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THE COURT: Good afternoon.

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Please be seated. All right.

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Any preliminary matters before

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we proceed with witness testimony?

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MR. DUFFIELD: Good afternoon,

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your Honor, Todd Duffield for the

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debtor. Having had the benefit of

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the weekend to review my notes and

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the transcript of Friday, we

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notified TWU counsel yesterday that

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we have no questions of Mr. Roth.

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THE COURT: All right, that

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was easy.

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Next witness.

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MR. SHERWOOD: Your Honor,

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first we'd like to move his

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declaration into evidence.

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THE COURT: And I imagine the

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accompanying exhibits as well?

21 MR. SHERWOOD: Yes, your
22 Honor.

23 THE COURT: What are the
24 numbers for those?

25 MR. SHERWOOD: I think we've

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1
2 marked it in a binder as TWU
3 Exhibit 1.

4 THE COURT: Any objection?

5 MR. DUFFIELD: No objection,
6 your Honor.

7 THE COURT: All right, they're
8 received.

9 MR. KIZEL: Good afternoon,
10 your Honor, Paul Kizel from
11 Lowenstein Sandler on behalf of the
12 TWU. Your Honor, the next witness
13 that we call is Donald Videtich.

14 DONALD VIDETICH,
15 called as a witness, having been

16 first duly sworn, was examined
17 and testified as follows:

18 MR. KIZEL: Your Honor, before
19 we start I'd like to hand up a copy
20 of Mr. Videtich's declaration,
21 which will be TWU 2.

22 THE COURT: Yes. I have a
23 copy. Has this been revised?

24 MR. KIZEL: No, it should be
25 the same.

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2 THE COURT: Thank you. You're
3 identifying this as TWU 2?

4 MR. KIZEL: Two, yes, your
5 Honor.

6 THE COURT: Thank you.

7 DIRECT EXAMINATION

8 BY MR. KIZEL:

9 Q. Mr. Videtich, would you just
10 state your name for the record.

11 A. Yes, it's Donald Videtich.

12 Q. And by whom are you employed?

13 A. The TWU.

14 Q. What is your -- are you an
15 employee of American Airlines?

16 A. Yes, I am. I'm currently on a
17 union leave with American.

18 Q. How long have you been
19 employed by American?

20 A. Since August of 1991 employed
21 as an aircraft mechanic.

22 Q. And prior to your employment
23 with American, could you describe what
24 your employment history was?

25 A. Prior to getting on with

4

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2 American in '91, from '89 until '91 I
3 worked for various MROs as a contract
4 mechanic, which is a maintenance and
5 repair, overhaul facility.

6 Q. Approximately how long did you
7 work for those MROs?

8 A. A couple of years.

9 Q. Prior to that, were you
10 employed by anyone?

11 A. Yes, I was in the United
12 States navy from 1981 to 1989 as an
13 aircraft mechanic.

14 Q. And you mentioned you're a
15 member of the TWU; is that correct?

16 A. Yes, Local 565.

17 Q. And how long have you held
18 leadership positions with the TWU?

19 A. Since 1996 I was an executive
20 board member for Local 513. In that
21 position I oversaw all the aircraft
22 maintenance affairs from bargaining to
23 arbitrations, FAA, dealing with FAA,
24 representing our members, but basically
25 all facets of aircraft maintenance.

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2 Q. After that position, did you
3 obtain another position with the TWU?

4 A. Yes, basically from 1999 until
5 2005, I was the president of Local 565,
6 which represents members in Dallas,
7 Houston, Austin and Denver. At that
8 time, we had Houston, too. Doing the
9 same thing. That particular local just
10 had aircraft maintenance and stores
11 members in that local that we
12 represented. Same thing except I was
13 responsible for all facets of the local
14 bargaining, preparation for bargaining,
15 contract proposals, research, FAA
16 investigations and prepare and present
17 arbitration cases.

18 Q. And then did you move on after
19 that, from that position to another
20 position?

21 A. Yes. In 2005 I was appointed
22 into the international to do, to oversee
23 the same functions, but from a global
24 scale in the United States, all of the

25 base locals and line locals, just proper

6

1

2 administration of the contracts for

3 aircraft maintenance mechanics, stock

4 clerks and maintenance control

5 technicians throughout all the country.

6 Q. So currently, is your position

7 with the TWU as an international

8 representative?

9 A. International representative,

10 correct.

11 Q. And are you also a member of

12 the TWU negotiating committee?

13 A. Yes, lead negotiator for the

14 M&R groups, the stores groups and the

15 MCT.

16 Q. Have you been a member of the

17 TWU negotiating committee for -- I'll

18 take a step back. Since when have you

19 been a member of the TWU negotiating

20 committee?

21 A. Prior to I was part of the
22 negotiating committee in 2001
23 negotiations and also in the 2003
24 restructuring discussions that we came
25 out with the CBA back then. But to fast

7

1
2 forward to this time frame, I've been the
3 lead negotiator since 2007 until today.

4 Q. As part of your
5 responsibilities as the international
6 representative, are you responsible for
7 keeping track sort of comparative terms
8 of CBAs across the industry?

9 A. Yes.

10 Q. With respect to -- and that's
11 with respect to M&R?

12 A. And stores and we have some
13 data on the MCTs, but some of those in
14 the other airlines are management.

15 Q. Just to take a quick overview.

16 Approximately how many employees are
17 there in the mechanics and related group?

18 A. In the mechanic and related
19 group there are around 11,500 members.

20 Q. With respect to stores, the
21 stores group?

22 A. Approximately 1300 members.

23 Q. So you indicated that back in
24 2001 you became a member of the TWU
25 negotiating committee?

8

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2 A. Yes, as president of the local
3 that was one of my responsibilities as
4 the contract negotiations as a member of
5 the committee.

6 Q. And I don't want to belabor
7 it, but can you just give a brief history
8 of what transpired in 2001 with respect
9 to the negotiations with American?

10 A. Post-agreement?

11 Q. Yes.

12 A. Just real fast. After the
13 2001 agreement was put in place, 9/11
14 happened and we kind of knew we were
15 heading in a direction of problems and we
16 laid off a thousand mechanics back there.
17 As the couple pulled down the operation a
18 little bit.

19 Part of that final frame,
20 working with the company, I mean we had a
21 lot of collaborative efforts. Even back
22 then we came up with an idea of how to
23 mitigate those layoffs by reducing the
24 amount of overtime for full time
25 equivalent head count needed. So

9

1

2 together we worked to offset that layoff
3 by I believe it was a few hundred heads,
4 but we still laid off around a thousand

5 people.

6 Q. At that point, did it appear
7 that there was an across the board layoff
8 of employees in all different groups?

9 A. No, part of the problem back
10 then was even though we were successful
11 with the collaborative efforts, there
12 wasn't a huge impact from the management
13 side as far as their reductions and that
14 was prevalent throughout the company.
15 But specifically, I'm talking about
16 maintenance and engineering.

17 Q. Fast forward a bit to 2003.
18 Were you involved in the negotiations in
19 2003?

20 A. Yes.

21 Q. Could you just describe
22 generally what the impact or just
23 describe generally what concessions were
24 made by the TWU and the M&R group
25 specifically?

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2 A. It was 620 million dollars in
3 reductions that the company had asked
4 for, of which in this particular group it
5 was 315 million.

6 Q. And what were the major
7 components of that 350 million dollars of
8 concessions?

9 A. The majority of it was pay,
10 17.5 percent pay cut and reductions in
11 vacation, reductions in sick time,
12 reductions in injury on duty time,
13 benefit changes as far as the medical
14 costs and stuff like that.

15 Q. And back in 2003,
16 approximately how many M&R employees were
17 there at American?

18 A. 16,000.

19 Q. And as a result of the 2003
20 CBAs, what impact did that have on the
21 staffing of misrepresentation?

22 A. Initially, from 2003 I believe

23 it was around 1900 more mechanics were
24 laid off. I testified earlier a thousand
25 in 2001. So another 1900 or so mechanics

11

1
2 were laid off.

3 Q. After the 2003 CBA
4 modifications, did the M&R employees and
5 stock clerks engage in any efforts to try
6 to improve productivity?

7 A. Yes.

8 Q. Could you describe what those
9 were?

10 A. Yes. Just, just a short
11 version. Essentially from 2004 and
12 beyond, those groups, the maintenance and
13 the stores and the MCTs to a certain
14 degree, but mainly maintenance and stores
15 worked with the company on trying to
16 offset our costs by improving
17 productivity, finding other efficiencies,

18 etc.. we had teams that were put
19 together to go around and visit with the
20 company all of the MROs and some of the
21 stuff they came up with was pretty good.
22 It was almost a billion dollars in
23 savings through cost avoidance or
24 reoccurring saving reductions.

25 Q. Were you personally involved

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2 in those, in those processes or reviewing
3 those processes?

4 A. Yes. I was pretty much as it
5 kicked into high gear, I oversaw it and
6 it reported directly back up to me and
7 senior management.

8 Q. When you say senior
9 management, senior management of American
10 Airlines?

11 A. American Airlines.

12 Q. Could you give one or two

13 examples of the cost savings initiatives
14 that were achieved?

15 A. Well one of the, one of the
16 most widely known in magazines and across
17 the country was with the MRO world was
18 Tulsa came up with a way of overhauling
19 the MD80s. We had originally seven
20 overhaul lines and we reduced it down to
21 four and phased in the aircraft kind of
22 like a pulse and reduced head count down
23 350, utilized those 350 mechanics to
24 work, to generate revenue working on
25 third party aircraft, and then we got the

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2 planes done faster.

3 Just Tulsa alone, besides that
4 initiative along with others, offset the
5 company's costs by more than 500 million.

6 Another example of it at
7 another station, was A F W, they came up

8 between the 767 and the 777 aircraft
9 developing a -- out of the head count
10 from those lines, created an additional
11 line to work mods or any third party work
12 that came in, and that work was so
13 successful that our 777 in 2008 when we
14 measured it last, was cheaper by flight
15 hour getting the maintenance done in
16 house than it was for United and
17 Continental getting it done overseas.

18 Q. How do you know that?

19 A. Because as a team we measured
20 that.

21 Q. When you say as a team, who
22 was on that team?

23 A. It was the maintenance, TWU
24 maintenance personnel, M&E finance and
25 management, and along with The Boston

3 Q. And they came up with those
4 conclusions about the cost savings?

5 A. Yes.

6 Q. Taking a little step forward
7 now, subsequent to the negotiations of
8 2003 CBAs and the commencement of these
9 Chapter 11 cases, were there negotiations
10 going on between the TWU and American?

11 A. So post-2003?

12 Q. Yes.

13 A. Yes.

14 Q. But before the filing of the
15 Chapter 11?

16 A. Yes.

17 Q. Could you describe generally
18 when those negotiations started, when
19 they ended?

20 A. They started in August of 2007
21 and they ended in October of 2011. It
22 was a long one.

23 Q. Could you describe generally
24 with respect to the M&R and stock clerk
25 groups what the basic substance of those

1
2 negotiations were in terms of what it was
3 trying to accomplish?

4 A. Well from 2007 to about 2009,
5 they were typical section 6 negotiations
6 where we were going back and forth.
7 Keeping in mind in 2003 the M&R group,
8 through restructuring, outside of the
9 bankruptcy court, gave up a lot in pay
10 and work rules and benefit.

11 So in 2007 we were trying to
12 get back up with the industry since we
13 were so far behind. So long story short,
14 2007 to 2009 we had discussions going
15 back and forth generally trying to
16 improve the pay, benefit and work rules.

17 In 2009, we filed for
18 mediation because we weren't getting
19 anywhere as far as where we thought was
20 par with the industry. So 2009 to 2011
21 we were in mediation. We actually came

22 out with a tentative agreement, I believe
23 it was May of 2010 for both groups that
24 we're talking about today, stores and
25 maintenance, and those TAs were sent out

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2 to the membership and it failed
3 ratification.

4 Q. With respect to the
5 negotiations that took place right before
6 the bankruptcy filing, was American asks
7 M&R and stock clerks to take layoffs?

8 A. No.

9 Q. So they weren't requesting
10 modifications that would have resulted in
11 layoffs, is that correct, generally?

12 A. Correct.

13 Q. And you indicated that those
14 negotiations involved to some extent
15 efforts to increase the wages for M&R and
16 stock clerks; is that correct?

17 A. Yes, essentially in the TA
18 that went out, the wages went up to at
19 that time, or where United is at today in
20 relation to a midnight mechanic, not the
21 day and afternoon mechanics, but it made
22 up some of the ground. There were still
23 some shortcomings in vacation and sick
24 time and I OD time as well.

25 MR. KIZEL: Your Honor, can I

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2 hand up an exhibit?

3 THE COURT: Certainly.

4 Q. Mr. Videtich, I'm showing you
5 what's been marked as is already in
6 evidence as TWU 6.

7 THE COURT: Counsel, is this
8 all -- none of this is for any of
9 the proposals that are in front of
10 me, correct?

11 MR. KIZEL: That's correct,

12 your Honor.

13 THE COURT: I think I had this
14 discussion earlier that I
15 understand the need to get into and
16 the desire to get into and the
17 relevance of earlier agreements and
18 give-backs, but what I think I had
19 said was I didn't find it
20 particularly helpful for what I had
21 in front of me to get into a level
22 of granularity as to using those
23 proposals as baseline in terms of
24 trying to figure out how they all
25 stacked up because it's essentially

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2 trying a case as if the bankruptcy
3 was filed and the proposals that
4 are relevant for purposes of 1113
5 existed in November of 2011. So
6 I'm having trouble again

7 understanding why we're getting
8 into this kind of level of detail.

9 Again, I was always thought as
10 a trial lawyer then whenever you
11 get into detail you're telling the
12 decisionmaker that that detail is
13 crucial, so explain to me why this
14 level of detail for 2011 is
15 crucial.

16 MR. KIZEL: Your Honor, it's
17 just a quick question, but this
18 relates to where the M&R employees
19 are in relation to --

20 THE COURT: We've been going
21 at this for about ten minutes and I
22 let it go. We've gone through
23 2001, 2003, 2007 and 2009 and now
24 we're at 2011. This chart does not
25 look like it lends itself to quick

2 questions. It's got a lot of
3 details as to rates, again, in
4 2011. So I'm trying to figure out
5 the relevance of it before we go
6 down this route at all.

7 MR. KIZEL: Your Honor, I was
8 just going to ask the witness about
9 page 5.

10 THE COURT: I assume you're
11 going to want this entire exhibit
12 into evidence.

13 MR. KIZEL: It already is,
14 your Honor.

15 THE COURT: All right.

16 MR. KIZEL: Your Honor, this
17 was marked into evidence during the
18 deposition -- during the
19 examination of Mr. Roth. So it
20 will be a 30 second question, your
21 Honor.

22 THE COURT: All right.

23 Q. Mr. Videtich, could you just
24 take a look at page 5 of this exhibit and

25 do you recognize what this that document

20

1

2 reflects?

3 A. Yes, it's the industry wage
4 rates for mechanism and related.

5 Q. And what does that show as to
6 where M&R employees stands compared to
7 other airlines at this point in time?

8 A. It actually shows us seventh,
9 but just so you know, this has been
10 updated too. United is up there with
11 Continental now and it's, today looking
12 at it from today just for the record, and
13 AA is last.

14 Q. So M&R employees at American
15 are now last in terms of wages and
16 compensation?

17 A. Correct.

18 Q. Mr. Videtich, let's take a
19 step forward now in connection with

20 negotiations that have taken place after
21 the Chapter 11 bankruptcy was filed. The
22 case was filed November 29, 2011; is that
23 correct?

24 A. Yes.

25 Q. And do you know when American

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2 made its first proposal after the
3 bankruptcy case was filed to M&R and
4 store employees?

5 A. February 1st.

6 Q. The company also made
7 proposals to all the TWU groups at that
8 point in time; is that correct?

9 A. Correct.

10 Q. Do you know what the total
11 concessions that American was requesting
12 from all the TWU groups?

13 A. 390 million for all of the TWU
14 groups.

15 Q. And with respect to the M&R
16 group, what was the concession request
17 from the M&R group?

18 A. 210 million.

19 Q. And what about with respect to
20 the stock clerks?

21 A. 20 million.

22 Q. And when the company met in --
23 the February 1 proposals were in the form
24 of term sheets; is that correct?

25 A. Yes.

22

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2 Q. And in addition to the term
3 sheets that were provided to M&R and the
4 stock clerks, were there also cost sheets
5 that were provided?

6 A. Yes.

7 Q. And were they provided to you?

8 A. Yes.

9 MR. KIZEL: Your Honor, can I

10 hand up an exhibit?

11 THE COURT: Yes, please.

12 MR. KIZEL: Your Honor, just
13 for the record, what I showed the
14 witness has already been marked as
15 AA Exhibit 1205.

16 THE COURT: Just let me ask
17 for purposes of, just to be on the
18 safe side, is this subject to
19 confidentiality or not?

20 MR. KIZEL: No, your Honor.

21 THE COURT: Thank you. That's
22 the problem with having everything
23 marked as private and confidential.
24 Thank you.

25 Q. Mr. Videtich, could you take a

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2 look at Exhibit AA 1205 and tell me if
3 you recognize it?

4 A. Yes, I do.

5 Q. And what is that document?

6 A. This is the company's cost out
7 of their February 1st term sheet.

8 Q. And this is the document that
9 was provided to you along with the term
10 sheet?

11 A. Yes.

12 Q. And what's the total amount
13 reflected as --

14 A. 212. I was off by 2 million.

15 Q. So 212 million dollars was the
16 company's ask?

17 A. Yes.

18 Q. And with respect to the
19 outsourcing portion of the ask, what was
20 the company's valuation of what would be
21 saved through that, their outsourcing
22 ask?

23 A. Well, just with the total
24 130.3 million in the outsourcing section,
25 which is both title 1 and title 2

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2 aircraft maintenance and facility

3 automotive maintenance.

4 Q. And in addition to the

5 valuation of the ask, do you know

6 approximately how many employees would

7 have been impacted in terms of job losses

8 as a result of the company's February 1

9 proposal to M&R?

10 A. 4,600.

11 Q. And that's 4,600 out of 11,500

12 M&R employees; is that correct?

13 A. Correct.

14 Q. Did the company make another

15 proposal to the M&R group in March 22,

16 2012?

17 A. Yes.

18 Q. And did that also come along

19 with a proposed term sheet, with a cost

20 out?

21 A. Yes.

22 Q. And could you describe

23 generally what the company's valuation of

24 those cost savings were that were
25 requested in the March 22 term sheet?

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2 A. They were the same as the
3 original. If I recall correctly it was
4 210 or 212.

5 MR. KIZEL: Your Honor, can I
6 hand up an exhibit?

7 THE COURT: Yes, thank you.

8 Q. Mr. Videtich, do you recognize
9 what's been marked as AA Exhibit 1212?

10 A. Yes.

11 Q. And what is that document?

12 A. This is the cost out of the
13 March 22nd term sheet that the company
14 gave us for M&R.

15 Q. For M&R?

16 A. Yes.

17 Q. And what does it reflect as to
18 the company's valuation of the total cost

19 savings?

20 A. 212 million annually.

21 Q. And with respect to the
22 outsourcing portion of it, what's the
23 company's valuation of that?

24 A. 128.9.

25 Q. So that went down de minimis,

26

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2 right?

3 A. Right.

4 Q. With respect to the March 22
5 proposal to M&R, did that -- did it
6 change the amount of employ these would
7 have been outsourced as compared to the
8 proposal made on February 1?

9 A. No, it was the same, 4600.

10 Q. So no change whatsoever?

11 A. None.

12 Q. I just want to turn for a
13 second to the stores group. When was the

14 first proposal the company made to the
15 stores group?

16 A. February 1st.

17 Q. And what were the asks for
18 stores employees in terms of overall cost
19 reductions?

20 A. 20 million.

21 Q. 20 million?

22 A. Yes.

23 MR. KIZEL: Your Honor, may I
24 hand up an exhibit?

25 THE COURT: Yes.

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2 Q. Mr. Videtich, can you take a
3 look at what's been marked as AA Exhibit
4 1206 and tell me if you recognize that
5 document?

6 A. Yes, I do. It's the cost out
7 that came with the term sheet on February
8 1st for stores.

9 Q. And that reflects total cost
10 savings asks of 20 million?

11 A. Six year average 20 million a
12 year, yes.

13 Q. And do you know what impact
14 the February 1 stores proposal would have
15 had in terms of reduction in work force
16 for stores employees?

17 A. I believe the total was 270.

18 Q. And that's out of how many
19 store employees?

20 A. No, it's 264.

21 Q. 264?

22 A. Yes.

23 Q. It would have been 264
24 employees would have been terminated as a
25 result of the February 1 --

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2 A. Yes.

3 Q. And that's out of 1300?

4 A. Out of 1300, yes.

5 Q. And on March 22, did the
6 company also make a proposal to the
7 stores clerks?

8 A. Yes, they did.

9 MR. KIZEL: Your Honor, may I
10 hand up an exhibit?

11 THE COURT: Yes, please.

12 Q. Mr. Videtich, could you tell
13 me what Exhibit AA 1213 is?

14 A. This is the March 22nd
15 proposal to the TWU from the company for
16 stores that matches their 22nd term
17 sheet.

18 Q. And in terms of the total
19 dollar ask, was there any change between
20 the February 1 and the March 22 term
21 sheet?

22 A. Actually it went up a little
23 bit. It's 20.1.

24 Q. What about in terms of the
25 impact on employees, was there any

1
2 difference in terms of the number of
3 employees that would have been terminated
4 in comparing to February 1 and the March
5 22 term sheets?

6 A. The numbers were the same as
7 far as the people losing their jobs.

8 Q. So for both stores and M&R
9 employees from February 1 to March 22,
10 there was no, is it accurate to say there
11 was no movement in terms of the total ask
12 that the company was looking for?

