Eaton?

13 A. Yes.

14 Q. Thank you.

15 MR. MOLLEN: No further
16 questions, your Honor.

17 Q. But they're complicated for a
18 variety of reasons because they started,
19 historically as I think you testified
20 yesterday, with this sort of unvarnished
21 rule that the pilots at that particular
22 airline are going to do all of the flying
23 and then they evolve historically to
24 incorporate a variety of exceptions that
25 are then limited by fairly extensive

2 provisions; isn't that correct?

3 A. Yes, over time pilots looked
4 at what kind of protections can we assure
5 for ourselves in order to accommodate
6 pieces of balances.

7 THE COURT: I've been told me
8 wife some technical problems and
9 court call is not currently dialed
10 in, so if you can give us a moment
11 to get that squared away. We have
12 a long list of folks who are
13 interested in listening to the
14 proceeding.

15 Thanks for your patience,
16 proceed.

17 Q. Mr. Eaton, with my great
18 admission from you that scope clause is
19 complicated in my pocket, I'm going to
20 press forward. They're complicated
21 because of their historical evolution as
22 I think you just described, correct?

23 A. That's part of it.

24 Q. They're complicated because

25 lawyers like Mr. Dean and I get our hands

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2 in them and we make them impenetrable; is
3 that right?

4 A. That's at part of it.

5 Q. They're also composed of a
6 variety of different pieces, aren't they?
7 You've got the scope clause that's in the
8 agreement itself and then you have
9 letters of agreement and you have
10 supplements and you have letters
11 exchanged between the parties regarding
12 their interpretation and you have
13 arbitration awards, all of which put a
14 gloss on what the scope clause actually
15 means, correct?

16 A. That's correct.

17 Q. For example, if you were to
18 look just at the green book, at the main
19 collective bargaining agreement between

20 the parties at American, you wouldn't
21 know that American's permitted to operate
22 347 of the CRJ 700s, correct?

23 A. I believe that is correct.

24 Q. So that's in letter SS,
25 correct?

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2 A. I believed that's correct.

3 Q. In fact, even if you had SS in
4 front of you, letter SS in front of you,
5 you wouldn't know that the number is
6 actually 47, you'd think it was 50,
7 correct, because the limitation came in
8 an arbitration decision?

9 A. Is there was a subsequent
10 arbitration that brought it from 500
11 arbitration.

12 Q. You left the scope committee I
13 think you testified in 2004, correct?

14 A. Yes.

15 Q. And you said that you've tried
16 to keep up with the occurrences in the
17 industry with respect to scope since that
18 time, correct?

19 A. Yes, I have at various points
20 had to get reacquainted with the changes.

21 Q. It's been a challenge I would
22 imagine for the reasons that I just said,
23 that there's so many pieces to them;
24 isn't that right?

25 A. Well, you do your best to stay

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2 abreast of everything. It does require a
3 fair amount of homework.

4 Q. Now, did someone who's
5 actually on the scope committee do the
6 due diligence in your discussions with US
7 Airways or did you?

8 A. In discussions with US Airways
9 for the plan support agreement?

10 Q. Correct.

11 A. That was someone else on the
12 scope committee.

13 Q. So you weren't involved in
14 that at all?

15 A. No, I was not.

16 Q. Are you familiar with LOA,
17 that's letter of agreement 91, at US
18 Airways?

19 A. I believe I am. I probably
20 have to look at LOA 91 to be sure I am,
21 yes.

22 Q. Let's look at Exhibit 513 and
23 its treatment of US Airways. Now you
24 show that there are 93 aircraft allowed
25 to be flown through partners in the 77 to

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2 88 seat range; isn't that correct?

3 A. Yes.

4 Q. Isn't it a fact that in letter

5 of agreement 91 the parties added the
6 right to fly an additional 60 aircraft in
7 this range, that is CRJ 900s or
8 equivalents through a subsidiary?

9 A. I have to go back and look at
10 LOA 91. That's not my understanding of
11 what US Airways today allows.

12 Q. Okay. I was afraid you'd say
13 that. Mr. Eaton, I'm going to give you
14 as much time as you think you need to
15 look at this document. I will confess
16 that I have looked at this document at
17 some length and find it impenetrable, but
18 I would like you to look at it
19 specifically with an eye towards this
20 issue of whether this agreement permits
21 US Airways to add an additional 60
22 aircraft, CRJ 900 or equivalent through a
23 subsidiary?

24 A. Do we have on this document
25 when it was written? Usually it's at the

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2 end, but I didn't see a signature block.

3 Q. As I understand it, this is
4 attachment B to a much larger document
5 that I decided to save our forests not to
6 reprint. I can certainly provide the
7 entire letter of agreement to counsel if
8 he'd like to see it.

9 MR. DEAN: I would, your
10 Honor, in part just to know what
11 the date was on LOA number 91.

12 MR. MOLLEN: Your Honor, can
13 we take five minutes and I think I
14 can date a date for the witness.

15 THE COURT: Sure, the other
16 thing is since the witness is on
17 the stand looking at this, are
18 there any particular pages you want
19 him to focus on so he should have
20 some idea of what he should be
21 focusing on.

22 MR. MOLLEN: I'll get both of
23 those details. Let's take a few

24 minute break.

25 THE COURT: Let's do the first

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2 while you get the other documents
3 together.

4 Q. I will get the date, your
5 Honor, we're looking for it right now. I
6 will direct your attention, Mr. Eaton,
7 you'll see it's number 7 on page 3.

8 MR. DEAN: Your Honor, I don't
9 know how long the actual letter of
10 agreement 91 is, but for
11 completeness I think it will help
12 Mr. Eaton to know if this is
13 attachment B to that letter.

14 MR. MOLLEN: It's three.
15 There are attachments A, B and C.
16 As I understand it, your Honor,
17 this is the agreement by which the
18 operations were merged when US

19 Airways and America West put
20 themselves together and as you can
21 imagine it's very complicated and
22 this is the only provision in the
23 entire document, series of
24 documents that deals with the RJ
25 issue.

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2 MR. DEAN: Are there other
3 letters or attachments that deal
4 with scope provisions?

5 MR. MOLLEN: No. Not that I'm
6 aware of. But I'll find out.

7 THE COURT: He'll get you a
8 copy of the document and then if
9 you need time to take a look at it
10 before figuring out what you want
11 to do on redirect, that's fine.

12 MR. DEAN: Thank you, your
13 Honor.

14 THE COURT: In the interest of
15 expediency if you look at it and
16 later you have an objection you
17 want to make, that's fine. I
18 obviously realize you can't make
19 that now without having an a chance
20 to look at that.

21 MR. DEAN: Thank you, your
22 Honor. One question. The debtor
23 put on Mr. Glass on scope issues
24 and he provided the documents on
25 which he relied which were CBA

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2 provisions. Is letter of agreement
3 91 part of the material that he
4 relied upon?

5 MR. MOLLEN: I'd have to go
6 back and see if it was incorporated
7 in that material. I know the
8 entire US Airways collective

9 bargaining agreement was part of
10 the materials that we sent to you
11 as information relied upon.

12 MR. DEAN: As you point out,
13 that doesn't always include all of
14 the letter of agreements.

15 MR. MOLLEN: It doesn't
16 encompass everything. That's a
17 question I can answer at the next
18 break, your Honor.

19 THE COURT: If somebody can be
20 taking a look at that maybe it's
21 already incorporated somewhere
22 else, that might be helpful to know
23 in terms of resolving any
24 objections.

25 MR. DEAN: If it's already

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2 been provided to us with Mr.
3 Glass's material, then we were able

4 to do the due diligence to
5 ascertain we were looking at a
6 document that jibed with what the
7 APA has in its files.

8 THE COURT: Fair enough.
9 We'll cross that bridge for the
10 appropriate time. I think for
11 purposes of cross --

12 MR. MOLLEN: Your Honor, I'm
13 told that it was in the materials
14 on which Mr. Glass relied and
15 therefore within the materials that
16 were provided to APA.

17 THE COURT: If someone has,
18 again, I don't want to get bogged
19 down on this, if you have any sort
20 of direction as to where it might
21 be just to make it easier for
22 counsel to find it. In the
23 meantime, proceed.

24 MR. MOLLEN: Very well, your
25 Honor.

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2 Q. Have you had time to look at
3 the document, Mr. Eaton?

4 A. I've looked at it. Let me
5 make sure I understand. You're referring
6 now to page 3?

7 Q. Correct.

8 A. And bullet point 7 of this
9 document?

10 Q. Yes, sir.

11 A. I've read that, that bullet
12 point.

13 Q. And does that indicate that
14 the carrier permitted to add up to 60
15 large RJs and the CRJ 700 -- 700, I said
16 9, didn't I?

17 A. You did.

18 Q. I correct myself. 700-701
19 series at -- through a partner, wholly
20 owned subsidiary; isn't that correct?

21 A. It does, it does say and

22 they've got a little bit different
23 definition because they were running a
24 place where furloughed pilots could go,
25 but it would be a subsidiary.

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2 Q. Does that mean this 93 number
3 is incorrect, that is in Exhibit 513 in
4 your declaration?

5 A. I'll flip back to that in just
6 a second. Well I don't think those CRJ
7 700s are in that 77 to 88 seats, although
8 I don't -- I can't speak to how they were
9 configured whenever this was done.

10 Q. You're familiar with that
11 piece of equipment, though, are you not?

12 A. The CRJ 700?

13 Q. Correct.

14 A. I am.

15 Q. So either those CRJ 700s fit
16 in the 77 to 88 seat column there, the

17 plum column there, okay, or they would
18 fit where there is no column just to the
19 left of it, correct, where there is no
20 entry?

21 A. No, they could fit in the 51
22 to 70 column as well. The CRJ 700 can be
23 configured, in fact American configures
24 them at about 66 and I think --

25 Q. Two classes?

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2 A. In a two class, and when they
3 fly as a single class it's been a 70 seat
4 airplane.

5 Q. Just to prove the point that
6 scope clauses are complicated --

7 A. I'll agree with you again.

8 Q. Yes. Are you aware that the
9 provision that you just read was modified
10 in the transition agreement thereafter?

11 A. I know there was a subsequent

12 transition agreement. It's in one of my
13 exhibits where they did modify it.

14 Q. Are you aware that in that
15 transition agreement the limit was placed
16 at 88 seats?

17 A. In the transition agreement
18 they went to a limit of 90 seats coach,
19 88 seats dual class on the CRJ 900, not
20 the 700 that's in this paragraph.

21 Q. Let's focus then, given that
22 answer, on the number 88 which you assign
23 as the upper bound of the US Airways seat
24 limit for regional flying through a
25 partner. Did I just understand you to

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2 say that it's actually 90 seats for the
3 CRJ 900?

4 A. US Airways today has a coach
5 limit of 90 seats and a dual class of 88
6 seats.

7 Q. So in actuality that number on
8 your chart 88 should be 90, should it
9 not? We just said that the limit was 90
10 seats in coach?

11 A. I know what I said. It's
12 possible. I'd really have to go back and
13 look. They are flying all as a dual
14 class, but I understand your point.

15 Q. Now, there was a lot of
16 testimony yesterday on direct and there's
17 also references in your declaration to
18 the operation of the Embraer E 190 at US
19 Airways. Do you remember that testimony?

20 A. I do.

21 Q. Now, at one time those
22 aircraft were operated through a regional
23 partner, isn't that correct, US Airways
24 Express?

25 A. I know they were contractually

2 permitted. I'm not sure that they ever
3 flew them, but they were permitted at, I
4 think it was at Midatlantic Airways which
5 was a subsidiary of US Airways.

6 Q. Okay, I'll take that as a yes
7 and move on. It's a regional carrier,
8 correct?

9 A. It was -- US Airways to add to
10 the complexity, I'm not really sure if
11 they count it as a regional carrier, but
12 it was not a mainline carrier. And I
13 apologize for all these different
14 gradations, but that's kind of the
15 history of US Airways.

16 Q. I asked for a complicated
17 answer. I suppose I get what deserve
18 what I asked for.

19 Those aircraft, the right to
20 fly them was eventually brought back to
21 the mainline; is that correct?

22 A. In the transition agreement in
23 2005 it was brought back to the mainline.

24 Q. And that was in 2005, correct?

25 A. That's correct.

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2 Q. That was part of a package
3 deal with the pilots union at US Airways,
4 correct?

5 A. It was part of a negotiated
6 agreement for a whole bunch of things.

7 Q. And there were three elements
8 to the deal that the company got in
9 return for the agreement to bring that
10 flying back to the mainline; isn't that
11 right?

12 A. I'm not familiar with the
13 three elements. I've heard you say that.

14 Q. Do you recall that the, one of
15 the elements in that deal was to increase
16 the seat limit on the CRJ 900s from 88 to
17 90?

18 A. I don't recall. I think I
19 have the document I can refer to it.

20 Q. Do you recall that part of the

21 deal was the pilots union agreeing to
22 lock in for ten years pay rates for that
23 aircraft that were actually lower than
24 the rates at republic airways which was
25 the only other regional carrier that was

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2 flying that piece of equipment?

3 A. I don't recall the ten year
4 provision or the rates, but.

5 Q. But you don't dispute that,
6 it's just you don't recall it?

7 A. Yes.

8 Q. And the third element of that
9 deal was that US Air was permitted to
10 have wall to wall day one code sharing
11 with America West; isn't that correct?

12 A. I don't know, but again, a
13 transition agreement that usually is what
14 you're trying to transition to, to bring
15 the two carriers into one.

16 Q. Because until the two separate
17 carriers can be operationally integrated
18 without that code sharing arrangement you
19 have to operate essentially as two
20 independent airlines, right?

21 A. Yes.

22 Q. So when APA agreed to permit
23 day one code sharing between American and
24 US Airways in the term sheet that you
25 agreed to, that was a significant part of

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2 the deal and allowed a lot of code
3 sharing, did it not?

4 A. To allow code sharing between
5 -- if you want to call it old American US
6 Airways, old American, new American it
7 would be, right, to allow code sharing on
8 both networks, yes, at the same time.

9 Q. So let's just recap. Delta
10 can operate 255 aircraft between 70 and

11 76 seats, US Airways can operate up to
12 400 -- I'm sorry, United can operate
13 between up to 451 aircraft and 70 seats,
14 US can operate I think 153 aircraft at 90
15 seats and 97 aircraft at 70 seats. Is
16 that consistent with your understanding?

17 A. Not on US Air. You said 153
18 at 90 seats.

19 Q. Correct.

20 A. I don't see that. I see the
21 93 fit were all coach at 90.

22 Q. The 60 incremental?

23 A. Those 60 incremental are CRJ
24 700s. You couldn't get 90 seats into
25 those, that just wouldn't work.

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2 Q. So assuming that you're
3 correct, we're going to change that 153
4 to 93, so US can operate 93 aircraft at
5 90 seats, 97 aircraft at 70 seats, all

6 through regional partners; is that
7 correct?

8 MR. DEAN: I'm just going to
9 object that the witness has already
10 testified that he's not familiar
11 with what happened with those CRJ
12 700s.

13 THE COURT: Again, objection
14 foundation. I don't want to have
15 speaking objections.

16 Can you ask the question
17 again, please.

18 Q. I'm trying to figure out a way
19 to avoid the mathematical controversy
20 here. Am I correct, Mr. Eaton, in
21 understanding your testimony to be that
22 none of the matches between the number of
23 aircraft and the seat limits at United,
24 US Airways or Delta is consistent with
25 your understanding of what the industry

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2 standard ought to be in the scope?

3 A. No, I think you take all of
4 them and look at it and establish where
5 the industry standard is.

6 Q. Very good. Then let's move on
7 from there. Let's talk then about your
8 proposal.

9 A. Right.

10 Q. Currently American can operate
11 how many aircraft in the 90 seat range?

12 A. Unlimited.

13 Q. I'm sorry, I take your point.
14 How many aircraft can American operate in
15 the 90 seat range through a regional
16 partner?

17 A. Today it cannot.

18 Q. How many aircraft can merge
19 currently operate in the 76 seat range
20 through a regional partner?

21 A. Through a regional partner.
22 It cannot operate any.

23 Q. Okay. It can operate 47

24 aircraft in the 70 seat range; is that
25 correct?

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2 A. 47 regional jets and another
3 40 turboprops, yes.

4 Q. I'm going to set the
5 turboprops to one side, just for --
6 things are complicated enough without
7 interjecting those.

8 Now you've got a proposal on
9 the table which you say will increase
10 that 103 incremental aircraft up to a
11 total of 150; is that correct?

12 A. Yes.

13 Q. But the limit would still be
14 70 seats, correct?

15 A. That's correct.

16 Q. So even if your proposal were
17 accepted and even if all the conditions
18 in your proposal were satisfied, American

19 would still not be able to operate any of
20 the 76 seat or 90 seat aircraft that
21 their competitors can operate through a
22 regional partner; isn't that right?

23 A. Yes, what we tried to do was
24 actually-

25 Q. That's a simple yes or no

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2 question, Mr. Eaton.

3 A. Then you better ask it again.

4 Q. Isn't it a fact that even if
5 American accepted your scope proposal and
6 satisfied all the elements in it, the
7 conditions on it, that they still
8 wouldn't be able to operate any 76 seat
9 aircraft or any 90 seat aircraft through
10 regional partners; isn't that correct?

11 A. Through regional partners,
12 that's correct.

13 Q. Very well. Now let's talk a

14 little bit about the condition that you
15 did put on incremental growth of the RJ
16 fleet at American through the partner
17 fleet.

18 As I understand it, for every
19 regional jet that American wants to
20 operate through a partner, the company
21 has to add one piece of equipment in the
22 71 to 110 seat range to the mainline
23 operation, correct?

24 A. We look at their business plan
25 and tried to match, so yes.

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2 Q. Correct? Correct?

3 A. That's correct.

4 Q. Thank you. Now you can -- and
5 that would get them up to 150, 47 plus
6 103, if they did that to the maximum
7 extent permitted by your proposal?

8 A. That's correct.

9 Q. That would still be a third of
10 what United can fly and about 59 percent
11 of what Delta can fly even if we ignored
12 the seat limits; isn't that correct?

13 A. It would match what United
14 does today by about three airplanes.

15 Q. Allowance?

16 A. Allowance. In allowance it
17 would be below United's allowance.

18 Q. Well below United's allowance,
19 would it not?

20 A. It depends on how United
21 allocates their airplanes, so.

22 Q. Allowance?

23 A. Allowance, it would be below
24 United's allowance.

25 Q. Well below United's allowance,

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2 with the hundreds of air frames below
3 United's allowance; isn't that right?

4 A. It would be hundreds.

5 Q. Thank you. And in order to
6 add even the first RJ limited to 70 seats
7 to its regional fleet, American would
8 have to add one piece of equipment in the
9 71 to 110 seat range, right?

10 A. I'm not sure if the timing
11 requires it to be exact or if there's a
12 provision for you order it, we know
13 delivery comes.

14 Q. But the proposal is a one for
15 one match, you can add one at the
16 regional partner in the 70 seat range if
17 you add one to the mainline in the 71 to
18 110 seat range, correct?

19 A. As I read the proposal, I just
20 don't know if they discussed and said
21 well if you order a hundred here and a
22 hundred there we'll all be --

23 Q. Let's set sequencing and
24 timing aside. In order for American to
25 add one piece of equipment to its

1
2 regional fleet in the 70 seat range it
3 has to add one piece of equipment to its
4 mainline fleet in the 71 to 110 seat
5 range; isn't that right?

6 A. Well I'm just not sure. You
7 said you want to set the sequencing aside
8 and then we're talking about one for one.
9 At a conceptual level I can agree with
10 one to one. I just don't know if you get
11 10, or we get 10 or something.

12 Q. I will accept the conceptual
13 level. Now let's examine that condition
14 a little bit. Does Delta operate any
15 aircraft in the 71 to 110 seat range at
16 the mainline today?

17 A. I don't believe so.

18 Q. United?

19 A. No.

20 Q. Did Continental at the time of
21 the merger?

22 A. At the time of the merger with

23 United?

24 Q. Correct.

25 A. I'm not sure about their

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2 smallest 737s, but I think they were

3 greater than 110 seats.

4 Q. How about Northwest at the

5 time of its merger with Delta?

6 A. They may have. There were

7 some DC 9-10s that are very small,

8 hundred seat-ish and they may have had a

9 few of those left over but they're not in

10 the fleet today.

11 Q. You're not clear whether

12 they'd actually left the fleet at the

13 time of the merger, but you know they

14 were at least on the way out; isn't that

15 right?

16 A. I'm not sure if I knew they

17 were on the way out. For awhile they

18 were keeping these really old DC 9-10s on
19 the property. But they are not there, to
20 my knowledge they're not there today.

21 Q. Would you say that operating
22 aircraft in the 71 to 110 seat range at
23 the mainline is industry standard among
24 the network carriers?

25 A. As a contractual right. 71,

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2 you said 71 to 110? I think as a
3 contractual right, yes. It's just not --

4 Q. Let me refine the question.
5 Is the operation of aircraft in the 71 to
6 110 seat range at the mainline a industry
7 standard in the network carrier industry?
8 The answer is no, isn't it, Mr. Eaton?

9 A. You know, I don't think so. I
10 don't think the answer is no.

11 Q. You just told me, forgive me,
12 but you just told me that of the major

13 competitors, Delta, United, Continental
14 and Northwest, that three of them
15 definitely don't operate those airline
16 craft and one of them might have had a
17 few straggling around at the time of the
18 merger. So how can you tell me that
19 you're really uncertain as to whether
20 that kind of operation is industry
21 standard?

22 MR. DEAN: Objection;
23 argumentative.

24 THE COURT: It's cross
25 examination.

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2 A. When I look at what is
3 operating at the mainline, I have one
4 airline that is operating in that range
5 at the mainline, US Airways.

6 Q. We're going to talk about US
7 Airways. I haven't asked about that for

8 a reason.

9 MR. DEAN: Objection. May he
10 answer the question?

11 THE COURT: All right, you
12 asked an open ended question so you
13 got an open ended answer.

14 A. So if we're talking about an
15 industry where we consider US Airways a
16 part of that standard, we have US Airways
17 operating at mainline, no one else
18 operating at mainline in that range, but
19 no one, just because no one else is
20 operating at mainline does not mean -- I
21 mean I realize there's only one datapoint
22 to say that there's a standard, but there
23 is that one datapoint and everybody else
24 is still permitted in that range on, you
25 know, contractually.

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2 Q. So then your testimony is that

3 in an industry of so few players if you
4 have one datapoint then you at least have
5 an argument that that one datapoint among
6 the five then could constitute industry
7 standard?

8 A. Among the five?

9 Q. We were talking did Delta,
10 United, I asked you about Continental and
11 Northwest and now you've added US Airways
12 to the mix?

13 A. Right, I wasn't trying to
14 count. Okay.

15 Q. I'm just trying to understand
16 your prior answer that the one example at
17 US Airways may be enough for you to hand
18 hold, if you will, on the claim of
19 industry standard. Is that your
20 testimony?

21 A. That's not my testimony. I'm
22 not talking about hand holds and that
23 sort of stuff, so that would not be my
24 testimony. But I think that given what
25 you see today that US Airways does

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2 operate it and even though taking into
3 account that no one else does, if I have
4 to look at for some kind of a standard, I
5 look at the one datapoint. I'm not going
6 to say it's not done where I do have one
7 doing it.

8 Q. Let's talk a little bit about
9 the transition agreement that moved those
10 Embraer 190s to the mainline at US, being
11 that's the one example of that operation
12 currently happening in the industry.

13 How many of those aircraft
14 were operated through a regional partner
15 before where they were transitioned to
16 the mainline, do you know?

17 A. I don't know.

18 Q. If I told you it was about 25
19 to 30 aircraft, is that consistent with
20 your understanding?

21 A. Well, I'm not actually sure
22 whether they were ever physically
23 operated at a regional or if they were
24 slated to go there. This is again that
25 murky history of US Airways where I know

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2 contractually they were dedicated to go
3 to a, to mid Atlantic which was this
4 quasi-regional partner or non-mainline
5 partner. I just don't know if they got
6 there and actually physically flew. I
7 know they wound up there.

8 Q. Do you know how many are
9 flying today at the mainline?

10 A. I believe it's 15.

11 Q. Do you know that US Airways
12 has sold 10 of the aircraft?

13 A. Of the 15?

14 Q. No, of their original stash of
15 E 190s?

16 A. I don't know that, but I don't
17 argue with that.

18 Q. And if in fact it's true that
19 they sold off a big chunk of that fleet,
20 wouldn't that suggest that they've done
21 so because even with the ten year lock in
22 at subregional rates they couldn't make
23 them work economically?

24 A. I disagree with that.

25 Q. You think there might be other

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2 reasons for them to get rid of them?

3 A. I think if you choose to sell
4 an asset you would choose to sell it for
5 a number of reasons.

6 Q. Let's look at Exhibit 510 in
7 your declaration and that is on page 11.
8 Let me know when you're there.

9 A. I'm there.

10 Q. Okay, great. Now, let's see,

11 I don't know what color that is, let's
12 say pumpkin, the pumpkin bars on this
13 chart are all at 114,500 pounds straight
14 across the board for American's proposal,
15 do you see that?

16 A. Yes.

17 Q. You have said American's
18 proposal 114,500 pounds for aircraft
19 under 44 seats. Do you see that?

20 A. I see that.

21 Q. Let's set aside for one moment
22 whether an aircraft that's that small
23 that weighs that much could actually get
24 off the ground, that's an engineering
25 problem I'm not going to take on.

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2 A. I disagree with that, but we
3 don't want to go there.

4 Q. I once actually had an
5 engineer tell me he could take a dog

6 house and get it off the grounds if the
7 engine was big should have.

8 A. You should have asked Mr.
9 Rosselot that question.

10 Q. Are there any aircraft in the
11 sub-44 seat range or in the 44 seat and
12 lower range that actually weigh 114,500
13 pounds in takeoff weight?

14 A. Not in the airline service,
15 so.

16 Q. How about in the 45 to 50 seat
17 range?

18 A. No.

19 Q. How about in the 51 to 70 seat
20 range?

21 A. Actually, there -- well, not
22 today. But there have been.

23 Q. Okay. Let me actually go back
24 and ask you another question. Is anybody
25 making a 50 seat regional jet now?

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2 A. I don't know of any currently
3 in production.

4 Q. And in fact Delta announced
5 recently that they were going to
6 eliminate something like 200 of those 50
7 seat aircraft from their fleet, didn't
8 they?

9 A. I'm not aware of that
10 announcement. They may have.

11 Q. And they're a vanishing breed
12 in the industry; isn't that right? It
13 may take them awhile to leave because
14 there are so many of them, but they're on
15 their way out, are they not?

16 A. I'm not ready to say they're
17 on their way out. I'm not going to talk
18 about confidential pieces of American
19 Airlines fleet plans.

20 Q. I appreciate that.

21 A. I think everybody does. What
22 I don't know is will they go back into
23 manufacture. They may. But I think we
24 can safely say that their number is

25 declining. If that makes everybody

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2 happy.

3 Q. And that's because in the
4 current environment they're simply too
5 inefficient, they're not economically
6 viable; is that right?

7 A. Well, there's a fuel
8 inefficiency, there's a -- you can't put
9 a dual class product in it very
10 effectively. There are a few different
11 business reasons that one might not do
12 it.

13 Q. Now I know that, again, from
14 your testimony yesterday, that you aren't
15 on the negotiating committee, am I
16 correct in saying you haven't been at the
17 negotiating sessions where scope has been
18 discussed?

19 A. That is correct.

20 Q. So you may not know the answer
21 to this, but isn't it a fact that the
22 company has said across the table
23 numerous times that the only reason the
24 114,500 pound limit in there is for the E
25 190 Embraer?

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2 A. I'm not aware of that.

3 Q. If they had made that sort of
4 commitment across the table, that it
5 wasn't to go out and find a 70 seat
6 aircraft flying at 114,000 pounds that
7 was designed specifically to permit the
8 company to operate the Embraer, that
9 would be significant in your analysis of
10 their scope proposal, would it not?

11 A. Actually, in my analysis of
12 their scope proposal, no.

13 Q. Would it change your chart?

14 A. If they had -- if the company

15 had put in a different weight limit for
16 different seat categories it would change
17 my chart. If the company just said we
18 want a blanket weight limit of 114,500
19 pounds and it doesn't matter in terms of
20 seat range.

21 Q. If the company told you across
22 the table that the only reason that it
23 had put that limit in there was so that
24 it could operate the E 190, would you
25 have changed your chart?

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2 A. I would have -- yes, to a
3 point. I would also have to -- want to
4 know in what seat range.

5 Q. Let's look at 507 which is on
6 page 8. Now you show the company with
7 304 jets in the 81 to 88 seat range. Do
8 you see that?

9 A. I do.

10 Q. Isn't it a fact that the
11 company has again said across the table
12 it has absolutely no intention of
13 operating 304 airplanes in the 81 to 88
14 seat range?

15 A. I haven't been at the table so
16 I can't speak to that.

17 Q. Isn't it a fact that in the
18 company's business plan it shows only a
19 maximum of 126?

20 A. I don't think we want to talk
21 about those numbers. And that number
22 wrong. Sorry.

23 Q. Isn't it a fact -- excuse me,
24 your Honor. Isn't it a fact that in the
25 business plan it shows a much smaller

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2 number than 304 at the far end of the
3 business projection; isn't that right?

4 A. I think we actually have an

5 exhibit where we can point his Honor to
6 it if you'd like.

7 Q. I think you can answer my
8 question first and then if Mr. Dean wants
9 to show you the exhibit he can do that.

10 A. All right. The company's
11 business plan calls for a large number
12 less than 304 in that range. This
13 represents the maximum of what they're
14 demanding.

15 Q. And the company has said
16 across the table, has it not, that the
17 whole point of obtaining more flexibility
18 with respect to regional jet flying
19 through partners is to be able to right
20 size the aircraft to the market; isn't
21 that right?

22 A. Again, I haven't been at the
23 table so I haven't heard those
24 conversations.

25 Q. So you don't know. But it

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2 would be contrary to that goal for a
3 company to operate so many of their
4 aircraft at the maximum of the
5 contractual limit, would it not?

6 A. No, I wouldn't -- I wouldn't
7 say that.

8 Q. If the goal is to find an
9 aircraft that is the right size for each
10 market, the Goldilocks goal, not too big,
11 not too small, putting all your eggs, to
12 mix metaphors, putting all your legs in
13 the largest RJ basket would make no
14 sense, would it?

15 A. I think -- I think you'd look
16 -- you would literally look at markets
17 and say what do I need in a certain, you
18 know, given some assumptions.

19 Q. Right.

20 A. Which then leaves me
21 scratching my head why ask for something
22 that's 304 when you clearly don't need

23 that.

24 Q. It's a good question. Let's
25 go to APA Exhibit 2.

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2 A. 502?

3 Q. Exhibit 2.

4 A. In my declaration?

5 Q. No, it's before your

6 determining declaration, all the way at

7 the beginning of the book.

8 A. Oh, okay.

9 Q. Are you familiar with that
10 document, Mr. Eaton?

11 A. I've seen it.

12 Q. Isn't it a fact that when the
13 company changed its scope proposal it did
14 so in response to exactly that concern
15 from APA, that is American could put all
16 304 of these RJs at the top end of the
17 seat range?