13 A. None.

14 Q. Similar with respect to the
15 number of employees that would have been
16 terminated, was there any --

17 A. Actually, the company from the
18 people leaving in the context of the
19 proposals, the only change from February
20 1st to the March 22nd is the company
21 changed their medical proposal that was

22 from 23 percent contributory rate for
23 employees down to 21 percent, but it
24 still had where they could make plan
25 design changes so it was still expensive.

30

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2 And the company between February 1st and
3 March 22nd, as everybody knows, or should
4 know, they chose to freeze the pension
5 and take that approach. So those were
6 the two changes. But as far as the
7 majority of the items on these sheets,
8 they were the same and the same amount of
9 people were impacted.

10 Q. And the same dollar amount?

11 A. And the same dollar amount,
12 correct.

13 Q. Now, between February 1 and
14 March 22, 2012, were you involved in
15 negotiations, discussions with
16 representatives of American concerning

17 the 1113 proposals?

18 A. Yes.

19 Q. And would you tell me
20 generally what your discussions involved?

21 A. Well, when they gave us the
22 February 1st proposal, it was -- it was a
23 lot more than what we expected because
24 of, not to go back to 2003, but 2003 put
25 us in a position in comparison to the

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2 industry where we didn't think the
3 company would to make that many changes
4 to the M&R groups and stores groups to
5 the point where we were kind of in shock.
6 But getting over the shock, there was a
7 lot of clarifications. When you get a
8 term sheet it essentially is bullet
9 points and we needed to know, you know,
10 what's the definition. It isn't like
11 they handed us full text language. So we

12 spent the first three weeks just
13 developing hundreds of questions to get
14 clarifications and requesting documents
15 to kind of understand where the company
16 was coming from.

17 Putting that aside, we did
18 take the high road and started developing
19 proposals and on February 24th we gave
20 the company a proposal.

21 Q. In terms of your -- taking a
22 step back, in terms of the discussions
23 you had with the company, what were the
24 -- were there any focal points that you
25 emphasized in terms of what M&R and stock

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1
2 clerks wanted to be considered or
3 changed?

4 A. Well the outsourcing was just,
5 it was way too much. I mean going back
6 again to 2003 and what we did pay-wise,

7 and then we're looking at how we compared
8 with the industry, the impact of that
9 many members and their families we needed
10 to work through essentially.

11 Q. And if you could just take a
12 look at your declaration which you have
13 in front of you, are the proposals that
14 the TWU M&R group made to the company
15 attached as Exhibit A to your
16 declaration?

17 A. Yes. The M&R one, yes.

18 Q. And with respect to the stock
19 clerks?

20 A. That would be B.

21 Q. So Exhibit B contains various
22 proposals that the stock clerk group made
23 to the company between February 1 and
24 March 22; is that correct?

25 A. Yes.

2 Q. And with respect to the M&R
3 group, contained in the proposals that
4 were made by the TWU to the company, was
5 there any concessions made by the TWU in
6 terms of potential job losses that would
7 have been affected?

8 A. I mean the safest, or the most
9 accurate way to put it, we knew that we
10 were going to need to provide some relief
11 with outsourcing, but at the same time,
12 we wanted to drive things to the market.
13 And we did put, we did move towards them
14 as far as the percentage of outsourcing,
15 yes.

16 Q. So you did make proposals in
17 terms of proposing certain provisions
18 which would result in certain outsourcing
19 of M&R employees, correct?

20 A. Yes.

21 Q. And did the company have a
22 response that moved towards your
23 direction at all?

24 A. On the March 22nd, no.

25 Q. So they did no --

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2 A. They went basically went back
3 to their original position on February
4 1st.

5 Q. So the last proposal and the
6 proposal that's attached to the debtor's
7 1113 motion is the March 22 proposal; is
8 that correct?

9 A. Correct.

10 Q. And could you just generally
11 describe why those proposals with respect
12 to the M&R and stock clerk groups were
13 unacceptable?

14 A. Well there was a couple of
15 reasons. One, from February 1st, as I
16 explained earlier, we had all these
17 questions and developed a proposal that
18 included outsourcing, but aside from
19 that, we had teams of guys that were in
20 Tulsa working with the company trying to

21 figure out alternative ways of getting to
22 some savings, to the extent where there
23 was a four or five day meeting in Tulsa
24 and then additional meeting in
25 headquarters prior to March 22nd.

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2 So when they gave us the March
3 22nd proposal, we were like, wait a
4 minute, what about all the work and
5 everything that we'd done, why is this
6 back to your original February 1st ask.

7 Q. So essentially, there was no
8 movement from your -- from the TWU
9 perspective on the major points from
10 February 1 to March 22?

11 A. Right. Except like I
12 testified earlier, the global issues of
13 medical and freezing of the pension which
14 they applied to everybody. As far as all
15 the work and the parochial issues to

16 these two groups, no, they basically went
17 back to the February 1st.

18 MR. KIZEL: Your Honor, I
19 don't have any other questions.

20 Q. I would just ask the witness
21 to verify that the declaration that's in
22 front of him is his testimony that he
23 would adopt.

24 A. I think there's one
25 correction. On page 9, paragraph 17,

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2 it's midway down, "These negotiations
3 were conducted in a difficult
4 environment." Anyway, after the 200 it
5 should say million in performance shares.
6 I forgot the word million. Sorry. But
7 yes, this is accurate.

8 MR. KIZEL: Thank you. Your
9 Honor, I have no further questions
10 at this time.

11 THE COURT: Thank you. Cross
12 examination.

13 MR. DUFFIELD: Could we have a
14 five minute break just to confer
15 with my counsel.

16 THE COURT: Let me ask, I
17 realize having reconvened at noon,
18 I don't know whether people would
19 actually eat before or after that
20 event. So I don't know what the
21 parties would like to do in
22 connection with that. If you want
23 to break, we can take it now, have
24 lunch and then come back. My only
25 time limitation today is that I

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2 have to take a short break at 4
3 o'clock for another matter, about
4 10 minutes.

5 MR. DUFFIELD: I think my

6 cross will be very brief, so maybe
7 we can take a short break, come
8 back and then break for lunch.

9 THE COURT: Absolutely.

10 (A recess was taken.)

11 (Luncheon recess: 1:02 p.m.)

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

3 1:13 p.m.

4 THE CLERK: All rise.

5 THE COURT: Please be seated.

6 Proceed.

7 MR. KIZEL: Good afternoon.

8 Paul Kizel, Lowenstein Sandler, on
9 behalf of the TWU. Your Honor, we
10 concluded with our second witness,
11 Mr. Videtich, and I'd like to move
12 into the record his declaration TWU
13 2.

14 THE COURT: Any objection?

15 MR. DUFFIELD: No objection,
16 your Honor.

17 THE COURT: It's received.

18 And I assume you're talking about
19 the accompanying exhibits as well,
20 A, B and C?

21 MR. KIZEL: Yes, your Honor.

22 THE COURT: Thank you.

23 MR. SHERWOOD: Good afternoon,

24 your Honor, Jack Sherwood,
25 Lowenstein Sandler. TWU calls

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2 Henry Owsley right now.

3 Your Honor, I'd like to hand
4 up TWU 3 which is a copy of his
5 declaration if the court doesn't
6 have it already.

7 THE COURT: All right, thank
8 you.

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

13 THE COURT: Good afternoon.

14 THE WITNESS: Good afternoon,
15 sir.

16 DIRECT EXAMINATION

17 BY MR. SHERWOOD:

18 Q. Mr. Owsley, can you tell the

19 court where you work?

20 A. I am CFO of Gordian Group.

21 Q. And what is the business of

22 Gordian Group?

23 A. Primarily to advise companies

24 and other constituencies with respect to

25 insolvency matters. How many.

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2 Q. How many years have you been

3 with Gordian?

4 A. 24.

5 Q. Have you any other experience

6 with distressed M&A and financial

7 restructuring other than your years at

8 Gordian?

9 A. Yes, for a period of time I

10 started and ran Goldman Sachs'

11 restructuring group.

12 Q. And just to be clear, the 24

13 years that you have been at Gordian, has

14 Gordian always been in the business of
15 distressed investment banking?

16 A. There are other activities,
17 but that, as I said, is the principal
18 activity.

19 Q. What about in terms of airline
20 experience at Gordian, what type of
21 airline experience have you had?

22 A. I worked on the 1114 issues on
23 behalf of the retired pilots of United.

24 Q. But generally speaking, you're
25 not an exclusive airline guy; is that

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2 right?

3 A. That's true. I don't consider
4 myself an expert in the airline industry,
5 but an expert in distressed investment
6 banking.

7 Q. And in that regard, have you
8 been retained as an expert in other

9 bankruptcies?

10 A. Many.

11 Q. And have you given expert
12 testimony in the field of distressed
13 investment banking?

14 A. Yes.

15 Q. And is your background
16 reflected in your declaration in terms of
17 your experience in distressed investment
18 banking?

19 A. It contains my CV, which is
20 representative of the things that I've
21 done.

22 Q. And have you published
23 anything in terms of the area of
24 distressed investment banking?

25 A. Yes. One of my partners and I

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2 co-authored a book on the topic.

3 Q. And what's the title of the

4 book "Distressed investment banking: To
5 the abyss and back."

6 MR. SHERWOOD: Your Honor, I
7 would move Mr. Owsley as an expert
8 in distressed advantaging.

9 THE COURT: Any objection?

10 MR. POLLACK: No objection,
11 your Honor.

12 THE COURT: All right,
13 proceed.

14 Q. Mr. Owsley, can you tell us
15 when you were first engaged by the TWU in
16 this matter?

17 A. My firm was engaged in late
18 January of this year.

19 Q. And when you were engaged,
20 what was your understanding of the
21 purpose for which you were engaged by the
22 TWU in this bankruptcy?

23 A. It was a relatively
24 broad-gauged assignment to advise the TWU
25 with respect to matters involving

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2 American's insolvency.

3 Q. Were you also called upon to
4 give any advice or opinions with respect
5 to the section 1113 proposal or proposals
6 that were made by American to the TWU?

7 A. We certainly reviewed some of
8 the proposals. We were there for some of
9 the presentations made by American to the
10 various unions, but no, I can't say that
11 that was a principal topic of our
12 assignment to value various elements of
13 the proposal and so on and so forth. We
14 relied on others who were experts in that
15 field.

16 Q. Did you personally participate
17 in any of the so-called merger
18 discussions that have been discussed in
19 this court with US Air?

20 A. No, two of my partners have,
21 but by that point in time, due to this
22 testimony, I had been ring-fenced.

23 Q. Did you say ring-fenced?

24 A. Yes.

25 Q. What did you mean by that?

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2 A. Excluded from negotiations on
3 other matters other than 1113.

4 Q. Now, did you review the
5 declaration prepared by Rothschild and
6 submitted by American in support of their
7 1113 motion?

8 A. Yes, both the original and the
9 amended.

10 Q. Did you in the course of your
11 duties review generally the American
12 stand-alone business plan?

13 A. Yes, I have.

14 Q. Now, in the course of your
15 review of the Resnick declaration and the
16 stand-alone business plan, did you have
17 any concerns from the perspective of the

18 TWU?

19 A. Yes, I did.

20 Q. And can you just generally
21 state what those concerns were?

22 A. Well, there were several. One
23 was the reliance on the so-called
24 cornerstone strategy which, you know, we
25 were all hopeful would work --

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2 MR. POLLACK: Excuse me, at
3 this point, Judge, I'm going to
4 interpose an objection. This
5 detail is not found anywhere in the
6 declaration.

7 THE COURT: Counsel, can you
8 point me to the declaration?

9 MR. SHERWOOD: He did say in
10 the declaration, your Honor, I'll
11 find it in a minute, that he was
12 concerned about the viability of

13 the --

14 THE COURT: Just find it for
15 me and we'll take it from there.

16 MR. SHERWOOD: Bottom of
17 paragraph 8, last sentence. The
18 bottom of paragraph 11, last
19 sentence.

20 THE COURT: I'm going to ask
21 the witness to step down for a
22 minute, take a walk, get some
23 oxygen and we'll discuss what you
24 are and aren't going to testify
25 about and you don't need to be

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2 around for that discussion. Thank
3 you very much for your patience
4 show.

5 (At this time, the witness
6 left the courtroom.)

7 THE COURT: Let me ask, I

8 understand this question to be part
9 of the TWU concerns about the
10 business plan and he said yes. And
11 you said what are those concerns.
12 I do not see in referenced
13 paragraph 8 or 11 anything other
14 than a one sentence sort of what I
15 thought was a cap all of some of
16 the discussion in paragraphs 8 and
17 11 and paragraph 8 talks about that
18 it's intended, the business plan is
19 intended to mask unnecessary labor
20 cost reductions and I understood
21 his testimony to essentially in
22 paragraph 8 deal with that and in
23 paragraph 9 -- I'm sorry, 11, to
24 talk about the costs requested for
25 TWU and the impact there. But I

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2 didn't, I don't see any discussion

3 in any depth about problems with
4 the business plan.

5 So the back and forth thus far
6 seems to suggest that I'm going to
7 hear that testimony now. So
8 explain to me why you think that's
9 appropriate because I don't see it
10 in here.

11 So, for example, can you tell
12 me where the cornerstone strategy
13 is anywhere referenced in this
14 declaration?

15 MR. SHERWOOD: I haven't
16 looked for the term, but I did --

17 THE COURT: I mean I didn't
18 see it.

19 MR. SHERWOOD: Your Honor, he
20 was deposed on this extensively,
21 number 1. And number 2, he did say
22 he had trouble with the business
23 plan.

24 This is not a major topic of
25 his declaration, this is just sort

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2 of background but he did criticize
3 the business plan in at least two
4 places in his declaration and --

5 THE COURT: Well let's look at
6 paragraph 11. It says "It is not
7 reasonable or appropriate to seek
8 to impose extraordinary concessions
9 on the TWU membership," and that's
10 what the paragraph is about, the
11 extraordinary concessions, "and
12 deem them necessary to permit
13 reorganization - when the business
14 plan upon which those concessions
15 are based is fatally flawed not
16 likely to come to fruition."

17 But there's no detail there.
18 Again, if there is something that
19 I'm missing somewhere else in the
20 declaration.

21 Experts, there are no expert
22 reports, as I understand it in this
23 case, but there are declarations.
24 And but thinking about this like an
25 expert report, you know, if you

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2 have to depose an expert you say
3 what are your opinions, how many
4 opinions do you have, what are they
5 and what's the basis for them. And
6 you usually expect to have some
7 discussion if there's going to be a
8 detailed sort of offer of well I
9 have a problem with the business
10 plan and here's the following five
11 things that really bug me.

12 But if I don't -- I am
13 concerned that I don't see that
14 here. And certainly there's been a
15 lot of discussion about the

16 business plan by some witnesses who
17 took, you know, clear aim, put it
18 in the cross hairs and then fired
19 away, so I think we all have a
20 sense of what that looks like.

21 But those two sentences seem
22 kind of a slender reed to get in to
23 offer a more expansive critique of
24 the business plan.

25 MR. SHERWOOD: Well, your

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2 Honor, I think we would have been
3 beyond it by now. Like I said,
4 your Honor said, this wasn't --

5 THE COURT: I have to deal
6 with whatever objections come up.

7 MR. SHERWOOD: That's fine.
8 It wasn't in our cross-hairs, it's
9 just sort of a background question
10 and I think I can get more, we can

11 get right to the key two issues
12 that are addressed in his
13 declaration.

14 THE COURT: Well certainly I
15 have those two statements in
16 paragraphs 8, at the end of 8 and
17 the end of 11. I think I read the
18 end of 11 and the end of 8 says
19 "The debtors' use of a stand-alone
20 business model to develop labor
21 cost savings, in light of the
22 history of failed stand-alone
23 models and prospects of the airline
24 industry, is unreasonable and
25 inappropriate," but there's no

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2 level of detail there.

3 So it does raise a little bit
4 of a conundrum because the opinion
5 is there.

6 So I guess where I come out is
7 his two opinions are in there. If
8 there's something that's tethered
9 to those statements I'll let it in,
10 but if there is a detailed breakout
11 such that the paragraph would
12 essentially kind of go from this to
13 this, then I do think that we may
14 have a disclosure problem.

15 So I'll give you a couple of
16 questions on it on a sort of a top
17 level nature, but I think details
18 of the sort where I think we were
19 headed I'm concerned because I
20 didn't -- I did not, I don't see
21 them here and I think it becomes a
22 disclosure problem. Lots of things
23 get discussed at depositions, but
24 unless there's some sort of
25 agreement among parties by way of

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2 emails or letters saying we
3 supplement our declaration, report,
4 whatever it is, all I have is
5 what's in front of me in terms of
6 direct testimony which is the
7 declaration.

8 So do you want a minute to
9 think about what you want to ask in
10 terms of top level questions?

11 MR. SHERWOOD: No, I think I
12 can go right in.

13 THE COURT: So would somebody
14 ask the witness to come back.

15 Thank you.

16 (At this time, the witness
17 returned to the courtroom:)

18 THE COURT: Sir, If you would
19 take a seat. Thank you.

20 Proceed, counsel.

21 Q. Mr. Owsley, in your review of
22 the Rothschild declaration, did you see
23 whether or not alternate business plans
24 were considered by American?

25 A. In terms of the four corners

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2 of the Rothschild declaration, it did not
3 bring up I think anything with respect to
4 alternate plans.

5 Q. And from the perspective of an
6 investment banker advising the TWU, did
7 this cause any problems for you?

8 A. I think that, you know, as is
9 set forth in the book I wrote, and is our
10 customary practice, in a situation in an
11 industry that is as consolidated as the
12 airline industry, you of course want to
13 have a stand-alone plan because you like
14 to have an alternative. But you also in
15 all likelihood should be pursuing merger
16 alternatives to understand what your
17 options are. This is all about options
18 and optionality.

19 Q. In regards to the sequencing

20 of the alternatives that American has to
21 consider, do you have any opinions with
22 respect to that?

23 A. Yes, I do. It's been my
24 experience that in the vast majority of
25 restructuring cases, that the important

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2 constituencies, and I do consider the TWU
3 to be an extremely important constituency
4 here, nothing gets done until everything
5 gets done at the same time.

6 And the TWU is being asked to
7 take an early hit out of sequence which
8 would violate that principle.

9 Q. Now, in terms of the Resnick
10 declaration, you're aware that there were
11 certain discussions concerning exit
12 financing, are you familiar with that?

13 A. Yes.

14 Q. And let me just caution you

15 not to use any numbers during this part
16 of the questioning.

17 What observations do you have
18 concerning the proposal for exit
19 financing for American under the business
20 plan?

21 A. All right, let me first say
22 that David Resnick is a very experienced
23 and respected member of our community,
24 and yet when he looked at the business
25 plan and the potential need for

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2 financing, he's come up with several
3 answers and if someone who's that close
4 to the business plan and who has had that
5 much experience can't really give a crisp
6 answer, it leaves significant questions
7 hanging in the air.

8 Q. Now, did you make any
9 observations concerning the impact of

10 outsourcing under the 1113 proposal upon
11 the TWU?

12 A. Yes, the significant portion
13 of the hits that are being asked,
14 particularly with respect to the
15 mechanics, so forth, come from
16 outsourcing, and as stated in my
17 declaration, across the seven unions, and
18 I'll come back to the two remaining
19 unions, as I said in my declaration, as
20 corrected by one typo in there, over a
21 third of the -- of the number of people
22 in the TWU are being eliminated through
23 outsourcing, attrition, whatever. Yet,
24 the American presentation has a table in
25 there that says that each union is taking

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2 a 20 percent hit.

3 Now when you go through the
4 numbers, you will see that the 20 percent

5 that the union, or the TWU is being asked
6 to take, that 20 percent is stated net of
7 the cost of outsourcing.

8 In other words, it's viewed
9 from American's prism. It's not viewed
10 from the prism of the workers.

11 And the number of heads
12 measured in 2012 or '13 is roughly 38
13 percent, not 20.

14 And if you were to translate
15 that into, say, the mechanics, which are
16 taking a relatively larger share than
17 their own union brethren, the mechanics,
18 that number is over 40 percent.

19 So it's not 20.

20 Q. Is it your understanding that
21 this proposal is based upon American's
22 stand-alone plan?

23 A. That is my understanding.

24 Q. And do you think it's fair for
25 such cuts to be made on the basis of a

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2 stand-alone plan?

3 A. I think that what we would
4 like to see, again, this is a question of
5 sequencing, we would like to see other
6 alternatives pursued and we certainly, as
7 advisors to the union, would have a view
8 as to what is economically best for our
9 client.

10 Q. Are you able to reach that
11 view at this point in time?

12 A. No, sir.

13 Q. Why not?

14 A. Because we don't have, you
15 know, a deal or, you know, between the
16 debtor and, for example, US Air, or any
17 other potential partner.

18 Q. Mr. Owsley, we've marked as
19 TWU 3 I think your declaration and you
20 have a copy of that in front of you. Do
21 you adopt that declaration as your
22 testimony in this case?

23 A. With the exception of an it
24 should say more than a third rather than
25 about a third.

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2 Q. And can you just point to that
3 paragraph so the record is complete.

4 A. Sure. Page 5, the carryover
5 of paragraph 11, seven lines up from the
6 bottom of that paragraph it should say
7 over one third.

8 MR. SHERWOOD: Thank you, Mr.
9 Owsley. Your Honor, I have no
10 further direct questions.

11 THE COURT: Thank you. Cross.

12 MR. POLLACK: Thank you. For
13 the record, Mark Pollack for the
14 debtors.

15 CROSS EXAMINATION

16 BY MR. POLLACK:

17 Q. Good afternoon, Mr. Owsley.

18 How are you?

19 A. Good afternoon.

20 Q. You just concluded your direct
21 testimony with noting a typographical
22 error that you wanted to correct in your
23 declaration. Are there any other
24 typographical errors that you'd like to
25 correct in your declaration today?

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2 A. Not that I'm aware of at this
3 time.

4 Q. Now, you testified this
5 afternoon and you stated in footnote 2 to
6 your declaration that one of your
7 criticisms of the Rothschild analysis was
8 its failure to provide, and footnote 2
9 you specifically say that no analyses
10 with respect to alternatives to the
11 business plan have been made available to
12 you; is that correct?

13 A. I believe that's correct, yes.

14 Q. In fact, Mr. Owsley, your team
15 has conducted your own due diligence of
16 the business plan, haven't you?

17 A. Yes, we have.

18 Q. And as part of that diligence
19 you conducted what you described to as
20 sensitivity testing of various
21 assumptions relating to the plan, right?

22 A. Yes.

23 Q. For instance, one of the
24 things you did was you changed the PRASM,
25 or unit revenue assumption, going into

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2 the revenue model and evaluated what the
3 resulting impact of that change would be
4 on the revenue line on the business plan,
5 didn't you?

6 A. I believe --

7 MR. SHERWOOD: Objection.

8 This is beyond the scope of direct
9 and the declaration.

10 THE COURT: Well, we have to
11 be consistent here. There was a
12 discussion and there were questions
13 about the business plan that came
14 up and the testimony is tailored a
15 certain way based on the
16 declaration. So I think he's
17 either in or he's out on some of
18 these detailed issues. So I don't
19 know if you all want to talk and
20 try to figure out where that is,
21 but I'm going to try to be as
22 consistent as I can on that topic.

23 So what I think I used before,
24 our discussion was the declaration,
25 essentially expert report is

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2 disclosing what his testimony is,

3 and so I'll do that again. But I
4 don't, I don't believe I let in
5 detailed discussions about the
6 business plan based on the
7 objection, so.

8 MR. POLLACK: Judge, to be
9 clear, what I'm speaking to is the
10 criticism that's been leveled both
11 in the declaration and before you
12 today, that insufficient analyses
13 of alternatives were considered and
14 I'm responding to that by
15 demonstrating what consideration
16 Mr. Owsley himself has done.

17 THE COURT: But I think the
18 question was sensitivity analysis
19 of the business plan which I think
20 is kind of a stand alone, to use
21 the term not in jest, question. So
22 if you're talking about
23 comparisons, I think, I think that
24 that's certainly fair game, but I
25 think the question is going to get

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2 into any level of granularity, sort
3 of specific discussion of the
4 business plan and I think the
5 sensitivity testing seems to go
6 towards that unless you have some
7 proffer of some other theory under
8 which it gets in.

9 MR. POLLACK: I think you're
10 correct, that is what I'm getting
11 at, Judge.

12 THE COURT: All right.

13 Q. In paragraph 8 of your
14 declaration, middle of the paragraph, you
15 characterize a merger transaction to be
16 inevitable, don't you?

17 A. Given American's current
18 business model, I think that that word is
19 appropriate. Perhaps a little strong.

20 Q. Okay.

21 A. But it's -- I think that this

22 has been a consolidating industry.
23 American has a plan that, or a business
24 model that probably is going to require
25 it to be bigger. I think, I've heard

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2 American Airlines' management say that.

3 Q. Well, you do agree that it's
4 important that American first have a
5 robust stand-alone plan in place to
6 compare against any potential strategic
7 alternatives, don't you?

8 A. I believe that it's important
9 to have a stand-alone plan. I'm not sure
10 that I would characterize the current
11 stand-alone plan as being robust. I
12 think it's got significant flaws in it,
13 but I think that, you know, as a
14 negotiating foil it's important.

15 Q. As you testified earlier
16 today, in your experience it's standard

17 for a company to first develop a
18 stand-alone plan before evaluating
19 alternatives; isn't it?

20 A. Not always. Sometimes you
21 head directly for the sale route
22 depending upon the requirements of
23 secured lenders, DIP lenders and so
24 forth.

25 Q. In this context would you

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2 agree that it's appropriate to developed
3 a stand-alone plan?

4 A. I would have advised nothing
5 less. I think that Mr. Resnick, as I
6 said, is experienced and having a
7 stand-alone plan out there as a foil is a
8 reasonable thing to do, but should be
9 used in context of merger discussions as
10 well.

11 Q. And you characterize it, I'm

12 using your terms now, as investment
13 banking 101 to first develop a
14 stand-alone plan?

15 A. I believe I used that
16 terminology in my deposition.

17 Q. You agree with that today,
18 don't you?

19 A. Maybe it's 202, but it's an
20 early course.

21 Q. You'll agree with me, won't
22 you, that one element of any business
23 plan are the labor costs, aren't they?

24 A. Absolutely.

25 Q. And you'll also agree with me

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2 that at the moment, American's labor cost
3 structure is very much in doubt and
4 uncertain; isn't it?

5 A. Many things in American's --

6 Q. Please answer the question.

7 A. Yes. Many things are in doubt
8 and uncertain with respect to American's
9 plan, including its labor structure.

10 Q. And you, as part of your
11 preparation for your testimony today have
12 reviewed the testimony of others given in
13 this case, haven't you?

14 A. Not everybody, but certainly a
15 good number of them.

16 Q. Well, do you accept as a good
17 many folks have testified, that today
18 American's overall labor costs are
19 significantly above those of its peers?

20 MR. SHERWOOD: Objection to
21 form.

22 THE COURT: I'll overrule it
23 as to form.

24 MR. SHERWOOD: Just for the
25 record, I think some of the

2 evidence in this case that has just
3 recently got in, reflected that,
4 for the M&R group.

5 MR. POLLACK: He can answer.

6 MR. SHERWOOD: So I object to
7 form.

8 THE COURT: All right. Why
9 don't you ask him if he has an
10 opinion and we'll solve the problem
11 that way about the relative cost of
12 the --

13 Q. I will ask you about your
14 opinion with respect to the overall labor
15 costs of American Airlines. Do you have
16 an opinion relative to its peers?

17 A. Could you be more specific.
18 Are you talking about the aggregate
19 dollar cost or the per hour cost of its
20 peers?

21 Q. Are you familiar with the CASM
22 measurement on an aggregate seat basis?

23 A. Yes.

24 Q. Have you studied it, do you

25 have a view of where American's CASM

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2 relates to those of its peers?

3 A. I believe that its latest 12
4 months, this is just from memory, I
5 believe it's higher than at least some of
6 its competitors. I did not come here
7 today however prepared to answer that
8 question.

9 Q. Did you compare its labor
10 CASMs with those of US Airways?

11 A. I'm sure I did.

12 Q. You're sure you did?

13 MR. SHERWOOD: Objection; your
14 Honor. It's beyond the scope of
15 the declaration by far. He said
16 he's not an expert on that.

17 THE COURT: I don't want to
18 have speaking objections. I'm
19 going to allow it because there's

20 essentially some testimony about
21 what role the business plan place
22 in looking at alternatives, so I'll
23 give a little latitude, but I don't
24 want to go down the rabbit hole on
25 some of the details.

68

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2 MR. POLLACK: I'll tie it up
3 quickly.

4 Q. Based on your review you do
5 know that American's labor costs were
6 substantially above US Airways labor
7 costs, don't you?

8 A. At this point in time I'm just
9 not in a position to answer the question
10 because I haven't looked at the data in a
11 good period of time.

12 Q. Fair enough.

13 A. It would be unfair for the
14 court to take in testimony I think

15 subject to his honor's views, to
16 speculate.

17 THE COURT: Don't worry about
18 me.

19 Q. I'm not asking you to
20 speculate, sir. Based on your
21 restructuring experience, you're familiar
22 with the concept of labor cost
23 dyssynergies in merger negotiations,
24 aren't you?

25 A. Labor cost synergies?

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2 Q. Dyssynergies?

3 A. You're going to have to be
4 more specific. I'm not -- I know that
5 labor costs can go up or down, but you're
6 going to have to be more specific.

7 Q. Based on your experience,
8 particularly with regard to your
9 experience in the airline industry, you

10 know that in merger negotiation labor
11 costs tend to migrate upwards towards the
12 higher end, don't they?

13 MR. SHERWOOD: Your Honor,
14 just objection beyond the scope.

15 MR. POLLACK: This is directly

16 --

17 THE COURT: This deals with
18 the alternative which is the
19 merger, so I'll allow some latitude
20 on this because I think it's
21 reasonably related.

22 A. You know, I think that's
23 really speculative because what you
24 probably would do is reach an agreement
25 between the merger partner, American, and

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2 the key unions for both carriers to at
3 least come to some agreement on what the
4 cost structure would be.

5 I'm not sure you would enter
6 into a, you know, a black hole with no
7 control over it.

8 Q. You're aware, aren't you, that
9 the other major network carriers,
10 including United and Delta, first
11 realigned their labor costs through
12 bankruptcy restructurings before their
13 subsequent consolidations, aren't you?

14 A. I believe that's right.

15 Q. And in fact, putting it again
16 in your words, sir, realigning of labor
17 costs was a big, big part of their
18 reorganizations, wasn't it?

19 A. I believe that's right.

20 Q. Now, with regard to a
21 potential transaction between American
22 Airlines and US Airways, you have not
23 seen or evaluated any business plan for
24 such a merged entity, have you?

25 A. Well, I created merger plans

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2 myself for --

3 Q. With regard to this
4 transaction, you have not seen such a
5 plan, have you?

6 A. I just said I created one
7 myself.

8 Q. Have you seen anything between
9 US -- the management teams of US Airways
10 and American Airlines?

11 A. No, I've not.

12 Q. You have not seen a network or
13 a fleet plan developed between those
14 management teams, have you?

15 A. No, I have not.

16 Q. And again, using your own
17 words, whether any such merger will
18 happen is speculative, isn't it?

19 A. As I said before, until it
20 happens it hasn't happened and so it's
21 got -- it carries -- any unclosed
22 transaction carries uncertainties.

23 Q. By the way, do you regard US

24 Airways to be a viable stand-alone
25 business?

72

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2 A. They have a different business
3 model than American. They're profitable.

4 Q. What do you understand that
5 different model, business model to be?

6 A. They're slightly lower cost.
7 They have a different route structure,
8 they're not going head to head
9 necessarily with United in Chicago, and
10 so forth. They have, you know, viable
11 presences in the Carolinas and Pittsburgh
12 and so forth.

13 Q. They found a way towards
14 profitability despite their smaller
15 network, right?

16 A. They did.

17 Q. Now, if I can direct your
18 attention to paragraph 10 of your

19 declaration. You begin that discussion
20 by asserting that the cost savings the
21 debtors are seeking from the unions have
22 been a movable feast, that's your
23 characterization, isn't it?

24 A. As I said in my declaration --

25 Q. Is that --

73

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2 A. In my deposition testimony.

3 This is primarily --

4 THE COURT: I'm going to ask
5 -- this is a simple yes or no
6 question, you used the term movable
7 feast. Again, there'll be
8 subsequent questions asked by your
9 counsel to get into some other
10 explanations, but for the questions
11 where you can't give a straight yes
12 or no answer, but I think just the
13 use of the term movable feast where

14 you can. So let's --

15 A. Sorry, I was anticipating the
16 next question.

17 THE COURT: Yes, we may be
18 here for much longer than any of us
19 would care to be if we go down that
20 route. I understand the
21 temptation.

22 Q. Those are your words, aren't
23 they?

24 A. Yes, sir.

25 Q. Now we'll get to the next

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2 question. The analysis that you provide
3 in this paragraph focuses on the changes
4 in the business plan relating to the
5 pension freeze versus the termination and
6 the potential equity raise, right?

7 A. That is correct.

8 Q. And as we established at your

9 deposition, Mr. Owsley, you do recognize
10 that in neither circumstance did American
11 change in any fashion the amount of labor
12 concessions it was seeking; isn't that
13 right?

14 A. This was written inartfully
15 and the answer is yes, it was referring
16 to the amount of capital raise.

17 Q. If I can direct your attention
18 to paragraph 11 of your declaration, over
19 on page 5; about seven lines down, you
20 say "On a related note, the TWU is being
21 asked to assume a significant portion of
22 the pain through reductions in force,
23 so-called outsourcing to lower cost
24 countries," right?

25 A. It does say that.

75

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2 Q. And you stand by that today,
3 don't you?

4 A. I believe it to be the case.

5 Q. No, no one in American has
6 told you they intend to outsource to
7 foreign countries, do they?

8 A. No.

9 Q. And in fact, nothing that
10 you've seen in the business plan provides
11 for outsourcing to foreign countries,
12 does it?

13 A. No.

14 Q. In fact, as we established at
15 your deposition, it is your understanding
16 that American has valued the cost
17 reductions associated with outsourcing
18 maintenance based on domestic maintenance
19 and repair rates, don't you?

20 A. That is my understanding.

21 Q. Now, with respect to the
22 opinions that you offer in paragraphs 11
23 and 12 of your declaration, those relate
24 to your valuation of the cost
25 concessions, right?

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2 A. I think that is -- those
3 numbers --

4 Q. I'm just trying to get --

5 A. There are several sets of
6 numbers here. Maybe I should pause and
7 say which numbers are you asking me to --

8 Q. Let me break it down. And
9 before we get into the specifics and the
10 numbers, you are not a labor cost
11 evaluation expert, are you?

12 A. No, I was not engaged to do
13 that.

14 Q. And as you reference in
15 paragraph 11, you relied on the work of
16 Mr. Roth with respect to the costing
17 valuations, right?

18 A. Yes, sir.

19 Q. Now, in paragraph 12 you
20 accuse the debtor of being willfully
21 misleading, again, those are your chosen

22 words, aren't they?

23 A. Yes.

24 Q. When it characterizes the
25 requested labor concessions as 20 percent

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2 across the board from all groups, right?

3 A. Yes.

4 Q. Now, in fact, as we
5 established at your deposition, you
6 understand that Mr. Roth himself has
7 valued the cost concessions at 20.4
8 percent, don't you?

9 A. He has a completely different
10 number and he also looks at it on a net
11 basis.

12 Q. But he has looked at it in the
13 same note basis that American's looking
14 at it, right?

15 A. Yes.

16 Q. And you have adopted a

17 different methodology, a gross basis
18 rather than a net basis, right?

19 A. I think that, you know, in
20 order to understand what's going on
21 through the prism of the workers
22 themselves I think that's appropriate.

23 Q. And you have acknowledged, Mr.
24 Owsley, that your approach not only has
25 it not been used by Mr. Roth but by

78

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2 American Airlines, your approach is not
3 used by other labor experts when valuing
4 proposals such as those at issue in this
5 case, have you?

6 A. I'm not using this for
7 purposes of doing anything other than
8 pointing out the, what I would consider
9 to be American's being fast and loose
10 and/or disingenuous with the numbers.

11 Q. I appreciate that. Will you

12 please answer my question.

13 A. I thought I did.

14 Q. Do you acknowledge, sir, that
15 the approach that you are utilizing has
16 not been accepted by other labor cost
17 evaluation experts?

18 A. Well I have seen nobody in
19 this case do what I did.

20 Q. I'm asking now more generally.
21 Do you have any basis to suggest that
22 your approach has been accepted by
23 costing valuation experts beyond this
24 case?

25 A. I have -- I don't -- I

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2 couldn't answer that question.

3 MR. POLLACK: Your Honor, may
4 I approach?

5 THE COURT: Certainly.

6 Q. I'm going to hand you what

7 we've marked as American Airlines Exhibit
8 1732. Do you recognize this document,
9 sir.

10 A. Yes.

11 Q. In connection with the
12 preparation of your declaration, your
13 team prepared this list of documents that
14 were reviewed and relied upon in forming
15 your opinions, didn't they?

16 A. This is a broadly inclusive
17 list that my team reviewed on the
18 documents that they deemed important or
19 that I asked to see something that was on
20 point, I read those. I did not read
21 everything on this list. My team did.

22 Q. You're anticipating my
23 questions again. The fact is, Mr.
24 Owsley, you did not review many of the
25 documents on this list; isn't that right?

2 A. There's several on this list I
3 did not review.

4 Q. And in fact there's several on
5 this list with which you are entirely
6 unfamiliar; isn't that right?

7 A. That was correct.

8 Q. Again, using your words, you
9 would describe some of these listings as
10 in code to you, wouldn't you?

11 A. I did, because if you look at
12 some of the titles here, they are not
13 quite in discernible, you know, English
14 language as far as I'm concerned.

15 Q. And your team put this list
16 together, didn't they?

17 A. This they -- yes, they did.

18 Q. Let's look at just a few as
19 examples. We'll start at the top. What
20 has been denominated here as first
21 document, the 2003 pilot contract?

22 A. Yes.

23 Q. You didn't review that before
24 you submitted your declaration, did you?

25 A. In my deposition I told you I

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2 did not review that. To my knowledge.

3 Q. Have you reviewed it since?

4 A. No.

5 Q. Second one, the 2003 pilot

6 contract, have you reviewed that?

7 A. No.

8 Q. The next document, listed as

9 the '04 dispatchers document, you don't
10 know what that even refers to, do you?

11 A. I did not know at the time and
12 I haven't refreshed my recollection.

13 Q. The next document, Sim Techs,
14 you didn't review that, did you?

15 A. No.

16 MR. SHERWOOD: Objection; it's
17 again beyond the scope, your Honor.

18 THE COURT: Do I understand
19 this to be -- well let me ask, what
20 is this a -- you said your team

21 generated this.

22 THE WITNESS: Yes.

23 THE COURT: What was it
24 generated for? Why was it
25 generated?

82

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2 THE WITNESS: It's a list of
3 documents that my firm reviewed in
4 connection with this case and I
5 don't review -- I don't read every
6 single document.

7 THE COURT: Fair enough. I'm
8 just wondering why it exists,
9 essentially to put it together as
10 experts often do in terms of what
11 you took a look at.

12 THE WITNESS: And to be
13 conservative, we gave a very wide
14 net.

15 THE COURT: That's what people

16 normally do. That's perfectly
17 fine.

18 MR. POLLACK: I'll go back,
19 Judge.

20 THE COURT: Given that I think
21 it's fair game, although at a
22 certain point we'll reach
23 diminishing returns.

24 MR. POLLACK: I think I'm
25 there. Thank you.

83

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2 THE COURT: All right.

3 Q. Attached as Exhibit B to your
4 declaration is a listing of matters in
5 which you've given expert testimony in
6 the last four years, right?

7 A. Yes.

8 Q. You did not intend for that to
9 be a comprehensive list of cases in which
10 you provided expert testimony, did you?

11 A. If I missed something let me
12 know.

13 Q. Well, in fact, Mr. Owsley,
14 you're aware that there have been cases
15 where your proffered expert testimony has
16 been rejected by federal district courts
17 as unreliable; isn't that right?

18 A. There was one case probably
19 eight or ten years ago where the Judge
20 rejected the experts on our entire side
21 of the table and that was Vlastic.

22 Q. You're referring to the
23 Campbell's Soup case?

24 A. Vlastic, yes.

25 Q. That was a case that was tried

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2 in the Federal District Court of
3 Delaware, wasn't it?

4 A. Yes, it was.

5 Q. And that Judge specifically

6 addressed your expert testimony, didn't
7 he?

8 A. He addressed mine as well as
9 others, yes.

10 Q. With respect to your
11 testimony, do you recall the Judge
12 concluding that your analysis was
13 rejected as unreliable?

14 A. I think that was a word he
15 used.

16 Q. Do you recall that he also
17 concluded by saying, in short, Mr.
18 Owsley's analysis is fundamentally flawed
19 and unpersuasive?

20 A. I can't remember his exact
21 words, but I wouldn't surprise me if he
22 had that in his statement.

23 MR. POLLACK: Nothing further,
24 your Honor.

25 THE COURT: Can I ask you if

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2 you recall what your testimony was
3 in that case on what topics?

4 THE WITNESS: Yes, I'll try to
5 be brief. Vlasic was spun out of
6 Campbell's and it was our side's
7 contention that the company was
8 largely insolvent at the time of
9 the spin. The financials were
10 inherently unreliable. The company
11 ended up on a glide path to Chapter
12 11. It ultimately was sold in
13 bankruptcy for just about what I
14 said it was worth. And, you know,
15 I did the standard analyses of
16 discounted cash flow --

17 THE COURT: I guess your
18 opinion was on the valuation of --

19 THE WITNESS: It was entirely
20 a valuation exercise.

21 THE COURT: Thank you.

22 MR. POLLACK: Nothing further,
23 Judge.

24 THE COURT: Redirect?

25 MR. SHERWOOD: Can I have five

86

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2 minutes to consult, your Honor?

3 THE COURT: Sure.

4 (A recess was taken.)

5 THE CLERK: All rise.

6 THE COURT: Please be seated.

7 Counsel?

8 MR. SHERWOOD: Your Honor, we

9 have no redirect, but we would ask

10 that the court accept TWU 3 into

11 evidence.

12 THE COURT: All right. With

13 Exhibits A and B?

14 MR. SHERWOOD: Yes, your

15 Honor.

16 THE COURT: All right, any

17 objection?

18 MR. POLLACK: Judge, we have

19 interposed objections to the
20 adequacy of foundation elements to
21 several of the opinions expressed
22 here. I'm mindful of the way in
23 which you resolved those objections
24 previously with one of the other
25 union's experts, and we're content

87

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2 to stand on the objections and let
3 you consider the opinions for the
4 weight as you deem appropriate.

5 THE COURT: All right. I
6 certainly -- I'll accept them. I
7 understood that the testimony that
8 was offered after a colloquy to hue
9 to the direct testimony that was
10 proffered, and so I'm certainly
11 going to accept that.

12 I will take your arguments as
13 to weight and sort it all out,

14 those issues another day. Thank
15 you, sir, you're excused.

16 THE WITNESS: Thank you.

17 MR. SHERWOOD: Thank you, your
18 Honor. Your Honor, I'm going to
19 excuse myself if it's okay.

20 THE COURT: All right. Fair
21 enough. Absolutely. I confess --

22 MS. LEVINE: Your Honor, from
23 the TWU we rest and cede the
24 podium.

25 THE COURT: That's what I

88

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2 thought you were going to say, but
3 I confess I lost track of the
4 number of witnesses, so I'm happy
5 to know I wasn't completely out of
6 touch.