18 MR. DEAN: Objection; lack of
19 foundation.

20 A. I'm not sure why the company
21 did what it did.

22 THE COURT: Ask the question
23 again.

24 Q. Isn't it a fact that the
25 company changed its scope language in

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1
2 order to provide APA with the assurance
3 that it had no intention of putting all
4 of --

5 THE COURT: I'll allow it
6 since he says he's familiar with
7 the document.

8 A. And I'm not sure why the
9 company made the proposal that it made.

10 Q. Because you weren't there when
11 the company made the proposal, correct?

12 A. Right.

13 Q. Okay. All right. Let's move
14 on and talk just a little bit about code
15 sharing. Now you testified yesterday
16 that the industry had changed in many
17 ways with respect to scope and that the
18 APA was willing to loosen some of the
19 scope protections to help the company
20 compete, correct?

21 A. I believe I said that.

22 Q. And let's look at paragraph 13
23 of your declaration. I apologize for
24 making you flip back and forth. It's an
25 unwieldy process.

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2 THE COURT: Paragraph number
3 again?

4 MR. MOLLEN: 13. It's on page
5 4.

6 Q. In this paragraph don't you
7 say that one of the ways that the

8 industry has changed with respect to
9 scope is in the code sharing realm; isn't
10 that right?

11 A. I'm sorry, I just want to make
12 sure I get, paragraph 13, page 4 of my
13 declaration.

14 Q. I'm sorry, I don't mean to
15 rush you.

16 A. That's all right. All right,
17 please, if you don't mind, ask me the
18 question one more time.

19 Q. Sure, sure. The purport of
20 this paragraph is really that one of the
21 ways in which the industry has evolved is
22 in the use of code sharing and that has
23 had a concomitant change or impact on
24 scope restrictions; isn't that right?

25 A. In paragraph 13?

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2 Q. Did I get the wrong number?

3 A. It talks about commuter
4 carriers and I have a sense you're asking
5 about something else.

6 Q. You know, I may have gotten
7 the wrong number, I apologize. Did you
8 not say in your declaration at some
9 paragraph unnamed at this point that the
10 industry's evolved such that code sharing
11 is frequently used to extend the
12 company's market presence and to feed
13 mainline flights?

14 A. Not to argue with you too
15 much, but I'd love to know where I said
16 it.

17 Q. 15. I apologize.

18 A. Okay.

19 Q. It starts at the bottom of
20 five, goes to six.

21 A. I've looked at 15, but it
22 didn't say what you had said, so.

23 Q. The last sentence there, the
24 last clause, the industry's evolved such
25 that code sharing is frequently used to

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2 extend the company's market presence and
3 sometimes to feed American's flights.

4 A. I'm sorry, you're right, I
5 read too fast. My apologies.

6 Q. So let's talk a little bit
7 about this evolution. You testified
8 yesterday I think that as an airline's
9 network grows its reliance on code share
10 will typically wane; isn't that correct?

11 A. Let's be clear as to what
12 we're talking about in terms of code
13 share and network.

14 Q. First answer my question. Did
15 you say that yesterday?

16 A. I'm not sure -- well I guess
17 the reason want to be clear is because
18 I'm not sure I said it quite in that
19 context.

20 Q. Okay, go ahead?

21 A. Because code share that we're

22 talking about is domestic code share, so
23 solely with a domestic US carrier. We're
24 not talking about code share in the
25 commuter area, we're not talking about

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2 international.

3 So in respect to as a domestic
4 carrier's network grows through
5 consolidation or through I suppose growth
6 he when you build up, then one's need for
7 domestic code sharing in a broad sense
8 would decline.

9 Q. Okay. So with those
10 qualifications, setting commuter flying
11 to one side and setting international
12 code sharing to one side, you'll agree
13 with me that as the size of a network
14 carrier's network grows, its need for and
15 reliance on code share is likely to
16 shrink?

17 A. Yes, just to be clear it's the
18 indigenous network rather than because
19 you would actually grow your network
20 during code sharing.

21 Q. It's a synthetic growth
22 through code sharing, correct?

23 A. Organic growth versus
24 synthetic, yes.

25 Q. Now, in 2003, when you helped

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1
2 negotiate the current scope clause,
3 American was the largest carrier on the
4 planet, wasn't it?

5 A. I think it was.

6 Q. It was actually significantly
7 bigger than US Airways or Northwest,
8 wasn't it?

9 A. I believe that's correct.

10 Q. And it was actually vastly
11 bigger than US, wasn't it, orders of

12 magnitude?

13 A. I don't know vastly. It was
14 -- it was -- if you put them on the scale
15 we were the biggest, US Air was the
16 smallest. Northwest may have been the
17 next biggest.

18 Q. So in 2003, when that scope
19 clause was negotiated, in fact up until
20 the mergers at Delta and Northwest and
21 United and Continental, American had far
22 less need for code sharing than those
23 other airlines had, correct? That is
24 domestic carrying?

25 A. I'm not sure that they had far

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1
2 less need. In 2003 they didn't have
3 partners to choose from.

4 Q. So you're not sure that they
5 had less need, but they did have less
6 code sharing; isn't that right?

7 A. They did have less code

8 sharing, that's correct.

9 Q. And they had less code sharing

10 in large measure because their collective

11 bargaining agreement didn't permit them

12 to have more code sharing; isn't that

13 right?

14 A. Until -- well, to be clear, we

15 had this agreement in 2003 because we

16 were trying to avoid being in this court

17 or a court like it. We granted the

18 company the right to do domestic code

19 share. The problem for the company was

20 they did not know with whom they could

21 code share because the partner, the dance

22 partners were predominantly taken.

23 So we gave them this mechanism

24 that would allow them to do something

25 with anyone under this mediate, you know,

2 negotiate, mediate, arbitrate to industry
3 standard.

4 Q. So in that pre-merger
5 environment all of American's competitors
6 had very extensive code sharing
7 agreements that sort of ate up the
8 availability of partners and so American
9 was left as the last carrier standing
10 without such a relationship, is that your
11 testimony?

12 A. At the time there were no --
13 there were no large network carriers with
14 whom to have, with whom to negotiate a
15 code share. I don't know that they
16 couldn't have done something with someone
17 else or peeled another off.

18 Q. So at that point, again
19 pre-merger, I think the benchmark we used
20 was 2006, Northwest had something north
21 of 709, or 700 city pairs in which it
22 code shared, Delta had 400, about orders
23 of magnitude, your recollection?

24 A. I think I've seen some. I

25 think you put on some exhibit with

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2 someone else that has large numbers.

3 Northwest I think was doing code sharing

4 with both Delta and Continental at the

5 time.

6 Q. And setting the Hawaiian

7 interisland issue aside, at that point

8 when these others had hundreds and

9 hundreds of city pairs with which to code

10 share, American was at 63; isn't that

11 right?

12 A. All with Alaska, yes, and

13 approximately 63.

14 Q. And those were city pairs that

15 were specified in writing, it wasn't as

16 though APA had said you can code share on

17 63 city pairs, go find them?

18 A. No, I don't think we specified

19 those city pairs in writing. There were

20 certain protections that we put in given
21 city pairs that we actually -- when we
22 looked at where there was some overlap
23 flying, we said okay, you have seven
24 flights, we get one or we have one,
25 something like that.

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2 There was a code share
3 agreement which was really, I always
4 called it the commercial agreement
5 between Alaska and American that defined
6 the cities that they would do things, but
7 there were sections of the country where
8 it was allowed them to do anything.

9 Q. So your recollection is not
10 that the supplement R of the collective
11 bargaining agreement regarding Alaska
12 incorporated by reference the list of
13 cities that was in the commercial
14 agreement and limited American to those

15 city pairs?

16 A. I just don't think it's a list
17 of cities because there were things that
18 they could do wholly within I think it
19 was the western region of the US which
20 maybe was West of the Mississippi, I just
21 don't remember the map. But that was you
22 can do whatever you need to out there.

23 Q. But in any event, the
24 situation with respect to the need for
25 code share is now reversed, is it not?

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2 You have American chasing United and
3 Delta who both have much more substantial
4 networks and it's American that has the
5 disadvantaged network; isn't that true?

6 A. American has a smaller
7 network. They still face the problem of
8 potential code share partners.

9 Q. So today, in the world today,

10 when American's competitors have a
11 reduced need for code share, US still has
12 its code on 250 plus United flights,
13 correct?

14 A. They have their code on United
15 flights, I don't know the exact number.

16 Q. And United has 110 on US;
17 isn't that right?

18 A. Again, I don't know the
19 number, but they do code.

20 Q. And American has zero codes on
21 any network carrier; isn't that right?

22 A. I don't want to argue with you
23 whether Alaska is -- they only code with
24 Alaska.

25 Q. So would you say that zero is

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2 the industry standard for code share
3 partners with a network carrier?

4 A. No. And in this context,

5 we're not talking about the number of
6 code share partners as being anything a
7 industry standard at least not relative
8 to my declaration.

9 Q. Okay.

10 A. We talk about protections.

11 Q. Well let's talk about what's
12 currently in the proposal that APA has
13 made, or agreed to with US. In addition
14 to specific code shares that were
15 identified, that were set to one side,
16 didn't APA agree that US could enter into
17 any new code share relationship that it
18 chose so long as the total ASMs, so that
19 those operations met a certain ASM cap;
20 isn't that correct?

21 A. Well they agreed to Alaska
22 separately and then anything else was
23 capped at a ASM limitation based on
24 domestic mainline carriers.

25 Q. Also the code shares with

1

2 United didn't count towards that 4
3 percent cap; isn't that right?

4 A. There was -- right. United
5 has a -- they have a two month, they have
6 to give, essentially give their notice to
7 United in two months and have two years
8 to get out of that code sharing
9 arrangement so they can do an orderly
10 withdrawal.

11 Q. But for two years, whatever
12 codes United and US share don't count
13 towards that 4 percent ASM cap; isn't
14 that right?

15 A. Up to two years.

16 Q. Right. Okay, and so let's set
17 United and Alaska to one side. US Air is
18 permitted to go out and find other code
19 share partners and enter into alliances
20 with them so long as those operations
21 don't rise above the 4 percent ASM cap,
22 correct?

23 A. That's my understanding.

24 Q. Have you made any similar
25 proposal to the company here?

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2 A. The proposals to the company
3 reflect what the company was asking for
4 in November which were specific, they had
5 -- the company had specific dance
6 partners which we talked about yesterday
7 in one, two and three.

8 Q. So the answer is no, correct?

9 A. In terms of a blanket you can
10 do whatever you want subject to a
11 limitation.

12 Q. The agreement that you had
13 with US permitted them to go out and be
14 creative and find opportunities where
15 they might arise over the coming years
16 that none of us can foresee; isn't that
17 right?

18 A. I'm not sure. I'm not sure

19 it's necessary to say it allows them to
20 be contemplative or creative or whatever.

21 Q. One would hope that they would
22 be, though, don't you?

23 A. Oh, I think one would hope.

24 Q. And they have the freedom to
25 go out and find new partners if Virgin

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2 America presents an opportunity or
3 Allegiant or Spirit in 2015 or 2016, APA
4 agreed to a mechanism that would allow
5 them to do that; isn't that right?

6 A. Yes, I'm sure if the company
7 wanted to do something similar, that --

8 Q. Did you make a proposal of
9 that sort to American?

10 A. The company wanted to get rid
11 of prepetition paragraph 1 H which
12 allowed for that mechanism --

13 Q. It's a simple question. Did

14 you agree to a similar ASM cap
15 arrangement -- did you propose to
16 American a similar ASM cap arrangement to
17 the one that you agreed to at US Airways?

18 A. We did not.

19 Q. And you mentioned that you,
20 when we were talking about US, you said
21 Alaska, we agreed to set Alaska to one
22 side for a moment because that didn't
23 count towards the cap. The agreement at
24 US permitted wall to wall, any time,
25 anywhere as much as you want, so long as

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2 you leave Hawaii out of it, anything you
3 want to code share on US Airways gets to
4 do with Alaska; isn't that right?

5 A. I believe there are no
6 restrictions other than the US to
7 mainland to Hawaii.

8 Q. Did you make that proposal to

9 American?

10 A. I did not.

11 Q. When you say you did not, I
12 recognize you're not on the negotiating
13 committee. Did APA make such a proposal
14 to the company?

15 A. No, APA made a different
16 proposal to the company regarding Alaska.

17 Q. Thank you, thank you.

18 MR. MOLLEN: Your Honor, can I
19 have maybe just a couple of minutes
20 to caucus with my colleagues and
21 I'm probably done.

22 THE COURT: Do you want to
23 take a break?

24 MR. MOLLEN: I think that
25 might be preferable.

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2 THE COURT: Let's take a few
3 minutes.

4 (A recess was taken.)

5 THE CLERK: All rise.

6 THE COURT: Please be seated.

7 Proceed.

8 MR. MOLLEN: No further

9 questions, your Honor.

10 THE COURT: Redirect.

11 MR. DEAN: A couple questions,

12 your Honor.

13 REDIRECT EXAMINATION

14 BY MR. DEAN:

15 Q. First officer Eaton, do you

16 have an understanding one way or the

17 other as to whether it was US Air or APA

18 that proposed the 4 percent ASM limit on

19 dome code sharing that ended up in the

20 term sheet?

21 A. I do not.

22 Q. Has the company, American,

23 ever proposed an ASM limit for domestic

24 code sharing, to your knowledge?

25 A. Not to my knowledge.

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2 Q. Do you recall that Mr. Mollen
3 asked you about US Air management beliefs
4 regarding the profitability of Embraer
5 190 flying?

6 A. I recall that.

7 Q. Does the US Air agreement with
8 APA regarding 81 to 110 seat flying at
9 the mainline suggest to you one way or
10 the other whether US Air believes that
11 that flying can be done profitably?

12 A. It only suggests that they
13 would intend to do more of that flying.

14 MR. DEAN: Nothing further.

15 MR. MOLLEN: Nothing, your
16 Honor.

17 THE COURT: All right. So the
18 next witness I believe is the
19 subject of motion.

20 MR. DEAN: Excuse me.

21 MR. MOLLEN: No, no.

22 MR. DEAN: Not a question. I
23 have not moved Mr. Eaton's
24 declaration exhibits.

25 THE COURT: Fair enough.

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2 MR. MOLLEN: No objection,
3 your Honor.

4 THE COURT: Just identify the
5 exhibits for purposes of keeping
6 track of these things.

7 MR. DEAN: Sure, it is Exhibit
8 500-A and then the following
9 exhibits, 501, 502, 503, 504,
10 505-A, 506, 507, 508, 509, 510,
11 511, 512, 513, 514, 515, 516, and
12 517-A.

13 THE COURT: All right. They
14 are all received as evidence. And
15 you're excused. Thank you.

16 MR. MOLLEN: One moment, I'm

17 sorry, your Honor. I showed the
18 witness the letter of agreement,
19 the US Air letter of agreement and
20 I can't remember whether he was
21 able to authenticate it. If he
22 wasn't, if he was I want to move it
23 into evidence now. If he wasn't,
24 we'll put it in through a rebuttal
25 witness.

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2 THE COURT: My memory is that
3 he was familiar with the agreement
4 in general but not necessarily that
5 piece of paper.

6 MR. DEAN: Right. I think we
7 can reach a stipulation if in fact
8 it's --

9 MR. MOLLEN: We'll either
10 stipulate --

11 THE COURT: It is what it is,

12 and we can let this nice gentleman
13 go home.

14 MR. MOLLEN: We'll either
15 stipulate or put it in through
16 another witness.

17 THE COURT: That's fine, thank
18 you.

19 All right. So am I correct
20 that there is one last witness who
21 is to be heard and that's a witness
22 who's the subject of a motion that
23 was filed on Monday and a response
24 which was filed or provided this
25 morning or late last night, I'm not

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2 sure which. Give me a second to
3 finds the papers. Is that the last
4 witness we're talking about here?

5 MR. HAIRSTON: Yes, sir, that
6 is. Chuck Hairston, your Honor,

7 for APA.

8 THE COURT: Let me cut to the
9 chase. First of all, thank you for
10 the response this morning under the
11 time constraints it was
12 particularly helpful in laying out
13 the relevant things to look at and
14 relevant case law which is always
15 very helpful. I am generally
16 inclined to view these things as
17 matters of weight, but consistent
18 with traditional trial practice,
19 it's premature in my view to rule
20 on these things until essentially
21 there's voir dire on these kind of
22 Daubert issues, as exciting as they
23 are.

24 So I think it's appropriate
25 for me then to take it under

2 advisement until after the cross
3 and then I'll let you know what I
4 think. But I just don't want to
5 get bogged down as I do think the
6 papers were helpful. They pointed
7 out factually what the witness had
8 said and what the witness had not
9 said, and gave some guidance as to
10 what is the case law. With that
11 said, I think we should proceed
12 with the witness and I know that
13 this will obviously be a subject of
14 cross examination.

15 MR. HAIRSTON: Yes, sir. APA
16 calls Mr. Christopher Heppner.

17 CHRISTOPHER HEPPNER,
18 called as a witness, having been
19 first duly sworn, was examined
20 and testified as follows:

21 THE COURT: Proceed, counsel.

22 MR. HAIRSTON: Good morning,
23 your Honor. Again, Chuck Hairston
24 for APA.

25 DIRECT EXAMINATION

1

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BY MR. HAIRSTON:

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Q. Mr. Heppner, good morning.

4

A. Good morning.

5

6

Q. Barely. Mr. Heppner, could you briefly describe your educational

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background for the court.

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A. I have a Bachelor's from the University of Illinois from their College of Business Administration and Information and Decision Sciences.

12

13

Q. And when did you receive your Bachelor's degree?

14

A. 1991.

15

16

Q. What was your first position following your graduation in 1991?

17

18

A. I was an actuary, analyst for Mercer.

19

Q. When did you start?

20

A. I started in 1992.

21 Q. And how long were you with

22 Mercer?

23 A. Six years.

24 Q. Mr. Heppner, do you have any

25 actuarial credentials?

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2 A. I am an associate of the

3 Society of Actuaries.

4 Q. When did you earn that

5 credential?

6 A. 1995.

7 Q. Could you just briefly

8 describe what that credential means?

9 A. Well, I'm, the Society of

10 Actuaries is one of several credential

11 link organizations in the United States

12 and I'm an associate of that, of that

13 society which means that I can -- I'm an

14 actuary and recognized by the Society of

15 Actuaries.

16 Q. And do you in fact still hold
17 that credential today?

18 A. Yes, I do.

19 Q. How long did you stay at
20 Mercer?

21 A. I was at Mercer for six years.

22 Q. And did you have any other
23 position during that six year period?

24 A. I was, you know, primarily an
25 actuary analyst in their, in their health

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2 practice. I did, you know, obtain my
3 credential while I was at -- while I was
4 at Mercer.

5 Q. Where did you go after Mercer?

6 A. I went to work for Consec, a
7 major medical insurance company.

8 Q. When was that?

9 A. That would have been in 1998.

10 Q. And what did you do at Consec

11 major mutual insurance company?

12 A. I was an actuary in their, in
13 their pricing area. I was responsible
14 for pricing their individual and their
15 small group health insurance products and
16 that would have been, that would have
17 included doing experience analysis. It
18 would have included filing rates for
19 their existing products and filing rates
20 for any new products that were developed
21 during that time.

22 Q. What was your actual title
23 when you joined con see Co.?

24 A. I would have been an actuarial
25 associate.

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2 Q. And did you have that same
3 title throughout your time there?

4 A. Well I was promoted to vice
5 president while I was at Conseco.

6 Q. How long were you at Conseco

7 total?

8 A. About four years.

9 Q. Until then 2002?

10 A. Yes.

11 Q. What did you do in 2003?

12 A. I began to work for The Segal

13 Company.

14 Q. And what is The Segal Company?

15 A. The Segal Company is an

16 employee benefits consulting firm. We

17 have approximately a thousand employees;

18 20 offices or so throughout the United

19 States and Canada. That's what we are.

20 Q. When you first joined Segal in

21 2002, what was your position?

22 A. I was hired in as a senior

23 health actuary and the lead analyst in

24 the health practice.

25 Q. And how long did you hold that

1

2 position?

3 A. I did that for about two

4 years.

5 Q. And then what?

6 A. Then I was promoted to manager

7 of the health practice.

8 Q. When you say you were promoted

9 to the manager of the health practice,

10 which health practice?

11 A. The health practice in the

12 Chicago office.

13 Q. Is that a position you still

14 hold?

15 A. Yes, it is.

16 Q. So you have had that for about

17 eight years then?

18 A. Yes.

19 Q. Could you describe what your

20 department, what the health practice

21 does?

22 A. The health practice works, you

23 know, with our clients for clients to

24 evaluate the financial aspects of their
25 health and welfare plans, you know. The

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2 key components of our role would be to do
3 their experience analysis, do their
4 budget projections, to evaluate their
5 reserve levels, to establish their COBRA
6 rates, and, you know, also to work with
7 our clients when they're either in
8 negotiations or when they're evaluating
9 their plan designs to develop the
10 expected cost impact of any plan changes
11 that they are doing. And then
12 incorporate that into their budget
13 projections.

14 Q. You testified that you are the
15 manager of the Chicago health practice.
16 Do you hold any other titles or positions
17 at Segal?

18 A. Well I'm a vice president, as

19 well.

20 Q. How long have you been a vice
21 president?

22 A. I believed I was promoted in
23 2005.

24 Q. Mr. Heppner, are you a member
25 of any professional associations?

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2 A. Yes, I'm a member of the
3 American Academy of Actuaries.

4 Q. And what is that?

5 A. The American Academy of
6 Actuaries is an actuary organization that
7 is a public policy, communication,
8 professionalism and educational
9 organization for all actuaries in the
10 United States.

11 Q. Mr. Heppner, have you
12 testified as an expert previously in a
13 judicial proceeding?

14 A. Yes, I have.

15 Q. And what proceeding was that?

16 A. I testified in a fairness
17 hearing in the case of Bailey versus AK
18 Steel.

19 Q. Could you briefly describe the
20 subject of your testimony?

21 A. Bailey versus AK Steel was a
22 class action lawsuit by the class,
23 Bailey, against AK Steel regarding the
24 unilateral change of their retiree
25 medical benefits. I was retained by that

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2 class to work with them in -- because
3 there was working towards settling that
4 class action lawsuit. My role with the
5 class was to work with them to evaluate
6 and understand what their current
7 benefits were and to actually work with
8 the company actuaries in that instance,

9 then to work with that class to help them
10 understand what changes to those benefits
11 would look like based on the terms of the
12 various settlement offers that were made
13 by the company.

14 The purpose of the testimony,
15 of course it was a fairness hearing, and
16 after class action suits my understanding
17 is there are class notices that are
18 issued that discuss the terms of the
19 settlement, financial terms, and actually
20 in this case it was the expected benefits
21 that were going to be paid by the trust
22 that was being established by that
23 settlement, and as the actuary for the
24 class my testimony was to assist the
25 court in determining whether or not that

1
2 settlement was, I believe the terms of
3 the class suit is fair, reasonable and

4 equitable, but I'm not a hundred percent
5 positive.

6 Q. Did you actually conduct a
7 valuation of the terms of the settlement
8 agreement in Bailey versus AK Steel?

9 A. Yes, I did.

10 MR. HAIRSTON: Your Honor, at
11 this point I will tender Mr.
12 Heppner as an expert in the field
13 of healthcare benefit plan design
14 as well as valuation.

15 THE COURT: All right. Again,
16 I think if we had all -- in front
17 of us we would go right to voir
18 dire of the witness on any Daubert
19 issues, but since we don't, I think
20 we'll just get all the direct in
21 and we'll deal with it all on cross
22 examination.

23 But let me ask you one
24 question.

25 Was the fairness hearing in

1
2 that case a contested matter do you
3 recall or was there any opposition.

4 THE WITNESS: Yes, there was
5 an opposing portion of the class in
6 that, so it was contested.

7 THE COURT: Thank you.
8 Proceed.

9 Q. Mr. Heppner, you were retained
10 by the Allied Pilots Association in this
11 matter, correct?

12 A. Yes.

13 Q. And could you please describe
14 the scope of your assignment as you
15 understand it to be?

16 A. The scope of my assignment was
17 to work with the Allied Pilots
18 Association in assisting them in
19 evaluating the term sheet proposal and
20 the savings of the term sheet proposal
21 for the active medical, retiree medical
22 and long term disability benefits.

23 Q. Now, did you just look at the
24 company proposals or also the APA
25 counterproposals?

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2 A. I evaluated the company
3 proposals and I did evaluate
4 counterproposals that were made by the
5 Allied Pilots Association.

6 Q. Mr. Heppner, you completed a
7 declaration in this case, correct?

8 A. Correct.

9 Q. If you could please in the
10 binder to your right turn to APA 300.
11 Was that in fact your declaration?

12 A. Yes, it is.

13 Q. Now, there are some tabs
14 behind that that represent exhibits, do
15 you see those?

16 A. I do.

17 Q. They're numbers 301 through

18 310?

19 A. Yes, I do.

20 Q. Are those in fact exhibits to
21 your declaration?

22 A. They are.

23 Q. Do you adopt your declaration
24 and the exhibits I just mentioned as your
25 testimony in this case?

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2 A. Yes.

3 Q. I want to focus, since you
4 mentioned long term disability, I want to
5 shift your focus to the company's
6 proposed changes to active medical and
7 the company's proposed changes to future
8 retiree medical and life.

9 Let's start about the
10 company's proposals on future retiree
11 medical and life first, okay?

12 A. Okay.

13 Q. Did you reach an opinion
14 regarding whether the company's
15 assumptions and calculations of savings
16 on their proposed changes, the company's
17 proposed changes to future retiree
18 medical and life were reasonable and
19 appropriate?

20 A. I did.

21 Q. And what is that opinion?

22 A. My conclusion is that the
23 company's assumptions and methodologies
24 regarding the retiree portion of the term
25 sheet were reasonable and adequate with

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1
2 the exception of one assumption.

3 Q. What is that exception?

4 A. That is the discount rate.

5 Q. Now, what is a discount rate?

6 A. The discount rate is the rate
7 that is used to determine the present

8 value of future benefit payments. Since
9 the retiree medical valuation is a very
10 long term projection, the discount rate
11 takes those future cash flows and puts
12 them in today's terms.

13 Q. Do you know what discount rate
14 the company used?

15 A. The company used 8.25 percent
16 discount rate.

17 Q. And why is that a problem?

18 A. My understanding is the basis
19 for that discount rate the company used
20 was the investment returns that they had
21 obtained for their retirement or their
22 pension plan assets. The retiree medical
23 plan, you know, for the pilots is a
24 completely unfunded obligation and when
25 an obligation does not have any assets

3 liabilities, you have no asset pool to
4 look at or an investment policy to look
5 at to establish an appropriate discount
6 rate for those cash flows.

7 So discount rates in those
8 purposes are set by going out and looking
9 and saying, well, if we were to settle
10 these obligations, if you will, using a
11 long term fixed income type of portfolio
12 or bond portfolio that you could obtain
13 and what discount rate would that
14 portfolio earn, and in this case, that
15 portfolio would earn around 5 percent.
16 And so that was the basis of the
17 assumption that we had used.

18 Q. Now, when you speak to the
19 high quality bond portfolio, are you
20 talking about something that you can
21 obtain on the open market?

22 A. Yes.

23 Q. And why would that matter?

24 A. It creates a mechanism in
25 which you know that this interest rate is

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2 obtainable or discount rate is
3 obtainable.

4 Q. Now you address the valuations
5 on the company's proposed changes to
6 future retiree medical and life in
7 paragraph 10 of your declaration,
8 correct?

9 A. Correct.

10 Q. Now looking down in the middle
11 of the page, I'll just read you the
12 sentence: "Such a rate would also be"
13 speaking of the bond rate, "Such a rate
14 would also be more consistent with the
15 5.7 percent rate the company used to
16 value the same post-retirement welfare
17 benefits for accounting purposes in
18 accordance with FASB ASC 715." And then
19 there is a cite to APA Exhibit 301. I
20 guess my first question is what is a FASB

21 ASC 715? Turn to APA 301 if you like.

22 A. Well, that is their, I mean
23 that is the generally accepted accounting
24 standard for valuing post-retirement
25 welfare plans and the report here is the

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2 American Airlines post-retirement welfare
3 plan valuation report.

4 Q. Let's look at 301 and just go
5 page by page. This is not the complete
6 report, correct? It is an excerpt?

7 A. That's correct.

8 Q. The first page is simply a
9 notice, the second page is a cover sheet
10 that indicates the year concerned and
11 what year is at issue in this report?

12 A. This is a valuation report
13 that was for January 1st, 2011.

14 Q. And why did you use that one?

15 A. This was the report that was

16 available at the time we began our
17 analysis.

18 Q. The next page is actually a
19 table of contents, correct?

20 A. Correct.

21 Q. And the next page is a
22 sub-table of contents breaking out the
23 management summary; is that correct?

24 A. Correct.

25 Q. And the next page is MS 2,

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2 management summary page 2, and the
3 caption there is "Basis for valuation."
4 Do you see that?

5 A. Yes.

6 Q. Can you please walk us through
7 this document?

8 A. Well, this page which has on
9 it the assumptions that were used for the
10 basis valuation, the key part here that

11 we want to focus in on is the discount
12 rate which is in about the in the center
13 of the page. The discount rate used as
14 of January 1st, 2011 is 5.69, which
15 actually is the average of the discount
16 rate of 5.7 used for American Airlines
17 and there's a portion of TWA in here
18 which is actually using a 5.3 percent
19 discount rate.

20 Q. And why does that matter?

21 A. This is a valuation for
22 accounting for retiree medical
23 obligations and the analysis that we
24 performed regarding the term sheet was
25 measuring economic impact of the retiree

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2 medical obligation. So these are...

3 Q. Looking back at your
4 declaration, APA 300, I want you to look
5 at the last sentence of paragraph 10.

6 A. Okay.

7 Q. And that is where you indicate
8 valuation, your valuation for savings
9 using a 5 percent rate as opposed to the
10 rate the company used, 8.25 percent,
11 correct?

12 A. Correct.

13 Q. And there's a cite there to
14 APA 302, do you see that?

15 A. Yes.

16 Q. Why don't you turn to APA 302.
17 This is a one-page document, correct?

18 A. That's correct.

19 Q. What is it?

20 A. This document just summarizes
21 the economic cost for the current plan of
22 benefits, the term sheet benefits and in
23 the APA proposal. These valuations are,
24 the results here are all done at a 5.0
25 percent discount rate.

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2 Q. And what is the source of this
3 information? Is this a Segal document?

4 A. Yes, it is.

5 Q. Why don't we start at the top,
6 the category that says number of actives.
7 Can you tell me what that means?

8 A. That is the number of actives
9 that were projected for each year of the
10 valuation.

11 Q. And whose numbers are those,
12 Segal's or American Airlines?

13 A. These would have been numbers
14 we would have received from the term
15 sheet's information.

16 Q. So they're American?

17 A. Yes, they're American numbers.

18 Q. Next down says current plan?

19 A. Correct.

20 Q. And what is that category?
21 What do those numbers reflect to the
22 right?

23 A. The numbers at the right,
24 well, they -- you know, the 7589 and the

25 2679 are the economic costs per year

100

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2 service for the -- for the current

3 actives and those numbers are used to

4 develop the economic cost based on the

5 number of actives in each of those

6 categories.