7 All right. So where are we?

8 MR. FLICKER: Your Honor,

9 Scott Flicker for American
10 Airlines. At this point we are I
11 believe completed with the
12 responsive case of the unions. I
13 question whether the UCC at this
14 point has any responsive evidence?

15 MR. BUTLER: We have none,
16 your Honor.

17 THE COURT: All right.

18 MR. FLICKER: Given that, I
19 believe we're in the debtor's
20 rebuttal. It's very clear to me
21 given that it's only 3:15 on Monday
22 that the horse has clearly seen the
23 barn and so we're moving along
24 quite quickly. Let me tell you
25 what we have planned here.

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2 THE COURT: I did not expect
3 to finish the, to get to the

4 rebuttal case today, but that's
5 fine. I did take a brief look,
6 although not an in depth one at the
7 declarations and rebuttal binders
8 that were provided earlier today,
9 so.

10 MR. FLICKER: Our plan is as
11 follows. The debtors did file
12 three declarations and exhibits
13 today. There's a supplemental of
14 Ms. Denise Lynn, one by Mr. Keith
15 Austin and one by Denny Newgren.
16 They all share the following
17 feature, which is they're intended
18 to address information sharing
19 concerns that have been raised
20 during the unions' case that we did
21 not intend to explore in the
22 courtroom in order to be able to
23 obviously streamline the rebuttal.

24 Now obviously, if the unions
25 wish to cross examine, we can make

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2 arrangements to do that if
3 necessary.

4 THE COURT: Let me ask when
5 these were provided to the unions
6 in terms of the rebuttal
7 declarations?

8 MR. FLICKER: That would have
9 been just today, I believe this
10 morning.

11 THE COURT: So the question is
12 then how would you like to proceed?
13 I don't know if you have a
14 suggestion. I will hear from the
15 unions, but let me hear from you
16 first.

17 MR. FLICKER: So our intention
18 is to present I believe we have
19 eight witnesses who would be
20 testifying from the stand on
21 rebuttal and the declarations are
22 in addition to the testimony.

23 THE COURT: Ah, all right. I
24 knew that would be too easy. So
25 let me hear the list of eight.

91

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2 MR. FLICKER: So the batting
3 order would be we would recall Dan
4 Kasper, one of our experts first.
5 We plan to do that today. And then
6 our plan, I believe we've advised
7 the unions of this, would be to
8 call Mr. Jeff Brundage today.

9 And that would conclude the
10 rebuttal witnesses that we're
11 prepared to present live, your
12 Honor, today. And we would propose
13 to pick up tomorrow.

14 THE COURT: All right.

15 MR. FLICKER: And the order
16 that we would proceed would be to
17 start tomorrow, let me see if I can

18 do this from memory. I believe it
19 would be with Mr. Jerrold Glass,
20 recall that expert first. We have
21 Mr. Denny Newgren, Bruce Richards
22 who is a Mercer actuary. And if
23 there is time tomorrow we would
24 also call David Resnick.

25 THE COURT: And two more.

92

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2 MR. FLICKER: Two more. So
3 the two that are remaining in order
4 are Alex Dichter and Beverly
5 Goulet. We anticipate those would
6 be Wednesday.

7 THE COURT: Let me just see if
8 I understand something here. You
9 are calling Mr. Newgren. Am I
10 correct in assuming that his
11 supplemental declaration on issues
12 about information sharing is, you

13 intend to call him live for other
14 matters and that this is
15 essentially what you've provided to
16 me in the binders are essentially
17 just on information sharing. Your
18 intent is to not get into that in
19 live testimony?

20 MR. FLICKER: I believe that
21 is correct.

22 THE COURT: All right. So let
23 me hear from counsel for the as to
24 how to proceed from here.

25 MR. JAMES: Your Honor, this

93

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2 is not the lineup we were given
3 yesterday.

4 MR. FLICKER: I can explain
5 that, your Honor. Because we saw
6 the proceedings moving as quickly
7 as they did today, we obviously

8 pulled a witness into today that we
9 had intended to provide tomorrow
10 and therefore take them out of
11 order and that would be Mr.
12 Brundage.

13 MR. JAMES: We were given
14 Kasper, Glass, Mercer, Newgren,
15 Brundage and so forth. If we take
16 a little break I'm sure I can be
17 ready for Mr. Brundage after he
18 testifies on direct. As for the
19 other two people, Denise Lynn and
20 Mr. Austin, I don't believe we need
21 Mr. Austin. Have not had a chance
22 to read those declarations
23 carefully yet. We probably will
24 need Denise Lynn, but I can't say
25 that conclusively until I read it.

94

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2 THE COURT: That's fair. I

3 think for the declarations, that's
4 why I wanted to get the order in
5 terms of what's implicated in terms
6 of proceeding. But it sounds like
7 the two folks who were intended to
8 go forward today are none of these
9 folks. So you can let me know
10 tomorrow what you intend to do with
11 any declarations that you've taken
12 a look at.

13 It sounds like everybody is
14 ready to go forward with Mr.
15 Kasper. So let's do that first and
16 then we can take this witness by
17 witness.

18 MR. FLICKER: Your Honor, so
19 the debtor calls Mr. Dan Kasper.

20 THE COURT: I will say that
21 since we've been doing this and we
22 have an extensive record, I know
23 it's impossible to jump right into
24 a detailed question without some
25 warmup, but certainly I think we've

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2 discussed these issues very
3 thoroughly, so I don't need a whole
4 lot of warmup just in terms of the
5 interest of time.

6 MR. FLICKER: Yes, your Honor.
7 May I approach?

8 THE COURT: Certainly. Thank
9 you.

10 MR. FLICKER: Mr. Butler, let
11 me apologize, I have three copies
12 of my binders here and I think I've
13 given them to the three unions.
14 We're going to display I think
15 everything.

16 THE COURT: If you're going to
17 display it, you can take this back
18 and I'm happy to live with the
19 display. You can just promise to
20 get me a hard copy later on.

21 MR. FLICKER: We'll do that.

22 Your Honor, is it your practice to
23 re-swear the witness?

24 THE COURT: I think the
25 witness is still under oath so you

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2 may proceed.

3 DANIEL KASPER,
4 resumed, having been previously
5 duly sworn, was examined and
6 testified further as follows:

7 CONTINUED EXAMINATION

8 BY MR. FLICKER:

9 Q. Good afternoon, Mr. Kasper.

10 A. Good afternoon, Mr. Flicker.

11 Q. As his Honor referred to, this
12 is the rebuttal portion of the case and
13 therefore I'm going to focus my questions
14 on specific points that have been raised
15 during the unions' case and obviously if

16 you have anything to say about that,
17 please do.

18 MR. FLICKER: And your Honor,
19 if you have any questions about how
20 something that I'm getting into
21 ties with the unions's case, please
22 don't hesitate.

23 THE COURT: I will try, thank
24 you.

25 Q. Mr. Kasper, one of the union's

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2 experts, Mr. Akins, testified that
3 American's profitability gap against the
4 other major network carriers stands
5 primarily from a network disadvantage due
6 to mergers of the other major
7 competitors.

8 A. Yes, I heard that.

9 Q. Do you agree with that?

10 A. No, I don't.

11 Q. Why not?

12 A. Well, if you look at
13 American's profitability problem actually
14 predates the mergers. So if you look
15 back in time you would see that even when
16 it had the largest network, American was
17 still among the least profitable
18 airlines.

19 Q. To set our gauge here, when
20 did the mergers of the major network
21 competitors occur?

22 A. The United/Continental merger
23 occurred in 2010. The Delta/Northwest
24 merger occurred in 2008.

25 Q. Have you prepared any analysis

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2 for us of the American's profitability
3 prior to that time?

4 A. Yes, I have.

5 Q. So I'll direct you to what

6 we've marked as Exhibit 1742.

7 A. Yes.

8 Q. Please explain what this
9 shows?

10 A. Well, what this chart shows is
11 across the horizontal axis are the
12 carriers listed there and the measure
13 we're using here for size of the carrier
14 is A S Ms, which is available seat miles.
15 And the purple line that cuts through
16 from left to right is the net margin of
17 each of those carriers. On the far right
18 is American and as you can see, in 2007,
19 which is the last year before the first
20 of the mergers occurred, that is the
21 first of the Delta/Northwest and
22 United/Continental mergers occurred,
23 American had -- was the largest carrier
24 with 189 billion available seat miles,
25 but it also had the lowest net margins of

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2 all of the carriers.

3 And so you can see likewise
4 one of the smaller carriers, Northwest,
5 actually for that year had the highest
6 net margin.

7 Q. Is this year 2007 a year in
8 which American made a profit?

9 A. Yes, it is. It is one of the
10 years, few years in that period in which
11 American did make a profit.

12 Q. We'll just turn to the next
13 chart, 1743. What does that show us?

14 A. It's really the same chart
15 except the measure of system size is
16 revenues as opposed to available seat
17 miles and again, you can see American in
18 red on the right even -- it's also the
19 largest carrier in terms of revenues,
20 almost 23 billion dollars in 2007.
21 Again, the lowest in terms of net margin.

22 Q. So if American's profitability
23 gap is not solely a function of network
24 scale, mergers or revenues, what else

25 accounts for it?

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2 A. Well as I testified in my
3 direct testimony, American also has a
4 significant cost problem.

5 Q. And I think that Mr. Akins
6 also had a chart that addressed cost. He
7 showed, he compared major airline ex-fuel
8 CASM. Let's display that chart.

9 MR. FLICKER: Your Honor, for
10 the record we're display APFA
11 Exhibit 700 which is the Akins
12 declaration chart 4.

13 Q. So here's Mr. Akins's chart
14 showing ex fuel CASM for major airlines
15 from '03 to 2010 showing American in the
16 red line in the middle of the pack. Does
17 this CASM chart tell the whole story on
18 relative cost position of American versus
19 the other airlines?

20 A. No, it does not.
21 Q. Why not?
22 A. For two reasons. One if you
23 extend it out to 2011 American would
24 actually be I believe second highest.
25 But I think more significantly is the

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2 fact that this is total CASM. American's
3 problem, they have a significant labor
4 CASM problem. They're much higher in
5 terms of their labor CASM than the other
6 carriers.

7 Q. Have you actually rendered an
8 analysis of American's labor CASM
9 compared to the other?

10 A. Yes, I have.

11 Q. So I'll direct you to 1744.

12 A. Yes.

13 Q. What does this chart show?

14 A. Well, what this chart showings

15 is American's labor cost, excluding
16 maintenance, as a percentage of the, its
17 CASM excluding both maintenance and fuel
18 cost.

19 Q. Let me ask you about the
20 maintenance. I recall that Mr. Akins
21 said in his testimony that a labor CASM
22 comparison is not accurate because it
23 masked the fact that other carriers have
24 outsourced their maintenance, but you've
25 rendered a chart in which you're able to

102

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2 unmask that issue?

3 A. Yes, in fact, as I testified
4 in my direct, that indeed that I showed
5 the comparison taking out maintenance
6 because American has historically
7 provided more maintenance in-house than
8 other carriers. So if you take out
9 maintenance for American and maintenance

10 for the other carriers, then you have an
11 apples-to-apples comparison and that's
12 what I've done here using DOT form 41
13 data.

14 Q. Let me make sure we're
15 actually clear on the record about this.
16 When you take out maintenance from the
17 other carriers, are you only taking
18 maintenance out of their labor CASM or
19 are you also taking it out of their total
20 CASM?

21 A. Everywhere it shows up, out of
22 the total CASM. So this is an
23 apples-to-apples comparison.

24 Q. I see that American is the red
25 line on chart 1744. What does this show

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1
2 about the evolution of American's labor
3 CASM compared to the other majors?

4 A. What it measures, just to be

5 clear is the labor CASM as a percentage
6 of the total CASM ex-maintenance and
7 ex-fuel. And what it shows if you look
8 through 2002, you can see that American
9 was either the lowest or one of the
10 lowest carriers in terms of its
11 percentage of labor CASM, but beginning
12 in 2003 forward it has emerged as the
13 highest cost carrier in terms of labor
14 CASM as a percentage of CASM.

15 Q. Is it disadvantageous or
16 advantageous to American to have a higher
17 percentage of CASM going to labor?

18 A. It's disadvantageous.

19 Q. Why is that?

20 A. Well, if you think about what
21 airlines spend money on, basically, and I
22 prepared a pie chart in my direct
23 testimony which illustrates straits this,
24 I think it's helpful to think of sort of
25 three groups. There's fuel, there's

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2 labor, boats of those anywhere from 30 to
3 33 percent and then all other. If your
4 labor CASM is higher as American's labor
5 CASM is higher, that means they're either
6 taking not spending something in the
7 other category and that hurts American,
8 because as we discussed, American's had
9 some product issues. They've not been
10 able to invest as aggressively as their
11 more profitable competitors in proven
12 product, or if they try to keep up by
13 investing in product, that runs them
14 further in the hole in losses.

15 So having a higher labor CASM
16 is a direct disadvantage.

17 Q. So a cost problem and a labor
18 cost problem, is that your opinion?

19 A. Yes.

20 Q. Now in focusing on the revenue
21 and network scale, the unions have down
22 played the impact of LCC competition on

23 American. Is it important for American
24 to control its labor costs in light of
25 LCC competition?

105

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2 A. Well, I believe that it is. I
3 believe low cost carriers have been and
4 remain an important threat to American
5 Airlines.

6 Q. Mr. Akins didn't say this on
7 the stand, but in his declaration, the
8 cite is paragraph 15, Mr. Akins said that
9 American had put forth no evidence that
10 shows a greater level of LCC competition
11 for American compared to its network
12 competitors. So let me ask, does
13 American have a greater level of LCC
14 competition than the other network
15 carriers?

16 A. Yes, it does have somewhat
17 greater exposure than the other low cost

18 carriers and I put together an exhibit
19 that shows that.

20 Q. That's 1745 and that's the
21 next one?

22 A. Yes.

23 Q. Before looking at this, is it
24 your view that it's important for all
25 network carriers to maintain cost

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2 discipline in the face of LCC
3 competition?

4 A. Yes, it is. I had presented
5 in my direct testimony a chart which
6 showed that all legacy carriers lost
7 market share over the past decade against
8 low cost carriers, but American had
9 actually suffered an even greater loss.

10 So it's important for all
11 legacy carriers, not just American, but
12 given its cost disadvantage relative to

13 the other carriers, it's even more
14 important for American because low cost
15 carriers as the name suggests, are going
16 in to compete on the basis of lower fares
17 driven by lower costs.

18 Q. So now looking at 1745, what
19 does your analysis show about American's
20 relative exposure to LCC competition
21 compared to the other major network
22 carriers?

23 A. What I did was compare the
24 percentage of American's passengers that
25 have access to low cost carrier options

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2 when they're traveling, with other
3 carriers and what percentage of their
4 passengers have access to low cost
5 carrier options. As you can see, about
6 78 percent of American's passengers have
7 access to low cost carriers for their

8 trips.

9 That's higher than any of the
10 other carriers, significantly higher than
11 for Delta and US Airways.

12 Q. I'd like to spend a minute on
13 the, we've heard a bit about the
14 cornerstone strategy and in particular,
15 we've heard criticism that American's
16 strategy to concentrate the vast majority
17 of its operations in five hubs is unusual
18 or improper. In your view, is this
19 approach unusual among the large network
20 carriers?

21 A. No, it is not unusual and I
22 was surprised to hear that criticism. In
23 fact, one of the perhaps the single
24 greatest advantage that the legacy
25 carriers have is that they have hubs and

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2 hubs permit them to serve markets by

3 concentrating traffic flows through a hub
4 to serve markets that low cost carriers
5 can't afford to serve because there's not
6 enough traffic there.

7 So one of the things that all
8 of these carriers that have gone through,
9 the other legacy carriers, all of them
10 that have gone through bankruptcy now
11 have done is to concentrate their service
12 around their hubs.

13 Q. And have you prepared a chart
14 to show that?

15 A. Yes, I have.

16 Q. Let's look at 1746. Briefly,
17 what's the punch line here?

18 A. The punch line here is that
19 this clarity measures the proportion of
20 each carriers's domestic available seat
21 miles that are flown to and from each
22 carrier's hub. As you can see, American
23 now is the red line, that the other
24 carriers are shown in different colors
25 there, American has definitely increased,

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2 but it's right in the range. All of them
3 in the 90 plus percent range of ASMs
4 flown to or from their hubs.

5 Q. We've also heard some
6 criticism from the unions's witnesses
7 about the growth in American's business
8 plan, including the growth in regional
9 flying. Now, how does American's volume
10 of regional flying stack up against the
11 other major network carriers? I will
12 refer you to a chart here, 1747. You
13 prepared this chart?

14 A. Yes.

15 Q. So how does American's volume
16 of regional flying stack up against the
17 other major network carriers?

18 A. Well, this chart looks at the
19 percentage of regional available seat
20 miles divided by the total available seat
21 miles of each of the four legacy network

22 carriers. And as you can see, American
23 is only slightly more than half the US
24 Airways share and substantially lower
25 than both Delta and United/Continental in

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2 terms of its percentage of flying done by
3 regional jets.

4 And this is very consistent
5 with the exhibits that I put in in my
6 direct testimony which show that American
7 had a substantial deficit vis-a-vis other
8 legacy carriers in terms of regional
9 flying, particularly with regard to the
10 large RJs.

11 Q. Well, the American has the
12 ability to fly at its regional carriers
13 smaller RJs, isn't that right?

14 A. It does, 50 seaters.

15 Q. So why couldn't American
16 simply make up this gap by flying smaller

17 planes?

18 A. There are a couple of problems
19 now with 50 seaters, one, with very high
20 fuel prices and this I think has run
21 throughout the testimony, witnesses have
22 talked about this in the case, high fuel
23 prices render many of the routes that had
24 previously been served by 50 seat RJs
25 uneconomic. You can't afford to fly

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2 given the fuel economics.

3 The second factor is that
4 unlike large RJs, you can configure the
5 -- which you can configure with first
6 class or premium seating, the 50 seaters
7 don't -- that makes no economic sense at
8 all and so you deprive yourself of added
9 revenue that you could get by flying the
10 large RJ in the appropriate markets.

11 Q. So in light of that fact and

12 in light of this deficit showed in your
13 chart, is the large RJ regional growth in
14 American's business plan unreasonable?

15 A. No, I don't believe it is. As
16 I testified on direct, I think they need
17 that kind of flexibility so they can
18 compete with the other carriers which
19 have much less restrictive scope
20 provisions dealing with large RJs.

21 Q. We heard, and I don't want to
22 use any actual numbers here, but we heard
23 a lot of criticism about the magnitude of
24 growth that is built into the American
25 six year business plan. And I just

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2 wanted to ask you to talk about the
3 magnitude a little bit. Roughly what
4 level of growth in regional flying would
5 American have to plan in order to reach
6 the level of a US Airways, the next

7 smallest carrier in the network?

8 A. I think US Airways is probably
9 a good comparison because as your
10 question suggests, it is the next
11 smallest regional carrier, the next
12 smallest network carrier and those
13 carriers tends to need, if they're
14 network footprints is smaller, they have
15 greater need to fly regional jets.

16 If American were to increase
17 so that its percentage of ASMs flown in
18 regional service turned out to be about
19 the same as US Airways, that would
20 represent roughly a 90 percent increase
21 in American's regional ASMs.

22 Q. So a 90 percent increase in
23 American's regional ASMs based on this
24 base theory?

25 A. On ASMs, that is correct.

2 Q. Is not going to blow well past
3 any of the other carriers on this chart,
4 is it?

5 A. No.

6 Q. Now, the unions have contended
7 that, and we've heard again today that a
8 stand-alone American is not viable. Do
9 you agree with that?

10 A. I don't.

11 Q. Why not?

12 A. Well, I've been involved in
13 all of the other major airline
14 restructures in Chapter 11, they've all
15 gone through a similar pattern that the
16 carriers come up with the business plan,
17 they -- one of the key features of all of
18 their business plan is a substantial, in
19 addition to shedding other debts and
20 restructuring, there has been a very
21 substantial reduction in labor costs and
22 specifically labor cost as measured by
23 labor CASM.

24 When that has occurred, even

25 carriers like US Airways which was

114

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2 literally within a week or days of

3 running out of cash in its

4 reorganization, was able with the

5 substantially restructured labor costs to

6 emerge to become a profitable carrier.

7 And I see no reason why American, which

8 has more fundamental strengths, and a

9 strong reputation, there some residual, I

10 think goodwill based on its long history

11 of service and brand recognition, I see

12 no reason why American cannot do what

13 United, Continental, Northwest and Delta

14 and US Airways have done previously, and

15 Continental from earlier.

16 Q. And while some of those

17 carriers emerged and then consolidated,

18 in today's current environment are there

19 carriers that have taken the position

20 that they can remain viable as
21 stand-alone even though smaller than the
22 merged carrier?

23 A. Yes, in fact, Doug Parker
24 who's the chairman of US Airways has made
25 it quite clear as recently as last month,

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2 that US Airways is a viable stand-alone
3 carrier, does not need to merge in order
4 to remain viable and attributes their
5 ability to do so even though he had what
6 he described as an inferior route
7 structure, that they can make up for that
8 with lower cost, and looking at US
9 Airways' cost you know one significant
10 source of their cost savings is the fact
11 that they have lower labor costs.

12 Q. Thank you. I'd like to
13 leverage a little bit this perspective
14 you have of being in other airline 1113

15 cases. The unions have contended that in
16 this case, in this proceeding American is
17 not seeking competitive labor cost
18 reductions. And I want to ask you if you
19 have analyzed the labor cost reductions
20 obtained by other airlines in their 1113
21 cases?