7 Q. Below that there's a category

8 that says term sheet, and I'll note the

9 numbers in savings are the same as the

10 total economic cost immediately above,

11 346.1 million, correct?

12 A. Correct.

13 Q. Why is that?

14 A. Well, the term sheet proposal

15 is eliminating the benefits for actives,

16 so the valuation of the term sheet would

17 be zero because the economic costs would

18 go to zero and so the savings are equal

19 to the current economic cost of the plan.

20 Q. Now your declaration in
21 paragraph 10 indicates a total savings
22 over the projection period 2012 through
23 2017 of 106.1 million, correct?

24 A. Can you rephrase that, please,
25 or restate that.

101

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2 Q. Sure. Going back to your
3 declaration in paragraph 10, the last
4 sentence what is the number reflected
5 there for total savings over the
6 projection period 2012 through 2017?

7 A. Well, the increase in the
8 projected savings by changing the
9 discount rate is 106.1 million. The
10 savings using the company discount rate
11 was 240 million and when we calculated it
12 using the lower discount rate, those
13 savings increased to 346.1.

14 Q. So that 106 is the product of

15 subtracting the company's 240 from your
16 346.1?

17 A. Right, is the difference.

18 Q. Why don't we now turn to
19 active medical.

20 A. Okay.

21 Q. So now we're going to talk
22 about the work you did on the company's
23 proposed changes to the active medical
24 plan as opposed to the future retiree
25 medical and life, okay. Did you reach an

102

1
2 opinion regarding whether the company's
3 assumptions and calculations of savings
4 on their proposed changes to active
5 medical were reasonable and appropriate?

6 A. Yes, I did.

7 Q. What is that opinion?

8 A. My opinion is is that the
9 assumptions and the methodologies used by

10 the company to determine the baseline
11 projections and their savings were
12 reasonable with the exception of one.

13 Q. And what is that exception?

14 A. The exception is is that when
15 the company determined the value of the
16 savings of the plan and they developed
17 their plan savings factors, they
18 developed those factors excluding the
19 impact of any changes in utilization.

20 Q. When you say utilization, what
21 do you mean?

22 A. Utilization means how people
23 access and use their health benefits.

24 Q. And why should that be
25 factored in here with the company's

103

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2 proposed changes to active medical?

3 A. The amount and the level of
4 cost sharing by participants in medical

5 plans, their level of deductible, the
6 amounts of their co-pays, the amounts of
7 their out-of-pocket limits, has an effect
8 on how those participants utilize the
9 plan. And plans that have different cost
10 sharing provisions are going to have
11 different levels of utilization.

12 Q. Why don't you turn to APA 303.
13 Which should be the next exhibit in order
14 cited in your paragraph 11. Can you tell
15 me what that document is?

16 A. This is a summary of the
17 provisions of the current plan of
18 benefits and the term sheet proposed
19 benefits.

20 Q. Whose document is it?

21 A. This is a document that Segal
22 prepared based on the information that we
23 had from the company, the benefits.

24 Q. Now just looking at the
25 numbers on this page, you have some

1

2 dollar amounts and you have some
3 percentages. I think the dollars are
4 self-explanatory. But what does a
5 percentage mean when you see it on this
6 chart?

7 A. When a percentage is shown on
8 here, you know, for example, there's
9 several percentages under co-insurance,
10 80 percent would mean that the plan would
11 cover 80 percent of the costs of the
12 benefit, whereas the participant would
13 pay 20 percent. So if the service cost a
14 hundred dollars, the company, or the plan
15 would pay 80 dollars and the participant
16 would pay 20.

17 Q. And just so it's clear, under
18 current benefits on the left side of the
19 page, that would mean the current active
20 plan?

21 A. Correct.

22 Q. And the March 15th proposal

23 box on the right side of the page, that
24 would be what the company is proposing?

25 A. Correct.

105

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2 Q. Just to illustrate the scope
3 of the change, why don't you walk us
4 through the emergency room line from the
5 left all the way to the right?

6 A. You know, for a lot plans, you
7 know, emergency room is obviously going
8 to get care at an emergency room. Under
9 the current benefits those benefits would
10 be covered under a deductible and
11 co-insurance. So when you go to the
12 emergency room you first have to satisfy
13 your deductible. If there were still
14 charges that were covered then you'd
15 begin to pay your appropriate
16 co-insurance.

17 Under the proposals, the

18 changes there would be that in addition
19 to paying deductible and co-insurance the
20 participant would also have to pay a
21 co-pay to access care in an emergency
22 room.

23 Q. Is that the \$100 co-pay
24 indicated?

25 A. Yes.

106

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2 Q. Why would that affect
3 utilization?

4 A. In order to access care at the
5 emergency room, it would now cost an
6 additional hundred dollars and, you know,
7 emergency room care is used for emergency
8 and nonemergency frequently and a lot of
9 times provisions are put, put a co-pay in
10 there to discourage emergency room usage
11 when it's not in fact an emergency. So a
12 participant could in fact maybe go to a

13 primary care physician, get urgent care
14 or some other means.

15 Q. Now, would the same principles
16 you just described apply to the other
17 categories here beyond just the emergency
18 room category?

19 A. Yes.

20 Q. Now these cost increases that
21 are shown under the March 15th proposal
22 which you just described, are those
23 premium increases?

24 A. The numbers shown here are the
25 changes to the plan of benefits. So if a

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2 participant is enrolled in the plan and
3 they use the plan, this is what they
4 would pay. A premium would be the amount
5 that the participants would have to pay
6 in order to be able to participate in the
7 plan.

8 Q. And that would be a flat rate
9 for whatever period?

10 A. Yes. Typically there's the
11 same rate for, you know, when you enroll
12 into a plan there's a communicated
13 premium for the cost for you enrolling
14 into that plan.

15 Q. Now, Mr. Heppner, did you
16 value the company's proposed changes
17 adding in utilization changes?

18 A. The methodology that I utilize
19 and the software that I utilized where we
20 input all the different plans integral in
21 those calculations would be the financial
22 effect of changing the plan, you know,
23 how much extra is the deductible, the
24 co-pay, and includes utilization changes.

25 Q. So you did value the changes

1
2 inn including utilization?

3 A. Yes.

4 Q. You just mentioned software.

5 What software?

6 A. The Segal Company leases Apex
7 software to use as its tool to price out
8 medical plan changes.

9 Q. When you say The Segal
10 Company, that the only tool that The
11 Segal Company, company-wide uses to do
12 that?

13 A. The Apex tool is the tool that
14 the company uses for pricing out medical
15 plan changes, yes.

16 Q. Do you know how that software
17 works?

18 A. Well, I do not program that
19 software, but I do know how rating
20 software does work, what it is supposed
21 to be designed and what it's supposed to
22 do.

23 Q. And how does this work, the
24 Apex software?

25 A. Well, the Apex software from

1
2 the user perspective requires inputs
3 regarding the plan design features, the
4 deductibles, the co-insurance, etc. And
5 the software does take that information
6 and there are tables and distributions
7 that are built within the system that are
8 used to measure the effects of all those
9 different changes. You know, I mean and
10 the reason there's distributions because
11 changing a value of a deductible let's
12 say if you're at a hundred dollars and
13 you change it to 200 dollars, that value
14 is going to be a whole lot different than
15 if you had, say, a 3,000 dollar
16 deductible and you changed it by a
17 hundred dollars, because fewer people
18 reach \$3,000 of claims than, say, a
19 hundred dollars in claims.

20 And built within the system is
21 there are lots of distribution tables

22 based on the different coverages that are
23 included, there are tables that value the
24 impact of changes in the co-insurance,
25 change in the deductible, changing impact

110

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2 of co-pays, and because all of those
3 features will affect the overall
4 utilization of a plan, there are also
5 tables that include adjustments to the
6 overall cost based on utilization.

7 Q. Now, do you know what these
8 tables are based on, what data?

9 A. The Apex company, they're the
10 ones that do develop, do the development
11 of the software. They base their tables
12 based on their data that they store.
13 They have -- they have claims data for 2
14 million participants that they collect on
15 a monthly basis, and they use that
16 information as the basis of creating all

17 the factors that go into the software.

18 Q. Now, with respect to that
19 data, do you know whether it is limited
20 to specific industries or specific
21 geographic regions?

22 A. I do know that the data is
23 from all 50 states and I do not know what
24 the full breadth of the industries that
25 that data would encompass.

111

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2 Q. Do you know whether it's
3 limited to one?

4 A. It's not limited to one.

5 Q. You mentioned 2 million
6 members on a monthly basis. Is that
7 what's called a member month?

8 A. Yes.

9 Q. Now the does the size of that
10 pool matter from your perspective?

11 A. Yes, it does.

12 Q. Why?

13 A. Any tables that are going to
14 be created, any factors that are going to
15 be created based on data are -- you're
16 going to have -- statistical analysis is
17 going to have to be done. And there --
18 and as you increase the sample size of
19 the information that you have, it's going
20 to increase the credibility of the
21 results that you get from that
22 information.

23 THE COURT: Counsel, as I
24 mentioned to folks earlier, I do
25 have, I promised folks a ruling in

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2 AMR motion that was addressed the
3 last time of the hearing, and so I
4 think now is a good time to break.

5 So people who are here for
6 this proceeding can go about their

7 business and while I deal with that
8 other matter and then we can all
9 come back at 2 o'clock.

10 So if there's anyone on the
11 phone who is holding for the 12:30
12 bench ruling as to the motion of
13 the ad hoc committee of PSA agents,
14 I'm going to adjourn for a few
15 minutes and then be back online
16 just about 12:30. In the meantime,
17 anybody who is here is obviously
18 more than free to leave and go do
19 whatever else you need to do and
20 I'll see you folks back here for
21 the 1113 proceeding at 2 o'clock.

22 (Luncheon recess: 12:23 p.m.)

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

3 1:19 p.m.

4 THE CLERK: All rise.

5 THE COURT: Please be seated.

6 Good afternoon. When we were last
7 here I think we still had some
8 direct examination to complete. So
9 proceed.

10 MR. HAIRSTON: Thank you, your
11 Honor.

12 CHRISTOPHER HEPPNER,
13 resumed, having been previously
14 duly sworn, was examined and
15 testified further as follows:

16 CONTINUED DIRECT EXAMINATION

17 BY MR. HAIRSTON:

18 Q. When we last spoke before the
19 break, I believe you were speaking to the
20 pool of claimants used by the Apex
21 software, correct?

22 A. Correct.

23 Q. Now, how long have you used
24 this software?

25 A. I've used the software for ten

114

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2 years.

3 Q. And that corresponds with when
4 you arrived at Segal, correct?

5 A. Correct.

6 Q. To your knowledge, has this
7 software ever been vetted or validated by
8 anyone at Segal?

9 A. This software is vetted by
10 our, by our national health practice.

11 Q. And what is your national
12 health practice?

13 A. Well, our national health
14 practice is, it's out of -- it's in New
15 York and it's run by Ed Kaplan and its
16 role is to set the policy or procedures
17 and work with all the local health
18 practices in guiding us in how we're
19 going to do our work.

20 Q. To your knowledge, is this
21 software updated?

22 A. Yes, it is, Apex updates their
23 software annually.

24 Q. And how are those updates
25 implemented at Segal, if you know?

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2 A. The updates are provided to
3 Segal and before they I guess implement
4 or launch the updates, the national
5 health practice would review those
6 updates and validate them and then they
7 would release the update at some point.

8 Q. In your ten years using this
9 software at Segal, have you found it to
10 be reliable?

11 A. Yes, I have.

12 Q. Would you use software at
13 either of your two previous employers,
14 Mercer or Consec?

15 A. I used at Conseco I used what
16 was called the M&R healthcare cost
17 guidelines. At the time that was the
18 mill man and Robinson. I think their
19 name now is the mill man USA or something
20 like that. But that was what we used at
21 Conseco.

22 Q. How did the results generated
23 by Apex compare to the results generated
24 by Conseco software?

25 A. I found both tools to be

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2 reasonable tools and comparable.

3 Q. Have you compared the results
4 from Apex to the results from other firms
5 or insurance companies?

6 A. Yes, I have.

7 Q. Under what circumstances?

8 A. When we are doing budget
9 projections and pricing for our clients,

10 we do, when we value those, validate our
11 results with carriers. We don't do it
12 every time, but we do do it on a regular
13 basis, where we ask the network or Blue
14 Cross/Blue Shield to review, not to
15 review, but to actually just determine
16 what they think the value of the plan
17 changes are and they provide to us that
18 information and we compare it to our
19 results.

20 Q. And how do those results
21 compare?

22 A. They tend to be comparable.

23 Q. The last sentence in paragraph
24 11, going back to your declaration in APA
25 300, indicates your conclusion as to the

117

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2 dollar impact of adding utilization,
3 correct?

4 A. The last sentence indicates

5 that, you know, when Segal developed this
6 plan change pricing factors and included
7 utilization in the valuation, that our
8 savings were 52.5 million different from,
9 from the company's.

10 Q. And that's for the entire
11 projection period 2012 through 2017,
12 correct?

13 A. Correct.

14 Q. Now there is a cite in that
15 sentence to APA Exhibit 304. Could you
16 please turn to APA 304 where you say that
17 about APA 304 I will note that it is a
18 confidential document so I'm not going to
19 ask you to reveal any numbers. I will
20 not be revealing numbers either, okay.

21 A. Okay.

22 Q. What is APA 304?

23 A. APA 304 is an exhibit produced
24 by Segal that compares the baseline
25 projection, which would be the

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2 projections based on the current plan of
3 benefits and the current contribution
4 requirements done by American and by
5 Segal. It also compares the American
6 Airlines proposal done by American and
7 then done by Segal and then it
8 illustrates the difference -- the savings
9 between the baseline cost and the term
10 sheet cost on the bottom of the chart.

11 Q. Let's start at the top. The
12 baseline projection year, is that what
13 you were referring to when you talked
14 about the starting point?

15 A. Correct.

16 Q. And do Segal and American
17 agree on the starting point as far as
18 valuation?

19 A. Yes.

20 Q. The next line down, or next
21 box down is the AA proposal and then I'll
22 note there's a box immediately to the
23 right and that caption that says

24 AA-projections, and then right next to
25 that is a box that says Segal and a box

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2 next to that says difference dollars and
3 then next to that is difference percent.

4 A. Correct.

5 Q. What do those mean?

6 A. Well the -- exactly what they
7 say. That's the difference between the
8 net cost and the contributions and the
9 net benefit cost between Segal and
10 American Airlines' projections and then
11 what those represent as a percentage of
12 the American Airlines projections.

13 Q. So the number for Segal, those
14 are your calculations, correct?

15 A. Correct.

16 Q. With the turning point of the
17 Apex software that you just testified to?

18 A. Correct.

19 Q. What assumptions underlie
20 these figures in APA 304 and
21 specifically, the AA proposal block?

22 A. Well, again, The Segal Company
23 evaluated the work done by the company
24 and we reviewed the assumptions that they
25 used and we utilized the same assumptions

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2 that they used except for when we
3 developed our plan change factor we
4 included utilization in that.

5 Q. Now the 52.5 million dollars
6 difference in savings that you testified
7 to that's reflected in paragraph 11, is
8 that the product of the two numbers shown
9 in the total columns under value of
10 changes?

11 THE COURT: Counsel, why don't
12 you just ask him a question where
13 does he get the number. It's

14 direct. It's more useful for me to
15 hear it from his mouth than from
16 yours. So ask a non-leading
17 questions, who, what, why, where
18 and when.

19 Q. Looking at the bottom of the
20 page.

21 A. Okay.

22 Q. What does that indicate?
23 Again, it's confidential so please don't
24 mention?

25 A. The 52.5 million is the

121

1
2 difference between the two numbers on the
3 lower right part of those charts. That's
4 what -- that's what that is.

5 Q. Mr. Heppner, you also valued
6 APA's counterproposal on both future
7 retiree medical and life and active
8 medical, correct?

9 A. Correct.

10 Q. Now the actual proposals
11 themselves are contained in APA 305 and
12 307; is that right?

13 A. Correct.

14 Q. Let's start with active
15 medical. Where is that addressed in your
16 declaration? Again, we're talking about
17 the union's counterproposal on active
18 medical, where is that addressed?

19 A. The active medical would be
20 addressed in paragraph 12.

21 Q. And what methodology did you
22 use in valuing the union's
23 counterproposals in active medical?

24 A. Again, we used the same
25 assumptions and the same baseline when we

122

1
2 were valuing the effect of the plan
3 changes, we included the impact of

4 utilization changes in those factors.

5 Q. So is there any variance
6 between your methodology and the
7 company's proposal as opposed to your
8 valuation of the union's proposal?

9 A. We're being consistent in our
10 valuation methods, yes.

11 Q. With respect to the
12 utilization rate, was there any
13 difference in the way you handled that
14 between the union's counterproposal and
15 the company's proposals?

16 A. No.

17 Q. What was the actual dollar
18 savings over the projection period 2012
19 through 2017 for the union's
20 counterproposals on active medical?

21 A. The savings based on the
22 counterproposal compared to the current
23 book, the current benefits is 145.5
24 million.

25 Q. And is that reflected in the

1

2 last sentence of paragraph 12?

3 A. Yes, it is.

4 Q. There is a cite there to APA

5 306, so would you please turn to APA 306.

6 What is that document? And again, that

7 is a confidential document so please

8 don't mention the numbers.

9 A. This is a very similar looking

10 exhibit to Exhibit 304. The key

11 difference is that under the Segal, well,

12 really under the APA counterproposal, in

13 there we have, Segal has put the value of

14 what the counterproposal from APA is.

15 The American Airlines

16 projection numbers under both the

17 baseline and the proposal are the same

18 numbers that were on the previous

19 exhibit, and again, the savings number

20 that we calculated is illustrated on the

21 bottom right of the bottom chart that

22 says Segal.

23 THE COURT: Let me just
24 interrupt for a second on a
25 completely nonsubstantive point.

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2 Apparently some people in the
3 overflow room are having trouble
4 hearing. So let's all make sure to
5 speak into the microphone. I think
6 you're doing the best job of
7 anyone, so it's not your problem,
8 it may be everyone else's. Thank
9 you.

10 Q. Mr. Heppner, you also valued
11 the APA proposal on future retiree
12 medical and life, correct?

13 A. I did.

14 Q. Where is that addressed in
15 your declaration, APA 300?

16 A. Paragraph 13.

17 Q. And what methodology did you
18 use in valuing the union's
19 counterproposals on future retiree
20 medical and life?

21 A. We, again, utilized the same
22 methodology that the company used but we
23 did change the discount rate and we used
24 the 5 percent discount rate in lieu of
25 the 8.25 percent discount rate.

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2 Q. Is the actual dollar value of
3 the projected savings using that 5
4 percent discount rate reflected in your
5 declaration?

6 A. Yes, it is, it's 149.3 million
7 over the 2012 to 2017 period.

8 Q. There's a cite there back to
9 APA 302, which is a document we looked at
10 earlier. If you could please turn back
11 to it for just a moment.

12 A. Okay.

13 Q. We discussed the top three
14 categories earlier, number of actives,
15 current plan, and term sheet, correct?

16 A. Correct.

17 Q. What is the remaining category
18 on this document, 302?

19 A. The -- I'm sorry.

20 Q. Sure, look at the bottom of
21 the page where it says APA proposal,
22 what's that?

23 A. That's the value of the APA
24 counterproposals and there we, again,
25 using the same methodologies we have

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1
2 valued the economic cost of that
3 proposal, the 196.8 million, and the
4 savings, the economic savings of that
5 would be the difference between the three
6 -- are these numbers confidential as

7 well? I'm not supposed to -- or not.

8 Q. Not to my knowledge.

9 A. No, these are okay. That's
10 the 346.1 minus 196.8 results in the
11 149.3.

12 MR. HAIRSTON: Thank you, Mr.
13 Heppner. That's all I have for
14 you. Your Honor, I know you were
15 going to take the motion under
16 advisement. Normally I would move
17 to introduce APA Exhibits 300
18 through 307 at this point unless
19 that's changed.

20 THE COURT: We'll wait until
21 we get through the cross as we've
22 been doing with all the exhibits
23 anyway just to see how much people
24 want to pursue certain objections
25 after the cross.

2 MR. GAGE: Good afternoon,
3 your Honor. Ken Gage on behalf of
4 American Airlines.

5 THE COURT: Good afternoon.

6 CROSS EXAMINATION

7 BY MR. GAGE:

8 Q. Good afternoon, Mr. Heppner.

9 A. Good afternoon, Mr. Gage.

10 Q. Good to see you again.

11 A. Good to see you.

12 Q. You testified earlier that
13 you're an associate with the Society of
14 Actuaries; is that correct?

15 A. That's correct.

16 Q. And there is a higher
17 designation within the Society of
18 Actuaries, fellow, correct?

19 A. That is correct.

20 Q. And you have in the past
21 attempted to achieve that level of, that
22 designation but you've not succeeded,
23 correct?

24 A. That is correct.

25 Q. And in fact, you no longer are

1
2 even pursuing that higher designation,
3 correct?

4 A. I am not.

5 Q. And in order to achieve that
6 you need to pass additional exams testing
7 your knowledge of various actuarial
8 principles, correct?

9 A. There are additional exam
10 requirements to obtain your fellow of the
11 Society of Actuaries.

12 Q. And as an associate in the
13 Society of Actuaries, you have continuing
14 education requirements, correct?

15 A. Correct.

16 Q. And in fact, you can satisfy
17 those requirements by reading
18 publications from the Society of
19 Actuaries, correct?

20 A. I can.

21 Q. And in fact, if there were
22 literature in publications from the
23 Society of Actuaries pertaining to the
24 issues in this case, you certainly would
25 want to read them prior to forming your

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2 opinions, wouldn't you?

3 A. If I was aware of one that was
4 -- yes, I would want to -- I would want
5 to have read it.

6 Q. You didn't even look for any,
7 did you, before signing your declaration?

8 A. I wasn't aware of any articles
9 that were directly related to this case,
10 no, and I did not, I did not, before
11 signing my declaration, look for one
12 specific article that was -- that was
13 mentioned in some conversations with the
14 other actuary, correct.

15 Q. So in conversations with the

16 other actuary, that is the actuary from
17 Mercer who did the work for American
18 Airlines, he specifically mentioned that
19 there was an article out there, right?

20 A. He did not mention that there
21 was an article, but he mentioned a
22 concept.

23 Q. Okay. Now just a little bit
24 more on your background. You do not
25 serve on any professional committees, do

130

1
2 you?

3 A. I do not.

4 Q. You've not published any
5 articles, have you?

6 A. I have not.

7 Q. And aside from some internal
8 training at Segal, you do not conduct any
9 professional teaching, right?

10 A. I do not.

11 Q. You indicated that you worked

12 for Mercer for six years, right?

13 A. Correct.

14 Q. And in general you think

15 Mercer's work is fine, correct?

16 A. Mercer is a, a competent and

17 respected employee benefits consulting

18 firm, but it doesn't mean that I would

19 agree with everything that they do.

20 But...

21 Q. Mr. Hairston talked about

22 retiree medical first, so why don't we

23 get that one out of the way.

24 A. Okay.

25 Q. There are no laws or

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2 regulations or rules that require the use

3 of a 5 percent discount rate in this

4 matter, are there?

5 A. I'm not aware of any laws, no.

6 Q. Or regulations or rules,
7 correct?

8 A. No.

9 Q. In fact, there are no laws or
10 regulations or rules that require any
11 particular discount rate, correct, much
12 less a 5 percent discount rate?

13 A. There are not.

14 Q. And in fact, 5 percent is not
15 the only acceptable discount rate for
16 this matter, correct?

17 A. Correct. There would --
18 correct.

19 Q. Now, before we took the break
20 Mr. Hairston asked you why using a high
21 quality bond portfolio mattered and you
22 said that it's a mechanism in which you
23 know the interest rate is obtainable. Do
24 you remember saying that?

25 A. I do.

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2 Q. Now, in the AK Steel case that
3 you testified about earlier today, you
4 used a 7 percent discount rate there
5 because the employer's expected return on
6 both its pension and non-pension assets
7 was 8.5 percent, right?

8 A. We used a 7 percent discount
9 rate in evaluating the AK Steel and if --
10 and I don't recall all the details, but I
11 do believe that the company at the time
12 had used those other numbers for their
13 pensions. They're not necessarily --
14 they're not tied to each other.

15 Q. But that was in part one of
16 the reasons why you chose 7 percent in
17 that matter, correct?

18 A. The reason that we actually
19 chose 7 percent in that matter has got to
20 do with that the AK Steel case, Bailey
21 versus AK Steel was, again, it was a
22 settlement of a retiree medical suit. In
23 that suit, the company was going to make

24 a cash payment to a VEBA trust that would
25 be trusteed by retirees and a couple of

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2 professional trustees, but by the, you
3 know, really controlled by the
4 participants.

5 And in establishing a discount
6 rate for that particular instance, we
7 knew that we were going to have to fully
8 fund and finance the retiree medical
9 benefits based on the monies that were
10 provided by AK Steel to settle off that
11 lawsuit.

12 And we had discussions with
13 investment consultants and others
14 regarding portfolio mixes that would be
15 appropriate for -- for that particular
16 liability. And based upon that
17 information, a 7 percent discount rate
18 was determined to be appropriate.

19 Q. So again, you used it because
20 in that situation it was likely that the
21 assets would be invested in a more
22 diverse asset mix than just high quality
23 fixed income securities, right?

24 A. That is correct.

25 Q. Now, if you turn to your

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2 Exhibit 301, the last page of that
3 exhibit. That indicates that American's
4 rate of return on assets is 8.5 percent,
5 correct?

6 A. That indicates that the rate
7 of return on the assets that were assumed
8 for this valuation was 8.5 percent.

9 Q. That represents a rate of
10 return that is obtainable, correct?

11 A. It represents the rate of
12 return that is on the assets for that,
13 yes, so that would be something that

14 would be obtainable.

15 Q. And again, that was the
16 purpose for which you said you looked to
17 a portfolio of high quality fixed income
18 securities, correct, because it would be
19 something that was obtainable, correct?

20 A. It is obtainable and there was
21 no other basis to -- because for the
22 portion of the liability I'm looking at
23 there are no assets invested. There is
24 an 8.5 percent return here. There are
25 some assets that are part of this

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2 obligation, but they are not related to
3 the pilots.

4 Q. Now, if American had used your
5 discount rate of 5 percent, it would have
6 projected a higher labor cost
7 attributable to the pilots retiree
8 medical, correct?

9 A. It would have, yes.

10 Q. So American therefore would
11 have had a greater need for savings,
12 right?

13 A. However -- exactly how they
14 did all their calculations, I don't know,
15 but yes, it would have created a higher
16 labor cost.

17 Q. I want to talk for a few
18 minutes about estimates of active medical
19 costs if we can.

20 Would you agree with me that
21 estimating active medical costs in the
22 future over a six year period is a
23 complicated exercise?

24 A. Yes.

25 Q. And in fact, doing so requires

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2 you to make a number of assumptions,
3 including the overall trend of healthcare

4 costs, correct?

5 A. That is correct.

6 Q. The trend of administrative

7 costs, correct?

8 A. That is correct.

9 Q. How employees will migrate

10 from existing plans to new plans,

11 correct?

12 A. That is correct.

13 Q. In other words, how people

14 will respond to the increases in

15 deductibles, co-pays, etc.?

16 A. To determine the value of the

17 plan changes their behavior regarding

18 usage of benefits will be affected as the

19 deductibles, co-pays, etc., change, so

20 yes, that would be included in the

21 valuation.

22 Q. But that will affect

23 migration, correct? That will affect

24 people's decisions about which plan to

25 choose, right?

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2 A. People's decision on which
3 plan to choose will be based on what each
4 particular plan's benefits are and it
5 will be based on what the level of
6 contributions are for each of those
7 plans, yes.

8 Q. Now, another assumption that
9 actuaries use is what's called selection
10 or anti-selection, right?

11 A. That's correct.

12 Q. And when a company offers
13 multiple health plans, selection factors
14 are used by actuaries to adjust the cost
15 projections for each plan to reflect the
16 fact that in general sicker individuals
17 will select the richer plans and the
18 healthier individuals will enroll in the
19 less rich plans, correct?

20 A. That's the concept, yes.

21 Q. And when sicker people choose
22 the richer plans, you make an adjustment

23 upwards to account for what will be the
24 higher cost as a result, right?

25 A. Yes, you do.

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2 Q. Now, you said earlier in your
3 testimony, and I believe you state in
4 your declaration, that you accepted as
5 reasonable all of the assumptions that
6 Mercer used in its evaluation, correct?

7 A. Yes.

8 Q. With the one exception,
9 utilization, right?

10 A. Correct.

11 Q. And you agree that Mercer's
12 migration assumption is reasonable,
13 right?

14 A. I do.

15 Q. As are its trend and
16 administrative cost assumptions?

17 A. I do.

18 Q. You agree that the selection
19 factors it used were reasonable, correct?

20 A. Yes.

21 Q. And again, the only assumption
22 you disagree with is an assumption around
23 utilization, correct?

24 A. That is correct. That when
25 they determined the value of the plan

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2 changes they did not include utilization
3 when they made that calculation and we
4 did.

5 Q. And again, the utilization
6 concept you're talking about is how
7 employ lease respond to the change in the
8 terms of the benefit plans, in terms of
9 how frequently they use them, right?

10 A. Correct, the underlying plan
11 provisions will affect how people use a
12 plan.

13 Q. And as to all of these
14 assumptions, there's a range of
15 reasonableness that you would accept,
16 correct?

17 A. I would -- yes.

18 Q. Two actuaries can disagree
19 over these assumptions, correct, and both
20 of them may have reasonable opinions,
21 right?

22 A. Two --

23 Q. I won't ask you the joke about
24 actuaries and light bulbs.

25 A. Okay.

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2 Q. Isn't that true, that two
3 actuaries can have different opinions
4 about all of the assumptions here?

5 A. That is correct.

6 Q. And both of them reasonable?

7 A. That is correct.

8 Q. And with each of these
9 assumptions they can be adjusted upwards
10 or downwards within that range of
11 reasonableness, right?

12 A. Correct.

13 Q. And if you made those
14 adjustments it would impact the overall
15 estimate of costs, correct?

16 A. Yes, they would.

17 Q. Now, the accuracy and
18 reliability of these projections
19 decreases as the projection period
20 increases, right?

21 A. That is correct.

22 Q. And your estimate of net
23 benefit costs for 2012 could be off by
24 plus or minus 2 percent, correct?

25 A. That is correct.

3 sixth year of the projection period could
4 be off by as much as 15 percent, right?

5 A. That is correct.

6 Q. Now a few questions specific
7 to the American proposal. Now you
8 received all of the information you
9 needed to conduct your valuation, right?

10 A. Right, we conducted our
11 valuation, yes.

12 Q. You got everything you needed,
13 right?

14 A. Yes.

15 Q. And in fact, you were, you've
16 referred to it earlier, you were on a
17 telephone call where you had a discussion
18 with representatives of Mercer, correct?

19 A. Yes.

20 Q. And that took place before you
21 signed your declaration, right?

22 A. Yes.

23 Q. Now, in your declaration you
24 state "The company did not account for
25 changes in utilization of the active

1
2 medical benefit when it calculated the
3 savings for their proposed changes."

4 You're not saying that Mercer
5 failed to carefully consider how
6 utilization would be impacted by the plan
7 changes, are you?

8 A. I am saying that they did not
9 include an adjustment in their
10 calculations for utilization. Whether or
11 not they considered -- I mean everything
12 that they considered, I couldn't speak to
13 that because I wasn't there doing their
14 work.

15 Q. But in fact, on that --

16 A. So.

17 Q. -- on that telephone call that
18 you participated in, Mr. Norton, who is a
19 representative of Mercer, told you that
20 Mercer was anticipating that just prior

21 to the plan changes there would be an
22 increase in utilization, and then after
23 the plan changes there would be a
24 decrease in utilization subsequently
25 followed by a gradual increase in

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2 utilization over the projection period of
3 six years which would actually result in
4 higher trends, he told you that, right?

5 A. Yes.

6 Q. So you do know that they
7 carefully considered this, correct?

8 A. I know they considered it,
9 yes.

10 Q. Now, I want to talk a little
11 bit about the software that you testified
12 about and the data.

13 A. Okay.

14 Q. Now, you said before we took a
15 break that if you increase the sample

16 size it's going to increase the
17 credibility I think was your word, of the
18 results that you get from statistical
19 analysis. Do you remember saying that?

20 A. I do.

21 Q. And you also know what Mark
22 Twain said about statistics, right, lies,
23 damned lies and then statistics, right?

24 A. I've heard that quote before.

25 Q. You've heard that quote

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2 before?

3 A. Yes, I have.

4 Q. And you would agree with me
5 that the manner in which large bodies of
6 data are analyzed will necessarily affect
7 the reliability of the statistical
8 results that come out, right?

9 A. I don't understand the
10 question.

11 Q. If the methodology for
12 conducting the analysis of a large body
13 of data is flawed, the results won't be
14 reliable, correct?

15 A. Yes.

16 Q. And those results could be
17 misleading if the methodology is flawed,
18 correct?

19 A. Yes.

20 Q. Now, I think you already
21 testified you did not develop the
22 software that you used in this matter,
23 correct?

24 A. I did not.

25 Q. In fact, do I understand your

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2 testimony correctly, that your
3 methodology was the same as Mercer's with
4 the exception that you used Segal's
5 software and Mercer didn't?

6 A. No, that's not the way I would
7 phrase that. Segal developed plan change
8 factors and Mercer developed plan change
9 factors. When Mercer developed their
10 plan change factors obviously they used
11 whatever software or methodologies that
12 they used. And when Segal developed
13 theirs, we obviously used ours.

14 Q. That's how you developed the
15 plan change factors with the software,
16 correct?

17 A. With -- and as part of that
18 development, they did not include
19 utilization adjustments when they
20 developed their factors and we did.

21 Q. Now again, you didn't develop
22 the software, right?

23 A. I did not develop the
24 software, no.

25 Q. And in fact, you don't know

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2 how it works, correct, how it analyzes
3 the data?

4 A. I do not know what Apex did
5 when they analyzed all their data to
6 develop their underlying tables.

7 Q. Okay.

8 A. But what I do know --

9 Q. That's all I asked.

10 MR. HAIRSTON: Objection. The
11 witness does get to answer the
12 question the way he wants.

13 THE COURT: Well, it's cross
14 examination and if there's leading
15 questions we'll be here all day, so
16 you'll certainly get a chance to
17 explore that on redirect.

18 Q. You don't know how many
19 different employers' data is in this
20 database, do you?

21 A. I do not.

22 Q. The data does not just come
23 from airlines or the airline industry,
24 does it?

25 A. No, it doesn't.

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2 Q. As far as you know, the data
3 could come in industries ranging from
4 fast food industries to major
5 manufacturing, professional services,
6 correct?

7 A. Yes, it could.

8 Q. You don't know whether the
9 data contains information regarding the
10 income of the participants, do you?

11 A. I don't think it would include
12 the income of the participants.

13 Q. And you would agree with me,
14 wouldn't you, that the income of a
15 participant would affect their
16 sensitivity to price changes, wouldn't
17 you?

18 A. I mean I do know that when we
19 -- the projections that were done for

20 both Segal and for Mercer, they are based
21 on underlying cost of the pilots and so
22 there -- obviously those costs take into
23 account all of the current aspects of the
24 pilot population, their current income,
25 their current demographics, etc.. and

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2 when we developed our pricing factors,
3 and when Mercer developed their pricing
4 factors, those factors do not include
5 adjustments taking into account the
6 income of the participants.

7 Q. That wasn't my question.
8 Wouldn't you agree with me that the
9 income of the participants will affect
10 their sensitivity to price changes?

11 A. When you say price changes,
12 what are you referring to?

13 Q. Changes in co-pays, changes in
14 deductibles.

15 A. There may be some effect of
16 that. To be honest with you, I've never
17 really evaluated income levels and plan
18 change factor levels.

19 Q. Now, in conducting your
20 evaluation here, after the current plan
21 of benefits and the proposed plan of
22 benefits are entered into the software
23 as inputs, the software generates plan
24 change factors, correct?

25 A. That's correct.

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2 Q. And the plan change factors
3 are maybe otherwise referred to as
4 relative plan values, is that fair to
5 say?

6 A. That's fair to say.

7 Q. And you would agree with me
8 that if Mercer has your plan change
9 factors, that Mercer should be able to

10 reconstruct your calculation, right?

11 A. They should be able to come
12 close.

13 Q. Now those plan change factors
14 that you used encompass an assumption
15 regarding utilization, correct?

16 A. That's correct.

17 Q. But those plan change factors
18 also encompass value differentials that
19 the software assigns to the differences
20 in co-pays and deductibles, etc.,
21 correct?

22 A. That's correct.

23 Q. So the plan change factor
24 encompasses more than just a change in
25 utilization, right?

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2 A. That's correct.

3 Q. And therefore, only a portion
4 of the additional savings that you refer

5 to in your declaration is attributable to
6 the whatever assumption regarding
7 utilization the software assigned,
8 correct?

9 A. That's correct.

10 Q. And the software determined
11 the change in utilization that was to be
12 used in the model, you didn't, correct?

13 A. The software has -- yes, the
14 software is the one that determines those
15 factors.

16 Q. You personally did not, as the
17 actuary in this matter, offer an opinion
18 as to what percentage change in
19 utilization should be used in the model,
20 did you?

21 A. I did not.

22 Q. And again, the utilization
23 assumption is the only item that you
24 criticize in Mercer's analysis; isn't
25 that right?

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2 A. That is correct.

3 Q. And you realize, do you not,
4 that APA, specifically Ms. Clark,
5 testified yesterday that she relied upon
6 you to make an expert determination
7 regarding how the proposed active medical
8 plan changes would impact utilization?
9 You understand that, right?

10 A. Yes.

11 Q. Did you tell her that you did
12 not make the determination as to what, if
13 any, utilization factors should be used?

14 A. I actually never had any
15 conversations with Ms. Clark about any of
16 the plan pricing. I worked with somebody
17 else at the APA, so.

18 Q. Did you tell anybody at the
19 APA that you personally did not make a
20 determination as to what utilization
21 factors would be used here?

22 A. I did not tell anybody that I

23 did not personally make that factor. I
24 utilized a tool and I utilized other
25 pricing tools, namely the Milliman

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2 Robinson healthcare cost factor.

3 MR. GAGE: I don't have
4 anything else, your Honor.

5 THE COURT: All right,
6 redirect.

7 REDIRECT EXAMINATION

8 BY MR. HAIRSTON:

9 Q. Mr. Heppner, Mr. Gage
10 mentioned a discussion that you
11 apparently had with a Mercer actuary. Do
12 you recall that part of your cross
13 examination?

14 A. I do.

15 Q. And you mentioned that a
16 concept was discussed, correct?

17 A. Yes, I did.

18 Q. What was that concept?

19 A. The concept that was discussed
20 was a concept called rush, hush and
21 crush.

22 Q. And briefly could you
23 summarize what that concept means to your
24 understanding?

25 A. Well, subsequent to my

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2 deposition I did go and search out that
3 article. And it was an article which was
4 published I believe in 2008 in the health
5 practice section of the newsletter that
6 the Society of Actuaries publishes. And
7 I did read through that article
8 carefully. A couple of key things
9 regarding that article is that a lot of
10 this article focuses on plans that go to
11 100 percent replacement to a consumer
12 driven health plan.

13 A consumer driven health plan
14 would be one which is similar to the core
15 plan that's discussed here, the \$2,000
16 deductible plan.

17 And in that article it
18 discussed how in anticipation of plan
19 changes effectively a 100 percent
20 replacement to a consumer driven health
21 plan, that usage may shift from the
22 period after the plan change to the
23 period before the plan change, so that in
24 anticipation of the plan change
25 participants may move some usage prior to

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2 that change.

3 And what that does is the rush
4 portion of the trend is that in the year
5 before the plan change you may see claims
6 higher than what you would have normally
7 anticipated. In other words, a higher

8 trend. And the year after, you would
9 actually see a lower than anticipated
10 cost because some of that experience
11 actually was able to move because
12 somebody perhaps got a knee operation
13 earlier versus later. Or something along
14 those lines.

15 And then in the subsequent
16 year, they would call it would be a trend
17 to crush. And it wasn't necessarily that
18 underlying trends were worse, but because
19 you effectively took some experience from
20 the middle and you moved it to before
21 that, that you have a lower trend and
22 then when -- and then -- and the year
23 after because the utilization is now at
24 where you expected it to be originally,
25 you actually would see an increase in the

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2 trend because that middle period actually

3 has moved some experience out of there.

4 When reviewing this article I
5 kind of took it into light and said how
6 does this really affect here. Well,
7 first of all, this is not a 100 percent
8 consumer driven healthcare replacement so
9 it might perhaps not be as extreme as
10 this article. It also moves, indicates
11 that a lot of experience that might move
12 might move actually prior to any of the
13 budget periods that we're talking about.
14 So there would definitely be some savings
15 that would be reflected after this plan
16 change.

17 And it didn't really so much
18 talk about whether or not plan changes in
19 and of themselves would result in usage
20 changes, which is really the big
21 component here is the -- that I'm
22 concerned about when Mercer did their
23 valuation, is that, you know, they did
24 not take into account utilization
25 changes, which when you have plan design

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2 changes those will occur. So I honestly
3 just think it's a conservative way to
4 value the plan savings.

5 But this article wasn't
6 addressing that per se, it was just
7 saying that some usage may shift from one
8 period to the other and that -- and the
9 result when you're doing your budgeting,
10 if you have this kind of a plan change,
11 you should be cautious.

12 Q. Now understanding what you're
13 describing, how would that relate
14 specifically to the six year projection
15 that we're looking at here and the trend
16 rate following the plan change?

17 A. Well, the article was really
18 only focused on three years, one of which
19 was before any plan changes. So it would
20 be a little difficult to say how it would
21 convey to a six year budget projection.

22 Q. Now I believe on cross
23 examination you also testified that a
24 rate other than 5 percent, and here we're
25 talking about discount rate, would be

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2 reasonable. What is the range of
3 reasonable for the discount rate in your
4 opinion?

5 A. There are a couple of
6 different sources that I would look at.
7 You know, there are some bond indexes
8 that might produce slightly different
9 interest rates versus a more exact cash
10 flow matching. But I mean I would
11 anticipate that doing these calculations
12 a couple different ways you'd probably be
13 plus or minus 50 basis points. So, you
14 know, 4.5 to 5.5 percent, but I haven't
15 really done all that math.

16 Q. Now earlier in your direct

17 examination you testified that the 5
18 percent was obtainable and then that
19 question was raised again on cross.
20 Obtainable where?

21 A. That interest rate could be
22 obtainable to settle the cash flow
23 liability by actually going out and
24 purchasing the bonds to replicate the
25 cash flow.

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2 Q. Where?

3 A. On the open market.

4 Q. Now is the same true of 8.25
5 percent?

6 A. You couldn't guarantee an 8.25
7 percent, no.

8 Q. You also testified on cross
9 examination about the AK Steel case where
10 you used a discount rate of 7 percent,
11 correct?

12 A. Correct.

13 Q. Why was 7 percent appropriate
14 there while 5 is appropriate here, in
15 your opinion?

16 A. When working with the class
17 members and developing the terms of the
18 settlement agreement, there is a very
19 fine balance that you must obtain.
20 Balancing between being conservative to
21 -- because the huge issue here is that
22 there was a certain amount of money that
23 was going to be provided to these
24 retirees and to a health and welfare VEBA
25 trust, and that money had to last until

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2 all these retirees died. And this is
3 where they were going to be getting their
4 retiree medical benefits from.

5 And there's a desire to want
6 to be conservative to make sure that it

7 all works out, but at the same time, if
8 you're too conservative it means that
9 you're going to have to make further
10 benefit reductions in order to meet
11 those, you know, if you're going to use
12 a, say, 5 percent discount rate, that
13 would require, because the amount of
14 money that was provided was the amount of
15 money that was provided, and it had to
16 pay for those benefits.

17 And what we wanted to do was
18 make sure that we were using a discount
19 rate at the time that given the projected
20 cash flows that we had valued based on
21 the plan designs that we had modeled with
22 the participants, that that was an
23 obtainable and reasonable interest rate,
24 not too conservative, not too aggressive.

25 And it was based on, you know,

2 a preliminary asset mix was developed
3 based on bonds and fixed incomes and
4 equities, and that's how that discount
5 rate was determined.

6 Q. You mentioned that there were
7 assets going into this fund, the VEBA?

8 A. Correct.

9 Q. Are there assets pre-funded in
10 this scenario on the future retiree
11 medical and life?

12 A. No.

13 Q. And is that relevant to your
14 decision on the discount rate?

15 A. Yes.

16 Q. Why?

17 A. I think again, when you have
18 an unfunded obligation there really isn't
19 a basis to establish how, how you're
20 going to invest any money because there
21 isn't any money to invest. And so
22 picking an investment income, a rate
23 based on perhaps investing it will in
24 most cases produce a higher discount rate

25 and actually lower the economic cost, but

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2 with no intention of ever funding it.

3 And so a high quality fixed income

4 portfolio, you know, based on my

5 experience, is a reasonable rate to use

6 in evaluating these assets so that

7 they're -- or these liabilities, there

8 aren't any assets.

9 Q. Is there any standard practice

10 among actuaries with respect to setting

11 the discount rate for an unfunded

12 obligation like that?

13 A. This was the way that -- this

14 is the way we would typically do it.

15 Q. When you say this is the way,

16 which one are you talking about,

17 American's or yours?

18 A. The bond portfolio matching,

19 yes.

20 Q. Mr. Gage also asked you some
21 questions about whether income, age or
22 health were included in your evaluation.
23 Do you recall those questions?

24 A. Yes, I do.

25 Q. And I believe that you

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2 testified that the baseline, for both you
3 and Mercer, was based on the pilot group.
4 Do you recall that testimony?

5 A. Yes, I do.

6 Q. What did you mean by that?

7 A. Well, when evaluating these
8 proposal, the experience that is used to
9 project these costs is based on the
10 pilot's experience, it is the pilot's
11 experience, and when we are doing these
12 projections and although we're not saying
13 oh, the age of this group is that, or the
14 income of this group is that, implicit in

15 the underlying historical experience of
16 the pilots is their income, their age,
17 their, all of their demographics, their
18 general health because those are the
19 claims that are in fact generated by that
20 group.

21 And to project claims going
22 forward you have to, you have to have a
23 -- you have to have a trend rate. And
24 here we have a trend rate that both Segal
25 and Mercer agreed to.

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2 And, you know, also -- yes, so
3 I mean that's -- so it's built into that.

4 MR. HAIRSTON: Thank you.

5 Pass the witness.

6 THE COURT: Can I ask you a
7 question about that last answer.
8 When you say it's built into the
9 claims of that group, are you

10 saying that their experience in
11 terms of filing claims and the
12 demands they make on the system are
13 therefore built in these
14 assumptions about their other
15 demographics? I'm not sure what --

16 THE WITNESS: Well, the plan
17 is what's known as a self-funded
18 plan, so American basically pays
19 for all the claims that are
20 experienced by the pilots.

21 So to develop a cost
22 projection for this group you would
23 collect that historical
24 information, how much were the
25 actual costs of that group, and so

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2 what claims were ultimately paid by
3 American on the pilots is what is
4 used for these projections.

5 So built into that would be
6 all of the nuances of how pilots
7 use the plan, because it's
8 ultimately what was paid on their
9 behalf.

10 THE COURT: Let me ask you one
11 other question, which is a question
12 about utilization rate.

13 I understand that your company
14 has software that uses, that has
15 utilization changes as an
16 assumption in spitting out the
17 ultimate numbers and opinions.

18 What do you, if any view, if
19 any, do you have, or do you have a
20 view about the modifications and
21 the utilization variable and
22 adjustment that's in that software?
23 Is that something you've ever taken
24 a look at or formed an opinion
25 about.

1

2

THE WITNESS: Well, part of

3

the information that I do look at

4

when I review plan change factors

5

is I talk, in part of my testimony,

6

that there's the impact of changing

7

the deductible, there's an impact

8

of changing, you know, co-insurance

9

and all of these factors.

10

The end result that comes out

11

of the system is a, is a plan

12

relative value which, you know,

13

this plan is worth a one and this

14

plan is worth .9. But we can run a

15

report and I do run reports that

16

actually show how that factor is

17

developed. And so it will show me,

18

okay, this change in the deductible

19

is worth 2 percent and change -- so

20

on and so forth and in there there

21

is a utilization adjustment factor.

22

THE COURT: My question is a

23

little different, which is do you

24 have an opinion about that
25 utilization factor in terms of what

166

1
2 -- there are adjustments made based
3 on various things.

4 THE WITNESS: Correct.

5 THE COURT: And reflected a
6 judgment about how utilization
7 should affect the ultimate number
8 that's spit out, right?

9 THE WITNESS: That's correct.

10 THE COURT: If that's the
11 case, do you have a view, or again,
12 have you had an occasion to probe
13 into what those adjustments are and
14 whether you agree with them? Do
15 you have an opinion? You may or
16 you may not?

17 THE WITNESS: I have, and I
18 have looked at them, you know, in

19 the course of my work. I mean, you
20 know, obviously, if you're going to
21 raise cost sharing you should
22 expect to see a commensurate
23 decrease in usage or a shift in
24 usage. And so when I look at these
25 factors I definitely make sure that

167

1
2 they move in the correct direction
3 and --

4 THE COURT: I guess my --

5 THE WITNESS: And to make sure
6 that when I'm looking at different
7 plan designs from, you know, based
8 on when I've done the pricing
9 before that they're consistently
10 developing this factor.

11 So yes, so I mean I do find it
12 to be a reasonable factor. And
13 when we --

14 THE COURT: I'm trying to get
15 at something a little more
16 granular, which is what is the
17 factor, other than going north or
18 south, obviously there's some --
19 there's shading, right, is it 33
20 percent, is it 27.5 percent, is it
21 19.2 percent. There's obviously
22 some very specific numbers that are
23 used here.

24 THE WITNESS: Correct.

25 THE COURT: Do you have a

168

1
2 view, or have you formed an opinion
3 about those specific kind of
4 applications here that are applied
5 in this case on any level of
6 granularity other than sort of
7 north and south?

8 THE WITNESS: I mean I find

9 the factors that it develops to be
10 reasonable. I mean that's what --
11 and part of that testing, when we
12 get plan change factors from, say,
13 insurance companies, and they don't
14 tend to break it out that way, they
15 just say here's the relative value,
16 and when I do those comparisons and
17 I nobility into my factor is these
18 utilization changes and so when
19 they're comparable, I can have
20 comfort that the pieces that are
21 going into that factor are
22 comparable.

23 THE COURT: All right. Thank
24 you.

25 MR. GAGE: No further

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1
2 questions, your Honor.

3 THE COURT: All right. What

4 I'm going to do is I think we're
5 going to have to have a discussion
6 that you probably can live without.
7 So what I would do is I would
8 stretch your legs while lawyers do
9 what lawyers do. I don't think we
10 can release you yet just in case
11 somebody wants to call you back and
12 clarify some things. But if you
13 give us a little bit, we should be
14 able to give you an answer and get
15 you on your way shortly.

16 THE WITNESS: So I can get up?

17 THE COURT: Yes. That's the
18 bottom line importance question,
19 yes, you can get up and make
20 yourself comfortable in the hallway
21 and let you know when you can
22 leave. Thank you very much.

23 All right. So I'll give each
24 side a second to sort of articulate
25 their view and inn light of the

1
2 testimony, both direct and cross
3 and then I'll share with you my
4 view at the end of that.

5 MR. GAGE: Thank you, your
6 Honor. I think Mr. Heppner's
7 testimony confirmed the basis for
8 our motion. And that is Mr.
9 Heppner, the actuary here, doesn't
10 have an opinion independent of what
11 the software tells him as to what
12 specific utilization factors should
13 be used here. That is the only
14 criticism they have of Mercer. It
15 is, we know from his testimony,
16 that the utilization assumption,
17 whatever it was that the software
18 used, only accounts for some of
19 this 52.5 million dollar number.

20 We know from Mr. Heppner's
21 testimony that there is a range of

22 reasonableness that actuaries could
23 use for many different assumptions
24 that are built into the model that
25 generates these numbers. We know

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1
2 from Mr. Heppner that there's a
3 range of error in year 1 of plus or
4 minus 2 percent and in year 6 plus
5 or minus 15 percent in these
6 numbers.

7 And so he's not qualified to
8 come in here and say that American
9 Airlines's estimate for the value
10 of the active medical changes is
11 unreasonable or off by 52.5 million
12 dollars, all he knows is that's
13 what his computer tells him.

14 He doesn't know how it's
15 derived. He can't explain how, as
16 your Honor was asking him, how the

17 software interprets the data, what
18 measure of change in co-pays or
19 deductibles leads to what measure
20 of change in utilization. He can't
21 explain that, he doesn't know.

22 He's told us that Segal vets
23 the software, but it isn't
24 validated and certainly we haven't
25 heard any testimony to suggest that

172

1
2 it's validated in as much as it is
3 a reliable predictor of how
4 utilization will change as a result
5 of specific plan changes.

6 And so if we look to even the
7 cases that APA cites, the Turner
8 case, the Royal and Sun Alliance
9 case, both of those, while the
10 result is the result that they want
11 to obtain here, that is that the

12 testimony is admissible, the courts
13 in those cases specifically relied
14 upon the fact that the software had
15 been validated, the fact that it
16 was the subject of I believe peer
17 review articles, so on and so
18 forth.

19 There was a basis for saying
20 that the methodology used was a
21 reliable way of predicting a
22 result. That's what this is all
23 about. The APA is saying that
24 they've offered Mr. Heppner as an
25 expert to say I think going out

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1
2 into the future for years 1, year
3 2, year 3, year 4, year 5 and year
4 6, utilization will drop by a
5 certain amount and that will affect
6 the savings.

7 But he doesn't have an opinion
8 on that. And while he can look
9 back in hindsight and say sure, I
10 think it's reasonable, that doesn't
11 solve the underlying problem that
12 they haven't demonstrated that
13 there is a reliable methodology
14 behind the number that was used.

15 And therefore, for all those
16 reasons, we don't think his
17 opinions or his testimony on this
18 subject is admissible.

19 THE COURT: All right. I'm
20 sure this is the answer, but just
21 to be clear, his declaration has
22 two opinions, essentially two
23 assumptions, worn is the discount
24 rate, that's not the subject of any
25 motion. The other is this, is this

2 value of the plan design changes
3 and his sole beef, so to speak with
4 that is the utilization?

5 MR. GAGE: That's correct, and
6 we've identified in our motion the
7 specific paragraphs.

8 THE COURT: I want to make
9 sure I'm cabining it off correctly.

10 MR. HAIRSTON: One thing on
11 that point, the motion by the
12 debtor actually indicates they're
13 trying to strike paragraphs 9, 11
14 and 12. I should point out that
15 the valuation issue that we're
16 talking about that traces back to
17 the software would only affect the
18 last sentence of paragraph 11 and
19 then paragraph 12. Paragraph 9
20 does not have anything about the
21 valuation in it.

22 THE COURT: I think that
23 that's -- well I guess they
24 probably identify every paragraph
25 where the word was used. So I

1
2 don't think we need to parse it
3 that finally. But I just wanted to
4 get, there's two opinions here, two
5 assumptions that he challenges, one
6 of which is not the subject of any
7 challenge, the other of which is.

8 All right, so what's your
9 position?

10 MR. HAIRSTON: The other piece
11 is again, we mentioned this in the
12 motion, they have waived any
13 objection to paragraph 9 which
14 shouldn't be an issue because it
15 doesn't have a valuation statement
16 in it. But they fail to identify,
17 to file that objection pursuant to
18 the scheduling order.

19 THE COURT: Here, the
20 scheduling order is, there are some

21 scheduling orders that courts are
22 very heavily emotionally invested
23 in and others that are a result of
24 the parties trying to get, you
25 know, from point A to point B.

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2 This one definitely falls into
3 the latter category and certainly I
4 have entertained motions that are
5 pretrial but as this trial is a
6 very good example of the fact that
7 a lot of those things fall away as
8 we get into the testimony and I
9 think that counsel all here have
10 been very reasonable trying to be
11 efficient about that because
12 otherwise we could have the trial
13 before the trial.

14 So I'm not, I'm not going to
15 get hung up on procedure as to this

16 particular issue because you can
17 see I want to hear all the
18 testimony first because I think
19 that that's appropriate to have a
20 factual record.

21 So let's turn to the substance
22 here.

23 MR. HAIRSTON: Turning to the
24 merits, there are two basic
25 arguments that they make. One

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1
2 relates to Mr. Heppner's reliance
3 on the software that he described
4 on the stand, the Apex software,
5 and the other, and as you
6 identified the other relates to his
7 valuations on proposed changes to
8 active medical. Not the future
9 retiree medical and life piece,
10 which is the discount rate.

11 The second point that they
12 raise is that his testimony on that
13 point should be stricken because
14 APA did not produce the software.
15 I can address the first one first
16 and the second one second.

17 THE COURT: Well, I'm not --
18 when he just got up and spoke I
19 didn't hear him raising that issue
20 about the software production being
21 an issue. I think what I
22 understood the objection to be is
23 his testimony, his basis for his
24 testimony, correct me if I'm wrong,
25 but I don't understand disclosure

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2 to be the issue here, but rather to
3 be the basis for the testimony.

4 MR. GAGE: We did raise the
5 issue of disclosure in our motion.

6 We didn't get it before his
7 deposition. It was at his
8 deposition that we learned that he
9 doesn't have the opinion, that he's
10 just relying on the software. So
11 the key issue here is as I just
12 described, the fact that he doesn't
13 have the opinion.

14 THE COURT: Much like I'm not
15 going to get hung up on procedure
16 in terms of making the objection
17 before the trial started, I'm not
18 going to get too hung up on the
19 back and forth disclosure because
20 it was obviously discussed.

21 So I just want to talk about
22 the argument as to whether this
23 witness has a basis to be an expert
24 to talk about the utilization
25 rates, which I understand to be the

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2 sole basis for the objection to the
3 value of the plan design in
4 paragraph 11, and the argument is
5 that he doesn't really have a basis
6 for that and so let me hear what
7 you have to say on that.

8 MR. HAIRSTON: Yes, sir. On
9 that point certainly the touchstone
10 is reliability and the question has
11 been addressed in multiple court
12 cases, obviously Daubert is one of
13 those, the seminal case, Kumho
14 Tire, and there are some factors
15 but every court I'm aware of
16 recognized that question, that
17 reliability can be approached in
18 many different ways.

19 You can look to the five
20 factors set out in Daubert. You
21 can look to whether the witness is
22 using the same methodology he uses
23 in his professional practice

24 because after all the whole point
25 of all these evaluations is to make

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1
2 sure that the witness brings to the
3 courtroom the same level of rigor
4 that he uses in his private
5 practice, his professional life.

6 After you heard from Mr.
7 Heppner, I don't think there's any
8 question that that is exactly what
9 he did. You heard from this
10 software, from his testimony about
11 the way this software was brought
12 into Segal, how it is vetted by
13 Segal's national office, how he has
14 compared its reliability to the
15 reliability of software he used at
16 other consultants, how he has
17 compared the reliability of the
18 software which he has used for ten

19 years to the reliability of
20 projections done by other insurance
21 companies and firms and everything
22 is pointed in one direction, which
23 is that it produces reliable
24 results, which is of course why he
25 has relied on it outside of here.

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2 THE COURT: Well, let me tell
3 you what my concern is. And maybe
4 it just goes to weight. My concern
5 is that the black box aspect of
6 this, that it's in the software and
7 other than saying it's a factor and
8 that sort of a north/south opinion
9 about what it should do to the
10 ultimate number, there's really no
11 level of sort of ownership of that
12 opinion that's built into the
13 software.

14 I mean the mere fact that the
15 software doesn't bother me. If I
16 hear another expert witness talk
17 about their proprietary software,
18 we'll just add them to the rest.
19 So everybody's been doing that.
20 That's fine.

21 But my concern is when
22 witnesses do that they essentially
23 say, yes, it's proprietary so I
24 can't tell you the exact mix of
25 things, but I can stand up and

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2 vouch for it because it reflects my
3 opinion, my value system. And he
4 did a little bit of that, I think
5 the last thing he said was
6 essentially I've compared some
7 insurance companies and they sort
8 of do a similar thing and that

9 gives me some comfort. But I think
10 that's the closest he got.

11 And I am inclined based on
12 that thin read and basically the
13 desire to sort of, you know,
14 consider the evidence to let it in,
15 but I've got to tell you it does --
16 it's sort of a sliding scale, you
17 can keep it out or you can let it
18 in and say I'll take it for what
19 it's worth which is usually what
20 you never want to hear a trial
21 Judge say.

22 He doesn't appear to be able
23 to take ownership of that analysis
24 which troubles me.

25 MR. HAIRSTON: Well, your

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2 Honor, on that one point, the black
3 box issue, I don't think that's

4 where he is. It is true he doesn't
5 have a programmer's level of
6 knowledge about how this --

7 THE COURT: But I'm not
8 talking about what's the input and
9 all that. I mean in a programmer
10 sense. I'm not talking about what
11 the code looks like. I'm talking
12 about here's the theory behind the
13 adjustment, here's the range of
14 adjustments considering different
15 factors and different
16 circumstances. It's the opinion,
17 right. So you can have an opinion
18 and say I have an opinion about how
19 the world should work and
20 adjustments that should be made and
21 I'm going to write code that if I
22 put in numbers that will reflect my
23 opinion, but he doesn't seem to
24 have strong views other than it
25 should be considered and that he's

1
2 comfortable with it, he's seen it a
3 lot.

4 I have no doubt for purposes
5 of his credibility he uses it all
6 the time. So I don't think it was
7 made up for this case. But I do
8 think that he's not really able to
9 put sort of intellectual heft
10 behind it which does discount his
11 opinion.

12 MR. HAIRSTON: Your Honor, I
13 understand what you're saying, I do
14 think that part of that is the
15 nature of the beast, which is as he
16 described it this software has a
17 massive amount of data, it has
18 massive numbers of tables that use
19 two million member months to
20 predict things.