22 A. Yes, I have.

23 Q. And just generally what does
24 that analysis show?

25 A. Well, basically, what that

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2 analysis shows is that each of the
3 carriers in the year prior to filing for
4 -- its filing for Chapter 11 protection
5 had labor CASM that was either the
6 highest or the second highest in the
7 industry. And that on emerging, that
8 labor CASM turned out to be lower, at the
9 bottom of the pile, if you will, of all

10 the other carriers whose labor costs
11 they're compared to when they filed for
12 bankruptcy.

13 So in other words, they
14 targeted moving from the top of the heap
15 in terms of unit labor costs to somewhere
16 at or near the bottom as a way to restore
17 financial viability.

18 Q. Have you prepared some charts
19 to walk us through those?

20 A. Yes, I have.

21 Q. Let me direct you to 1748 and
22 let me ask you what this chart -- first
23 of all, what this chart shows and how you
24 put it together?

25 A. Okay, well what this chart is

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2 based on USD O T form 41 data, which is
3 again the standard industry source and
4 what it does is compare the labor costs

5 per available seat mile for all of the
6 carriers shown along the horizontal axis.
7 For the carrier that each slide focuses
8 on in the first slide, 1748, US Airways,
9 it shows two figures. On the left the
10 black box shows what US Airways' unit
11 labor costs were in the year before it
12 filed in this case for its first Chapter
13 11. And that was 5.26 cents per
14 available seat mile.

15 And that compares to the other
16 figures shown for these carriers, the
17 other carriers are all shown for that
18 same year, year ending 2001, quarter 2.
19 On the far right is shown US Airways'
20 unit labor cost for the year following
21 its emergence from bankruptcy. So in
22 effect this is its target unit labor
23 cost. And as you can see, this chart
24 shows clearly it went from being the
25 highest unit labor cost, at least

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2 prospectively, projecting itself into the
3 lowest unit labor cost carrier.

4 Q. What was the percentage
5 reduction that it targeted?

6 A. It was about 42 percent shown
7 across the top of the bar chart.

8 Q. Now you prepared a second
9 charts on US Airways immediately after
10 which is 1749.

11 A. Correct.

12 Q. Why do you show two? I see
13 the first one is pre-filing comparison,
14 the second one is post-emergence
15 comparison. What's the difference?

16 A. The set up of the charts is
17 the same. US Airways on the left,
18 compared to carriers on the right, US
19 Airways pre-bankruptcy in black bar, US
20 Airways post-bankruptcy in the white bar.

21 But remember that in the time
22 from the -- when US Airways filed its
23 first Chapter 11 till it merged, other

24 things were going on in the industry,
25 other carriers in fact had filed for

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2 bankruptcy, several carriers under
3 bankruptcy protection, Continental had
4 undergone a negotiated wage, negotiated
5 wage reductions.

6 So what this chart shows for
7 the other carriers to the right of the
8 black bar for US Airways, these carriers
9 are also shown on this slide for the year
10 ending 2006 quarter 3, which is the same
11 year that 3.04 cent bar for US Airways
12 is. So what this chart shows is
13 basically where they were projected and
14 where they ended up and then it shows
15 that they were nosed out by Continental
16 which has a slightly lower unit labor
17 cost because Continental was also
18 restructuring, trying to restructure its

19 costs at this point in time.

20 Q. So pre-filing comparison is a
21 snapshot at the time of filing and a
22 target for where they wanted to ends up,
23 1749 is?

24 A. Post emergence comparison
25 which shows where they actually ended up

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2 relative to the other carriers in the
3 year following US Airways's emergence
4 from bankruptcy.

5 Q. Did you perform a similar
6 analysis for Delta?

7 A. I did, I did for all the under
8 carriers that have undergone Chapter 11.
9 Delta I believe is the next.

10 Q. Now we understands how the
11 charts work, maybe we can speed this up.
12 1750, what does that show?

13 A. That shows that when Delta

14 went in it had a 3.88 cent labor CASM, it
15 was projecting just slightly below, to
16 emerge slightly below 3 cents and the
17 other carriers you can see Delta was
18 above all of the other carriers except
19 Northwest.

20 Q. So I'm going to give you a
21 rubric here we can follow. So Delta with
22 the second highest when it went in,
23 targeted 23 percent reduction, targeted
24 itself to be at the bottom?

25 A. Correct.

121

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2 Q. And in 1751 you're showing
3 what happened at post-emergence?

4 A. Correct. 1751 shows what
5 happened all the other -- basically what
6 happened to all the other carriers during
7 the period, the same period when Delta
8 was in bankruptcy in the year following.

9 As you can see again, Delta ended up with
10 slightly under 3 cent CASM, labor CASM,
11 again, Continental which had done its own
12 voluntary renegotiation, slightly,
13 slightly lower CASM. But again, Delta
14 ended up near the bottom of the pack.

15 Q. Let's look at 1752, which is
16 Northwest. Did Northwest target itself
17 at the bottom?

18 A. It did.

19 Q. And what's the reduction that
20 you calculated there?

21 A. Almost 26 percent.

22 Q. And where did it ends up?

23 A. It ended up, in you turn to --

24 Q. Hold it. We've got to make
25 sure the court reporter can follow us.

122

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2 A. I'm sorry.

3 Q. Where did Northwest ends up in

4 Exhibit 1753?

5 A. In 1753 Northwest ended up a
6 little over three cents which put it
7 slightly above Delta and Continental.

8 Q. And then for United, why don't
9 you turn to 1754, it shows where United
10 was, where it targeted itself and where
11 it ended?

12 A. Correct. As you can see on
13 this one, and your Honor, I would point
14 out one slight difference in this chart,
15 the base year that I'm using for United
16 here is the year ending second quarter of
17 2001. United actually filed in 2002 but
18 because of the effects of 9/11 starting
19 in September it just, the whole
20 industry's numbers went kind of screwy
21 for awhile. So the base period pre-9/11
22 was used. And basically what the chart
23 shows the same thing, United was at that
24 point second highest in terms of the unit
25 labor cost and therefore that base year

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2 period projecting itself to come in with
3 the lowest unit labor cost and the
4 reduction of about 30 percent.

5 Q. Okay. And then in 1755 how
6 did they do?

7 A. In 1755, as you can see by
8 that point, all of the other carriers had
9 gone through bankruptcy, or in bankruptcy
10 as well, Northwest, Continental, US
11 Airways I believe had emerged at that
12 point with lower cost structures, so
13 United ended up with a 30 percent
14 reduction, but it was above, above the
15 other carriers on the right.

16 Q. Have you done a similar
17 analysis for American based on its labor
18 proposals here?

19 A. Yes, I have.

20 Q. Now, because where American is
21 going to end up would be based on

22 confidential information, we're going to
23 break this into two and I haven't put it
24 in the notebook, I'll hands it out. I
25 have two exhibits to add here, 1756,

124

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2 which is the current snapshot and of
3 course that's not public, is it -- I mean
4 that's not confidential?

5 A. That's not confidential,
6 that's correct.

7 Q. So we'll be able to display
8 that. I'm going to then I'm going to
9 show you 1757 and I'll ask not to display
10 that and not refer to numbers when we
11 goat that, okay?

12 A. Okay.

13 MR. FLICKER: Your Honor, may
14 I approach again?

15 THE COURT: Yes, please.

16 MR. FLICKER: I have an extra

17 here.

18 Q. We can go ahead and display
19 1756. Let's start with where is American
20 now? This is the before picture, what
21 does this show?

22 A. What this shows is that
23 American's labor CASM, basically drawn
24 from the same data used in the previous
25 exhibit in my rebuttal is the highest

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2 labor cost per ASM, four and a quarter
3 cents.

4 Q. And we're not going to display
5 the after. Let me give one to his Honor.

6 THE COURT: Thank you.

7 Q. Now, Mr. Kasper, what does the
8 American Exhibit 1757, the projected
9 labor CASM number show for American,
10 without using percentage reduction or the
11 actual number?

12 A. Okay. Well, what it shows is
13 American, A, is seeking reduction; B,
14 that the percentage reduction is
15 substantially less than the percentage
16 reduction sought by the other carriers
17 that filed Chapter 11. And that as a
18 result, American's unit labor cost is not
19 targeted to end up at or near the bottom
20 of the pack of carriers.

21 Q. Is this a surprising result
22 given the large percentage reductions of
23 the other airlines and the fact that they
24 moved to last or near last on most of
25 those charts?

126

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2 A. Yes, it is surprising. A
3 pattern that the other carriers have
4 demonstrated worked successfully is to
5 get your unit costs down and your unit
6 labor costs in particular down as a way

7 to try to get back on your financial
8 feet.

9 Q. We've heard the unions talk in
10 this case about the notion of
11 convergence, that is that the other
12 carriers say labor costs will increase
13 over time. If that occurs, how would
14 that position American's labor cost
15 reductions compared to the reductions
16 that were achieved by other carriers in
17 their 1113s?

18 A. Well, without -- it's hard,
19 you really can't predict the future, but
20 the thrust of that argument seems to be
21 that these other labor cost figures that
22 are in here now for the carriers other
23 than American would shift upward, which
24 would have the effect of moving American
25 farther to the right, that is closer to

2 the lowest cost of the low cost carriers.
3 So it would shift them, the blue bar
4 would presumably go to the right
5 somewhere. Where we don't know because
6 we don't know where the other carriers'
7 reductions are like or increases are
8 likely to be or are.

9 Q. If that occurs, would that
10 place American pretty much in the same
11 position as other carriers were in their
12 1113s?

13 A. I think it would put them
14 closer to that, yes.

15 MR. FLICKER: At this point I
16 think I'll pass the witness.

17 THE COURT: All right. Do you
18 want to take a short break?

19 MS. LEVINE: Yes, please.

20 (A recess was taken.)

21 THE CLERK: All rise.

22 THE COURT: Please be seated.

23 MR. FLICKER: Your Honor,
24 we've gotten a binder for you of
25 the exhibits that we just used

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2 except the two that we handed up.

3 THE COURT: Thank you. All

4 right. Thank you very much.

5 Proceed.

6 MS. PARCELLI: Good afternoon,

7 your Honor, Carmen par, APFA.

8 CROSS EXAMINATION

9 BY MS. PARCELLI:

10 Q. Now, Mr. Kasper, you were head

11 of the transportation division for

12 Compass Lexecon; is that correct?

13 A. No, I'm a senior consultants

14 there. I've given up all administrative

15 responsibilities, thankfully.

16 Q. Probably a wise choice, yes.

17 Has Compass Lexecon be retained to do

18 work for US Airways related to a possible

19 merger with American?

20 A. That's possible. We have a

21 very ferocious internal Chinese wall
22 system, so if they have I don't know
23 about it, but it wouldn't surprise me.

24 Q. Do you recall in your
25 deposition that was taken, which seems

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2 like a long time ago, on April 19th, do
3 you remember that, sir?

4 A. I agree, it seems like a long
5 time ago.

6 Q. I'd like to read you a portion
7 of that:

8 "Q. Would you agree that
9 American" --

10 THE COURT: Counsel, do you
11 have a question. Normally you use
12 depositions for impeachment.

13 MS. PARCELLI: I was going to
14 ask if he still agrees.

15 THE COURT: Just say do you

16 still agree, blah, blah, blah,
17 blah. If he says no, then you
18 impeach him.

19 MS. PARCELLI: Okay.

20 Q. So would you agree that
21 American has fall fourth largely because
22 of mergers behind United/Continental and
23 Delta/Northwest?

24 A. In terms of the size of the
25 network, yes.

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2 Q. Have those two combinations,
3 United/Continental and Delta/Northwest,
4 have they gained market share beyond what
5 they would have otherwise simply from
6 their combinations and size as a result
7 of the mergers?

8 A. Well, that's a little hard to
9 say because it's asking, sort of
10 comparing a hypothetical but-for world.

11 I would guess that they probably have
12 gained some, but I'm not sure.

13 Q. Okay. But wouldn't it be true
14 that the combining entities is not just
15 simply adding up what they had before,
16 but there are certain synergies that go
17 with those mergers; is that correct?

18 A. I think what I testified to,
19 and would testify again, is there are
20 both synergies and dyssynergies that go
21 with mergers.

22 Q. But there are synergies and
23 the synergies of those two transactions
24 -- the synergies of those two
25 transactions have outweighed the

131

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2 dyssynergies; isn't that true?

3 A. Based on the improved
4 performance of those two carriers I would
5 say yes.

6 Q. And in addition to those
7 synergies, there's also benefits in terms
8 of coordinating scheduling; isn't that
9 true?

10 A. Well, I think that would be
11 one of the sources of the synergies.

12 Q. Okay. And so you believe that
13 they have been able to grow faster than
14 they would have otherwise absent their
15 merger transactions; isn't that true?

16 A. I think they would, they would
17 have financially performed better. In
18 some cases that might be growing faster.
19 In other cases that might be shrinking
20 less or taking other steps to improve
21 profitability. So it's not always a
22 growth story.

23 Q. Okay. But would you agree
24 that they have been able to grow faster
25 than they would have been able to do

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2 otherwise had they been maintained as
3 separate entities? Do you agree with
4 that statement?

5 A. I think the answer is probably
6 yes in their case.

7 Q. Now, the new charts that
8 you've introduced looking, for example,
9 at what's been marked as American Exhibit
10 1744, just as an example here.

11 A. Yes.

12 Q. So this is a labor CASM
13 analysis; is that correct?

14 A. It is a labor cost analysis
15 based on a CASM, that is correct.

16 Q. Now, your charts use a labor
17 CASM analysis. Are you aware that this
18 is a different analysis than American has
19 used over the years itself to evaluate
20 its labor costs?

21 A. It wouldn't surprise me.
22 Carriers frequently use different
23 metrics.

24 Q. And are you aware that in its
25 June 2010 10-Q filing American Airlines

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1
2 relied on a different labor cost analysis
3 and in that 10-Q filing informed
4 investors that it had a 600 million labor
5 gap? Are you aware of that?

6 A. I'm aware that American in not
7 only that one, but typically in its 10-Qs
8 and 10-Ks does include a labor cost CASM
9 measure, typically ex fuel CASM.

10 Q. But are you aware of what they
11 said in the June 2010 when they analyzed
12 their lash costs and said they had a 600
13 million labor cost gap, are you aware of
14 that analysis?

15 MR. FLICKER: Objection. If
16 counsel is going to characterize
17 the statement in the 10-K then she
18 should put it in front of the

19 witness.

20 THE COURT: Well, it's cross.

21 I'll give her some latitude. If he

22 knows, he knows, if he doesn't

23 know, he doesn't know I expect a

24 document will be handed to him.

25 Q. It's APFA Exhibit 803 at page

134

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2 12 and I did not bring multiple copies

3 with me this morning, I'm afraid.

4 THE COURT: I'm allowing the

5 question.

6 MS. PARCELLI: It is in the

7 record.

8 THE COURT: If you can ask it

9 and he can answer based on memory,

10 he can answer.

11 Q. Are you aware of that?

12 A. I'm sorry, what's the question

13 again?

14 Q. The question again is, are you
15 aware that in their June 2010 10-Q filing
16 American Airlines said, indicated it had
17 a 600 million dollar cost gap, are you
18 aware of that?

19 A. I'm aware that they used that
20 figure, yes.

21 Q. And that figure was not based
22 on a labor CASM analysis as you've
23 prepared?

24 A. That I don't know.

25 Q. And again, just looking at

135

1
2 this new exhibit 1744 as an example. So
3 this is based on DOT form 41 data,
4 correct?

5 A. Correct.

6 Q. Now you're aware, are you not,
7 Mr. Kasper, that nonpublic data is
8 available to airlines regarding

9 competitors' labor costs through their
10 trade association, correct?

11 A. I'm aware some such
12 information is available, yes.

13 Q. Okay, but you haven't used any
14 of that in your analysis, have you?

15 A. I have relied only on publicly
16 available data.

17 MS. PARCELLI: Does Mr. Kasper
18 per still have his original
19 declaration?

20 MR. FLICKER: I don't believe
21 so.

22 MS. PARCELLI: You don't
23 believe so.

24 THE WITNESS: I don't.

25 Q. You don't. Well, I think

1
2 you're recollect this if I ask. You have
3 several charts that appear in your

4 original declaration submitted in this
5 case that contain economic analysis that
6 is done on a stage length adjusted basis,
7 do you not?

8 A. I do.

9 Q. And several, I mean many, many
10 of the charts are done on a stage length
11 adjusted basis; isn't that fair to say?

12 A. Correct.

13 Q. Now, again, talking as an
14 example about Exhibit 1744, the labor
15 CASM analysis, that is not done on a
16 stage length adjusted basis, is it, Mr.
17 Kasper?

18 A. That is correct.

19 Q. And just perhaps it might be
20 helpful to once again give a brief
21 explanation of what stage length
22 adjusting is?

23 A. Stage length adjust
24 advertising a method, one method that's
25 used to compare airline costs, typically

1
2 in my experience not labor CASM, but
3 certainly overall CASM to reflect the
4 fact that flights operate at different
5 average stage lengths, have different
6 cost characteristics and so to put them
7 all on the same footing, it is common to
8 do stage length adjusting of CASM costs.

9 Q. But you have stage length
10 adjusted labor costs in the past, have
11 you not?

12 A. It's possible.

13 Q. And that would change the
14 values that appear here, would it not?

15 A. Stage length adjusting would
16 change some of the values.

17 Q. So the analysis that you've
18 presented here, it stops at third quarter
19 of 2011, correct?

20 A. Right. Which at the time this
21 chart was prepared was the last year end,
22 fiscal year ended third quarter which was

23 the last full year of data that was
24 available from the Department of
25 Transportation.

138

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2 Q. So it of course doesn't take
3 into account new agreements that may be
4 reached recently or in the process of
5 being reached at other carriers with
6 their employee groups, right?

7 A. That is correct. Anything --
8 any changes that have occurred after that
9 period obviously would not be reflected.

10 Q. But you are aware that the
11 United flight attendants not long ago,
12 just a couple of months, reached a new
13 flight attendant agreement, correct?

14 A. I'm aware of that.

15 Q. And you're aware that it
16 contains increases for those flight
17 attendants, correct?

18 A. That's my understanding.

19 Q. And that it contains such
20 things as an early out for those flight
21 attendants with a 60,000 dollar payout
22 incentive; is that correct?

23 A. I don't recall that
24 specifically, but that's possible.

25 Q. And you're aware that US

139

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2 Airways flight attendants recently
3 reached a tentative agreement with that
4 carrier, correct?

5 A. I am.

6 Q. And that it did not ratify,
7 right?

8 A. I'm aware of that also.

9 Q. But the general expectation is
10 that the wages and compensation that's
11 ultimately settled upon would be more
12 than the failed tentative agreement,

13 correct?

14 A. Are you asking me that a new
15 agreement might result in higher -- well,
16 I would assume it would result in
17 changes, some of which might increase
18 compensation, others might adjust the
19 work rules to give the productivity that
20 management seeks.

21 Q. Okay. Are you aware that
22 Delta has scheduled flight attendant
23 increases for later this year?

24 A. Yes.

25 Q. And are you aware that Delta's

140

1
2 pilots just announced a new agreement
3 that they've reached?

4 A. So I heard.

5 Q. Yes, and apparently wage
6 increases in somewhere of the order of 19
7 percent over like a three and a half year

8 term, does that sound like what you've
9 heard?

10 A. I haven't -- I'm anxiously
11 awaiting the summary of the agreement. I
12 haven't actually seen what it would
13 include.

14 Q. Now again turning to your
15 labor CASM analysis, do you know, does
16 that analysis have any connection at all
17 with American's section 1113 ask to its
18 labor unions?

19 A. Does my labor CASM analysis
20 have any connection to American's ask?

21 Q. That you know of?

22 A. I'm not aware that American
23 used my analysis to shape its labor cost
24 ask.

25 Q. Okay. Turning to your new

3 A. Yes.

4 Q. So this chart is intended to
5 discuss American's exposure to the low
6 cost carriers, correct?

7 A. Relative to other network
8 carriers, yes.

9 Q. And you show them as being
10 slightly higher than the next bar graph,
11 United/Continental, correct?

12 A. Correct.

13 Q. And is this exposure that
14 American has according to your chart, is
15 that a function of where the cornerstones
16 are located?

17 A. It's -- well, it reflects
18 where American is operating and where the
19 low cost carriers are operating. So I
20 suppose to that extent it reflects
21 existing route structures.

22 Q. Now looking as your new chart,
23 1747?

24 A. Yes.

25 Q. So this discusses American's

1
2 current regional ASMs, the percentage the
3 total ASMs as compared to their
4 competitors, correct?

5 A. Yes, that's correct.

6 Q. Now -- well let me back up for
7 a second. When you were here in court
8 with us a couple of weeks ago now, I
9 asked you about your knowledge of the
10 business plan model. Do you recall that?

11 A. Correct.

12 Q. Right. And you testified at
13 that time that you had not actually seen
14 the business plan model itself, just a
15 high level slide deck summary of the
16 business plan; is that correct?

17 A. Correct.

18 Q. Okay. Do you know anything
19 about how the business model plans work
20 in terms of obtaining regional flying,

21 the specifics of it?

22 A. Other than the fact that the
23 plan itself as I understand it,
24 contemplates the expanded use of large
25 regional jets, beyond that, no, I've not

143

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2 looked specifically at what routes they
3 would fly them on.

4 Q. And you don't know any
5 specific details about where it is that
6 they intend to obtain that regional
7 flying, what carriers they may contract
8 with to get that; is that correct?

9 A. Well, I know the carriers that
10 generally speaking that have the
11 equipment, but I don't know what -- where
12 American, if or when -- where American
13 plans to contract with those carriers.

14 Q. My question was about their
15 business plan, not what you may know from

16 your general industry knowledge.