21 THE COURT: But there's still
22 got to be what do you do with the

23 data, that's a basic question, what
24 do you do with the data and why do
25 you do that with the data and

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2 that's where I think -- again,
3 we've had a lot of proprietary
4 software, people running models and
5 discussion about getting access to
6 models and how sensitive that is
7 because nobody wants to share the
8 model or they're out of business,
9 or you can do their work, right.

10 So I understand that, but it
11 still means that people have to be
12 able to give an overview and say I
13 can't tell you exactly all the
14 rates, but this is what it's
15 assigned to do and here's basically
16 how it does it. We've had a lot of
17 that testimony from both sides.

18 So I guess I'll say this might
19 be a pyrrhic victory, I'm going to
20 allow it and I'm going to consider
21 the arguments that have been made
22 to the weight, but just in the
23 interest of sort of full disclosure
24 I'm going to tell you it's a closer
25 call than I would have thought

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2 because I generally am not a big
3 and if of keeping evidence out, but
4 at the same time I'm going to have
5 to grapple with the evidence when I
6 issue a decision and there are
7 some, there are some weaknesses in
8 connection with that particular bit
9 of testimony. So that's my ruling.
10 It's in for what it's worth.

11 MR. HAIRSTON: And the
12 remaining exhibits, your Honor, I

13 move those at this time.

14 THE COURT: Subject to my
15 ruling, any other objections?

16 MR. GAGE: Subject to your
17 ruling, no other objections.

18 THE COURT: I understand the
19 objection, the motion to really
20 sort of cut across this issue as
21 it's reflected in the declaration
22 and the exhibits and so having
23 ruled on that, I will let it in,
24 I'll overrule the objection based
25 on my explanation and I'll allow

187

1
2 the evidence in.

3 MR. GAGE: Thank you, your
4 Honor.

5 THE COURT: So am I correct
6 that we've reached the conclusion
7 of the Allied Pilots Association

8 case?

9 MS. KRIEGER: Yes, we have and
10 there's one cleanup matter we
11 wanted to put into the record, some
12 supplemental exhibits we've
13 discussed with debtor's counsel and
14 Dan Rosenthal will do that.

15 THE COURT: By the way, I do
16 commend counsel, I thought you
17 presented very cogent explanations
18 of why in support of both your
19 positions. I found the papers to
20 be very helpful and so I appreciate
21 that given that I know how much fun
22 it is to write briefs while you're
23 in trial. It's always a great part
24 of being a litigator. So.

25 MR. ROSENTHAL: Good

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2 afternoon. We have an agreement

3 with company counsel to introduce a
4 supplemental exhibit in an attempt
5 to clarify and correct some
6 statements that were made yesterday
7 in court. Do you have the
8 documents, Jack?

9 MR. GALLAGHER: No.

10 MR. ROSENTHAL: May I
11 approach?

12 THE COURT: Yes. Thank you.

13 MR. ROSENTHAL: By way of
14 background, Lawrence Rosselot
15 testified yesterday about
16 American's manpower planning model
17 and there was some questioning
18 about whether the APA had requested
19 access to that model, including the
20 following exchange on cross
21 examination:

22 "Q. American has filed with
23 the court all, every single page of
24 the information request and
25 responses since the start of

1
2 negotiations to outline the
3 declaration of Denise Lynn which
4 are Exhibit 1500 and American
5 exhibits 1501 to 1672.

6 "Do you know why none of those
7 requests mentions the manpower
8 planning model?

9 "A. No."

10 And then on redirect I asked
11 him whether he thought that such
12 requests had been made and he said
13 that he thought so but he wasn't
14 completely sure.

15 This exhibit is actually
16 broken up into four parts and I'll
17 just quickly tell you what each one
18 of them are. First APA Exhibit 8-A
19 is a response from American which
20 was posted March 23rd which was

21 before Ms. Lynn submitted her
22 declaration and on the second page
23 it reflects that there was a
24 request 6, please provide a copy of
25 the AA crew resources manpower

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2 optimization tool, it goes on.
3 There's a response which includes,
4 it mentions the March 26th demo
5 which Mr. Rosselot testified to and
6 then it says for proprietary
7 reasons an actual copy of model is
8 not currently able to be produced.

9 The second part, 8-B is a
10 follow-up request on March 30th
11 which makes requests about the
12 model.

13 The third is another follow-up
14 request on April 13th which
15 requests about the model.

16 And then the fourth is a
17 response from American posted April
18 21st on IntraLinks which
19 acknowledges one of those requests.

20 So just in the interest of a
21 clear and accurate record, we
22 wanted to put that in.

23 THE COURT: All right. So am
24 I essentially to understand that
25 this clarifies factually what

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1
2 requests were made and what
3 responses were made and then of
4 course the parties will argue about
5 the adequacy or inadequacy of the
6 exchange?

7 MR. ROSENTHAL: Yes, your
8 Honor.

9 THE COURT: All right.

10 MR. GALLAGHER: If I may, your

11 Honor, Jack Gallagher for the
12 company, I thought we had an
13 agreement, your Honor, to make the
14 record complete and we do not
15 object to these exhibits going in,
16 is it 008-A, B, C and D. But your
17 Honor will -- I should apologize,
18 your Honor, Ms. Lynn's declaration
19 was finalized before these
20 documents. It's dated March 23rd,
21 but Ms. Lynn's declaration was
22 finalized -- it was filed on the
23 27th, but I erred, I misspoke
24 yesterday when I said it was all
25 inclusive.

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2 But I do want to call your
3 Honor's attention to Exhibit 008-D.
4 These are additional American
5 responses of April 21st, 2012 to

6 data requests of April 13th, and on
7 page 3, items IV and V, Roman 4 and
8 Roman 5, in those few questions and
9 answers in the question, APA
10 asserts that the company's April
11 11th, 2012 response is
12 nonresponsive. Well, the surprise
13 I have, your Honor, is that
14 American's April 11th response is
15 not included in this set. But
16 rather than object, we will simply
17 file that as part of our rebuttal
18 case in order to complete the
19 record.

20 THE COURT: All right. That's
21 fine. I'm sure the parties will
22 explain to me the back and forth in
23 terms of meeting standards under
24 1113.

25 MR. GALLAGHER: Thank you,

1

2 your Honor.

3 THE COURT: Anything else that
4 needs to be said about this? Given
5 the lack of objection,ism receive
6 it and I'll expect to receive the
7 April 11th document as well in the
8 rebuttal case.

9 So I think we're ready to move
10 on to the next part of the program.
11 Before we do that, I just did have
12 one item I want to discuss which is
13 we briefly talked about what
14 briefing, if any, additional would
15 be helpful to me and I've now
16 formed an opinion about that. I
17 confess when the question was asked
18 I really didn't know what the
19 answer was. But here's what I
20 think would be helpful. I have a
21 lot of paper and the briefs that
22 have been failed are all top
23 flight, but what I do have is a
24 veritable blizzard of details. And

25 so I think the idea of annotating

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2 that is probably not particularly
3 helpful. I'm here for the
4 testimony, I've taken a lot of
5 notes, and I'm actually trying to
6 write up summaries later so I can
7 remember. So I don't know that
8 that's a worthwhile use of your
9 time or would be useful to me.

10 However, what I think would be
11 useful is essentially a page,
12 something that has a page limit on
13 it that are your proposed findings
14 of fact and conclusions of law
15 because it really does -- if I took
16 the parties' briefing and used that
17 as a model I'd have to issue a
18 6,000 page opinion, and I'm sure
19 that you don't want that, and I'm

20 sure no reviewing court would want
21 that. So it's always my job to try
22 to summarize and distill the
23 essence of the parties' cases. I'm
24 not asking anyone to give up any
25 arguments. You've preserved them

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1
2 all and the arguments you've made
3 in cross and the direct and the
4 papers you've filed to date. But
5 certainly there is always a -- I
6 figured out I think at this point
7 what the big arguments are and so
8 those are the ones you really need
9 to grapple with, you can put in a
10 paragraph and say reserve all other
11 rights and argue that the other guy
12 is wrong, so that's fine.

13 So what I'm thinking of now is
14 essentially some time after we get

15 done that you could give me
16 proposed findings and conclusions
17 of law that distill your case and
18 I'm groping towards page limits on
19 that. My off the top of my head to
20 try to reflect the complexity of
21 the case, the factual record and
22 but considerably smaller than the
23 briefs that have been filed thus
24 far would be every union would
25 have, say, 30 pages and that the

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2 debtor would have, say, 75. If you
3 want to work out something in that
4 range I'm trying to be fair and
5 that's, I'm just sort of groping
6 towards numbers. I need something
7 that is not a dictionary size
8 submission just because I'm sitting
9 through the trial so I think I'll

10 have heard it all.

11 We can talk about scheduling
12 for that once we get further on,
13 but since I know that that puts a
14 burden on parties to prepare that,
15 at least I want to give you an idea
16 of what I really am likely going to
17 ask for so you can start to think
18 about how to put that together.

19 So with that said, I think we
20 can call the next witness.

21 MS. KRIEGER: Your Honor,
22 maybe a five minute break to let
23 them assemble.

24 THE COURT: Yes, a five minute
25 break, absolutely.

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2 (A recess was taken.)

3 THE CLERK: All rise.

4 THE COURT: Please be seated.

5 All right, just a quick
6 question about scheduling. In
7 terms of asking court personnel to
8 stay, I'm just trying to get a
9 sense of what folks would like to
10 do this evening. It's 4 o'clock.
11 So what do you have in mind?

12 MR. CLAYMAN: Your Honor,
13 Robert Clayman, for the Association
14 of Professional Flight Attendants.
15 I'm going to do, I reserved part of
16 my opening and I'm going to do that
17 to start, and then we would call
18 Laura Glading and hopefully Anne
19 Loew if there were time, but I
20 think we would like to break at the
21 end of the testimony of those two
22 witnesses, which we would think
23 would take probably combined on our
24 end no more than an hour or so. So
25 I think we would be, and I just

1

2 don't -- you know, depending on the
3 length of cross examination.

4 THE COURT: I would imagine
5 that given cross we're not talking
6 an hour.

7 MR. GEIER: Actually, your
8 Honor, John Geier, for debtors. I
9 think cross of both Ms. Glading and
10 Ms. Loew will be combined maybe an
11 hour.

12 THE COURT: All right, then
13 maybe we'll get those two in. So
14 what I would say is I want to just
15 make sure people understand in
16 terms of what their sticking around
17 in terms of. So we're looking at
18 six, add on sort of the multiplier,
19 6:30, and I think at that point we
20 may just stop where we are unless
21 you want to go further. So at some
22 point we have to cross that bridge

23 in terms of what days it would make
24 sense to run late. So I have most
25 days I can do it, not every day.

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2 So as we go consecutively, but.

3 MR. CLAYMAN: One caveat is
4 Ms. Loew is not available tomorrow.

5 THE COURT: Do you want to do
6 her first?

7 MR. CLAYMAN: I would much
8 prefer to do Ms. Glading first, but
9 again, Ms. Loew is willing to stay
10 if need be, a little bit later, but
11 I still think we should be done by
12 6:30. I'm just saying if we ran a
13 little late I would like to finish
14 up.

15 THE COURT: Give me a second.

16 MR. GEIER: Your Honor, we
17 will stay as late as it takes to

18 finish Ms. Loew this evening. I
19 would like to note we had
20 originally been told an order of
21 witnesses. I wasn't here, but at
22 one of the status conferences, and
23 then last night Mr. Clayman
24 informed me he was changing that
25 order. I would like to make sure

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2 we would get a complete order
3 today.

4 THE COURT: Let's get the
5 order out of the way. So Ms.
6 Glading is first. Ms. Loew is
7 second. And then who comes next?

8 MR. CLAYMAN: Dan Akins.
9 That's right. Adam Condrick. Adam
10 Condrick followed by Dan Akins,
11 followed by Leon Szlezinger. And
12 that's it.

13 MR. GEIER: I would note, your
14 Honor, yesterday we were informed
15 they were not going to put Mr.
16 Roman, he originally announced,
17 he's filed a declaration, I believe
18 Mr. Clayman and I have agreed we
19 will submit a rebuttal deck
20 declaration, we're going to try to
21 do this without putting live
22 witnesses on. There's a limited
23 focus of Mr. Rohan's direct
24 testimony, we will do a rebuttal
25 declaration by next Wednesday.

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2 They will then have I think a week
3 to file their surrebuttal
4 declaration. But we're not going
5 to put anybody on the stand.
6 THE COURT: You're all going
7 to kill me, aren't you?

8 MR. GEIER: We're trying to
9 make the live proceeding efficient.

10 THE COURT: Although at a
11 certain point the amount of paper
12 will eclipse the utility of the
13 fact of just putting on the
14 witness.

15 But I will in the first
16 instance defer to you all as to how
17 you want to do this within reason,
18 so let me know what you want to do,
19 although surrebuttal declarations
20 frighten me a little bit just as a
21 concept.

22 But anyhow, it sounds like we
23 should be able to get through two
24 witnesses today, so what I've told
25 folks is that, you know, in terms

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2 of time estimates that you've given

3 me and built into them a fudge
4 factor which I won't disclose at
5 this time for fear that it will
6 expand for the time available.

7 So all right, so let's move
8 forward. Then at the end of the
9 day I do want to talk about days
10 that we can go late because again,
11 I just think in the interest of
12 when the court staff needs to be
13 here late, I just want to be
14 courteous of their time and the
15 commitment to the cause of justice,
16 but I don't think it's fair to
17 spring it on folks at the last
18 second.

19 MR. GEIER: One last, there
20 was a seventh witness that
21 originally filed a declaration with
22 the APFA, a Stuart Wohl. Are you
23 not putting him on?

24 MR. CLAYMAN: We're
25 withdrawing the declaration.

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2 MR. GEIER: Withdrawing the
3 declaration, okay.

4 THE COURT: All right. So
5 it's contemplated there will be
6 five witnesses, live witnesses?

7 MR. CLAYMAN: Yes.

8 THE COURT: Great, so let's
9 proceed then.

10 MR. CLAYMAN: Thank you, your
11 Honor. I want to begin by just
12 briefly describing the testimony of
13 the witnesses, the five witnesses
14 that APFA will be calling.

15 We will begin with Laura
16 Glading, who is the president of
17 the Association of Professional
18 Flight Attendants, has held that
19 position since April of 2008 and
20 was recently reelected or elected
21 to a second term, four year term.

22 She will talk about, describe
23 the material events that both
24 precede and follow the bankruptcy
25 filing, particularly of course as

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2 they relate to 1113.

3 She will also testify about
4 the company's demand of the 230
5 million dollars in concessions and
6 how that has been, how she believes
7 that demand would be received by
8 the flight attendants if it were
9 put to them in a ratification.

10 And similarly, she will also
11 describe her interactions with
12 officers of US Airways and the
13 negotiations that ultimately
14 resulted in the US Airways
15 conditional agreement.

16 Ms. Glading will be followed

17 by Anne Loew, who is a flight
18 attendant with 36 years of
19 seniority. She has been the lead
20 negotiator for the past four years,
21 since this round of bargaining
22 began in April of 2008, and her
23 testimony will focus on the
24 negotiations that took place in
25 February and March of this year

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2 pertaining to the 1113 process.

3 Ms. Loew will be followed by
4 Dan Akins, who is an airline
5 economist and analyst with more
6 than 25 years of experience.

7 As you know, he submitted a
8 lengthy declaration and his
9 testimony will focus on the
10 prepetition financial situation of
11 the carrier, an assessment of the

12 stand-alone plan, an assessment of
13 alternatives, and finally, he is
14 responsible for the valuation, in
15 large part for the valuation of
16 APFA's proposal and for also
17 looking at the valuation of the
18 company's proposals.

19 I misspoke, I guess Ms.
20 Parcelli can correct me again,
21 actually Adam Condrick will be
22 preceding Mr. Akins.

23 Adam is a consulting actuary
24 with Segal, has been for the past
25 25 years, and he will describe the

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2 costing that he has done on the
3 pension proposal as well as the
4 impact of the company's proposal on
5 the flight attendants' benefits ad
6 retirement.

7 Then finally, Leon Szlezinger
8 is a managing director of
9 Jefferies, has 25 years of
10 experience in the investment
11 banking field and he will testify
12 that he would not recommend, or
13 that, put it simply, APFA being
14 viewed as a prudent investor should
15 not invest in the stand-alone plan.

16 Now, I think it's helpful to
17 kind of go back to where Mr. James
18 started his opening, which is to
19 figure out in a case that is this
20 complex and has, as your Honor has
21 said, so much paper and evidence,
22 what is the starting point for the
23 court to determine how to apply the
24 law to the facts, and I think what
25 was said then, and I think we've

2 said in our brief and I obviously
3 believe it bears repeating, is that
4 what is on trial here is the
5 proposal, the proposal. That is
6 what has the company proposed, the
7 modifications it has proposed and
8 the total amount of concessions
9 that those modifications equate to.

10 For the purposes of the flight
11 attendants, the amount is 230
12 million dollars annually over the
13 next six years. What is not on
14 trial here is the status quo. APFA
15 is not taking the position that the
16 current collective bargaining
17 agreement shall remain in place
18 unchanged and the negotiations that
19 Ms. Loew will describe reflect that
20 view.

21 Now, what makes this case
22 seemingly more difficult than it
23 should be in large part is due to
24 the company's decision not to base

25 its labor ask on market based

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2 rates.

3 I think it helps to look back
4 at the way the court, the Second
5 Circuit in Carey looked at
6 necessary to permit a successful
7 reorganization and the court found
8 that that was inexplicably linked
9 to American's, and this is a quote,
10 "ultimate future."

11 It is obviously very much a
12 forward looking exercise and the
13 company's ultimate future is
14 defined by the business plan and
15 its projections of revenues and
16 costs. Because a business plan may
17 be projected out for a number of
18 years, in this case six, typically,
19 debtors, and for a variety of other

20 reasons, look to market based
21 contracts to establish the labor
22 component of its business plan.

23 And in fact, when the company
24 does that, that is in essence a
25 free-standing determination. That

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2 determination as to how much of a
3 change the market dictates can
4 stand apart from the business plan,
5 it can be integrated into in effect
6 into any business plan. That is
7 not the case here.

8 The reason -- and moreover,
9 with a market rate, when it is
10 adopted, it is difficult to dispute
11 because it is quantifiable, it's
12 based on existing and ascertainable
13 facts.

14 And one has to ask why

15 American chose not to go down that
16 road because if American had taken
17 that approach, the evidence would
18 clearly show that the flight
19 attendants collective bargaining
20 agreement today is very close to
21 market and if 230 million dollars
22 in cuts were implemented, the
23 flight attendants would find
24 themselves 30 percent below their
25 peers at other carriers.

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2 THE COURT: Well, since we're
3 talking about that, how do you want
4 me to understand your position when
5 it runs into losses that lead to
6 bankruptcy and also the 1113 notion
7 of equally sharing the burden?

8 MR. CLAYMAN: I think that the
9 company's, the question is that if

10 the company's, and I'll get into
11 this a little bit more, but if the
12 company's plan doesn't work, which
13 we will put a lot of evidence on
14 that the stand-alone plan is not
15 the plan that will get the company
16 to becoming or to being a
17 successful carrier, then obviously
18 alternatives have to be considered.

19 And in particular, when you're
20 looking at what's being imposed on
21 or what is being asked of labor, it
22 far out strips any other
23 stakeholders' sacrifice.

24 I don't think the company
25 could point to a single other

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2 creditor who is being asked to
3 asked a contract, an executory
4 contract that would leave that

5 creditor or supplier, vendor,
6 whatever, 30 percent below market.

7 So there's something
8 fundamentally wrong, inherently
9 wrong just based on the fair and
10 equitable standard when you look at
11 what the company's asking of us
12 versus what it's asking of everyone
13 else.

14 The fact is that the company
15 has rejected this approach of using
16 market based rates and the reason
17 is that, or what it has done
18 instead is that it has looked to
19 its business plan to drive the ask.
20 That is, it is unrelated to market
21 based rates and what it did do, and
22 I don't think -- I think at this
23 point it's largely undisputed, is
24 that it did not determine its labor
25 cost need before it projected its

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2 revenue. And instead what it did
3 was it projected an exceedingly
4 selected, an exceedingly high
5 EBITDAR target, it determined all
6 of its other non-labor costs, all
7 its non-labor costs and then it saw
8 that it had a hole and what it did
9 is it backfilled that hole in its
10 plan with the 1113 proposals.

11 That is not --

12 THE COURT: Let me ask you
13 your view how would you do this as
14 a debtor then? What would be your
15 process to, for purposes of the
16 bankruptcy and 1113 in terms of
17 coming up with a number?

18 MR. CLAYMAN: Well I think,
19 your Honor, it goes to, I'm not,
20 I've never been in that position
21 and I don't think I ever will be
22 asked to be in that position, but
23 having said that --

24 THE COURT: But you are now,
25 so.

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2 MR. CLAYMAN: But I am now,
3 that's true.

4 I think that you have to look
5 at the underlying assumptions of
6 the plan before you then say that
7 the hole that has to be filled is
8 going to be borne entirely by
9 labor.

10 That is what the testimony
11 reveals is that the EBITDAR target
12 was selected in a way that's not,
13 was not warranted. I think Mr.
14 Yearley has testified quite
15 effectively as to that the EBITDAR
16 target is higher than it needs to
17 be, that there is a range of
18 EBITDAR targets that should have

19 been looked at rather than
20 considering the wide range of
21 carriers like Allegiant, etc.

22 THE COURT: That's why I ask.
23 Is your quarrel with the EBITDAR
24 target? If you thought there was a
25 reasonable EBITDAR target, your

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2 view, then would you be okay with
3 filling in the labor ask based on a
4 quote, unquote, reasonable EBITDAR
5 target, or do you have a different
6 methodology entirely?

7 MR. CLAYMAN: We have a
8 different methodology, which is
9 that the business plan doesn't work
10 and so you have to start over.

11 I don't -- I am not suggesting
12 that the union, nor should it be
13 responsible for providing a

14 different business plan, but the
15 business plan, the stand-alone
16 plan, our witnesses will testify --

17 THE COURT: No, I understand
18 that, but I asked the question
19 because you've raised the
20 criticism, not just you, I think
21 it's a uniform criticism and I've
22 just sort of trying to be figure
23 out, sort of tease through it
24 mentally, which is what is really
25 the crux of the objection. Is it

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2 that the EBITDAR target is wrong
3 and that if you had a reasonable,
4 in your view, EBITDAR target, you
5 could reverse engineer the labor
6 ask because it would reflect an
7 appropriate number, or is it no,
8 that's not the way you should do it

9 at all, you should throw that
10 process out the window and you
11 should do some other process?

12 MR. CLAYMAN: Yes.

13 THE COURT: Which I assume is,
14 from what I've heard market based,
15 but I'm just wondering what that
16 proposed process is.

17 MR. CLAYMAN: I think that
18 every other item that's not a labor
19 cost, it was pegged, it was assumed
20 to be in the course of the
21 bankruptcy that it would be lowered
22 to a market based rate.

23 There's nothing that precluded
24 the company from doing exactly the
25 same thing and then determining its

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2 overall cost based on a market, an
3 application of the market to every

4 expense including, including labor.

5 That's what's been done in a
6 number of other plans. That's the
7 way it has worked in some of the
8 other major bankruptcies, including
9 Northwest and others.

10 So I think that that's the
11 methodology that should have been
12 implemented here and instead, it
13 was reverse engineered where labor
14 costs came, determining labor costs
15 came last rather than being treated
16 like any other expense.

17 Also I think what's important
18 here is that you are -- that
19 necessary, instead of necessary
20 being derived from something that's
21 easily ascertainable as I said,
22 like the market, you're now, you're
23 looking at the stand -- you're
24 looking at the business plan, far
25 more than you would have to if you

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2 were using the alternative
3 methodology, because what is
4 necessary, what is being claimed to
5 be necessary in terms of labor
6 modification is derived from the
7 business plan alone, without regard
8 to the market.

9 So if the business plan is not
10 valid or viable, then it cannot
11 justify the modifications which the
12 company is now seeking.

13 Now that's one of the
14 ramifications of the company's
15 approach and of the company's
16 rejection of a market based
17 methodology.

18 The second is that when you
19 take the approach the company has,
20 then the stand-alone plan that
21 underlies the 1113 proposal, it

22 must be assumed, or it should have
23 a high degree of certainty that
24 that in fact is the plan that will,
25 that the debtors will pursue.

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2 Again, if it were market based that
3 could stand on its own. The
4 company could make various changes
5 to its plan. But here, the
6 necessary, the amount of necessary
7 is linked directly to this
8 particular plan.

9 I think with regard to whether
10 or not this stand-alone plan, which
11 is obviously now at issue, whether
12 or not it's viable, I think what
13 the testimony has shown thus far is
14 from their own witness, Mr.
15 Resnick, I think it's fair to
16 describe his testimony as that he

17 is not willing to take ownership of
18 the stand-alone plan.

19 Mr. Yearley I've mentioned
20 already, believes that there's an
21 unreasonably high EBITDAR target.
22 I think it's informative that the
23 unsecured creditors' committee on
24 March 22nd mentioned, stated in
25 open court that the committee had

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2 not yet endorsed the business plan.
3 It's almost two months later and it
4 still hasn't endorsed the business
5 plan.

6 Now Mr. Akins will testify to
7 multiple deficiencies in the plan
8 and numerous unsupportable or
9 unsupported assumptions. And
10 ultimately he will show that many
11 of the projections, if not all of

12 them, many, if not all of the
13 projections, are fundamentally in
14 error and many are incredible.

15 So if you take those
16 deficiencies either separately, or
17 put them together, which you would
18 have to do here, it makes it
19 abundantly clear that this plan
20 doesn't work, a stand-alone plan,
21 this particular stand-alone plan
22 does not work.

23 And that's what Mr. Szlezinger
24 will also testify to as I mentioned
25 earlier.

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2 Now, the second ramification
3 of the company's approach is this
4 issue of uncertainty and doubt
5 concerning whether the stand-alone
6 plan will in fact steer American's

7 future.

8 Well, it has become
9 increasingly clear, and now it's
10 overwhelmingly clear that no one
11 can say with any certainty
12 whatsoever that the stand-alone
13 plan is in fact American's future
14 now it is necessary to go back to
15 see what the history a little bit
16 of how this has evolved over the
17 last really month or so, but you
18 may remember that at the beginning
19 of the case Mr. Horton was opposed
20 to any consideration of
21 consolidation and had said that
22 that would only be done after exit.

23 As of April 13th, according to
24 docket number 2695, which is
25 McKinsey's supplemental retention

2 application, it expanded McKinsey's
3 responsibilities to include the
4 following, and I'm quoting,
5 "evaluate alternative business
6 plans, including cost, savings and
7 risks to support the debtors in any
8 effort to execute one or more
9 business plans and support the
10 debtors in responding to diligence
11 requests from the committee and
12 other third parties regarding the
13 items noted above."

14 So beginning on April 13th,
15 ten days before this hearing began,
16 it appears that the company had
17 retained McKinsey, expanded their
18 services to include an examination
19 of alternatives, a serious
20 examination of alternatives.

21 Approximately 10 days later,
22 according to APFA Exhibit 005, Mr.
23 Horton issued his statement saying
24 that, and I'm quoting, "First and
25 foremost, everyone should

1
2 understand that what's best for our
3 company, our people, and our
4 financial stakeholders will be
5 determined by the facts in a
6 disciplined manner and process.
7 And this includes whether American
8 will choose to pursue any
9 combination down the road."

10 Now, last Friday there was a
11 press release announcing that
12 American and the creditors'
13 committee had entered into what I
14 believe is an unprecedented
15 protocol which will result in those
16 two parties working together to
17 identify alternatives, to explore
18 alternatives and to determine
19 ultimately what is the best course
20 for the estate and for this company

21 and its employees.

22 Now, that would be, the depth
23 of, or the amount of uncertainty
24 that those actions have generated
25 is also kind of compounded by the

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2 fact that essentially all of Wall
3 Street has embraced, no one on Wall
4 Street has really embraced the
5 stand-alone plan and virtually all
6 prefer consolidation.

7 So what you're left with,
8 instead of having the certainty you
9 would expect when a company is so
10 dependent on its business plan to
11 justify what it's demanding of
12 labor, what you have is, without
13 exaggeration, can be viewed as
14 something like a placeholder plan,
15 that their commitment, American's

16 commitment to this plan is at best
17 tenuous.

18 Now, the uncertainty that
19 we're talking about whether the
20 stand-alone plan will chart
21 American's future, or whether
22 consolidation will, those are the
23 two sides. I mean it's not as if
24 we're saying it's a stand-alone
25 plan or it's nothing. What we're

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2 looking at is that there's a
3 stand-alone plan that has been
4 widely criticized, there's a lot of
5 uncertainty around it, but on the
6 other side of that, kind of the
7 mirror image of that is all the
8 talk and discussion and interest in
9 whether consolidation is the better
10 path for this company and for its

11 employees.

12 Again, there's virtual
13 unanimity that consolidation is the
14 preferred path. And of course it's
15 magnified by what has happened with
16 US Airways. US Airways is not
17 speculative. Its interest is real.
18 It's exemplified by the fact that
19 it took the time to sit down with
20 the three unions on this property
21 to reach conditional agreements.

22 They're obviously remain very
23 interested, but that informs this
24 process. It has to inform this
25 process as to what is going to

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2 happen to the estate, and also --

3 THE COURT: Let me ask you
4 about that. You say it's not
5 speculative and certainly I've

6 heard plenty of testimony about it.
7 But I've also heard testimony and I
8 can take judicial notice of the
9 fact that there have been plenty of
10 airline mergers that have not
11 worked and I have been in this
12 courtroom, I have seen large cases
13 where things have gone sideways and
14 taken unexpected turns and so what
15 was the plan, to use the term
16 loosely, at one point was very much
17 had to be remade.

18 So what, just thinking of it
19 as an evidentiary matter, what is
20 it you want me to take from the
21 testimony about the goings on with
22 US Airways? I mean what is it, the
23 relevance, if you were to put it in
24 one sentence, the relevance is that
25 what?

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MR. CLAYMAN: I think that the

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relevance is that US Airways, or

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maybe some other carrier provides a

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better or different alternative

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that forces the court to examine

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what is truly necessary in this

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case. And if you start from this

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premise, and I think it's got to be

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understood that what American

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suffers from is arguably a

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condition that has arisen only

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within the last couple of years.

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No one could have foreseen that in

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a short period of time that two

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carriers would now be 50 percent

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larger than American. That creates

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incredible disadvantage to this

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airline that cannot be overcome

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over a matter of years.

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American doesn't have the

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luxury of time. There is an

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urgency that now, it now must

24 confront and the only way that it
25 can be cured, that problem can be

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2 cured as quickly as it needs to be
3 cured is through consolidation.
4 And that's what Mr. Akins will
5 testify to at some length, is that
6 that is the course that should be
7 defining necessary, that is the
8 course that allows for synergies
9 which in turn allows the merged
10 company to minimize or reduce the
11 amount -- allows the company in
12 this case, and US Air has done it,
13 to look to the market and they have
14 basically agreed to market -- they
15 have agreed to market based
16 contracts.

17 Now I think I said earlier
18 that the company's approach also

19 implicates the fair and equitable
20 standard, because again, the
21 company is asking only of labor far
22 more than the market would
23 otherwise dictate.

24 I think it's interesting to
25 think back, to look back on what

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2 Mr. Horton said a few weeks ago,
3 because he in essence said everyone
4 will have the benefit of this
5 disciplined process for determining
6 the future of the airline.

7 Well, by going forward with
8 1113 and asking for six years worth
9 of concessions of this depth
10 effectively he's depriving the
11 employees of that process. And
12 again, it's only the employees who
13 will not be the beneficiaries of

14 it.

15 Again, by overreaching in the
16 way that it has, the other
17 implication of what it has done,
18 which is clear, is that the impact
19 on the individual flight attendants
20 is more than many of the flight
21 attendants will be able to bear.

22 Now this all leads to one
23 fundamental question, which as a
24 practical matter and as a legal
25 matter I think is really of the

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2 utmost importance. We now know
3 that the exclusivity period of this
4 debtor will conclude as of now at
5 the end of September. We know from
6 the protocol that they will work
7 together to try to figure out what
8 kind of plan will control or be,

9 you know, the underlying business
10 plan as well as the plan of
11 reorganization, and of course, that
12 kind of decision is going to have
13 to precede by weeks the ultimate --
14 the end of exclusivity in terms of
15 preparing and figuring out what
16 direction they want to go.

17 And so what we're faced with
18 is a situation where this case,
19 unlike many others, is not kind of
20 consumed by a sense of urgency.
21 There is no financier saying that
22 covenants have to be achieved
23 within a certain amount of time, or
24 satisfied within a certain amount
25 of time. We've got, I wish I could

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2 say we, American has \$5 billion in
3 cash, that's an unprecedented

4 amount of cash available to an
5 airline debtor. And instead of
6 this case being infused with
7 urgency, what it's really infused
8 with is uncertainty.

9 And it is unfair to labor, it
10 is inequitable and unfair to the
11 employees of this carrier to
12 require them to make a commitment
13 to a plan and to a situation that
14 is not only so uncertain as the one
15 is today, but will effectively be
16 resolved, that uncertainty will be
17 removed in a matter of a few
18 months. And you have to ask what
19 is the rush? Why now? Why does
20 labor have to be forced, if
21 necessary, to give up as much as
22 they are asking when they cannot
23 say with any certainty what the
24 direction of this airline will be
25 60 or 90 days from now. A lot has

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2 happened in a month. A lot more
3 will happen in the next two months.

4 And just based on that degree
5 of uncertainty, this motion should
6 be denied and of course based upon
7 all the factors that we set out in
8 our brief, the company has not
9 conformed and this proposal does
10 not conform to all, or any of the
11 requirements of section 1113.

12 Thank you.

13 THE COURT: Thank you.

14 MR. CLAYMAN: APFA would now
15 like to call Laura Glading.

16 LAURA GLADING,
17 called as a witness, having been
18 first duly sworn, was examined
19 and testified as follows:

20 CROSS EXAMINATION

21 BY MR. CLAYMAN:

22 Q. Ms. Glading, could you first

23 please state your name.

24 A. Laura Glading, one D.

25 Q. And where are you currently

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2 employed?

3 A. I work for the Association of
4 Professional Flight Attendants.

5 Q. And your position there?

6 A. I'm president.

7 Q. And are you employed anywhere
8 else?

9 A. Yes, by American Airlines.

10 Q. And what is your position with
11 American?

12 A. I'm a flight attendant.

13 Q. And how long have you been a
14 flight attendant?

15 A. 33 years.

16 Q. How long have you been
17 president of APFA?

18 A. Four years.

19 Q. What is the length of the term
20 of office as president?

21 A. Four years.

22 Q. Have you run for office again?

23 A. Yes, I have.

24 Q. And were you reelected?

25 A. Yes, I was.

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2 Q. And when did the second term
3 begin?

4 A. April 1st.

5 Q. Could you briefly describe the
6 responsibilities that you have as
7 president of APFA?

8 A. As president you're sort of
9 the chief officer, so I oversee all of
10 the committees at APFA. I chair the
11 Board of Directors. I chair the
12 executive committee. I chair the

13 negotiating committee. And I oversee all
14 of the committees at APFA, run the
15 headquarters, all hiring, sign all
16 agreements, hiring staff, professionals.

17 Q. And you mentioned I think the
18 executive committee and the Board of
19 Directors?

20 A. Yes.

21 Q. What are those?

22 A. The Board of Directors are the
23 governing body. They are the 16 base
24 chair people for the 16 bases that we
25 have and so each chairperson sits as a

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2 voting, is a voting member of the board
3 of directors.

4 Q. When you say, could you just
5 briefly define what a base is?

6 A. A base would be where you're
7 domiciled, where you fly from, so let's

8 say Dallas, Chicago, Los Angeles, New
9 York, so forth.

10 Q. Are all individual bases which
11 would have their own representatives on
12 the board?

13 A. Yes, they would. And there's
14 an international and domestic operation,
15 so there would be a chairperson for both
16 for international, one for international
17 and one for domestic.

18 Q. At that particular base?

19 A. Yes, that's correct.

20 Q. Now, could you just describe
21 the demographics of the flight attendant
22 group at American?

23 A. Oh, the average age is
24 approximately 51. I would say we're
25 about 75 percent female, 25 percent male.

3 maybe 22 years.

4 Q. Do you know when the last time
5 American hired a flight attendant?

6 A. Yes. That would have been in
7 2000, 12 years ago.

8 Q. And currently are there any
9 flight attendants on furlough?

10 A. Yes, there are.

11 Q. Approximately how many?

12 A. 214, approximately.

13 Q. And have there been flight
14 attendants on furlough continuously
15 since, over the past five or six years?

16 A. Yes, there have.

17 Q. Now, as president, do you have
18 any particular responsibilities with
19 regard to collective bargaining?

20 A. Well, as president you're
21 basically the chairperson of the
22 negotiating committee, yes.

23 Q. And you have participated then
24 in this current rounds of bargaining?

25 A. Yes.

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2 Q. And before you became
3 president, just did you hold any other
4 positions with APFA?

5 A. Yes, I did. Since about 1986
6 I was a council representative, vice
7 chairperson, chairperson, served on the
8 board of director, I was a negotiator,
9 division representative.

10 Q. And prior to becoming
11 president, did you have any experience
12 with APFA in collective bargaining?

13 A. Yes, I did. Starting in 1999,
14 after a failed tentative agreement, the
15 team was replaced and the board put me
16 in. I was designated the chair of the
17 negotiating committee or chief
18 negotiator, lead negotiator at that time.
19 And then again during the restructuring
20 period in 2003. Same team stayed in

21 place all that time.

22 Q. And what was the outcome of
23 that bargaining?

24 A. Of which bargaining?

25 Q. Of the 2001 bargaining, I'm

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2 sorry.

3 A. Oh, okay. We had ratified an
4 agreement which was ratified on September
5 12th, 2001.

6 Q. And was that ratified by a
7 large majority of flight attendants?

8 A. Yes, very large majority.

9 Q. And did it -- was it
10 concessionary or did it contain primarily
11 improvements to the collective bargaining
12 agreement?

13 A. It had tremendous
14 improvements. It became the industry
15 leading contract at the time.

16 Q. And what happened about two
17 years or less than two years later when
18 you went back to the bargaining table in
19 2003?

20 A. I guess American management
21 had approached you us in December of 2002
22 and said that they would need some
23 concessions back from all of the labor
24 unions in order to avoid bankruptcy, and
25 I sort of retired from the union work at

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2 the time, I had gone back to flying, and
3 I was asked to participate in those
4 negotiations, which took place in March
5 of 2003.

6 Q. Do you remember the amount
7 that the company was asking from the
8 flight attendants?

9 A. Yes, a steady state of 340
10 million dollars per year. Roughly, it

11 was reduction of about 33 percent of our
12 compensation package.

13 Q. How many days did it take to
14 reach an agreement?

15 A. We bargained for 17 straight
16 days.

17 Q. And at the end of that 17 day
18 period you had a tentative agreement?

19 A. Yes, we did.

20 Q. And did you play any role in
21 then having to get that agreement
22 ratified?

23 A. Yes, I played a very large
24 role.

25 Q. What was that role?

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2 A. That was, we didn't have time
3 to do base visits which we normally do
4 after a contract to explain the terms,
5 but what we did was we did a

6 teleconference that was shown, it was
7 live, it was on the internet and people
8 attended their, you know, domicile
9 meetings to watch and ask questions. We,
10 I wrote a letter to the membership
11 explaining why I fully believed we needed
12 to ratify that contract that the company
13 needed those concessions.

14 Q. Did that agreement ratify?

15 A. Yes, it did.

16 Q. And do you recall by what
17 margin?

18 A. A very narrow margin, maybe 2
19 percent.

20 Q. Was it controversial at the
21 time of the ratification process?

22 A. It was extremely
23 controversial.

24 Q. How so?

25 A. Well, a lot of people didn't

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2 feel as though American was really going
3 to go into bankruptcy. They didn't
4 understand the business plan. We will
5 been shown during those negotiations a
6 business plan going forward. We had a
7 lot more information and it was just hard
8 for the flight attendants to understand
9 that in such a short period of time they
10 suddenly had to give up and what they
11 were giving up was just so much. I mean
12 who's prepared at any given day to
13 suddenly have 33 percent of their
14 compensation package taken away? It was
15 a very, very difficult time.

16 Q. Was that 33 percent in wages
17 or were there other forms of compensation
18 that comprised the 33 percent?

19 A. It was approximately 15.9
20 percent in wages, if I remember
21 correctly, and then in benefits and
22 scheduling, work rules. Really across
23 the board.

24 Q. What was the term of that

25 collective bargaining agreement?

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2 A. It was a five year agreement.

3 Q. Under the Railway Labor Act it

4 was to become --

5 A. Amendable on --

6 Q. -- some would say amendable?

7 A. Right, amendable on May 1st,

8 2008.

9 Q. Is that the same agreement

10 that has remained in place today?

11 A. Yes, it is.

12 Q. Do you know what the value of

13 the savings is or has been since 2008,

14 approximately? Is it still 340 million?

15 A. No, it's grown on the out

16 years because the 340 was an average over

17 the five years and then it increased as

18 time went on. It's somewhere north of

19 400 million today.

20 Q. Now let's turn your attention,
21 if we can, to your involvement in this
22 current round of negotiations. When did
23 those begin?

24 A. Those began in June of 2008.

25 Q. And you were, as the

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2 president, you are the chairman of the
3 negotiating committee?

4 A. That's correct.

5 Q. Who comprises the negotiating
6 committee?

7 A. The negotiating committee is
8 currently a combination of international
9 and domestic flight attendants, half of
10 which are appointed and half of which are
11 elected. I didn't appoint the appointed
12 half because I wasn't president at the
13 time they were appointed. That happened
14 in 2007. And then they, there's an

15 elected portion. So the total, there are
16 12 individuals serving on the negotiating
17 committee aside from the president.

18 Q. Were you or did you designate
19 anyone to help lead that committee?

20 A. Yes, I designated Anne Loew as
21 the lead negotiator or chief negotiator.

22 Q. And since those negotiations
23 began I think you said in June of 2008,
24 up until the bankruptcy filing in
25 November of 2011, approximately how many

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2 bargaining sessions about APFA and
3 American have?

4 A. Over 125 bargaining sessions.

5 Q. And when was the last time
6 prior to the bankruptcy filing that APFA
7 bargained with American?

8 A. In April of 2011.

9 Q. And was the National Mediation

10 Board involved in those negotiations?

11 A. Yes. The National Mediation
12 Board had been involved since June of
13 2000 -- I mean, sorry, January of 2009.

14 Q. Was there a mediator present
15 at the April negotiations?

16 A. Yes, there was.

17 Q. Can you describe how, what the
18 approach the mediator took in those
19 particular negotiations?

20 A. He had asked us to try to
21 engage in what he called supposals, so
22 they were sort of nonbinding proposals,
23 he called them supposals. And he sort of
24 did shuttle diplomacy I guess you'd call
25 it. He would go back with the different

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2 supposals and show each team.

3 Q. Do you recall the last day of
4 those negotiations, what the date was?

5 A. April 8th, 2011.

6 Q. And on that day did APFA make
7 a supposal that it gave to the mediator?

8 A. Yes, we did.

9 Q. And in response did American
10 make a counter-supposal?

11 A. Yes, it did.

12 Q. So how did that session end
13 following the exchange of those
14 supposals?

15 A. It ended late in the evening
16 with the company basically giving us
17 their final proposal. They brought -- we
18 did an in-person meeting which we hadn't
19 been doing and they brought in some top
20 executives to just sort of, you know, let
21 us know that this was their out of gas
22 proposal and this was final and this was
23 as far as they could go and that was the
24 last proposal in that session.

25 Q. Now, after they gave you that

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2 supposal, did APFA make any other
3 supposals?

4 A. Well, yes, because we were
5 very disappointed and we wanted very
6 badly to get to an agreement and we were
7 very close actually on April 8th and we
8 thought it was worth it to take a look
9 and to make one final shot and so we sent
10 a proposal to Jeff Brundage on April
11 20th, 2011.

12 Q. Do you recall what the gap was
13 at that time as of April 8th, between
14 American's position and APFA's position?

15 A. Yes, it was 30 million dollars
16 at that time.

17 Q. Do you recall what the amount
18 of APFA's proposal was on an annual
19 basis?

20 A. The amount of the company's
21 proposal.

22 Q. No, of APFA's proposal?

23 A. Of APFA's was 95 million
24 dollars a year.

25 Q. So the company was at 65

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2 million?

3 A. 65 or 68, yes.

4 Q. So after April 8th you made
5 another supposal?

6 A. Yes, we did.

7 Q. How did you provide that to
8 the company?

9 A. I emailed it to Jeff Brundage.

10 Q. And did that proposal, what
11 did that proposal do to the 30 million
12 dollar gap that existed between the
13 parties?

14 A. It had about 7 million more
15 dollars in savings, so it made the gap
16 about 23 million.

17 Q. And we're talking on an annual

18 basis?

19 A. Yes.

20 Q. And those valuations that
21 you've just testified to, are those based
22 on American's valuations or APFA's?

23 A. American's.

24 THE COURT: Counsel, I don't
25 want to interrupt you here, but

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2 certainly I've heard a lot of
3 testimony about a lot of proposals
4 and I know I'm going to be
5 inundated with testimony about the
6 APFA prior to 1113, from 1113 to
7 hearing, so I don't -- and I've
8 read the declaration, so I don't
9 want to get into too much minutiae
10 as to the proposals, supposals.

11 MR. CLAYMAN: Actually, I
12 think we're almost done with this

13 line of questioning, just a couple
14 more questions.

15 Q. Did you have any other
16 interactions with the company regarding
17 negotiations after you sent out that
18 April 20th proposal?

19 A. Yes, we asked for a meeting in
20 June just to kind of, once again, push
21 the company, show them, you know, what
22 they were missing, why it was important
23 to get this agreement, and why it was
24 important to do it now, what they could
25 benefit from it.

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2 Q. Did you give a presentation at
3 that meeting?

4 A. Yes, I did.

5 Q. And did Mr. Akins give a
6 presentation at that meeting?

7 A. Yes, he did.

8 Q. Do you recall the content,
9 very briefly, of Mr. Akins' presentation?

10 A. His was just to show where we
11 stood vis-a-vis the other flight
12 attendant work groups in the industry and
13 that we were very close to convergence
14 and so that his was a comparison of
15 flight attendant costs.

16 Q. And after that meeting, did
17 you say that was in June?

18 A. June 9th.

19 Q. After that meeting, between
20 the time of that meeting and the November
21 29th filing, did the company contact you
22 about resuming bargaining?

23 A. No.

24 Q. Did they ever respond to or
25 rebut Mr. Akins's convergence analysis?

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2 A. No. They gave a presentation

3 as well, but on June 9th, but not,
4 subsequent to that, no.

5 Q. Did that include, do you
6 recall if that included a convergence
7 analysis on June 9th?

8 A. It had some comparisons, if I
9 recall, but what it did was it said
10 here's where we would be at the end of
11 our contract compared to the other work
12 groups. So it was sort of assumed that
13 nobody would have any contracts and
14 nothing happened between that point and
15 the end of our contract.

16 Q. So with the April 20th
17 proposal on the table, supposedly on the
18 table, was that how negotiations stood as
19 of November 29th?

20 A. Yes.

21 Q. Now, how did you find out
22 about the bankruptcy filing?

23 A. Tom Horton called me the
24 morning he filed.

25 Q. And does APFA have a seat on

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2 the unsecured creditors' committee?

3 A. Yes, we do.

4 Q. And who serves as its

5 appointee to the committee?

6 A. I do.

7 Q. Now I think there's been some

8 testimony which I think you've been

9 present for that the company started or

10 initiated the 1113 process on February

11 1st with a presentation by Bev Goulet and

12 Jeff Brundage and I believe Mr. Horton.

13 Were you in attendance at that meeting?

14 A. Yes, I was.

15 Q. And did American indicate at

16 that time the amount of concessions that

17 the flight attendants would have to make?

18 A. Yes, we were assigned 230

19 million dollars steady state concessions.

20 Q. And following the meeting,

21 that was a large meeting with all the

22 other unions as well?

23 A. Yes, that's correct.

24 Q. And did you receive the 230
25 million dollar number at that meeting or

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2 subsequent?

3 A. No, there was a meeting
4 subsequent to that where we met with the
5 company's negotiating committee, we were
6 given our number. We were given the 1113
7 term sheet actually.

8 Q. I take it you had a reaction
9 to the 230 million dollar number?

10 A. Yes, it was --

11 Q. Has your reaction to the 230
12 million dollar number changed over time?

13 A. No, it hasn't.

14 Q. What is your response to the
15 230 million dollar number?

16 A. It's just not a place that I

17 can get the flight attendants to. It's
18 not anything that I could possibly get
19 ratified. It was just -- it would be so
20 destructive to their, you know, work
21 lives. It would be physically and
22 financially impossible to get to that
23 number.

24 Q. Now, after the February 1st
25 meeting, did you participate in the

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2 negotiations that then ensued?

3 A. Not often, no. I mean I came
4 occasionally. But Anne Loew, you know,
5 basically conducted the negotiations with
6 our team with the company and I was
7 briefed.

8 Q. Just going back for a moment.
9 In the negotiations that were -- that
10 preceded the bankruptcy, when would you
11 be at the table generally?

12 A. I was at the table usually
13 when Mark Burdette was at the table.

14 Q. And Mark Burdette's position
15 was what?

16 A. He was vice president of human
17 resources and employee relations.

18 Q. And if he wasn't there, who
19 was the company's lead negotiator?

20 A. Taylor Vaughn.

21 Q. What is Mr. Vaughn's position?

22 A. Managing director.

23 Q. So in the negotiations
24 following February 1st who was the lead
25 negotiator for the company?

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2 A. Taylor Vaughn.

3 Q. Now during negotiations, did
4 APFA make a proposal that addressed --
5 well let me go back a moment, I'm sorry.

6 During that February 1st

7 presentation followed by the meeting, at
8 the meeting, maybe at the presentation,
9 was anything said about the furloughs,
10 flight attendants being furloughed as a
11 result of the changes to the collective
12 bargaining agreement?

13 A. Yes. We were told that there
14 would be up to 2300 flight attendants
15 furloughed as a result of the term sheet.

16 Q. Out of how many flight
17 attendants?

18 A. Less than 17,000, 16,500,
19 roughly.

20 Q. And were you, I take it you
21 were concerned about that as an issue and
22 the impact that would have, so did you
23 come up with any kind of proposal during
24 the course of the negotiations following
25 February 1st?

2 A. Yes, I did. I was completely
3 horrified because the people that we'd be
4 furloughing had been furloughed before.
5 They were mostly former TWA flight
6 attendants who had come on the property
7 back in 2000, well, 2001. It was really
8 going to be devastating to those people,
9 I mean any job loss especially in this
10 environment. So all along we had been
11 talking about an early out proposal and
12 so I once again started talking about
13 some sort of early out proposal to
14 mitigate the furloughs.

15 Q. A couple of things I want to
16 kind of get some understanding about,
17 which is first, why were the TWA flight
18 attendants the ones that would be subject
19 to these furloughs?

20 A. Because when American bought
21 TWA, and although they put them at the
22 top of the pay scale, we, the union, not
23 me, but, I was not president at the time,
24 put them at the bottom of the seniority

25 list and so they were most junior,

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2 although many of them had upwards of 40
3 years seniority.

4 Q. They're also, even though
5 they're at the bottom of the seniority
6 list, they're at the top of the pay scale
7 almost all uniformly?

8 A. Yes.

9 Q. And they have many years of
10 seniority?

11 A. I think all but maybe a
12 hundred of them are at the top of the pay
13 scale.

14 Q. What would happen if they were
15 furloughed with regard to their right to
16 return to American should a vacancy
17 arise?

18 A. We have an agreement, standing
19 agreement that they would be recalled.

20 They would sort of be on the furlough, on
21 the seniority list and ready to recall
22 when the company needed additional
23 employees.

24 Q. So that vacancy would then be
25 filled with a flight attendant in all

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2 likelihood at the top of the pay scale?

3 A. Correct.

4 Q. Then explain, if you would,
5 what an early out program was?

6 A. Well the early out was really
7 geared toward that. We were trying to
8 let anyone who was at the top of the pay
9 scale, regardless of age, so whoever
10 wanted to leave, could leave for 40,000
11 dollars cash and then they could be
12 replaced by a new hire, the company had a
13 program for new hires, so I don't -- I
14 don't really understand how that worked

15 into the business plan it didn't make a
16 whole lot of sense to me, but I was told
17 there would be, and so I thought this
18 would be a way to get people who wanted
19 to leave who had been with the company
20 for a very long time and had earned their
21 benefits and who really wanted to leave,
22 to leave with some, you know, cash. And
23 then the company would have the ability
24 eventually to replace them with a new
25 hire flight attendant.

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2 And the new hire flight
3 attendants cost is almost half of what a
4 flight attendant at the top of the pay
5 scale costs.

6 Q. And you, or APFA made a
7 proposal and gave that to the company?

8 A. Yes, we did.

9 Q. Do you know if the company

10 ever made a counterproposal to APFA's
11 early out program?

12 A. No, they didn't.

13 Q. And based on your experience,
14 how do you think an early out program
15 would affect a ratification vote?

16 A. I think it would have made all
17 the difference in the world. First of
18 all, it would have been a savings to the
19 company that they would have realized
20 within the first year. It would have
21 gotten the yes vote from the 2300 people
22 aren't going to vote themselves onto the
23 treat, but they would certainly vote for
24 something that gave them a chance of
25 holding onto their employment. It gave

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2 everybody more seniority. It just would
3 have been a very, very welcome. I mean I
4 know from the membership this is

5 extremely, extremely important to them,
6 to everyone.

7 Q. Has American agreed to early
8 out programs in the past?

9 A. Yes, they have.

10 Q. Do you recall the most recent
11 one that they may have offered?

12 A. The most recent one was in
13 August 2008 I believe, we did a bridge to
14 retirement.

15 Q. Was that also intended to
16 avoid furloughs?

17 A. Yes, it was.

18 Q. Did it -- what effect did it
19 have on the number of people who were
20 furloughed?

21 A. Oh, it was very successful.

22 Q. What was the projected number
23 of furloughs, do you recall?

24 A. I don't recall at the time,
25 no.

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2 Q. But it minimized the number of
3 furloughs?

4 A. Yes.

5 Q. Now you mentioned earlier that
6 Mr. Akins --

7 A. Can I go back. I know what
8 happened was we wound up having voluntary
9 furloughs leaves instead and then we had
10 an involuntary month furloughs during the
11 holidays, so really nobody -- I don't
12 believe anybody, I could be wrong, but I
13 don't believe anybody was put out on the
14 street on full furlough as a result of
15 that.

16 Q. I think you testified earlier
17 that Mr. Akins had done a convergence
18 analysis that showed that the flight
19 attendants were close to convergence back
20 in June of 2011?

21 A. Right.

22 Q. Do you know if he has assessed
23 the effect of 230 million dollar cut on

24 the flight attendants' position in the
25 industry?

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2 A. Yes, he has.

3 Q. And do you know what the
4 results of that analysis is?

5 A. The results would be that the
6 American Airlines flight attendants would
7 be, they're making 30 percent less, so
8 the package would be 30 percent less than
9 the industry average.

10 Q. Now, I think you said earlier
11 that even that you could not, I think you
12 -- well let me ask you -- let me withdraw
13 that.

14 So if APFA were to reach an
15 agreement or to decide to send out a
16 package that totaled 230 million dollars
17 in concessions, do you think that that
18 would ratify?

19 A. Absolutely not. Absolutely
20 not.

21 Q. Because?

22 A. Because I think it's one thing
23 if they're forced to do it, but I think
24 it's so devastating. Well a couple of
25 reasons. First of all, it's so

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2 devastating nobody would voluntarily do
3 that. It's almost putting a gun in your
4 hand and saying shoot yourself or saying,
5 you know, if you're going to shot me,
6 you better do it because I'm not going to
7 do it myself.

8 But it's also because it's
9 very hard -- I would have to get out and
10 support it. I did that in 2003 and I did
11 that wholeheartedly and I took a lot of
12 heat and got very beaten up but I did it
13 because I believe the company needed it.

14 I believed in the business plan that I'd
15 been shown during those negotiations and
16 I really was able to go out and very
17 honestly say this is what the company
18 needs to achieve their goals.

19 And I can't do that now. So I
20 it would be impossible for me to go out
21 and sell it as I did in 2003, to begin
22 with, and it's just too much to ask of
23 the flight attendants, I could not ask
24 them to do that to themselves and all the
25 furloughs, it would really be very

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2 devastating.

3 Q. Why couldn't you go out and
4 tell the flight attendants that the
5 company needed to 230 million dollars?

6 A. Why couldn't I?

7 Q. Yes.

8 A. I don't believe they need 230

9 million dollars. It doesn't make sense
10 to me. I don't understand where that
11 number came from, how it supports the
12 business plan, how the business plan is
13 to work. It's just not -- I don't
14 believe in that.

15 Q. And what do you base that view
16 on?

17 A. The view --

18 Q. Your view that --

19 A. The business plan won't work.

20 It wasn't just my analysis because I've
21 been around a very long time and I
22 certainly have opinions, but I, you know,
23 consulted with Dan Akins, our airline
24 economist as well as the Jefferies, you
25 know, obviously I read analyst reports,

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2 I've read them for a long time, I know

3 the analysts, I visit with them pretty

4 frequently over the last ten years. I've
5 asked them. I've really asked a lot of
6 people. I've asked the company, make me
7 believe in this, I'd like to. You know,
8 I always want to be successful, you want
9 things to work out, but I don't believe
10 this can.

11 Q. Now, at some point in February
12 or March after the section 1113 process
13 had begun, were you contacted by anyone
14 from US Airways?

15 A. Yes, I was.

16 Q. Who would that be?

17 A. Scott Kirby, the president.

18 Q. When was that, do you recall?

19 A. March.

20 Q. Any idea when in March?

21 A. It was probably somewhat early
22 March.

23 Q. Why was Mr. Kirby calling you?
24 What did he say at the time that he
25 called you?

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2 A. Well, he said that US Air was
3 interested in merging with American and
4 he wanted to know if the unions would be
5 interested in such a merger and he wanted
6 to explain what their business plan would
7 look like and see if there was any
8 interest.

9 Q. And what did you tell Mr.
10 Kirby?

11 A. It was kind of a hectic time
12 if I recall and I told him that I would
13 be willing to talk to him about it, but
14 it did take a little while for us to get
15 together, but I told him I would talk to
16 him, sure.

17 Q. And did you ultimately get
18 together?

19 A. Yes, we did. On March 19th I
20 believe.

21 Q. And who else was there besides

22 you and Mr. Kirby?

23 A. Dan Akins.

24 Q. And can you just describe what
25 happened at that meeting?

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2 A. We went over his decks, if you
3 will, the business plan, what it would
4 look like the two companies coming
5 together. Basically looked at the
6 business plan of the merged companies.

7 Q. Let me just ask you to turn to
8 your Exhibit 105, that's part of your
9 declaration.

10 A. Is that in here or there?

11 Q. It should be --

12 A. Here, I have it.

13 Q. If you'd just look through
14 that briefly. Is that the deck that you
15 reviewed with Mr. Kirby in March?

16 A. Yes, except it was a colored

17 version, but yes.

18 Q. Sorry. And how did that
19 meeting end? How long did it take Mr.
20 Kirby to go through that deck with you?

21 A. Well, the meeting was a couple
22 of hours. I guess we spent at least an
23 hour on the decks itself.

24 Q. And how did the meeting end?

25 A. I thanked him, told him that I

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2 would think about what I had been told.

3 I wanted to talk to other people. I

4 needed to talk to the other unions. I

5 had spoken to the other unions about it

6 prior to the meeting because we had been

7 sort of talking about the fact that they

8 had contacted us. And I told him I would

9 get back to him.

10 Q. And did you ultimately decide

11 to meet with him?

12 A. Again after that?

13 Q. Yes.

14 A. After that we spoke a couple

15 of more times and we agreed, I agreed to

16 go to Phoenix and to get a little bit,

17 dig a little bit deeper and I was

18 bringing one of the Jefferies

19 representatives with me and Dan Akins,

20 another attorney, just a team of people

21 to kind of look at this and I guess more

22 eyes on it.

23 Q. When you went out there, were

24 you -- was negotiating, did you

25 anticipate negotiating with US Air at

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2 that point?

3 A. At that point I didn't. I was

4 pretty clear I wasn't coming out there at

5 that point to do that, I just needed to

6 really feel confident I was bringing some

7 people. In the meantime we were doing
8 some, you know, looking around, talking
9 to people, talking to the Jefferies,
10 asking them to look at it. But I did not
11 originally go out there to negotiate, no.
12 Although I did have two members of the
13 negotiating committee with me when I
14 first went out, yes.

15 Q. And what happened in the first
16 couple of days out -- how long were you
17 out there that week?

18 A. I was out there for about five
19 days.

20 Q. Just to correct your
21 declaration, I think it says that you met
22 the week of the 9th of April.

23 A. Right, but I met the week of
24 April 1st.

25 Q. Thank you. You were out there

2 most of that week?

3 A. Yes, all of that week.

4 Q. And what happened in the first
5 couple of days?

6 A. Well, you know, we realized
7 that it was very, an interesting
8 proposal, we realized that it was a much
9 better alternative, both business plan as
10 well as what would work for the
11 employees. And so I called the rest of
12 the negotiating committee, the table team
13 and asked them to join me in Phoenix and
14 start talking about a possible term
15 sheet.

16 Q. And then did the negotiating
17 committee, or members of the negotiating
18 committee come out to Phoenix?

19 A. Yes, they did.

20 Q. Let me just ask you how does
21 this -- how do you see this meeting and
22 what you were doing in Phoenix, how does
23 that fit in with your responsibilities as
24 president of APFA?

25 A. Well, I think protecting jobs,

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2 protecting flight attendants, seeing if

3 there's an alternative business plan.

4 Again, you know, the employees love this

5 company, I love American Airlines, we all

6 do, we want it to do well so I felt that

7 the unions had an opportunity to look at

8 an alternative that would make a more

9 viable company and be better for all the

10 employees.

11 Q. And so once the negotiators

12 got out there, what happened?