17 Do you know when, what points
18 in time American is targeting in its
19 business plan to expand regional flying?

20 Do you have any awareness of that?

21 A. I don't recall. I may have
22 known at one point, but I don't recall
23 specifically what that -- when that is.

24 Q. So you have not actually
25 studied the revenue model that's part of

144

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2 American's business plan, correct?

3 A. Correct.

4 Q. And you haven't looked at the
5 fleet plan, have you?

6 A. Beyond that --

7 Q. That's part of the model?

8 A. Beyond the numbers that I've
9 seen reported elsewhere, not in the plan,
10 no.

11 Q. And you haven't studied the
12 projections for growth that appear in the
13 business plan at the macro market level,
14 have you?

15 A. No.

16 Q. And you haven't evaluated the
17 business plans in terms of testing any of
18 its underlying assumptions, have you?

19 A. That is correct.

20 Q. But up said earlier on your
21 direct testimony today that you think
22 that a stand-alone plan is viable; is
23 that fair to say?

24 A. It is.

25 Q. But were you talking about

145

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2 this business plan in particular or just
3 that you can conceive that there might be
4 a stand-alone plan that would be viable?

5 A. Well, I was talking in both

6 senses. As I testified, I looked at the
7 overview of the business plan laid out in
8 the slide presentations. I believe it
9 addressed the fundamental problems that
10 American has in terms of its cost, its
11 labor cost, the need for scope relief, to
12 use large RJs, to expand code sharing, to
13 increase the footprint of the network.

14 So I believe that they are
15 addressing the problems that need to be
16 addressed. And that I see no reason why
17 American, which has the fundamental
18 strengths of some of the other carriers
19 entering Chapter 11 did not have, I don't
20 see any reason why it would be unable to
21 do what other carriers, including those
22 less well situated, have done
23 successfully to date.

24 Q. But correct me if I'm wrong,
25 sir, it sounds like what you're saying is

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2 that from your very -- I believe on
3 direct you called it your 3,000 mile view
4 of the business plan; do you recall that?

5 A. I believe I said --

6 Q. 300,000.

7 A. No.

8 Q. 30,000, 30,000, that's what
9 you said?

10 A. It was 30 thought feet which
11 is about six miles.

12 Q. All right, fair enough. My
13 math skills --

14 THE COURT: Six mile view.

15 Q. Okay, the six mile view, I'll
16 go with that. Now I forgot my question.
17 So is it fair to enough to say from your
18 six mile view about this business plan
19 that you felt like it had perhaps
20 appropriately diagnosed what you saw as
21 American's competitive disadvantages; is
22 that correct?

23 A. I would agree with that.

24 Q. But you don't know anything,

25 Mr. Kasper, do you, about whether the

147

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2 business plan model itself effective

3 addresses those particular problems?

4 A. Well, I certainly believe that

5 using large RJs, for example, is an

6 effective way to address the shortcomings

7 that the lack of those aircraft provide.

8 I believe that expanding code

9 sharing is an effective way to expand the

10 network which is a problem.

11 And I believe lowering costs,

12 including labor cost, is an essential

13 element of the plan, all of which are

14 done by the plan.

15 As to how specifically that is

16 done, I have not looked at those

17 mechanics.

18 Q. And wouldn't it matter greatly

19 the timing when these things were done in

20 order to be achieved effectively and the
21 underlying assumptions about what kind of
22 revenue they may deal with, wouldn't you
23 agree with that, Mr. Kasper?

24 MR. FLICKER: Objection. I
25 understand it's cross, but it's

148

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2 compound.

3 THE COURT: I don't think it
4 calls for confidential information,
5 I'll allow it.

6 A. I'm sorry, your question is
7 wouldn't I?

8 Q. That's all right, I'll
9 withdraw it.

10 CROSS EXAMINATION

11 BY MS. LEVINE:

12 Q. Mr. Kasper, Sharon Levine for
13 the TWU. In the charts that we've been
14 discussing this afternoon, do you take

15 into account fleet age?

16 A. Do these charts take into
17 account fleet age?

18 Q. Yes.

19 A. To the extent that -- well,
20 we'd probably have to look at each
21 exhibit, but to the extent, for example,
22 on cost charts, whatever costs were
23 involved in servicing the fleet, if we
24 were including maintenance, for example,
25 would be included. If older aircraft

149

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2 would be more expensive to maintain that
3 would presumably show up. I think most
4 of these charts in my cost charts have
5 used ex-maintenance, so all those costs
6 are taken out.

7 Q. With regard to the CASM
8 analysis from the form 41s, isn't it true
9 that they actually don't take into

10 account fleet age?

11 A. Costs are the costs, that's
12 correct. Whatever costs are that's what
13 form 41 reports.

14 Q. And they don't take into
15 account fleet complexity?

16 A. I think that's -- I wouldn't
17 put it that way. The costs that are
18 reported are the costs that are reported.
19 So if somebody has an older fleet and
20 those costs, they report those costs,
21 they are reflected in the form 41 costs.

22 Q. Are you adjusting for the age
23 of the fleet in your analysis on these
24 charts?

25 A. No, I'm taking the age,

150

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2 whatever they filed with the DOT is what
3 your using.

4 Q. So the conclusions that you

5 draw with regard to where American is now
6 and where American's going to be
7 afterwards, does that take into account
8 the new fleet configuration American is
9 planning?

10 A. No. I'm not making any
11 forward projections here on costs, so it
12 doesn't take that into account.

13 Q. Well I'm referring to Exhibit
14 1757, where you're talking about
15 American's labor CASM target.

16 A. 1750 -- oh, sorry, wrong
17 chart.

18 Q. It's confidential, so.

19 A. Right. This number that I'm
20 using for the American plan, labor CASM
21 reflects the -- what is shown in
22 American's plan. So to the extent that
23 American has changed the fleet
24 composition, it might --

25 Q. Well, is it your understanding

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2 that this reflects a change in the fleet
3 composition or does this not reflect a
4 change. This is your chart, correct?

5 A. That is correct.

6 Q. Is it your understanding that
7 this chart reflects a change in the fleet
8 composition or does not reflect a change
9 in the fleet composition?

10 A. I believe it would include
11 some changes in the fleet composition.
12 If you look at the notes it says
13 "American plan represents American
14 average for the period 2012 to 2017 under
15 the business plan model." So this is
16 what American anticipates spending on a
17 per unit CASM basis over that five year
18 period.

19 Q. But this is not your analysis,
20 this is just what you've been given by
21 American Airlines?

22 A. No, that is not accurate. The

23 only number in here provided by American
24 Airlines is the plan number. The rest of
25 these numbers are my calculations from

152

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2 DOT form 41 data.

3 Q. So then I'll go back to that
4 again. Does form 41 data take into
5 account fleet aging?

6 A. It does.

7 Q. Does it take into account
8 fleet complexity?

9 A. To the extent that fleet
10 complexity affects costs, yes, it does.

11 Q. Does it take into account
12 vendor costs for labor?

13 A. Vendor cost for labor? If --
14 this is -- we're looking, notice chart
15 looks at labor CASM.

16 Q. Does it take into account, do
17 form 41s take into account vendor costs

18 for labor?

19 A. Form 41s include vendor cost
20 for labor, but it would not show up in
21 the labor CASM line.

22 Q. So, for example, the labor
23 CASM charts that we've been talking about
24 this afternoon do not reflect, for
25 example, the cost that American would

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2 have to pay for the labor it is buying
3 through outsourcing?

4 A. None of the -- all of the
5 comparisons that I've been doing have
6 excluded maintenance. So that labor,
7 maintenance labor is excluded. All other
8 labor is obviously in it.

9 Q. So that was where I was going.
10 So none of these charts reflect any of
11 the M&R labor costs; is that correct?

12 A. No, I think that's not

13 accurate.

14 Q. Well one of the things we're
15 talking about here is substantial amount
16 of outsourcing for M&R and for stores,
17 correct?

18 A. On a going forward basis, yes,
19 that's my understanding.

20 Q. Okay. Do these charts reflect
21 the cost that these airlines would have
22 to pay for that outsourced labor?

23 A. Do you want to specify which
24 chart? You keep saying these charts.

25 Q. CASM, does the CASM reflect

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2 the cost?

3 A. There are probably half a
4 dozen charts with CASM.

5 Q. Let's start with 1758.

6 A. Yes, I have that.

7 Q. Does that reflect the cost

8 paid by these carriers for outsourced
9 labor?

10 A. If it's reported in the labor
11 line of CASM, it's for the labor line in
12 DOT form 41 reports, yes.

13 Q. What do you mean by that? Why
14 don't you explain that to me?

15 A. Well, there are some labor is
16 done on a contract basis, it's reported
17 in a different line.

18 Q. Let's be clear. There's some
19 labor costs that American will pay for
20 in-house, hourly wage employees under
21 their CBAs, and there's other labor costs
22 that American wants to pay through
23 outsourced vendors, correct?

24 A. Correct.

25 Q. Okay.

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2 A. On a going forward basis.

3 Q. On a going forward basis.
4 Isn't it true that the CASM analysis here
5 does not take into account the outsourced
6 labor costs?

7 A. In this chart it certainly
8 doesn't. This is a historic chart. It
9 doesn't -- it's not looking forward,
10 whether they plan to outsource.

11 Q. Isn't it true that it doesn't
12 take into account outsourced labor costs
13 period, not looking forward, in other
14 words, it's the internal cost for air
15 seat mile, it's not the vendor cost for
16 labor?

17 A. In this, this chart reflects,
18 this chart reflects the historic costs
19 that American has paid for its own labor.
20 There is a separate line that shows up
21 for contract labor which is in
22 maintenance in particular, which is why
23 the analysis typically, frequently
24 exclude maintenance from the comparisons
25 because of the difference among carriers

1
2 and how they handle maintenance.

3 Q. Let me just try it a different
4 way then. Maybe I'm not being clear and
5 I apologize. For United, for example,
6 does this chart reflect United's current
7 costs for outsourced vendor labor?

8 A. The labor CASM cost?

9 Q. Yes.

10 A. No, I don't believe it does.

11 Q. Okay. You talked a little bit
12 about the business plan in Northwest,
13 United, US Air and Delta. Do you recall
14 that testimony today?

15 A. The testimony in the -- back
16 on labor CASM?

17 Q. The testimony with regard to
18 the fact that when they went through
19 their 1113 processes they went through
20 those 1113 processes marking towards
21 stand-alone business plan?

22 A. Correct.

23 Q. In each of those cases, isn't
24 it true that labor was marking towards
25 the same stand-alone business plan as

157

1
2 every other constituents in the case?

3 A. I suppose at some point in the
4 case, yes.

5 Q. Was there a separate process
6 that was going to take place after the
7 1113 where people were going to work on
8 redoing the business plan in any of those
9 cases?

10 A. I don't recall any formal
11 process, no, that I can recall.

12 Q. So I'll try it again. Isn't
13 it true that in every single one of those
14 cases all of the constituents in the case
15 tied into and were being asked to invest
16 in and support the same stand-alone

17 business plan?

18 A. When you say the same, you
19 mean in each case the constituents were
20 asked, each airline to buy into --

21 Q. Yes, in United there was a
22 business plan and everybody was asked to
23 support the United business plan?

24 A. Correct.

25 Q. And in Northwest there was a

158

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2 business plan and all of the constituents
3 were asked to support the business plan,
4 correct?

5 A. Yes.

6 Q. And in US Air there was a
7 business plan, US Air 2 and all of the
8 constituents were asked to support the US
9 Air business plan, correct?

10 A. Yes.

11 Q. And in Delta there was a

12 business plan and all of the constituents
13 were asked to support that business plan,
14 correct?

15 A. Correct.

16 MS. LEVINE: Thank you. Your
17 Honor, I'm advised we're ready to
18 pass the witness.

19 THE COURT: All right.

20 MR. FLICKER: Your Honor, may
21 we have a few minutes.

22 THE COURT: That's fine.

23 (A recess was taken.)

24 THE CLERK: All rise.

25 THE COURT: Please be seated.

159

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2 MR. FLICKER: Thank you, your
3 Honor, Scott Flicker on redirect.

4 REDIRECT EXAMINATION

5 BY MR. FLICKER:

6 Q. I want to clear up really just

7 one issue. I'll ask that you have in
8 front of you the two loose exhibits, 1756
9 and confidential 1757.

10 A. Yes, I have it.

11 Q. Let's start with 1756 here. I
12 want to make sure I understand what's in
13 and what's out of the labor CASM for all
14 of these carriers. Now, is it the case
15 that in-house maintenance expenses are in
16 this calculation for all of the carriers
17 listed here?

18 A. In the labor CASM, yes.

19 Q. And what about outside
20 maintenance, contract maintenance by all
21 of the carriers including American in
22 this chart, is that in or out?

23 A. Out.

24 Q. And so this is apples to
25 apples as to all?

2 A. Correct. It's the same we did
3 in all the previous charts in this
4 series.

5 Q. And now if you turn to
6 confidential 1757. Looking at the blue
7 line which is the American plan line, is
8 in-house maintenance in or out of that
9 chart?

10 A. In.

11 Q. And is it in or out for all of
12 the other carriers?

13 A. In-house maintenance is in for
14 all of the other carriers as well.

15 Q. And then what about outside
16 contract maintenance, is that in or out
17 for American?

18 A. Out.

19 Q. And is it in or out for all of
20 the other carriers?

21 A. It's out for all of the other
22 carriers as well.

23 Q. So again, apples-to-apples
24 comparison?

25 A. Correct.

161

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2 MR. FLICKER: Nothing further.

3 Thank you.

4 MS. LEVINE: Your Honor, one

5 second, please. Nothing further,

6 your Honor, thank you.

7 MR. FLICKER: At this point

8 I'd like to move to admit the

9 exhibits that were discussed with

10 Mr. Kasper, which are AA 1742

11 through 1757 sequentially. 1757 we

12 would offer that under seal.

13 THE COURT: Any objection?

14 MS. LEVINE: No objections.

15 THE COURT: All right. It's

16 admitted. You're excused.

17 THE WITNESS: Thank you, your

18 Honor.

19 THE COURT: Thank you. All

20 right. What is next?

21 MR. MOLLEN: Mr. Jeffrey

22 Brundage, your Honor, again.

23 Return engagement.

24 THE COURT: All right, Mr.

25 Brundage. I believe this will be

162

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2 the third time, so maybe the third

3 time is the charm.

4 THE WITNESS: I hope so.

5 MR. MOLLEN: Neal Mollen for

6 the debtors. It will be the third

7 time and by far the most brief

8 appearance for Mr. Brundage, I

9 think.

10 THE COURT: All right, well

11 we'll see about that.

12 MR. MOLLEN: I'm always an opt

13 mist. The witness is under oath?

14 THE COURT: Yes.

15 JEFFREY BRUNDAGE,
16 resumed, having been previously
17 duly sworn, was examined and
18 testified further as follows:

19 DIRECT EXAMINATION

20 BY MR. MOLLEN:

21 Q. Mr. Brundage, good afternoon.
22 There's been an awful lot of testimony
23 thus far in this case about the labor ask
24 number being sort of a plug that the last
25 thing to do once the business plan was

163

1
2 put together. Did the company do
3 anything to test the size or the scale of
4 the number generated by the business plan
5 for the labor ask?

6 A. Yes, I believe I've previously
7 testified and also mentioned it in
8 meetings with some of the union advisors
9 after February 1st. We had done a

10 considerable amount of work which has
11 been described here, and in fact a board
12 package has been presented here, where we
13 explain to our board that we believed we
14 had approximately a billion dollars of
15 labor cost disadvantage and that was
16 their contract analyst, it was a
17 difference. We had in unfunded pension
18 liability. It had a hundred million
19 dollars of seniority differences and some
20 network differences.

21 So if you think about this as
22 kinds of a three-legged stool, the first
23 leg would have been the business plan.
24 The second leg was this test taking a
25 look at what we perceived the labor costs

164

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2 of the other carriers on us plus those
3 other things I mentioned, and then the
4 third leg of the stool was work that our

5 finance department did by taking publicly
6 available financial results from our
7 competitors and also checking it against
8 form 41 data and trying to understand or
9 to calculate how our results differed
10 from those competitors on a margin basis.

11 And so we thought about it as
12 being a three-legged stool. The business
13 plan from one perspective, the work that
14 we had done over a period of time and
15 presented to the board as the second.

16 And then the work that our finance
17 department did which looked at a macro
18 level at the results of the other
19 carriers versus the results of American.

20 Q. There's also been a lot of
21 testimony about the phrase market
22 competitiveness or industry standard, and
23 I'd like to ask a few questions about the
24 efforts that you made to test the term
25 sheets that the company came with for

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2 each of the group against the market.

3 In order to do that, I'd like
4 to give you a document to examine. Can
5 you identify this document for me, Mr.
6 Brundage?

7 A. This was a document that was
8 prepared by American, that I presented to
9 the labor subcommittee of the UCC in
10 February.

11 Q. Now, it says confidential, it
12 has a confidential legend on it but it is
13 no longer, this information is no longer
14 confidential, is it?

15 A. That's correct.

16 Q. It's a very long document, I
17 don't want to spend a lot of time with
18 this. I wanted to make sure it was in
19 the record and I want to just highlight a
20 couple of pages with you, Mr. Brundage.
21 Can you turn to page 5. I'll ask you
22 what that page reflects?

23 A. That was put in this package

24 to give an overview of the strategy that
25 we used to prepare the term sheets and

166

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2 the 1113 proposals that we intended to
3 make to the union.

4 Q. This was a philosophy you had
5 in developing the items that would go on
6 the term sheet?

7 A. Correct.

8 Q. Now, turn, if you would, to
9 page 8. Actually, if you'd look briefly
10 at pages 8 through 12 and tell me what
11 those pages reflect.

12 A. This section is the pension
13 and retiree benefit section, primarily
14 pension section for each of the work
15 groups, and what this package tried to do
16 was to take a look at the largest and
17 most significant cost drivers, group by
18 group, and allow someone reading the

19 package to immediately draw some
20 comparisons as to where American's
21 proposals were generally to the industry.

22 Q. So where American would fit in
23 if its proposals were accepted by the
24 union?

25 A. Page 8, which speaks

167

1
2 specifically to the pension proposal for
3 pilots demonstrates the US Airways at 10
4 percent, DC contribution, United at 16
5 percent contribution, the other carriers
6 in line there and where American sits on
7 that proposal.

8 Q. And page 10?

9 A. This is the look for flight
10 attendants.

11 Q. How about let's skip ahead, if
12 you would, to pages 25 and 31 which as I
13 understand it are similar charts but for

14 two different work groups, the pilots and
15 flight attendants. Tell me what they
16 reflect?

17 A. Yes, we've had a lot of
18 discussion about productivity here and
19 the fact that the number of hours that
20 you can schedule someone to is a
21 significant driver of productivity among
22 especially pilots and flight attendants.
23 And so this chart represents the, first
24 our current schedule max in the text,
25 which is 78 hours, and then it shows the

168

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2 proposals and there's also a carve-out in
3 the United column for narrowbody
4 specific, but it simply demonstrates
5 where this significant driver of
6 productivity fits in the industry.

7 Q. Page 31?

8 A. The same page as it relates to

9 flight attendants, again, it's the
10 schedule max and it shows where our
11 current maximums are 78 domestic and 82
12 international, and it shows that our
13 proposals are 100 hours with Delta and
14 American 100 and US at 85.

15 Q. We're done with that document,
16 Mr. Brundage.

17 You were listening to the
18 testimony provided by Mr. Roghair here,
19 were you not?

20 A. Yes, I was.

21 Q. He testified about the
22 difficulties that airlines and pilot
23 groups in particular have with respect to
24 seniority integration?

25 A. Yes, he did.

169

1

2 Q. Do you have some background
3 with respect to seniority integration?

4 A. As I testified in my life as a
5 pilot, I was a merger committee chairman,
6 so I actually ^ ?? negotiated the
7 seniority for the folks on the list that
8 I participated on. I also was involved
9 in the integration of the four Eagle
10 carriers and their seniority lists as a
11 /AOD visor to ALPA, business express
12 seniority integration and also worked on
13 the Air Canada connector seniority
14 integrations in addition to one or two
15 others peripherally.

16 Q. Why is seniority integration
17 and the problems that it poses for
18 airlines -- make you can recap for us or
19 tell us what kinds of difficulties
20 seniority integration can pose for a
21 pilot group and for an airline?

22 A. Well, we've had a lot of
23 discussion over the last couple of weeks
24 about the fact that essentially seniority
25 is everything to, primarily, all airline

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2 employees.

3 It determines what airline you
4 get to fly, which side of the airplane
5 you get to sit on, or in the flight
6 attendants' case, what routes you get to
7 fly, schedules you can pick, when your
8 vacation is. It is all important for
9 every group and historically seniority
10 integrations have been very contested in
11 terms of the integration of large groups
12 of employees.

13 Q. It might be helpful for the
14 Judge to understand the process that
15 typically is followed for integrating two
16 different seniority lists when there's a
17 merger?

18 A. Well, I think a little bit of
19 history is important. Much of the
20 precedent that still exists today was
21 created back in about 1971 when Allegheny

22 and Mohawk were merging under the
23 auspices of the cab. And the aeronautics
24 board issued a set of labor protective
25 provisions called the Allegheny Mohawk

171

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2 LPPs ^ ?? . There were numerous
3 provisions. Many of them had /TOURSD
4 with compensation and moving allowances
5 and pay and other things. But the two
6 that have essentially survived
7 deregulation and permeated just about
8 every seniority integration that I'm
9 aware of are section 3 and Section 13.

10 Section 3 in a nutshell being
11 a fair and equitable seniority
12 integration, and 13 --

13 Q. Section 3 creates the fair and
14 equitable standard for that?

15 A. The standards. And that
16 standard has been viewed over the years

17 to take into consideration the pre-merger
18 expectations of the groups that were to
19 be merged and also takes into -- has
20 taken into consideration the financial
21 wherewithal of the carriers that were
22 merging. And 13 simply provided for in
23 those circumstances where a negotiated
24 agreement couldn't be reached --

25 Q. You say that it would take

172

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2 those -- the financial health of the
3 various -- of the two carriers involved
4 and the career expectations of the pilots
5 in the two groups or employees in the two
6 groups involved. How so? How does that
7 work?

8 A. Well, the arbitrator, or even
9 in the negotiations typically, in either
10 the negotiations or if it moves to
11 arbitration, the participants take a look

12 at what the expectations are for the
13 future of the employees at each of the
14 carriers and take into consideration what
15 their expectations are for how they will
16 move through the ranks, how their
17 progression might work, and all of those
18 things as they think about how to put the
19 list together.

20 Because there is no standard
21 prescribed in the LP Ps as to how the
22 list goes together. The list can go
23 together based on date of hire, it can go
24 together based on ratios. It can go
25 together based on partial data, partial

173

1
2 ratios.

3 But there's a -- the failed
4 carrier doctrine is well recognized and
5 it, as I said, it emerged back under the
6 Allegheny Mohawk LP P times and it

7 essentially says that if a carrier's in
8 bankruptcy, the career expectations of
9 the employees of that carrier can be in
10 effect discounted versus the carrier
11 expectations of a healthy carrier that
12 they're merging with.

13 And there are plenty of
14 examples ^ ??, but one of the most recent
15 examples that I think is important here
16 is the example of the America West pilots
17 in the merger that, the arbitration that
18 took place between the America West
19 pilots and the US Air pilots. The
20 America West pilots were by far the
21 smaller pilot group, but they in fact
22 were seen as the healthy carrier and they
23 claimed in that arbitration that US Air
24 in fact was the failed carrier, as a
25 result of their two trips through

2 bankruptcy, and that the career
3 expectations of those US Air pilots were
4 diminished as a result of their position
5 in bankruptcy.

6 The arbitration award by
7 George Nicolau took into consideration at
8 least in part the notion of the failed
9 carrier doctrine. And awarded seniority
10 positions on the proposed list that were
11 junior pilots from America West were put
12 above many more senior pilots from US Air
13 on the basis that the career expectations
14 of the US Air pilots were diminished as a
15 result of their multiple bankruptcy.

16 We faced some of that same
17 circumstance when we integrated the TWA
18 employees into American Airlines. During
19 that integration there was one
20 arbitration with, among the TWU folks and
21 in that arbitration that same doctrine
22 was argued that the career expectations
23 of the former TWA /EFPBL employees were
24 diminished as a result of them having
25 been part of a failed carrier.

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And there was actually

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litigation that fell out of the pilot

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integration, it was the Bensele case,

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where the APA argued that in fact if a

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healthy carrier was in a position that

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through the integration it would

8

compromise the seniority of its, the

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employees that it represented, the union

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that represented those employees, it

11

would be unlikely that a merger would

12

take place because it would put the

13

healthy carriers' employees at risk.

14

And I think one of the big

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challenges that we have in the

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circumstance we're discussing here is

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that we're really in to some degree an

18

America West/US Air situation or a TWA

19

situation in that American likely would

20

meet the standards in an arbitrator's

21 eyes of being the failed carrier.

22 Q. Now, we've heard testimony
23 that there's been legislation to attempt
24 to address the seniority ^ ?? process
25 under the ?? do you have a view as to

176

1
2 whether that's actually fixed the problem
3 ^ ???

4 A. Well in the McKaskill-Bond
5 legislation arose out of the American
6 Airlines cases, the seniority integration
7 with TWA. And that simply has pulled
8 forward the section 3 and Section 13 from
9 the Allegheny Mohawk LPPs into a new set
10 of -- into a new legislative vehicle
11 which requires the airlines that are
12 merging use, A, the fair and equitable
13 standard, unless the two groups that are
14 merging are covered by the same union and
15 that union has a merger international

16 policy, then that merger integration
17 policy would apply ^ ??, but if that's
18 not the case, the fair and equitable
19 standards would be used both in the
20 negotiation and if the negotiation didn't
21 produce a list, then it would go to
22 arbitration ^ ?? and it's my expectation
23 that as a result of pulling 3 and 13
24 forward and /PHA /KAS sill bond
25 legislation it's pretty clear the failed

177

1
2 carrier doctrine and those same issues
3 are not present.

4 Q. Mr. Brundage, can you identify
5 the document I've placed in front of you,
6 it's been marked as Exhibit 1733?

7 A. It's the American Airlines
8 Section 13, 1113 (c) proposal to the APA
9 as of April 19th, 2012, the term sheet.

10 Q. Now, I suppose before we talk

11 about that, let me hand this one out.

12 And 1734, can you identify that document?

13 A. This is a sheet that we
14 produced that describe changes to the
15 terms of American's last proposal prior
16 to the filing on March 27th and then the
17 last proposal prior to the start of the
18 hearing on April 23rd.

19 Q. So what changes were made to
20 the term sheet for the flight attendant,
21 mechanics and related stock clerks groups
22 between the original term sheet passed
23 before the filing of the motion and the
24 beginning of the hearing?

25 A. This sheet explains that there

178

1
2 were no changes.

3 Q. There were some changes on the
4 pilot term sheet, correct?

5 A. That's correct.

6 Q. And those are reflected on
7 Exhibit 1733?

8 A. That is correct. In the top
9 right corner.

10 Q. Can you very briefly describe
11 the three changes that were made to the
12 pilot term sheet between just prior to
13 the hearing and the beginning of the
14 trial in this case?

15 A. The revised scope proposal
16 limits the number of regional jets by
17 size. Added an average day of 4 hours
18 and 15 minutes. And eliminated a
19 proposal which to assign displaced first
20 officers to an FB or F C position on the
21 same flight ^ ??.

22 Q. Mr. Brundage, can you tell me
23 why there weren't any changes made to the
24 term sheet between the middle of March,
25 March 22nd and the beginning of the trial

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2 with respect to the flight attendants,
3 M&R and stock clerks group?

4 A. Well, we did not see any path
5 to reaching an agreement that would have
6 met our targets and been what we believed
7 reasonable for us to assume that the
8 business plan would have been successful.

9 The bargaining was very slow,
10 very limited in terms of moves, and as a
11 result, we simply put the term sheet in
12 place prior to starting the hearing.

13 Q. You heard Mr. Videtich say
14 that the M&R employees of American make
15 less than M&R employees at the other
16 airlines. Can you explain why there's a
17 disparity in American's M&R wage rates
18 and those of its competitors?

19 A. Well I think a great portion
20 of it can be attributed to the fact that
21 American has outsourced far less work
22 than our competitors, on the order of
23 about 9 percent versus the 40 to 50 plus

24 percent range. So as a result,
25 American's labor costs are spread over a

180

1
2 much larger group and American does not
3 benefit from lower wage rates at the
4 outsourced carrier. So it's really just
5 a function of the number of people.

6 Q. I have another document for
7 you, Mr. Brundage. That one's been
8 marked 1735. Can you tell me what that
9 document is?

10 A. That is a letter to the Bob
11 /PWAOE Gless, the deputy director of the
12 A T D, describing a me too provision
13 which we agreed to prior to the company's
14 last best and final offer being put out
15 to each of the TWU groups.

16 Q. Is there a similar letter for
17 the other groups?

18 MS. LEVINE: Your Honor,

19 what's the date of this letter, for
20 clarification purposes, if we can
21 know that?

22 THE COURT: I don't see a
23 date. Counsel?

24 MR. MOLLEN: I can find out,
25 your Honor.

181

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2 MS. LEVINE: We would object
3 to any discussion about this letter
4 as taking place after the March 22
5 proposal.

6 THE COURT: All right. Well
7 let's find out what date it is
8 before we consider what to do with
9 it?

10 MR. MOLLEN: Can I have just a
11 moment, your Honor?

12 THE COURT: Sure.

13 MR. MOLLEN: Your Honor, I

14 don't have the date on which the
15 letter was actually passed across
16 the table. It was during the
17 course of bargaining. It is part
18 of the ratified agreements for the
19 five groups that have ratified, TWU
20 groups that have ratified. And it
21 goes directly to the fair and
22 equitable standard, your Honor.
23 We've seen an awful lot in the
24 briefs from all the unions really
25 about the fair and equitable

182

1
2 standard embracing changes that are
3 going to be made --

4 MS. LEVINE: Your Honor, we're
5 -- knoll.

6 MR. MOLLEN: Hold on, just a
7 moment.

8 MS. LEVINE: I thought the

9 rule here was no speaking
10 objections and we're really trying
11 to finds the date because our
12 understanding is this is dated
13 after the commencement 69 hearing
14 and we're going to argue it's
15 inadmissible for purposes of the
16 1113.

17 THE COURT: I'll ask Mr.
18 Brundage to take a walk. The cow
19 has left the barn ^ ??. All right
20 let me ask you a question. Is
21 there an argument by the unions
22 that -- I'm trying to figure out
23 what it is that you are rebutting
24 precisely.

25 MR. MOLLEN: Your Honor, I

183

1
2 think -- I'm sorry.

3 THE COURT: In other words,

4 that there's some argument having
5 to do with TWU, some employees
6 having ratified, some employees not
7 having ratified that somehow that
8 affects the fair and equitable
9 argument. I don't know if that
10 argument has been made such that it
11 it can be rebutted. So let me shed
12 some light on that.

13 MS. LEVINE: Our position is
14 exactly the opposite, your Honor.
15 That we've asked that the fact that
16 these yes votes not be considered
17 by this court with regard to the
18 1113 process at all with regard to
19 M&R and with regard to stores and
20 that the only thing that's before
21 your Honor is --

22 THE COURT: I don't have any
23 other agreements in front of me.
24 The question is you all have spent
25 a lot of time trying to piece

1
2 together some of the narrative here
3 relevance-wise in some detail that
4 I have not gotten there yet. And I
5 think that's why I was frustrated
6 the other day because I can't --
7 there's a level of real detail here
8 about what's relevant and what's
9 not relevant and I'm not quite
10 there yet.

11 So what I'm trying to figure
12 out is why do I need to address the
13 issue at all? You're saying that
14 it has to do with what's fair and
15 equitable and I guess what I'm
16 saying is that there's a
17 particular argument that you're
18 trying to rebut maybe that
19 argument's not being made such that
20 I don't need to consider this
21 particular bit of evidence.

22 MR. MOLLEN: Your Honor, I

23 think it's relevant for two
24 reasons. First of all, I think it
25 does go directly to the fair and

185

1
2 equitable standard. It seems odd
3 that the unions would say the
4 changes made from management
5 support staff should be considered
6 and they've been directing your
7 Honor's attention to those groups
8 ^ ?? and yet several of the
9 organized groups represented by the
10 TWU have actually reached
11 agreements and ratified those
12 agreements and the TWU argues that
13 those agreements aren't relevant at
14 all to /KWRAOURPBS's consideration.
15 Those would be the only employees
16 at American that they say aren't
17 relevant to your Honor's

18 consideration which seems sort of
19 strange.

20 THE COURT: Let me ask one
21 other question. I know we've gone
22 around on this particular thing and
23 the me too provision came in, so
24 what does the letter add, if
25 anything, to what's already in the

186

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2 record?

3 MR. MOLLEN: It's simply to
4 make sure that your Honor has
5 alluded a number of times to the
6 fact that there's likely going to
7 be an appeal, we'd like to have the
8 letter in the record so that the
9 language of the agreement and the
10 language of the commitment that the
11 company made is available in the
12 appellate record should there be an

13 appeal, God for bid.

14 MS. LEVINE: We would argue
15 that it's irrelevant and
16 inadmissible and we would
17 respectfully submit we started the
18 hearing with this issue, it came up
19 in the middle of the hearing and
20 now it is again. We reserve the
21 right to call Mr. Gillespie if in
22 fact these post-hearing
23 negotiations are in issue, we need
24 to --

25 THE COURT: I'm not hearing

187

1
2 anything about post-hearing
3 negotiations.

4 MS. LEVINE: That's what this
5 is.

6 THE COURT: I haven't read the
7 letter yet. What I understand it's

8 being offered to is essentially the
9 me too provision, I've already
10 heard something about it. I
11 confess I'm having a little trouble
12 understanding the, how strongly
13 people are arguing the merits or
14 demerits of this because I
15 don't-really see it factoring into
16 my decision. I see it as general
17 background and people may argue
18 it's generally relevant as to
19 something or not. I don't have, I
20 only have two TWU union contracts
21 in front of me. The parties are
22 arguing --

23 MS. LEVINE: This doesn't
24 relate to either of them.

25 THE COURT: Let me finish.

3 groups are being treated fairly or
4 unfairly. I haven't seen in
5 closing, either in papers or
6 argument how people are going to
7 discuss the issue of what is fair
8 and what is considered to be fair
9 when comparing groups against each
10 other, so I don't know if this is
11 an issue that someone is arguing
12 one way or the other, this is
13 rebutting some argument or it
14 isn't.

15 But the fact of this doesn't
16 really particularly, it's not
17 particularly novel, it's not
18 particularly kinds of worth the
19 hassle that we keep bogging down
20 into it repeatedly.

21 So I think I know what the me
22 too provision is. It's been
23 discussed. I don't think I need to
24 get into any level of specificity.
25 So I'm not sure why I want to go

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2 down this route at all.

3

MR. MOLLEN: Your Honor,

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there's a second reason that the --

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what happened with the other five

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groups is relevant and I thought

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that we had consensus on this

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point. In other words, on labor,

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on -- when we first joined issue on

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which proposals matter, I

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understood the position of the

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unions to be that when you're

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measuring the conduct of the

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company in in composing its term

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sheets it's the term sheet that is

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active at the time that the motion

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is filed, but I thought there was

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consensus that with respect to

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whether the company is engaged in

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good faith bargaining conduct

21 thereafter is very much relevant.
22 I think it's clear in the text of
23 the statute, in fact, we think the
24 text of the statute is clear. In
25 any event so we would say that it

190

1
2 actually is admissible and relevant
3 for a variety of different purposes
4 and we thought that your Honor had
5 actually reached that same
6 conclusion yesterday.

7 THE COURT: I confess I
8 haven't really again, this to me is
9 kinds of a side issue in terms of
10 my evaluation of the proposals and
11 I know there's fair and equitable,
12 but there's such a blizzard of
13 evidence dealing with the industry,
14 dealing with contract change from
15 what exists to what's proposed and

16 numbers, that I really don't see
17 this as, you know, the evidence
18 that's going to crack the case for
19 either side frankly.

20 So I don't, again, I
21 understand that it's a historical
22 fact, but I think really we keep
23 getting bogged down and I'm trying
24 to find a way to not.

25 MS. LEVINE: It's not a

191

1
2 historical fact, it took place
3 after the start of the hearing so
4 we would argue it's directly
5 violative of 1113. Period. Number
6 2 ?? ^ ??, this hearing relates to
7 two out of seven contracts, this is
8 unrelated to either of those two
9 contracts.

10 THE COURT: Well, unless you

11 can establish that this is
12 something that's from before the
13 hearing, I don't think it's a good
14 idea to have it in the record
15 because I think that I don't want
16 to go down that path.

17 There's been some evidence
18 just generally as I said from a
19 historical perspective as to what
20 was agreed to and what was not
21 agreed to, it's already in the
22 record as to a me too provision.
23 If people can't establish that this
24 communication is from before the
25 hearing started, I think that

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1
2 that's -- I'm not sure where all
3 these lines lead me to, but I think
4 that's a fairly inviolate line.

5 MR. GALLAGHER: Your Honor,

6 may I be heard briefly?

7 THE COURT: Sure.

8 MR. GALLAGHER: When we agreed
9 to the procedural order that was
10 agreed to by the parties it was
11 agreed, your Honor, that because of
12 the unique sequencing that was
13 done, that the debtors' rerule
14 case, would be in Mr. Butler's
15 words, a robust rebuttal. This
16 letter is not part of agreements
17 that have been ratified, five of
18 them.

19 THE COURT: What are you
20 rebutting I guess is my question?

21 MR. GALLAGHER: But, your
22 Honor, the unions, each one
23 separately and I think Mr. Roth
24 specifically said you're taking too
25 much from us, you should be taking

1

2 more from the pilots. What this
3 letter provides is for even-handed
4 treatment. If recede by 10 percent
5 with the pilots, we're not own
6 receding as to 37 million dollars
7 for the pilots, this me too letter
8 says we get 10 percent off too,
9 you'll have to give us back 10
10 percent.

11 So 37 million for the pilots
12 becomes 99 million for everyone.

13 That is a real world cost
14 consideration.

15 MS. LEVINE: Your Honor, if
16 Mr. Gallagher wants to testify,
17 maybe we can put him on the stand.

18 THE COURT: Is that doesn't
19 help me at all, at all. Thank you
20 very much. Okay, here's what we're
21 doing. I'm taking it under
22 advisement, let's finish with the
23 witness.

24 MR. GALLAGHER: Thank you,

25 your Honor.

194

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2 MR. MOLLEN: Thank you, your
3 Honor.

4 MR. MOLLEN: Your Honor, we
5 have one more task to accomplish
6 with Mr. Brundage. He is going to
7 raise the same issue, draw the same
8 objection and I'm assuming your
9 Honor's going to take it under
10 advisement in the same manner ^ ??
11 ^ ??.

12 THE COURT: I have not yet
13 established that any of this is
14 relevant. So --

15 MR. MOLLEN: All I would like
16 to accomplish is have the witness
17 identify a series of documents that
18 reflect the terms of the ratified
19 agreements. I understand that Ms.

20 Levine --

21 THE COURT: We can do that
22 without this witness. We can reach
23 stipulations. I can't imagine the
24 facts are really in dispute. The
25 question is whether the facts are

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2 relevant for purposes of
3 proceeding. So we're not going to
4 do it with this witness. I'll take
5 it under advisement and we'll
6 figure it out later.

7 MR. MOLLEN: Very well, your
8 Honor, no further questions for
9 this witness.

10 MR. JAMES: Your Honor, I just
11 have a few questions and then my
12 younger associate who was a math
13 major at the University of Chicago
14 has a number of questions to ask

15 Mr. Brundage. I'm embarrassed by
16 my lack of efficiency in anything
17 involving math ^ ??.

18 CROSS EXAMINATION BY

19 MR. JAMES:

20 Q. Let me get through this detour
21 and frolic quickly. You testified about
22 seniority arbitrations, Mr. Brundage,
23 correct?

24 A. Yes.

25 Q. And you testified in

196

1
2 particular about the America West US Air
3 merger ^ ???

4 A. Yes.

5 Q. And isn't it true that what
6 the arbitrator did there, George Nicolau,
7 he did something that is very common, he
8 took the furloughees at both carriers and
9 put them at the bottom?

10 A. Yes.

11 Q. And isn't that a common method
12 of seniority /EUPBLTSDZ /TKPWRAEUGS?

13 A. Yes.

14 Q. And you heard, not through
15 your testimony, but there's been other
16 testimony about the inability of America
17 West and US Air to get those pilots to
18 come to term on the single seniority
19 list, you're well aware of that?

20 A. Yes, I am ^ ??.

21 Q. And you are also a senior
22 official /A*LG at ALPA you testified
23 before and you and I know that because
24 we've dealt with each other for a long
25 time. You know ALPA merger policy?

197

1

2 A. I know it from ten years. I
3 don't know if I know its current.

4 Q. Well, I'll stipulate it hasn't

5 changed. When America West and US Air
6 were both represented by ALPA at the time
7 of the merger?

8 A. Yes.

9 Q. And under ALPA merger policy,
10 the carrier, the employer is not a
11 participant in that proceeding?

12 A. That's correct.

13 Q. And isn't it true that what
14 happened when that seniority process
15 occurred under ALPA merger policy the
16 company said we're not going to agree to
17 be bounds by it?

18 A. That's not how I understood
19 it, but I understood that in fact the
20 pilots from East, the US Air pilots,
21 believed that if they were able to
22 decertify APA they could avoid the award
23 ^ ?? ^ ?? and as a result they did that.

24 Q. And they've not been able to
25 get rid of the award, correct?

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2 A. Well as I understand it, the
3 award is still being litigated.

4 Q. But the carrier refuses to be
5 bound by the award because they weren't
6 part of the process?

7 A. And again you're testing my
8 knowledge, but I'll tell you what I know
9 and that is I understand that the carrier
10 actually went into court to ask for an
11 advisory opinion as to what they do in
12 the circumstance because they were
13 prepared, they were concerned about being
14 sued by both pilot groups.

15 Q. We've known each other too
16 long to get /POEUFBLTDZed, but the
17 carrier is not a participant under ALPA
18 merger policy?

19 A. That's correct.

20 Q. They don't participate in --

21 A. No, that's correct, in the
22 ALPA merger policy they do not.

23 Q. Under McKaskill-Bond which you
24 testified very accurately and carefully
25 is a codification of the old Allegheny

199

1
2 Mohawk seniority integration procedures,
3 do you recall that?

4 A. Sections 3 and 13.

5 Q. 3 and 13. And the carrier is
6 a participant in that process unless they
7 decide not to be?

8 A. In fact, I believe that my
9 reading of /PHA McKaskill-Bond says the
10 carrier is obligated to facilitate that
11 process.

12 Q. Correct. So we would not
13 correct expect, you would not expect
14 another US Air America West situation to
15 arise if the carrier is a participant in
16 the arbitration?

17 A. I disagree with that. I think

18 that the fair and equitable standard has,
19 you know, four decades of arbitral
20 history behind it and the reality is that
21 the pre-merger financial condition of the
22 companies and career expectations of the
23 employee groups will in fact be taken
24 into consideration under the fair and
25 equitable standard.

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2 Q. You and I disagree about that,
3 but I'm not going to bore this court and
4 load up the record with the role of
5 pre-merger expectations. Is it fair to
6 say under Allegheny Mohawk, with the
7 carrier being a participant and you go
8 through the arbitration, everybody is
9 bound by the outcome?

10 A. Yes.

11 Q. Has there ever been to your
12 knowledge a challenge to a seniority

13 arbitration where the carrier has been a
14 party, to your knowledge?