13 A. We started negotiating the

14 term sheet with the US Air group.

15 Q. And did that result in an

16 agreement?

17 A. Yes, it did.

18 Q. And is that agreement, or term

19 sheet attached to your declaration?

20 A. I believe. You want me to

21 make sure?

22 Q. I believe that would be 106.

23 A. Yes, that's it.

24 Q. Was that exactly the term

25 sheet you signed?

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2 A. No, I signed this one later, I

3 think it was a little bit more than a

4 week later, past the April 12th date I

5 think. But we originally signed off on a

6 term sheet and then there were a few

7 corrections made to the term sheet and I

8 signed a second term sheet and sent it

9 back.

10 Q. Now --

11 A. But I signed a term sheet at

12 the end of that week, yes.

13 Q. And does this term sheet

14 obligate the flight attendants to become,

15 or in any way obligate APFA to US Air, or

16 are there any conditions which must be
17 satisfied before that would occur?

18 A. Well, the merger would have to
19 be complete. So they would have to, you
20 know -- we'd have to merge. And then
21 there was a due diligence clause saying
22 that we'd have to completely vet the
23 business plan once we had more
24 information, and so those were the
25 conditions, yes.

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2 Q. I'm not sure you said this,
3 but when was the first time you signed
4 that term sheet?

5 A. That Friday before I left,
6 Friday evening.

7 Q. And what is -- do you know
8 what the total value that was assigned to
9 that agreement is?

10 A. It was about 153 million

11 dollars in concessions.

12 Q. Do you know what the basis of
13 those valuations would have been?

14 A. We did the costing off the
15 term sheet. We worked off the 1113 term
16 sheet that we got from the company. So
17 it was the company's valuations.

18 Q. Were there any items that APFA
19 agreed to with US Airways but had not
20 agreed to as of yet, or had not agreed to
21 with American?

22 A. We had agreed with most of
23 them. I believe incentive pay, we
24 eliminated incentive pay. That was about
25 the only difference, the only thing we

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2 didn't agree with our negotiations with
3 American that we agreed with US Air. But
4 they were offset by per diem. So the per
5 diem, the rise in per diem or per diem

6 pay is probably the lowest in the
7 industry and so they were increasing the
8 per diem and it was offsetting the
9 incentive pay.

10 Q. And just briefly, what is per
11 diem?

12 A. Per diem is what you get paid
13 hourly, expense money, if you will.

14 Q. Were there any items that US
15 Airways was willing to agree to that
16 American would not?

17 A. Well, yes, very big items.
18 The early out proposal which would save
19 the jobs that we were very concerned
20 about. As well as a VEBA account to work
21 with our retirement health benefits.

22 Q. 'Now, at the time that you
23 were in Phoenix, did you communicate with
24 your Board of Directors?

25 A. Yes, I called the board before

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2 I signed the agreement. I had called
3 them the week before, I think the Friday
4 or Saturday before I left for Phoenix to
5 let them know what was happening. And
6 they were very supportive. And then I
7 called them from Phoenix to tell them I
8 was preparing to sign off on this
9 agreement and I briefed them on the
10 agreement.

11 Q. And subsequently did you
12 actually meet with the Board of Directors
13 about the US Air conditional agreement?

14 A. Yes, I brought them into
15 Dallas the following week to, you know,
16 get a further explanation of the
17 agreement and they passed a resolution
18 unanimously supporting the agreement.

19 MR. CLAYMAN: I have no
20 further questions at this time.

21 CROSS EXAMINATION

22 BY MR. GEIER:

23 Q. Good afternoon, Ms. Glading.

24 A. Good afternoon.

25 Q. You went over some of this

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2 with Mr. Clayman, but I'll go over some
3 of the facts.

4 A. I don't think we've ever met,
5 I'm sorry.

6 Q. I'm John Geier.

7 A. Oh, hi. Sorry, Mr. Geier, I
8 apologize.

9 Q. Paul Hastings.
10 You've mentioned that you have
11 attended the meeting on February 1st
12 where Bev Goulet made an overview
13 presentation of the business plan that
14 underlay the 1113 proposal; is that
15 correct?

16 A. Yes.

17 Q. And it's true, isn't it, that
18 the company had previously scheduled a

19 meeting for two days later, February 3rd,
20 where they had invited the union leaders
21 and all of their advisors for a deeper
22 dive into the business plan and they were
23 being -- and -- is that true?

24 A. Yes.

25 Q. And the company was also

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2 posting onto IntraLinks, the secured data
3 room that has been the exchange of
4 information place for the union and the
5 company a live version of the business
6 plan; is that true?

7 A. Yes.

8 Q. And in that first meeting
9 where Ms. Goulet spoke, Jeff Brundage
10 also spoke and he, among other things,
11 indicated the allocation, the labor ask
12 and how it was going to be allocated
13 between and among the union groups and

14 the nonunion groups; isn't that true?

15 A. I'm not sure that we had our
16 number there, but yes, he spoke about
17 that, correct.

18 Q. Right. You don't remember
19 hearing the 230 million dollars at that
20 meeting?

21 A. I don't remember hearing it
22 there. It wasn't until perhaps he said
23 it there, but I didn't see the terms
24 until the meeting following.

25 Q. And that first --

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2 A. The 1.25 million was
3 definitely mentioned there, I'm sorry.

4 Q. But the APFA allocation you
5 learned that day was 230 million dollars,
6 whether it was in that morning meeting or
7 in the afternoon meeting?

8 A. Yes.

9 Q. And that first afternoon you
10 did attend the kickoff meeting between
11 the company and the APFA negotiating
12 committees where the company, Mr. Vaughn,
13 and his team, presented the 1113 term
14 sheet to the flight attendants; is that
15 right?

16 A. Yes.

17 Q. Then on the evening of
18 February 1st, you posted a statement on
19 the APFA website vowing that "we have no
20 intention of coming out of this with
21 anything resembling this term sheet"; is
22 that correct?

23 A. Probably.

24 Q. You also said that the company
25 wasn't "entitled to" cost reductions that

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2 it had asked for; is that right?

3 A. Probably. I don't remember

4 exactly what I posted. That sounds like
5 something I would have posted at that
6 time, yes.

7 Q. It's in the record, I could
8 show it to you, but you don't have any
9 reason to doubt it?

10 A. I have no reason to doubt it,
11 no.

12 Q. And even in that statement you
13 also said, "APFA was not going to accept
14 it," correct?

15 A. Probably. Again, I don't
16 remember the exact posting but it sounds
17 -- that was my position at the time.

18 Q. And then one day later, on
19 February 2nd, you released a You Tube
20 video to the American flight attendants;
21 isn't that true?

22 A. Yes.

23 Q. And on that video you made a
24 number of statements, and I'm going to
25 read one to you and I'm going to ask you

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2 whether you remember making those, these
3 couple of statements: Please understand
4 these numbers are based on the acceptance
5 of the company's term sheet which we are
6 not going to do. These numbers are
7 obscene. And just as I expected,
8 presented without any justification
9 whatsoever. For years management has
10 been harping on an 800 million dollar
11 labor cost disparity without
12 justification, now they have tripled that
13 number and still no explanation is
14 forthcoming. It's outrageous and I will
15 not accept it."

16 Do you remember saying that?

17 A. Yes. But let me just clarify
18 that, the numbers I was talking about,
19 these numbers are based on the term
20 sheet. I was referring to the 2300
21 furloughs.

22 Q. And then one last quote from

23 the video, "This is nothing more than a
24 crime of opportunity." Do you remember
25 saying that?

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2 A. Yes, I do.

3 Q. And you talked about -- and
4 that all happened on February 1st and
5 2nd, and you made those statements on
6 February 1st and 2nd before eye therapy
7 you or any of the APFA advisors had yet
8 gotten the deeper dive into the company's
9 business plan supporting the labor cost
10 reductions, right?

11 A. Correct.

12 Q. So without -- you were going
13 to refuse to accept the 230 million
14 dollars prior to ever getting a full
15 understanding of the business plan?

16 A. Well, I had some understanding
17 of the business plan when I made the

18 statements, but correct, it was before
19 the deeper dive the following day, yes.

20 Q. And you indicate that you
21 couldn't get this agreement ratified.
22 Isn't it true that the rhetoric you've
23 used probably inflamed the flight
24 attendants and inhibited any ability to
25 get this, any agreement ratified?

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2 A. No, I don't think so.

3 Q. And you hold your position
4 with respect to the allocation to the
5 flight attendants even in the face of the
6 company losing 10 billion dollars since
7 2003 and a billion dollars in 2011; is
8 that true?

9 A. I'm sorry, the question is I'm
10 holding this position?

11 Q. You have hold your position
12 that the 230 million dollars is something

13 that is uncalled for notwithstanding the
14 substantial losses that the company has
15 experienced in the last decade?

16 A. Right.

17 Q. I'd like to just talk briefly
18 about the term sheet that you negotiated
19 with US Airways. It's Exhibit 106. It's
20 a confidential document. And I'll try to
21 only deal with issues that have been
22 disclosed in your declaration.

23 It's true, isn't it, that --

24 MR. BUTLER: Your Honor, could
25 we just have a minute?

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2 THE COURT: Sure.

3 You're talking about Exhibit

4 106?

5 MR. CLAYMAN: Correct.

6 THE COURT: I actually don't

7 have any marking on it that says

8 it's confidential. I just have a
9 title. So the entire --

10 MS. PARCELLI: I'm pretty sure
11 when it hit the docket it was
12 designated and filed as under seal.
13 We'll be happy to correct the copy.

14 THE COURT: That's fine. It
15 may be there's a cover sheet that
16 says that and I've got the document
17 in the binder and it doesn't say
18 that. I'm not trying to give
19 anyone a hard time. I just want to
20 make sure that I know what is and
21 isn't something we can speak about
22 in open court. So it now is
23 marked. Proceed.

24 Q. It's true, isn't it, that US
25 Air presented APFA with a target for

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2 flight attendant labor cost reductions of

3 approximately two-thirds the size of the
4 American ask, isn't it?

5 A. Yes.

6 Q. And in your declaration at
7 paragraph 21 you quantify those
8 reductions at 150 million dollars per
9 year, right?

10 A. Yes.

11 Q. And that's 153 million dollars
12 as an annual average cost savings over a
13 six year period?

14 A. Yes.

15 Q. And as you indicated in your
16 direct with Mr. Clayman, APFA accepted
17 American's valuations of its proposal to
18 APFA in reaching the 153 million target
19 established by US Air, correct?

20 A. Yes.

21 Q. I just want to make sure I
22 understand that your Exhibit 105, the
23 PowerPoint presentation that was in color
24 when you originally saw it.

25 A. Yes.

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2 Q. That's the extent of the
3 business plan that you had evaluated when
4 you had negotiated the term sheet with US
5 Air; is that right?

6 A. Well, I mean there was a lot
7 of, we did work just sole off that. I
8 mean there was a lot of questions, again,
9 I bought the Jefferies Group. They had
10 been looking at the US Air business plan,
11 asking a lot of questions, Dan Akins
12 who's an airline economist, who's been
13 doing this many years. They certainly
14 did a much deeper dive than just the
15 decks. So I based a lot of my
16 decisionmaking on their counsel as well.

17 Q. Have you read Mr. Akins'
18 deposition in this case?

19 A. No, not in its entirety, no.

20 Q. He indicated that all he had

21 seen while he was out in Phoenix was
22 Exhibit 105.

23 A. Well that could be.

24 Q. So could you point to me in
25 Exhibit 105 where there is any discussion

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2 of the EBITDAR target for the combined
3 business operation of US and American?

4 A. Well, that wasn't --

5 MR. CLAYMAN: Your Honor, I
6 need to make an objection. The
7 document speaks for itself. If the
8 document has a EBITDAR target, I
9 don't know how long it's going to
10 take.

11 THE COURT: Well I'm not sure
12 what's the objection. I mean we
13 use documents all the time, all
14 these documents speak for
15 themselves. What's the objection

16 to the question?

17 MR. CLAYMAN: I guess
18 just-time. I'll withdraw it.

19 THE COURT: Well, time, I
20 don't know we want to get into
21 that. I think we'll spend more
22 time arguing about it, so she's
23 obviously a very competent witness
24 and I'm sure she can say yes, no,
25 or I don't agree with you

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2 necessarily.

3 Q. I'll try to change the tenor
4 of it. There is no EBITDAR target in
5 that document, is there?

6 A. No, there's not.

7 Q. And there's no pro forma
8 financial statements, are there?

9 A. No, there's not.

10 Q. And there's no revenue plan,

11 is there?

12 A. No.

13 Q. And there is no fleet plan,
14 right?

15 A. We did discuss the fleet plan,
16 but no, it's not in the document, no.

17 Q. So it's true, isn't it, that
18 APFA agreed to the cost reductions with
19 US Air without any evaluation of a
20 business plan like its had to evaluate
21 with American Airlines, correct?

22 A. Right. And that's why we put
23 in the term sheet that this would be
24 contingent upon much, you know, more, you
25 know, comprehensive look at the business

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2 plan. So there's a contingency for that,
3 but that's correct.

4 Q. You indicated in your direct
5 with Mr. Clayman that the only difference

6 between what you had agreed to with US
7 Air versus what you had agreed to with
8 American was the elimination of incentive
9 pay, correct?

10 A. No. That's not what I said.

11 MR. CLAYMAN: That
12 mischaracterizes.

13 A. What I was asked --

14 THE COURT: Hold on, there's
15 an objection. I guess objection
16 foundation.

17 MR. CLAYMAN: Yes.

18 THE COURT: Would you ask the
19 question again.

20 Q. Did I understand your
21 testimony correctly that the only item in
22 the -- that you agreed to with US Air in
23 the conditional term sheet that you
24 failed to agree with with American was
25 the elimination of the incentive pay?

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2 A. Yes, that's what I said.

3 Q. Isn't it true that American's
4 proposal was for a six year duration of
5 its contract?

6 A. Yes.

7 Q. And that's not the duration of
8 the agreement you've reached with US Air,
9 is it? I mean -- I'm sorry. Your
10 proposed -- you had rejected the six year
11 proposal with American, correct?

12 A. Right.

13 Q. And yet you have agreed to
14 that same with US Air?

15 A. But the US Air agreement has
16 like a re-opener, an early re-opener. So
17 -- and I know you have it there, you can
18 see that. At the time that we filed for
19 a single carrier petition we can go back
20 to negotiations and then there'd be an
21 expedited negotiating period and if we
22 were unable to achieve or ratify a
23 contract, it would end in binding
24 arbitration to achieve a market based

25 contract.

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2 Q. You can't give me an estimate
3 of when all of those events will occur
4 and that can guarantee that they will
5 occur prior to six years?

6 A. The way it's triggered is that
7 if US Air were to merge, right, so as
8 soon as the merger was announced or they
9 were to take over, we would then as soon
10 as practicable file for single carrier
11 petition, right, we would file, so that
12 usually takes historically six months.
13 So as soon as that was then approved, we
14 would enter into negotiations for an
15 expedited period of time. I think we
16 have 60 days on the term sheet and if we
17 couldn't achieve an agreement then, or we
18 sent an agreement out and it didn't
19 ratify, we would then have binding

20 arbitration to settle the matter.

21 So the trigger would be maybe
22 eight or nine months after single carrier
23 petition was approved.

24 Q. And when that single carrier
25 petition going to be approved?

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2 A. My best guesstimate from
3 historical perspective, would be six
4 months after if US Air were to take over.

5 Q. That's speculation on your
6 part?

7 A. Yes.

8 Q. Going back to the condition
9 that APFA has the right to further
10 conduct due diligence on a combined
11 business plan, what happens to the term
12 sheet and the deal if APFA doesn't like
13 what it finds?

14 A. Then the term sheet no longer

15 exists.

16 Q. And there is no deal?

17 A. Right.

18 Q. I think, is it also true that
19 there's a condition that the US Air Board
20 of Directors has to approve the
21 conditional term sheet?

22 A. Yes.

23 Q. And has that occurred?

24 A. I think it has, but I don't --
25 I didn't confirm that.

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2 Q. So at some -- APFA can walk
3 away from the deal if it doesn't like
4 what it sees in the term sheet?

5 A. Once we do --

6 Q. In the business plan?

7 A. The business plan, yes.

8 Q. Going back to what you've
9 agreed to with US Air versus what you've

10 agreed to with American, isn't it true
11 that APFA agreed to the implementation of
12 a PBS system by US Air without requiring
13 APFA's agreement as to any aspect of that
14 system?

15 A. No, I don't believe that's
16 accurate.

17 Q. Maybe you can take a look at
18 your Exhibit 106.

19 MR. CLAYMAN: What page?

20 Q. On page 2 at the bottom, the
21 bidding system.

22 A. Yes, line holders and --

23 THE COURT: Hold on. If this
24 is con did I financial, I don't
25 want to have the witness read it.

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2 Refresh your recollection.

3 A. Yes, it was consistent with
4 the 1113, so.

5 Q. So that's the APFA's position
6 on the American proposal has not been to
7 accept it without condition, has it?

8 A. Well, it's a little bit
9 different with regard to reserves. We
10 had some discussions about it would work,
11 so there were further discussions and
12 understandings, but yes, we did say,
13 you're correct in saying that we accepted
14 it as was proposed in the 1113, but then
15 with were exceptions to reserve and
16 what-not. I'm not sure how much I can
17 say about all this.

18 Q. Isn't it true that in the
19 APFA's counterproposal, or proposal from
20 March 26th to American that as a
21 condition of accepting a preferential
22 bidding system, APFA has to agree to any,
23 to any particular PBS system before it
24 can be implemented?

25 A. Right, it can be -- we're

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2 doing that currently, yes, that's
3 correct.

4 Q. You're doing some due
5 diligence with American right now,
6 there's no agreement?

7 A. Right.

8 Q. There's no provision in the US
9 term for that same veto power, correct?

10 A. No, there's not in this term
11 sheet.

12 Q. That's a difference?

13 A. Yes.

14 Q. And is it true that American
15 has proposed to combine the current
16 separate domestic and international pay
17 scales and to merge them into a single
18 consolidated pay scale, American has?

19 A. American, yes.

20 Q. And the APFA has not agreed to
21 that, correct?

22 A. Combined operation?

23 Q. Not a combined operation,
24 combined pay scale?

25 A. No, I don't believe we have.

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2 Q. Yet you've agreed to that at
3 US Air, isn't that true?

4 A. Well, not exactly because
5 there's an override for international
6 legs that was greater than American's.

7 Q. The override is different, but
8 you've agreed to a combined scale, a
9 single scale at US and not at -- you've
10 rejected that proposal at American; isn't
11 that right?

12 A. Well, it's, you know, when you
13 look at a pay scale and there's a certain
14 amount of dollars on top of international
15 pay, it's really just sort of semantics
16 because what we agreed to was a pay rate
17 for international legs. So rather than

18 have -- and combining the operations,
19 which is basically what we agreed to with
20 American as well. So maybe I'm not
21 understanding what you're getting to.
22 It's not exactly the same, but it's
23 fundamentally the same.

24 Q. I'll probably be exploring
25 that further with Ms. Loew. I have no

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2 further questions for you right now.

3 MR. CLAYMAN: I have a very
4 brief redirect, if I may.

5 REDIRECT EXAMINATION

6 BY MR. CLAYMAN:

7 Q. I think during your cross, Ms.
8 Glading, you mentioned this process for
9 negotiating an agreement following the
10 filing of a single carrier?

11 A. Correct.

12 Q. And you said that it would

13 result in, if an agreement were not
14 reached, or ratified, it would result in
15 binding arbitration?

16 A. That's correct.

17 Q. And is there any kind of
18 standard that the arbitrator would have
19 to abide by in making his determinations
20 with regard to that arbitration?

21 A. Yes, it would have to be
22 market based contract in the aggregate.

23 Q. And when you agreed with US
24 Air to 153 million dollars worth of
25 concessions, what was the basis for that

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2 number, if you recall?

3 A. Well, what we did was we knew
4 that we had outliers, that we didn't
5 really line up with other unions with
6 regard to health benefits and pensions
7 and some productivity. So we gave them

8 those outliers.

9 Q. And do you recall how -- the
10 153 represented two-thirds of the
11 company's ask; is that correct?

12 A. Roughly, yes.

13 Q. And how did 153 compare to the
14 market, do you know, at that time?

15 A. It's still below market.
16 Close to market I should say.

17 Q. Now, do you know if US Air has
18 preferential bidding?

19 A. They do not. Well, that's not
20 exactly true. One -- I think the West
21 has preferential bidding but doesn't use
22 it, they still operate under two
23 contracts. So they've accepted it on one
24 division but not the other and they
25 haven't been able to implement it yet.

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2 Q. Do you know if the union has

3 any input into the selection of a
4 preferential bidding system?

5 A. Yes.

6 Q. For US Air?

7 A. Yes.

8 Q. They do?

9 A. Yes. They've been working
10 with the company on trying to get a
11 system together and they're waiting for a
12 combined contract.

13 Q. So that's the equivalent to
14 what you required from American in
15 essence?

16 A. Basically.

17 MR. CLAYMAN: I have nothing
18 further. Thank you.

19 THE WITNESS: Thank you.

20 MR. GEIER: No recross.

21 THE COURT: All right. I
22 imagine you want to move the
23 exhibits.

24 MR. CLAYMAN: Oh, yes, of
25 course. What would I do. Yes, I'd

1
2 like to move for the admission of
3 Ms. Glading's declaration and the
4 accompanying exhibits numbers 100
5 through 106.

6 THE COURT: Any objection?

7 MR. GEIER: No objection, your
8 Honor.

9 THE COURT: All right, they're
10 admitted.

11 THE WITNESS: Thank you very
12 much.

13 THE COURT: So we're still on
14 target.

15 MR. CLAYMAN: Yes.

16 THE COURT: I just want to
17 take a two minute break. Even with
18 the multiplier effect that's still
19 only five minutes.

20 (A recess was taken.)

21 THE CLERK: All rise.

22 THE COURT: Please be seated.

23 Call your next witness.

24 MR. CLAYMAN: Your Honor, APFA

25 would now like to call Anne Loew to

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2 the stand.

3 ANNE LOEW,

4 called as a witness, having been

5 first duly sworn, was examined

6 and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. CLAYMAN:

9 Q. Could you please state your

10 name for the record.

11 A. Anne Loew.

12 Q. Where are you employed?

13 A. By American Airlines.

14 Q. And your position there?

15 A. I'm a flight attendant.

16 Q. How long have you been a

17 flight attendant?

18 A. For 36 years.

19 Q. And during your tenure as a
20 flight attendant, have you held any
21 positions with the association of
22 professional flight attendants?

23 A. Yes, I've held a number of
24 positions. I was a scheduling rep on the
25 council, I've been a base chair, I've sat

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2 on the Board of Directors, I've served
3 three different terms on the executive
4 committee and I am currently the lead
5 negotiator on our negotiating committee.

6 Q. And how long have you been the
7 lead negotiator?

8 A. Since 2008.

9 Q. Now, regarding the
10 negotiations that have occurred since
11 American filed for bankruptcy, did you

12 attend the opening session of the 1113

13 negotiations on February 1st?

14 A. Yes, I did.

15 Q. And have you attended all of

16 the negotiation sessions that then

17 followed between February 1st and March

18 27th?

19 A. I attended all of them except

20 where there was a one week duration I was

21 unable to attend.

22 Q. And I think Ms. Glading

23 testified earlier that Taylor Vaughn was

24 the company's chief spokesperson; is that

25 correct?

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2 A. That's correct.

3 Q. And did you ever hear him

4 explain how American determined its ask

5 the flight attendants would be 230

6 million dollars?

7 A. Yes.

8 Q. And what was his its
9 explanation?

10 A. He said it was driven solely
11 by the business plan.

12 Q. Do you remember him saying
13 this more than once?

14 A. He said it on a number of
15 occasions.

16 Q. Did Mr. Vaughn ever indicate
17 whether or not American would move off of
18 its demands of 230 million dollars?

19 A. The 230 ask was never
20 negotiable. He made that very clear.
21 What he said is we could do, we could
22 talk about different areas which we could
23 take our concessions, but those areas it
24 all had to equal the 230 ask.

25 Q. And in the course of your

2 negotiations, did the company ever change
3 its position on the 230?

4 A. Never.

5 Q. You were here, again, for Ms.
6 Glading's testimony where she mentioned
7 that in the June 2011 meeting Mr. Akins
8 presented a convergence analysis that
9 showed that the flight attendant
10 agreement was near convergence with its
11 peers. Do you recall that testimony?

12 A. Yes.

13 Q. With that being the case, did
14 APFA take the position during these
15 negotiations that it would not be willing
16 to agree to any concessions?

17 A. No, we always understood that
18 we, there were certain areas that we
19 stood out in the industry and those areas
20 would have to be addressed and we were
21 determined to address those areas.

22 Q. And what areas did you -- did
23 you identify certain areas that you
24 considered not -- well, I don't know how

25 you would describe the areas that we're

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2 talking about. Was there --

3 A. Well, I guess we thought of
4 them as outliers, where we were, you
5 know, we stood above the industry in
6 those particular areas.

7 Q. And what were those areas that
8 you identified?

9 A. We understood that we were
10 outside of the industry in some areas of
11 productivity and our defined pension
12 benefit program and our active and
13 medical retiree -- active and retiree
14 medical program.

15 Q. Did APFA make a proposal
16 regarding each of these outliers?

17 A. Yes, we did.

18 Q. And was there a time when APFA
19 presented American with a comprehensive

20 proposal?

21 A. Yes, we presented a
22 comprehensive proposal on March 22nd.

23 Q. With regard to the scheduling
24 issue, what was American's offer on that
25 particular issue, productivity I'm sorry?

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2 A. I think you're referring to
3 the schedule max and probably the
4 preferential bidding system. They also
5 had something on the duty aloft.

6 So we, in all of those areas
7 we addressed a hundred, we met the
8 company's ask on the hundred hour
9 schedule max. We waived the requirement
10 for duty aloft restrictions and -- what
11 was the third thing I mentioned?

12 Q. The preferential bidding?

13 A. The preference bidding, that's
14 correct.

15 Q. Just briefly when you say
16 schedule max, what are you referring to?

17 A. Well flight attendants before
18 the start of the month is scheduled for a
19 certain number of hours and we have, we
20 were, fell behind the industry in that
21 area, so we understood that we had to
22 raise that schedule max and in fact we
23 did.

24 Q. And with regard to duty aloft,
25 what is that?

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2 A. There was a restriction on the
3 duty aloft for, on domestic and we lifted
4 that restriction so the company could
5 schedule flight attendants, I think what
6 they wanted to do particularly was to do
7 trans con turnaround and by eliminating
8 that restriction they were able to do the
9 trans con turnaround.

10 Q. What is meant by duty aloft?

11 A. The number of hours that you
12 can remain in the area.

13 Q. Now, with regard to the
14 hundred hour schedule max, had the
15 company prior to the bankruptcy, in the
16 negotiations that preceded the
17 bankruptcy, had the company ever proposed
18 this high a schedule maximum?

19 A. Their opening proposal on
20 schedule max was a hundred hours, they
21 withdrew it by their third proposal which
22 was probably a matter of a couple of
23 weeks between the two proposals, the
24 first and the third proposal.

25 Q. With regard to retiree medical

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2 benefits, did APFA make a proposal with
3 regard to that?

4 A. Yes, we agreed to eliminate

5 retiree medical benefits. We proposed a
6 VEBA and replacement of the retiree
7 medical benefits.

8 Q. Let me just go back. What was
9 the company's proposal on the elimination
10 -- on retiree health benefits?

11 A. To eliminate over 65 retiree
12 medical and we have retiree medical from
13 55 to 65 and they proposed to eliminate
14 that.

15 Q. And currently how are the
16 benefits paid for between the ages of 55
17 and 65?

18 A. We pre-fund our retiree
19 medical.

20 Q. Just explain briefly if you
21 would, what does that mean?

22 A. Well, it's about \$18 a month
23 and the employee must continuously
24 pre-fund in order to be eligible and the
25 company makes an equivalent, well, not

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2 equivalent, but they make a contribution
3 as well.

4 Q. And at the time that you
5 retire, do you, is the flight attendant
6 required to pay any portion of the
7 retiree medical benefit?

8 A. I'm sorry.

9 Q. Is there a contribution that
10 the employee, or the retiree has to make
11 after he or she has retired?

12 A. No.

13 Q. The union's proposal was to do
14 what exactly?

15 A. To create a VEBA, which is a
16 voluntary employee beneficiary
17 association, it's a trust, and what we
18 had wanted to do was have the employee,
19 the retiree contribute to the trust and
20 we wanted to also utilize the funds that
21 were currently in the trust from a
22 pre-funding to be contributed as seed
23 money for the VEBA.

24 Q. With regard to the pension,
25 what was the company's position on the

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2 pension?

3 A. They wanted us to freeze the
4 pension.

5 Q. What kind of pension do flight
6 attendants currently have?

7 A. A defined benefit program.

8 Q. And the company wanted that
9 plan frozen?

10 A. Yes.

11 Q. Were they going to -- was it
12 part of the proposal to create a
13 replacement plan?

14 A. Yes, they had proposed to
15 create a 401(k) plan where there was a
16 match up to 5.5 percent.

17 Q. And did APFA respond to that
18 proposal?

19 A. Yes, we did. We agreed to
20 freeze the pension plan contingent upon
21 the acceptance of an early out program.
22 We wanted to increase the contributions
23 to the 401(k) plan based on a flight
24 attendant's age and we would, what we
25 wanted to do is use some of the value in

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2 freezing the pension plan and apply it to
3 the increased 401(k), and we wanted to
4 increase our per diem. So there were
5 three contingencies in order for us to
6 agree to freezing the pension.

7 Q. Now, with regard to the
8 company's medical plan, did you prepare
9 an analysis or a chart comparing the
10 current cost it is for a flight attendant
11 to what the company had proposed?

12 A. Yes. It was a comparison of
13 what was our current, what APFA had

14 proposed and what the company's proposal
15 was.

16 Q. Let me turn your attention, if
17 I could, to what we have marked as APFA
18 Exhibit 202. In fact, that's the wrong
19 document. So bear with me, please.
20 Let's try 203. Is this the chart that
21 you prepared?

22 A. Yes, it is.

23 Q. And the five columns just very
24 briefly, those represent exactly what?

25 A. Well, we have the plan

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2 elements, we have what we currently pay,
3 contribute, and our current plan, and we
4 have our April 8th, it was really part of
5 our supposal of 2011, our proposal during
6 the 1113 negotiations and then it
7 compares it to American's term sheet.

8 Q. Now, what I see under 2012 are

9 four options. Could you just briefly
10 explain what those, what that means?

11 A. Under the --

12 Q. Current 2012 where it says
13 option 1?

14 A. Yes, right. There were
15 different levels of deductibles you could
16 choose and it depended on there were
17 some, depending on whether it was 150
18 dollar deductible, you would pay more in
19 contributions.

20 Q. And of the four options that
21 are shown here, which one is, if you
22 know, the most popular among the flight
23 attendants?

24 A. The option 1.

25 Q. \$150 deductible?

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2 A. Yes.

3 Q. And according to your chart,

4 if you move all the way over to the
5 right-hand column, the one that says AA
6 proposal term sheet March 14th, 2012,
7 what did their proposals provide for an
8 employee deductible?

9 A. For an individual, a thousand
10 dollars.

11 Q. And so you can compare each of
12 the elements of the plans between what is
13 current and what the company was
14 proposing?

15 A. That's correct.

16 Q. What was the duration of the
17 proposed contract in your comprehensive
18 that you provided to the company on March
19 22nd?

20 A. It was four years.

21 Q. And could you explain why APFA
22 proposed a four year agreement instead of
23 the six year term that American was
24 seeking?

25 A. Well, sure. I mean we took

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2 these huge concessions in 2003. So --
3 and which were now worth in excess of 450
4 million dollars year over year. We
5 recouped very little. We had 1.5 percent
6 pay increases from 2003 to 2008, but have
7 gotten no pay increases since then.

8 On top of that, those
9 concessions they're now asking for 230
10 million dollars. It was just beyond
11 palatable. It was something that we
12 couldn't accept for that length of time.

13 So we felt, and understanding
14 also how long these negotiations have
15 taken, that it is highly likely that they
16 will take another several years after the
17 amendable date. So we assumed that the,
18 it would be about a six year agreement by
19 the time. That may be even optimistic.

20 MR. CLAYMAN: Thank you, I
21 have no further questions at this

22 time.

23 CROSS EXAMINATION

24 BY MR. GEIER:

25 Q. Good afternoon.

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2 A. Counselor, good afternoon.

3 Q. I'm John Geier, I think we may

4 have passed a couple of times in the

5 hallway.

6 First, you spend a good bit of

7 time in your declaration discussing the

8 scheduling and work life of flight

9 attendants, and neither I nor the company

10 have anything but a great deal of respect

11 for the many hard working flight

12 attendants at American and how important

13 they are to the company's passenger

14 service.

15 A. Thank you.

16 Q. I did want to just confirm a

17 few other facts with you. It's true,
18 isn't it, that under the APFA collective
19 bargaining agreement flight attendants
20 have discretion in deciding how much
21 they're going to fly?

22 A. To a limited extent they do.
23 I mean they're scheduled at the beginning
24 of the month with a certain line of
25 flying. Depending on, you know, the

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2 month, and what is going on, holidays,
3 you know, they -- but they have some
4 latitude to pick up and drop trips.

5 Q. In fact, flight attendants can
6 drop or even sell all of their trips in a
7 given month, correct?

8 A. There are bid services that
9 are like, are like an exchange and so
10 they whether give their trips to these
11 bid services and the bid services will

12 then sell them to flight attendants.

13 Q. And some flight attendants,
14 it's true, sell or drop all of their
15 trips every month of the year; isn't that
16 true?

17 A. Some of them do, yes.

18 Q. And how much a flight
19 attendant chooses to fly will impact how
20 much they're paid, that's true, too,
21 isn't it?

22 A. Yes.

23 Q. And some flight attendants
24 have the discretion and want to pick up
25 trips and they pick up beyond the 75

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2 hours that the average line is built to;
3 is that right?

4 A. That's correct.

5 Q. And you would agree that the
6 low fly or no fly flight attendants

7 reduce the company's flight attendant
8 productivity in the course of the year,
9 wouldn't you?

10 A. Yes.

11 Q. And you've already spoken
12 about this on your direct, but in
13 paragraph 38 of your declaration you can
14 see that the current terms of the APFA
15 collective bargaining agreement are an
16 outlier in a number of areas including
17 productivity, pension benefits and
18 medical benefits for both active and
19 retired flight attendants?

20 A. That's correct.

21 Q. I want to talk a little bit,
22 you don't talk about it a great deal, but
23 you do talk about the importance of the
24 early out program that was raised by APFA
25 during the section 1113 negotiations.

2 And I think we'll be able to
3 agree that the potential value of an
4 early out program is that for every
5 senior flight attendant making top of
6 scale who elects to leave the company
7 pursuant to such a program will be
8 replaced by a new hire making less and
9 starting at the bottom of the pay scale
10 as well as perhaps some other corollary
11 benefits like usage of the held program,
12 correct?

13 A. Correct.

14 Q. And I know that you're not an
15 expert in early out programs, but APFA
16 retained one of its advisors to assist in
17 the development of an early out proposal,
18 right?

19 A. That's correct.

20 Q. You were present I believe at
21 FSU, that's the place where the
22 negotiations took place, I'm not really
23 sure what it stands for, but on February
24 15, when APFA's early out proposal was
25 initially presented, I think that was by

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2 Mr. Rohan from the Jefferies Group; is
3 that correct?

4 A. That's correct.

5 Q. And that proposal was for a
6 program whereby 3,000 American flight
7 attendants would be eligible to leave the
8 company in exchange for a 40,000 dollar
9 payment, correct?

10 A. That's correct.

11 Q. So that the up front cost of
12 that program would have been 120 million
13 dollars?

14 A. If you say so.

15 Q. Well somebody did the math for
16 me.

17 A. Okay, good.

18 Q. That's why I went to law
19 school. And Mr. Rohan's presentation, if
20 you remember, included a valuation that

21 he had conducted regarding the savings
22 that American, he said, would achieve if
23 it accepted APFA's early out proposal,
24 correct?

25 A. That's correct.

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2 Q. And do you recall that Mr.
3 Rohan's calculation showed that using a
4 six year average that the savings would
5 be slightly more than 49 million dollars
6 a year?

7 A. If you say so.

8 Q. Well, isn't it also true that
9 same day, February 15th, shortly after
10 receiving the proposal, that Mr. Vaughn
11 came down and alerted the APFA
12 negotiating team and Mr. Rohan that he
13 had failed to account for the 120 million
14 dollars of up front payments that were
15 going to be expended as a result of that

16 proposal?

17 A. I know he --

18 MR. CLAYMAN: Your Honor, I
19 object. This is now beginning to
20 get pretty far outside the
21 recommend of Ms. Loew's
22 recommendation. We have one
23 paragraph where Ms. Loew says there
24 was an early out proposals made and
25 that it's detailed --

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2 THE COURT: Again, I don't
3 want speaking objections.

4 MR. CLAYMAN: I'm sorry.

5 MR. GEIER: She was present
6 for these meetings.

7 THE COURT: Wait, wait. What
8 paragraph are you referring to?

9 MR. CLAYMAN: I'm looking at
10 paragraph 33 through 35 and

11 actually the last sentence of
12 paragraph-35.

13 THE COURT: That's all I need.

14 MR. CLAYMAN: I'm sorry. It.

15 THE COURT: It's cross
16 examination. It's in here, so I'm
17 going to allow questioning on it.
18 If you would repeat it because I
19 wouldn't have been able to remember
20 the question.

21 Q. Trying to recap, Mr. Rohan had
22 made a presentation and his presentation
23 included a valuation and I'll represent
24 to you that his proposal that was
25 presented that day showed savings of a

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2 little bit over 49 million dollars a year
3 in I believe it's net present value,
4 that's really getting beyond my
5 expertise, and that what Mr. Vaughn came

6 down shortly after receiving the proposal
7 and said wait a second, we think there's
8 an error here and you haven't backed out
9 the 120 million dollars that the company
10 has to pay as part of this program, do
11 you remember that exchange?

12 A. I remember Mr. Vaughn coming
13 down and making some remarks about the
14 valuation. I can't speak to the exact
15 number.

16 But I will say that they
17 always complained about the valuations of
18 whatever we did.

19 Q. Isn't it true that
20 subsequently the Jefferies Group modified
21 its valuation to accommodate the fact
22 that the company would be spending 120
23 million dollars if it had accepted that
24 proposal?

25 A. If you say so.

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2 Q. The early out program was the
3 subject of a number of meetings, correct?

4 A. That's correct.

5 Q. And including eight days after
6 the initial proposal was made, the
7 company responded in another meeting,
8 correct, about February 23rd? You don't
9 remember the date?

10 A. No.

11 Q. Do you remember being there
12 for a meeting where Mr. McMenemy and Mr.
13 Briggie from --

14 A. Yes, yes, I do.

15 Q. They are two senior members of
16 the company's finance organization?

17 A. That's correct.

18 Q. And they presented the
19 company's concerns, didn't they, with
20 respect to the early out proposal?

21 A. Yes, they did.

22 Q. Among other things, I'm only
23 going to focus on one, didn't the company

24 point out that the Jefferies Group early
25 out valuation assumed that the historical

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2 attrition of flight attendants would
3 continue notwithstanding the fact that
4 3,000 flight attendants would have just
5 left the company as a result of the early
6 out program?

7 A. Could you repeat the question,
8 please.

9 Q. Sure. Didn't the company
10 point out, I think it was Mr. Briggie
11 doing the speaking, that the valuation of
12 the APFA's early out proposal assumed
13 that historical attrition of flight
14 attendants would continue in exactly the
15 same way as it always had notwithstanding
16 the fact that 3,000 flight attendants
17 would have just left the company as a
18 result of the early out program?

19 A. I think that's what he said.
20 I don't think we necessarily agreed with
21 that.
22 Q. So is it your position that
23 someone who has the opportunity to take
24 40,000 dollars as an early out program
25 would not take it but would still leave

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2 the company in the next following year?

3 A. No, no.

4 Q. That's not your position?

5 A. No.

6 Q. That's what, that's what the
7 proposal contemplated?

8 THE COURT: Let me ask is
9 there a witness on the early out
10 program that would be --

11 MR. CLAYMAN: Your Honor, Mr.
12 Rohan, his whole declaration goes
13 to the early out. He was the one

14 that Mr. Geier is now referring to.
15 So we are not at this point, we
16 think we're satisfied with his
17 declaration, we were not intending
18 to call him, but, you know, if this
19 line of questioning continues, we
20 would have to reconsider.

21 THE COURT: There is some
22 testimony. Let me ask how far you
23 expect to go.

24 MR. GEIER: I have one more
25 question. I have one more question

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2 on the early out program.

3 Q. And that is at a subsequent
4 meeting, at a third meeting, isn't it
5 true that Taylor Vaughn, the company's
6 lead negotiator, suggested and the APFA
7 agreed, that a small group be convened to
8 continue the discussions and work to try

9 to develop an early out program that
10 would be either cost neutral or less
11 costly to the company?

12 A. They agreed to meet in a
13 separate group.

14 Q. Now I understand your
15 testimony with respect to the 230 million
16 dollar target, but I think you will agree
17 that the company, Mr. Vaughn, others at
18 the table, told the APFA negotiators that
19 they were willing to consider any
20 alternative contractual modifications
21 other than those that were on the term
22 sheet that could be used to reach the
23 allocation; isn't that true?

24 A. That's correct.

25 Q. And not only did they inform

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2 you of that, they actually demonstrated
3 their flexibility and made changes during

4 the course of the negotiations?

5 A. They did.

6 Q. For example, after some
7 discussions with Mr. Akins and discussion
8 of various assumptions as to certain
9 valuations, the company agreed that Mr.
10 Akins' assumptions were as reasonable as
11 theirs and they found 20 million more
12 dollars and they therefore modified their
13 proposal with respect to the duty rigs?

14 A. That's correct.

15 Q. And that new proposal was much
16 more favorable to the flight attendants,
17 wasn't it?

18 A. Yes, it was, but they had made
19 an accounting error so they were
20 correcting that accounting error and to
21 correct it they reinstated some of the
22 duty rigs that they had eliminated in
23 their 1113 proposal.

24 Q. I'm not going to fight you. I
25 think it was a different of assumptions,

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2 not a mistake.

3 A. We'll have to agree to

4 disagree on that.

5 THE COURT: We need a

6 question, so.

7 Q. The company also modified its

8 position, its initial proposal to

9 terminate the flight attendant defined

10 benefit plan and proposed to only

11 terminate that plan, correct?

12 A. That's correct.

13 Q. And as just a third example,

14 the company modified its initial proposal

15 with respect to preferential bidding to

16 make sure that APFA would have

17 substantial input in the due diligence

18 both as to the acquisition and the

19 implementation of such a system; isn't

20 that right?

21 A. That's correct.

22 Q. And I think you concede in

23 your declaration Mr. Vaughn on behalf of
24 the company made repeated statements
25 inviting the union to come forward with

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2 its own proposals to replace the ones
3 included by the company on its term
4 sheet, correct?

5 A. Well, in the four years that
6 we were negotiating prepetition the
7 company often said well bring us a
8 proposal only to have it ignored. So
9 it's something that I was always
10 skeptical of.

11 Q. But he made those remarks that
12 you were --

13 A. Yes, he did.

14 Q. That he encouraged you to make
15 proposals, did he not?

16 A. Yes, he did.

17 Q. Just a few questions on the

18 same exhibit Mr. Clayman had you look to,
19 I think actually it's Exhibit 202. This
20 is the March 22nd, 2012 term sheet
21 corrected on March the 26th?

22 A. Yes.

23 Q. And you had presented live to
24 the company a term sheet on March 22nd,
25 correct?

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2 A. That's correct.

3 Q. And then you sent this
4 corrected version by email to Mr. Vaughn
5 on March the 26th?

6 A. That's correct.

7 Q. And the corrected term sheet I
8 believe all it did, going to the next to
9 the last page, all it did was add a
10 series of proposals, I think yet to be
11 fleshed out, modifying article 1 of the
12 collective bargaining agreement?

13 A. That's correct. I think we
14 also clarified some items from questions
15 they had on article 30.

16 Q. Thank you. And since the
17 email to the company on March the 26th,
18 which contained the additional proposals
19 on article 1, there have been no meetings
20 to discuss this term sheet -- your
21 proposals, correct?

22 A. We -- that's correct, that's
23 correct.

24 Q. Turning back to the first page
25 of that exhibit, and the first

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2 substantive provision is the duration
3 clause, and the APFA has proposed a four
4 year duration clause, you discussed that
5 a little bit with Mr. Clayman, correct?

6 A. Yes.

7 Q. It's true, isn't it, that APFA

8 had previously presented proposals during
9 the section 1113 bargaining that were
10 premised on a six year duration?

11 A. That's correct.

12 Q. And the very first time the
13 union let the company know that it was
14 moving off of that and moving to a four
15 year duration was when it handed them the
16 term sheet on March the 22nd?

17 A. I don't recall whether that
18 was the very first time.

19 Q. Now you're aware that the
20 company's business plan is a six year
21 plan, correct?

22 A. Yes.

23 Q. And it's true, isn't it, that
24 Mr. Akins had prepared a valuation of
25 your term sheet using a six year term;

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2 isn't that true?

3 A. Yes.

4 Q. There's nothing in the
5 company's business plan that up know of
6 that would support a four year plan
7 versus a six year plan, right?

8 A. Well, what I would say is that
9 these cuts are so deep, I can't imagine
10 that they wouldn't support a six year
11 plan even if those four years as I said
12 in my direct examination, that the
13 negotiations typically takes another
14 couple of years. They've gotten an
15 exceedingly more value from the
16 concessions we took in 2003 because of
17 the time we have spent in negotiations.
18 So they benefited from that.

19 Q. Looking at the compensation
20 sections right under the duration, the
21 company's proposal was to, the current
22 contract has a separate pay scale for
23 international flight attendants and
24 domestic flight attendants, correct?

25 A. That's correct.

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2 Q. And the company was proposing
3 to combine those and have a single pay
4 scale with an override for the, for
5 international segments, correct?

6 A. That's correct.

7 Q. And the union has rejected
8 that proposal?

9 A. Yes, we have.

10 Q. You're also rejected the
11 company's proposal to eliminate incentive
12 pay, correct?

13 A. Yes.

14 Q. Now, isn't it true that you
15 talked about schedule max and under the
16 company's proposal, and we'll get to the
17 union's position on it, that flight
18 attendants will be flying more hours in a
19 given month, the average line of time
20 will move from approximately, for

21 domestic from 75 to 85 hours, correct?

22 A. Yes.

23 Q. And if incentive pay is not

24 eliminated much of the savings from

25 moving that schedule max would be

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2 negated; isn't that true?

3 A. No, I disagree, because

4 currently if you pick up extra time

5 you're getting that premium incentive

6 pay.

7 Q. Right, but if -- right. And

8 now you'll be -- anyone who flies the

9 normal time will be getting incentive pay

10 for every hour above 70, correct?

11 A. That's currently. Oh, under

12 our proposal.

13 Q. Under the company's proposals

14 -- the company's proposals eliminates it

15 because otherwise having to pay the

16 incentive rate for every hour over 70
17 will negate a portion of the savings
18 achieved by moving the schedule max --

19 A. Well, you get more value by
20 eliminating incentive pay.

21 Q. So to the extent the union
22 agrees to move the schedule max up, but
23 refuses to agree to the incentive pay,
24 it's reducing the value of the schedule
25 max to the company, correct?

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2 A. That's correct.

3 Q. If we look at the premium pay,
4 it's article 3-S, do you see that?

5 A. Yes.

6 Q. And the company had proposed
7 modifications to the domestic coach
8 galley premium, correct?

9 A. That's correct.

10 Q. And the historic reason for

11 that premium was that flight attendants
12 serving in that position were responsible
13 for the meal, often a hot meal that was
14 provided to passengers in the coach
15 section of the airline, correct?

16 A. Correct.

17 Q. And it's true that there's no
18 longer any meal service in the coach
19 section on domestic flights, correct?

20 A. Today that's the case, yes.
21 That doesn't mean it will be the case
22 tomorrow. They frequently change up
23 their services.

24 Q. When was the last time there
25 was a domestic coach meal at American?

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2 A. I think it was shortly after
3 9/11.

4 Q. Currently the flight
5 attendants serving in the domestic coach

6 galley position receive a premium without
7 performing any additional services for
8 that premium, correct?

9 A. No, I disagree. I mean they
10 set up the carts, they are still
11 performing extra duties to prepare for
12 the service.

13 Q. They're no longer serving food
14 to the passengers?

15 A. We serve a snack. And they
16 have to set up the carts with the snacks.

17 Q. The APFA has refused the
18 company's proposal to eliminate the
19 domestic coach gallery premium; is that
20 right?

21 A. That's correct.

22 Q. On the expenses row, article
23 4, this relates to the per diem paid to
24 flight attendants, correct?

25 A. That's correct.

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2 Q. Sometimes that's called T A F
3 B, time away from base?

4 A. Half B, yes.

5 Q. The company proposed no
6 changes to the current per diem rates,
7 correct?

8 A. That's correct.

9 Q. But the union's proposal
10 actually seeks to increase that premium;
11 isn't that so?

12 A. Yes, we're well below industry
13 standards on our per diem. We have not
14 he gotten an increase since 2003.

15 MR. GEIER: Your Honor, I'm
16 asking I think pretty much yes or
17 no questions.

18 THE COURT: I'm going to ask
19 the witness to answer them yes or
20 no but I'll also point out we just
21 spent some time talking about
22 snacks and I don't think the case
23 will be decided on that issue so I
24 would ask that we focus on bigger

25 picture issues. And again, I would

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2 answer the question yes or no.

3 Your counsel may ask you a few

4 questions to clarify, but we don't

5 want to be here forever.

6 THE WITNESS: No, I don't, so.

7 THE COURT: Me neither.

8 Proceed.

9 A. I'm sorry, repeat the

10 question, I'll give you an answer.

11 Q. I'll move on. Moving to some

12 additional items. Early on, it seems

13 like months now, but I think in his

14 opening statement a few weeks ago Mr.

15 Clayman stated that APFA had accepted a

16 number of the company's proposals

17 including such things as schedule max and

18 PBS. Starting with schedule max, it

19 isn't your position that the APFA in fact

20 has accepted the company's proposal, is
21 it?

22 A. With a few minor tweaks we
23 did.

24 Q. Would those few minor tweaks
25 include taking credit for the value for

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2 -- well, in your proposal of four years,
3 for years five through ten and it's on --

4 A. You're referring to the
5 preferential bidding?

6 Q. No, I'm on schedule max. It's
7 on the bottom of page 1 over to the top
8 of page 2.

9 A. Yes.

10 Q. And there are a couple of
11 other items on the bottom of page 1 that
12 are also conditional on your accepting
13 schedule max, correct?

14 A. That's correct.

15 Q. And in addition, your proposal
16 is that you don't accept the schedule max
17 proposal unless you get credit on a net
18 present value basis for years 5 through
19 10, correct?

20 A. I don't recall that that was
21 part of the costing on the hundred hour
22 schedule max. I thought it was on the
23 preference bidding.

24 Q. We'll see it there too.

25 A. Okay. Both.

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2 Q. If you look at the top of page
3 2 you'll see that no re-opener for 10
4 years and credit savings --

5 A. Oh, okay, yes. Okay, I'm
6 sorry.

7 Q. So that five to ten years of
8 savings is beyond both the APFA's
9 proposal of a four year duration and

10 beyond the company's proposal and its
11 business plan of a six year duration,
12 correct?

13 A. That's correct.

14 Q. Just finally, the same on
15 preferential bidding, which is on the
16 bottom of page 2.

17 A. Right.

18 Q. The union has not accepted the
19 company's proposal with respect to
20 preferential bidding, has it?

21 A. We changed it conditioned on a
22 few extra items.

23 Q. I count ten items; is that
24 accurate?

25 A. Yes.

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2 Q. And whereon of those at the
3 bottom of page 1 is, as I understand it,
4 tantamount to a veto power that no PBS

5 system could be implemented, no product
6 could be used without the union's
7 agreement as to the use of that product;
8 is that correct?

9 A. Well, I would think the
10 company would want our input into it. I
11 think we know it can -- how we can be
12 helpful, but yes.

13 THE COURT: Just please answer
14 the question if. If it can be
15 answered yes or no answer yes or
16 no.

17 Q. Are you aware of a similar
18 kind of veto power at US Air that has
19 held up the implementation of PBS there
20 for more than six or seven years?

21 A. I'm not sure that it was veto
22 power of the union. I don't know what
23 the situation is at US Airways and why
24 they are unable to. United also has had
25 issues with implementing PBS.

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2 Q. And you're not aware that
3 those are the result of the union having
4 to agree before such a system could be
5 implemented?

6 A. I'm not aware of that.

7 Q. And again, this is the second
8 provision where the, quote, acceptance of
9 the PBS is dependent on the union getting
10 credit for the value of savings for years
11 5 through ten, correct?

12 A. That's correct.

13 MR. GEIER: I have no further
14 questions. Oh, one moment. No
15 more questions.

16 THE COURT: Redirect.

17 MR. CLAYMAN: We have none,
18 your Honor, but I would like to
19 move for the admission of APFA
20 Exhibits 200 through 204 if there
21 are no objections.

22 THE COURT: Any objection.

23 MR. GEIER: No objection.

24 THE COURT: So admitted.

25 Thank you very much. True to your

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2 word. So let's take a moment and

3 just talk about scheduling by

4 reference to the rest of the

5 witnesses. You've gotten through

6 the first two witnesses and there

7 are three more that are

8 contemplated unless you have a

9 desire to add back in the person

10 who needs to talk about the issue

11 we just discussed at length.

12 So those three witnesses

13 tomorrow I have, an omnibus hearing

14 in another case, we should be done

15 by 10:30. Taking that into

16 account, any estimate about how

17 long it will take to finish those

18 three witnesses? Friday noon,
19 Friday afternoon?

20 MR. CLAYMAN: Your Honor, I
21 believe that Mr. Condrick should
22 take probably no more than half an
23 hour on direct. Mr. Akins could
24 take as much as two hours I think.
25 And then Mr. Szlezinger I would

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2 believe would be probably in the
3 neighborhood of half an hour. So
4 that's direct. Obviously I can't
5 speak to the other side.

6 THE COURT: I will say in the
7 context of direct, I'm happy to
8 have direct pulling out the
9 relevant things that you want to
10 talk about. It is helpful for me
11 to get to know the witnesses. But
12 I think people can dispense with

13 the preliminaries, you know, where
14 did you go to school. We haven't
15 gotten to what are the names of
16 your children, but I'm reading the
17 directs and so people cannot have
18 to worry about getting bogged down
19 in too much background detail, but
20 I certainly don't want to rob you
21 of your opportunity to make your
22 case with that in particular.

23 So I can't really pin anybody
24 down on cross, but I would imagine
25 we're talking sometime Friday

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2 afternoon would be probably the
3 safest estimate for finishing the
4 --

5 MR. FLICKER: Your Honor, I
6 think we believe the crosses of Mr.
7 Condrick and Mr. Szlezinger are

8 likely to be fairly short. Mr.
9 Akins I think two hours of direct,
10 we're going to have a significant
11 cross on him.

12 The question I have for your
13 Honor is even with the late start
14 is there any possibility we could
15 make an effort to try to get
16 through three witnesses with a late
17 day tomorrow?

18 THE COURT: We could if people
19 are interested in doing that. Let
20 me just how late do you want to go?
21 I assume that would mean we'll go
22 till we're done. So if we're
23 talking about getting one short
24 witness done in the morning,
25 perhaps even two, then we'll have

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2 the afternoon, so maybe we're

3 talking about eight, nine o'clock.

4 MR. CLAYMAN: Tomorrow night?

5 As much as I would like to finish

6 Thursday, it becomes for at least,

7 I will speak for myself to the

8 extent that matters, and possibly

9 our witnesses, it becomes

10 diminishing returns in terms of

11 their effectiveness as witnesses

12 and everything else. And

13 considering that we're scheduled to

14 go through Friday, I would prefer

15 to try to finish two witnesses

16 tomorrow and if Mr. Szlezinger is

17 not done by a reasonable hour, like

18 6:30 or 7 o'clock, that we just

19 finish up on Friday morning.

20 THE COURT: It sounds like Mr.

21 Akins is certainly going to be one

22 of the first two of those

23 witnesses, so we'll have the most

24 lengthy witness.

25 MR. CLAYMAN: I fully expect

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2 that we would finish Mr. Akins
3 tomorrow.

4 MR. FLICKER: I think that's
5 likely. We may need a little bit
6 of flexibility on the back end of
7 that.

8 THE COURT: All right. Then
9 what would you like to do? Do you
10 want to say we'll go to 7 and we'll
11 see where we are? Actually, I want
12 to give people some advance notice.
13 If we get done by 7, we get done by
14 7. If not, we'll finish up on
15 Friday. All right. And then
16 what's the plan for Friday? We'll
17 finish up whatever witness that you
18 want to present.

19 MS. LEVINE: Your Honor, we'd
20 like to open and then we have three
21 witnesses on our direct case. And

22 I'm trying to work with Mr.
23 Gallagher to see if we can limit
24 the amount of cross that was the
25 holdover from the opening case. I

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2 just need to confer a little bit
3 with our clients so I can't confirm
4 that right now. But if we have
5 that cross it would be Mr. Brundage
6 damage, Mr. Burdette and Mr. Wheel,
7 but I do believe that we may not
8 need all three of them and I'm not
9 sure we need any of them.

10 THE COURT: All right given
11 what you just said, is it safe to
12 assume that Friday will not be
13 sufficient to contain what has to
14 get done given the case that has to
15 finish up before you as well as
16 opening and your witnesses and

17 cross of the company's, that just
18 sounds like more people than we can
19 fit in on Friday, would that be a
20 safe assumption?

21 MR. FLICKER: Yes, sir, that's
22 right.

23 THE COURT: Unless you have a
24 time twister or something I'm not
25 aware of. So then we're into

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2 Monday. As I said, I have a Monday
3 calendar that I think at this point
4 I just want to keep. Do you have
5 any sense of your situation in the
6 other case?

7 MS. LEVINE: I think it's
8 definitely adjourned. I think
9 they're waiting for the Judge to
10 call back with a new date.

11 THE COURT: So we can resume

12 Monday as of noon and then I guess
13 just to guesstimate, we'll say
14 50/50 as to whether we'd be able to
15 finish Monday afternoon depending
16 on the length of cross of the
17 company's witnesses and what you
18 work out in connection with that.

19 MR. FLICKER: We'd anticipate
20 by Monday in the afternoon, if not
21 the end of the day we would
22 probably be finished with the TWU's
23 case.

24 MS. LEVINE: We would agree
25 with that, your Honor.

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2 THE COURT: So I mention that
3 because I'm also trying to figure
4 out when the witnesses for the
5 company would have to come back.
6 So we should be finished with the

7 TWU's case Monday and then return

8 we'll turn to the rebuttal case.

9 Any sense of what the rebuttal
10 case looks like at this point?

11 MR. FLICKER: At this point,
12 your Honor, I think we're thinking
13 about a two day rebuttal case.

14 THE COURT: All right.

15 MR. FLICKER: That would
16 include our estimate of cross, but
17 obviously we're guesstimating.

18 THE COURT: Famous last words.

19 MR. FLICKER: Right.

20 THE COURT: That would bring
21 us to roughly the 24th then and I
22 have an AMR omnibus in the morning
23 that has a number of matters that
24 are I think lengthy, contested,
25 complicated. So the morning is

2 out. So is there anything
3 evidentiary-wise to be done after
4 the rebuttal case? I heard that
5 dreaded word sur, s-u-r, connected
6 with declarations and cases and
7 trials and evidence and witnesses.

8 MR. CLAYMAN: Obviously, we
9 don't want to go there, it's just
10 it's part of the scheduling order
11 so I cannot say unequivocally that
12 won't happen.

13 THE COURT: Right, you haven't
14 heard the rebuttal case.

15 MR. CLAYMAN: Right.

16 THE COURT: That's fair
17 enough.

18 MS. LEVINE: Hope springs
19 eternal, Judge.

20 THE COURT: So if we do that I
21 imagine we're talking about
22 Thursday and Friday. I will tell
23 you that I have available Tuesday
24 the 29th as well. I realize that

25 some people are out of town and I

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2 don't know if it becomes difficult
3 for travel arrangements if we went
4 late Friday. So I don't want to
5 what's a weekend among friends. So
6 I'll let you talk about what you'd
7 like to do as we get there. So
8 just let me know and then I imagine
9 we have closings. Which should
10 take some time. Unless you want to
11 wave closings and just give me
12 proposed findings of fact and
13 conclusions of law. I won't ask
14 you to answer that question now but
15 think about it and then let me know
16 as we get closer.

17 So you'll also need to answer
18 on what you would like to have as a
19 proposed date for giving me the

20 additional briefing that are
21 proposed findings of fact and
22 conclusions of law that I think
23 will be helpful. So we can tea
24 talk about that as we get closer.

25 MR. BUTLER: Judge, just one

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2 question for Friday. Given the
3 fact that TWU is going to carry
4 over into the next week, do you
5 have a time in mind on Friday that
6 you think you would end the day on
7 so those of us who have to make
8 travel arrangements can have some
9 sense.

10 THE COURT: No, I'm open to
11 suggestions. As much fun as I'm
12 having at quarter to seven, I'm
13 happy -- this has become a marathon
14 and it's not a sprint so it doesn't

15 have to be inhumane. So you let me
16 know. I know there are people from
17 out of town. So let me know, I'm
18 happy to, if you want to break at
19 five. I obviously want to get a
20 trial day in and that's a day that
21 is unencumbered by other things,
22 but I don't think we need to go
23 late on Friday since we're
24 continuing on.

25 So why don't we plan tomorrow

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2 seven, Friday we will not plan for
3 a late day and if people want to
4 agree to blow the whistle at five
5 p.m., I'm okay with that, if not,
6 let know what you want to do.

7 Thank you, that's helpful.
8 Anything else we should discuss
9 before we break for the evening.

10 All right, thank you.

11 (Time noted: 6:47 p.m.)

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