15 A. There have been challenges,
16 but I'm not aware of a successful
17 challenge.

18 Q. The Bensel case you mentioned
19 American integration, and that particular
20 case TWA was one day away from
21 liquidation ^ ?? ^ ???

22 A. I believe TWA was approaching
23 liquidation, yes.

24 Q. And that was --

25 A. I don't know if one day is

201

1
2 correct, but it was on the verge of
3 liquidation.

4 Q. Correct.

5 MR. JAMES: Okay, I don't have
6 any further questions. I think
7 it's a somewhat extraneous issue,

8 but Danny Rosenthal does have a few
9 questions. ??.

10 CROSS EXAMINATION BY

11 MR. ROSENTHAL:

12 Q. Good afternoon, Mr. Brundage.

13 A. Good afternoon.

14 Q. My name is Daniel Rosenthal, I

15 represent the Allied Pilots Association.

16 You said a few minutes ago that you

17 believe there is a one billion dollar gap

18 between the labor costs at American

19 versus its competitors. Did I hear that

20 right?

21 A. Yes, you did.

22 Q. And did I hear you say that

23 you mentioned that to union advisors

24 after February 1st, was that your

25 testimony?

202

1

2 A. Yes.

3 Q. Did you say it to union
4 advisors before February 1st?

5 A. Well, we had regular what we
6 called joint leadership team meetings and
7 there were a number of times in those
8 joint leadership team meetings through
9 the entire previous year where we talk
10 about the fact that the exercise of
11 putting their contracts on us was
12 producing the six to 800 million dollar
13 gap. We talked about the fact that we
14 had pension under funding, that was a
15 very significant topic of conversation
16 for a long period of time ^ ??. We also
17 talked about the fact that our employees
18 were senior to the majority of those in
19 the comparator group and that had a cost
20 associated with it.

21 And in fact, the format that
22 we used to present to our Board of
23 Directors is the exact format we used
24 multiple times in multiple meetings to
25 discuss the fact that we were at a

1
2 significant competitive disadvantage.

3 Q. Thank you. My question was
4 whether you had presented the one billion
5 dollar number to union advisors before
6 February 1st, 2012?

7 A. To union advisors, no. But to
8 the union leadership, yes.

9 Q. So before February 1st you
10 told union leadership you thought there
11 was a one billion dollar gap between
12 American's costs and those of its
13 competitors?

14 A. I'm going to repeat what I
15 said and you can stop me if I'm not
16 making sense, but we had multiple
17 meetings, we had meetings every month
18 over the course of literally years,
19 different unions participated at
20 different times. The pilots union did
21 not participate in those joints

22 leadership team meetings. The other
23 unions did. And we frequently talked
24 about the fact that the gap was larger
25 than the six to 800 million and we talked

204

1
2 about the fact that the gap was about a
3 billion dollars.

4 Q. So you mentioned the one
5 billion dollar number in those meetings?

6 A. Yes.

7 Q. So let me just ask a couple
8 clarifying questions about that. So is
9 the one billion dollar number, is that
10 for a particular year?

11 A. Again, we talk about this
12 number in the proceedings as if it's
13 something we can verify and take down to
14 a spreadsheet into tenths or hundreds
15 ^ ???. The fact is it is looking at the
16 provisions of the other carries being

17 imposed on the population at American and
18 it's an average of a large number of
19 carriers, so there is no carrier that's
20 actually six or 800 million dollars more
21 expensive on a contract basis. And I
22 would say that whenever we've talked
23 about this we've talked about it being
24 simply kind of the zone of the
25 difference.

205

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2 You presented it to me as if
3 we had calculated it out to a couple of
4 decimal points and that's not how it's
5 been done.

6 Q. Okay. So I guess then I
7 misunderstood your testimony earlier. So
8 you're not testifying there's a one
9 billion dollar gap between American's
10 labor costs and those of its competitors?

11 A. Yes, sir, I am and I'm

12 explaining how that one billion dollar
13 number was derived.

14 Q. So back to my question. Does
15 that correspond to a particular year, so
16 is the one billion dollar gap for 2010,
17 2011, 2012 or is it timeless?

18 A. I think it has not changed
19 significantly over the course of the past
20 three or four years since the other
21 carriers exited from bankruptcy. And I
22 think much of the documentation we saw
23 earlier today about American's labor cost
24 CASM will substantiate American has been
25 the most expensive all along. The number

206

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2 as we've used a wide range of six to 800
3 million as we've described that, I think
4 that's some of the movement over time.
5 The number that we most recently talked
6 about is 2010 number ??.

7 Q. Okay. So the one billion
8 dollar number is a 2010 number?

9 A. I think you'll find it's also
10 a 2011 number. And a 2009 number because
11 it has remained at /KPWABGly the same
12 range.

13 Q. Thank you. So to clarify a
14 little further, the one billion dollar
15 number you've mentioned several
16 components of that. So do I understand
17 correctly that 600 million of it is the
18 portion that's attributable to the labor
19 contracts in place at American?

20 A. Six to 800 million is the
21 average across a whole host of carriers.

22 Q. And that's the portion that's
23 just attributable to the contracts?

24 A. Their contract on us, yes.

25 Q. And that's 600 to 800 million,

2 is that what you testified to?

3 A. That's the range that's been
4 used over the past year and a half or two
5 years.

6 Q. Is that the number that
7 American presented to the P P GC in March
8 2012?

9 A. If you have a document I'd be
10 happy to refresh my memory.

11 THE COURT: Counsel, can I ask
12 is this in response to testimony
13 that was provided on this part of
14 the case? I don't know that I
15 heard a whole lot of testimony
16 recently about this. I thought
17 this was just testimony from the
18 first time in which he appeared in
19 which he was crossed excessively.
20 I think the idea of a rebuttal
21 witness, unless we want to retry
22 the whole case is to address the
23 questions or testimony was
24 addressed in rebuttal.

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2 a well worn path about what the
3 billion dollar number means and in
4 looking at my notes I don't really
5 see that we did that. Again maybe
6 my notes are missing something.

7

MR. ROSENTHAL: Well I do
8 think Mr. Brundage just told us,
9 reiterated that he didn't talk
10 about that in his direct testimony.
11 He talked about the one billion
12 dollar gap --

13

THE COURT: I know it's his
14 direct testimony but now we're on
15 rebuttal and I'm not redoing all
16 the direct testimony. It's in,
17 cross was done, we're on rebuttal.
18 I don't want to revisit all the
19 things in the direct testimony, or

20 we'll be here forever.

21 MR. ROSENTHAL: I completely
22 understand. I might have been
23 unclear. What I meant was the
24 testimony he gave on direct earlier
25 today. Not the testimony --

209

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2 THE COURT: I think the one
3 billion has been mentioned but I
4 don't think we got into a breakdown
5 of what that number is. I'll give
6 you a little bit of latitude, but I
7 don't want to revisit every bit of
8 the direct from the earlier part of
9 the case.

10 MR. ROSENTHAL: I understand.
11 May I approach?

12 THE COURT: Yes.

13 MR. ROSENTHAL: I apologize, I
14 have have three copies. We didn't

15 realize Mr. Brundage was going to
16 be testifying today.

17 Q. This is a document that's
18 already in evidence as APA Exhibit
19 201. We're looking at slide 2 here. So
20 just to clarify, the gap that was
21 attributable to the contract, the
22 contractual gap is \$600 million; is that
23 right?

24 A. That's what this slide says.

25 Q. Thank you. I'll try to wrap

210

1
2 this up relatively quickly.

3 So what that means, is that
4 the other cost it is on there are not
5 attributable to the labor contracts; is
6 that right ^ ???

7 A. Well, we have retiree medical
8 in our contract and we have pension
9 funding in our contract which differs

10 from the other contracts in the industry.
11 So to the extent that we have those
12 provisions in and the other guys don't,
13 it will increase our costs.

14 Q. Just so I understand
15 correctly, are you saying that the 600
16 million does not include pension
17 benefits?

18 A. Yes, we -- lest me be clear
19 about this. On February 1st when we
20 began to talk to all of the union
21 advisors about how we were going to
22 proceed, we said that the future pension
23 costs, the costs that we would accrue in
24 the future from the point in time that we
25 made the term sheets we would consider

211

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2 towards the 1.25 billion. We would also
3 then charge that number with the defined
4 benefit pension plans that we intend to

5 put in place.

6 Then we had a second item
7 which we called out to the unions which
8 was the pension under funding that had
9 already occurred in the past and we had a
10 little over a 4 billion dollar liability
11 on our books ^ ?? and that was the second
12 thing and it was not /HRUD in any way
13 shape or form in the 12.25 billion /*P
14 ^ ?? ^ ??.

15 And then the third item we
16 addressed were barriers to business and
17 revenue production.

18 Q. Just to make sure I'm
19 understanding correctly, the \$600 million
20 does include costs related to pension and
21 benefits, right?

22 A. In this case, it's part of the
23 contractual gap going forward.

24 Q. Okay. Let me just ask you one
25 more kinds of set of a few questions

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2 about that number. So before bankruptcy
3 American thought that the 600 million
4 dollar gap was going to shrink due to
5 something that's been called convergence;
6 is that right?

7 A. We talked about the fact that
8 we expected our competitors to increase
9 their costs.

10 Q. And that would cause a
11 corresponding decrease in the 600 million
12 dollar number?

13 A. 600 million dollar number.

14 Q. After bankruptcy American
15 decided in fact convergence was not
16 happening?

17 MR. MOLLEN: Your Honor, there
18 was nothing about convergence? The
19 rebuttal testimony with this
20 witness ^ ?? ^ ??.

21 THE COURT: Where are we going
22 with this?

23 MR. ROSENTHAL: I'm sorry, I'm

24 just testing the one billion dollar
25 number further.

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2 THE COURT: I know. Anything
3 he testified about today is fair
4 game. I'm just looking back at my
5 notes and there was a general
6 statement about the billion dollar
7 number. But again, I do want to
8 keep it to what was testified to
9 today. We're not, again, there's
10 no benefit to anyone to go back
11 over things that we all at this
12 point can probably recite in our
13 sleep.

14 MR. ROSENTHAL: I understand
15 so is it okay if I ask the question
16 I was going to ask ^ ?? ^ ??.

17 THE COURT: All right. But
18 again, I don't have a whole lot of

19 -- I don't think there's any
20 testimony about convergence or the
21 600 million dollar number, but ask
22 your question again.

23 MR. ROSENTHAL: It's only as a
24 component of the one billion dollar
25 number that Mr. Brundage has

214

1
2 testified to.

3 Q. So after American decided that
4 convergence was not in fact happening; is
5 that right ^ ?? ^ ???

6 A. What we decided was ^ ?? after
7 bankruptcy ^ ?? once we had filed we
8 could no longer assume some very
9 significant risk and some assumptions
10 which were proving not to be true going
11 forward because we were now in a position
12 where we had passed the point where we
13 were willing to simply try to move along

14 and hope something better would happen.

15 The purpose of doing that was
16 to avoid bankruptcy. Once we filed for
17 bankruptcy, we recognized that those
18 risks and those assumptions were no
19 longer prudent or responsible, not for
20 any of our employees or for of our
21 stakeholders. So at that /#30EU7B we
22 moved away from convergence, we moved
23 away from those kinds of things and said
24 what is necessary for the restructuring
25 of this company, what will allow us to

215

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2 preserve as many jobs as possible, what
3 will allow us to successfully reorganize
4 and move on. /PRAE /*F.

5 So you are correct, we looked
6 back, we said we were wrong on
7 convergence but we absolutely had to be
8 right on restructuring.

9 Q. Thank you. ?? ^ ???

10 Q. Let me ask you finally one
11 question about what was labeled Exhibit
12 1734. It's entitled "Changes to terms of
13 American's last proposals prior to the
14 1113 filing."

15 A. Yes, sir.

16 Q. The first row there on the
17 right, those differences that are listed.

18 A. Yes, sir.

19 Q. So these are the only things
20 that American changed in this proposal
21 between the time that it filed its 1113
22 motion and the time that the hearings
23 started?

24 A. Correct.

25 Q. And these changes were not in

216

1
2 response to specific requests that APA
3 had made in negotiations, were they?

4 A. No. Can I clarify my previous
5 answer just so I'm -- I want to make sure
6 we don't forget about the changes that we
7 made to our medical plans and to our
8 retirement proposals and with the pilots
9 it's a slightly different situation. But
10 we did make those /TKPWHROEUBL changes to
11 all those and we talked about those
12 plans, so I want to be careful I don't
13 miss that.

14 Q. Let's make sure we have the
15 timing down, though. Did those changes
16 occur between the time American filed its
17 1113 motion, or March 22nd, 2012?

18 A. Prior to that.

19 Q. So between the time that it
20 filed its motion and the time that the
21 hearings started on April 23rd, 2012, I
22 believe it was, these are the only
23 changes that American made?

24 A. That's correct.

25 Q. But these changes were not in

1
2 response to specific counterproposals
3 that the union had made; is that right?

4 A. That's correct.

5 Q. So, for example, the union
6 never proposed eliminating American's
7 proposal to assign displaced first
8 officer to an FB or F C position ^ ???

9 A. In the time period we're
10 discussing, I do not believe they did. I
11 believe that a number of these were
12 discussed prior to this, but I can't say
13 that I /TPH0EF the date the proposal
14 would have been made on, but I can tell
15 you it wasn't made between these two
16 dates ^ ??.

17 Q. Would you have any
18 recollection of whether it was made since
19 American filed for bankruptcy?

20 A. I could only speculate.

21 Q. So you're not sure whether

22 these things were made in response to any
23 union proposals since American filed for
24 bankruptcy?

25 A. Well, look, I'll just be

218

1
2 candid. You know, I've been since
3 probably last August involved in the
4 pilot negotiations off and on. And these
5 items have been discussed on multiple
6 occasions during that time frame, but I
7 don't have the capability to reference
8 the exact or last time sitting here right
9 now.

10 Q. So you're not sure whether
11 they're a response to a union proposal?

12 A. Yes, that's what I just
13 testified to.

14 MR. ROSENTHAL: Thank you.

15 Nothing further at this time.

16 THE COURT: All right.

17 MR. MOLLEN: Your Honor, I
18 have no further questions. I'd
19 like to move into evidence --

20 MR. JAMES: Neil.

21 MR. MOLLEN: Oh, sorry.

22 MS. PARCELLI: That's okay.

23 CROSS EXAMINATION BY

24 MS. PARCELLI:

25 Q. Good afternoon, Mr. Brundage,

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2 Carmen par for the Association of
3 Professional Flight Attendants.

4 A. Good afternoon.

5 Q. I'd like to return to your
6 Exhibit 1758 if we can: Now I believe
7 you testified just now that there had
8 been work that the American Airlines
9 finance department had done in terms of
10 evaluating labor costs against
11 competitors; is that correct?

12 A. Yes.

13 Q. And is that work reflected in
14 this Exhibit 1758?

15 A. Some of that work is, yes.

16 Q. Just turning your attention
17 to, there's a flight attendant section in
18 this document beginning on page --

19 A. 29.

20 Q. The flight attendant specific
21 proposals, so that's page 29 through 33.
22 Do you see that, sir?

23 A. Yes.

24 Q. But this does not cover all of
25 American's proposals to its flight

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2 attendants, correct?

3 A. Absolutely not.

4 Q. Now, you testified, sir, at
5 some length just now that --

6 THE COURT: Let me clarify by

7 absolutely not, you're agreeing

8 with her it does not cover all --

9 THE WITNESS: That's correct,

10 it does not cover all of the

11 proposals.

12 MS. PARCELLI: Thank you, your

13 Honor, that's what I understood but

14 it was vague.

15 THE COURT: That wouldn't read

16 so well. Proceed.

17 Q. You testified at some lengths

18 about seniority integration matters just

19 now, right?

20 A. Yes.

21 Q. And you talked about the /PHA

22 McKaskill-Bond statute, correct?

23 A. Yes.

24 Q. Now, do you personally have

25 any experience under /PHA /KAS /SAL bond?

2 A. No, I don't believe anyone
3 does yet. I think --

4 Q. Oh, well those of us who
5 practice frequently in this area are
6 acquiring significant practice in terms
7 of the Southwest AirTran proceedings,
8 but --

9 A. Ah.

10 Q. We're creating a lot of
11 precedent. I'm sorry. But you do not.

12 Now after the civil
13 aeronautics board disbanded, right, and
14 so these matters were no longer governed
15 under its Allegheny Mohawk procedures,
16 correct?

17 A. Actually, if my memory serves
18 me they actually survived until 1984,
19 which was well after the cab was
20 disbanded. But they then moved to a new
21 agency and were no longer.

22 Q. So around roughly the
23 mid-1980s we no longer had a regulatory
24 authority?

25 A. Correct.

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2 Q. That was governing the
3 Allegheny Mohawk process, correct?

4 A. Correct.

5 Q. And from that point until the
6 eventual passage of McKaskill-Bond, those
7 matters were left to union contracts; is
8 that correct?

9 A. I guess.

10 Q. But now we have
11 McKaskill-Bond, right? And as I believe
12 Mr. James asked you, now we have a final
13 and binding arbitration process; is that
14 correct?

15 A. That's correct.

16 Q. Now, the concerns that you
17 raised with respect to seniority
18 integration issues, do you think those
19 are concerns that APA or the other unions
20 that are parties here would not be aware

21 of?

22 A. I don't know. I have not
23 heard them speak about them.

24 Q. But we all understand and have
25 been through several seniority

223

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2 integration processes; isn't that true?

3 A. That's true.

4 MS. PARCELLI: No further
5 questions.

6 THE COURT: I think you can
7 get up now.

8 MR. MOLLEN: I wanted to give
9 Ms. Levine a chance. I'd like to
10 move 1733 and 1734 and 1758 into
11 evidence. With respect to 1735,
12 which is the document over which we
13 had our argument, I suppose your
14 Honor's already ruled as to what it
15 --

16 THE COURT: What I want is I
17 want parties to submit a 10 page
18 brief as to their position on the
19 issue. Again, I'd remind people
20 this is a Ben trial, it's not a
21 jury trial. There is no great
22 value to trying to get me to not
23 see something that we spent 20
24 minutes talking about.

25 Rather, the point is for you

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2 to tell me what you think I should
3 make of it.

4 So that's what you can do and
5 that would be helpful to me. I'm
6 just trying to not get bogged down
7 on some of these things where the
8 existence of it is out there, it's
9 just a question of what to do with
10 it.

11 So just get me something by
12 the ends of the week and if in /*F
13 at the same time you want to make
14 it clear what it is you're
15 essentially you're proffering, if
16 the facts are in dispute, it either
17 is or isn't in a way that doesn't
18 implicate perhaps the timing
19 concerns raised by the objection,
20 maybe you can work something out as
21 to what would be appropriate to
22 stipulate into the record. I just
23 really with witnesses on the stands
24 I don't want to get bogged down in
25 this again. It is a Ben trial so

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2 you'll tell me whether I should
3 think that it's the most important
4 bit of evidence ever or it's really
5 not relevant at all.

6 MR. MOLLEN: Fair enough, your
7 Honor.

8 THE COURT: So I just by the
9 ends of the week, let me just ask
10 if this issue is going to come up
11 with any other witnesses because if
12 so I'd like to put a pin in that so
13 we don't have to go down this --

14 MR. MOLLEN: I don't believe
15 so, your Honor.

16 THE COURT: Do you expect it
17 to come up with any other
18 witnesses? /SHAR we don't plan on
19 raising it.

20 MR. MOLLEN: It relates to the
21 ratified agreements.

22 THE COURT: Let's do that.

23 MS. LEVINE: Just for
24 clarification, assuming the exhibit
25 will get attached to the debtors'

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2 papers before your Honor, can we
3 have that filed under seal? ??
4 ^ ??.

5 THE COURT: Do you want the
6 actual briefs to me to be under
7 seal, is that what you're saying,
8 the document itself?

9 MS. LEVINE: What I'm afraid
10 of is that the papers that are
11 going to get submitted to your
12 Honor in connection with the
13 exhibit that we're trying to
14 exclude from the evidence will
15 include as an exhibit the letter.

16 THE COURT: Is this
17 confidential?

18 MR. MOLLEN: I believe that
19 it's on the TWU website, your
20 Honor. It's sort of odd we're
21 going to be providing you a
22 document and arguing about whether
23 you can consider a document that is

24 currently on the website.

25 THE COURT: That's all right.

227

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2 People argue about these things all
3 the time.

4 Let me do this first. In the
5 interest of compassion, let's
6 excuse the witness from the stand.
7 Any objection other than to 1735?

8 MS. LEVINE: No objection,
9 your Honor.

10 THE COURT: Those are
11 admitted, you're free to go as
12 /REUF vetting as this conversation
13 is.

14 This 1735 is not in the
15 record. No one's going to file it.
16 I believe you can address the issue
17 without getting into the details of
18 the letter consistent with what's

19 already been discussed in open
20 court. So I'd ask you to do that.
21 What I would also ask is that you
22 talk to each other and maybe
23 there's a way that you can work out
24 a stipulation as to what's
25 appropriate and then you can argue

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2 about the relevance of those facts.
3 Maybe there's a stipulation to be
4 had. Maybe there isn't. I just
5 don't want to get bogged down in
6 terms of getting evidence into the
7 record because I'm fearful that
8 that's -- again, you all know
9 whether it's going to come up
10 again, I don't. So that's always
11 my concern is we'll just get
12 waylaid multiple times. You're
13 telling me this won't come up

14 again.

15 So I would say the end of the
16 week is fine if it's not going to
17 come up again. And meantime, I
18 will not do anything with this
19 document, I don't expect anybody
20 will file anything that reflects
21 this document and we will then
22 figure it out and I, people are
23 free to argue it closing in their
24 papers although I can't believe
25 they want to spend the time on this

229

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2 particular issue. But you know
3 your cases better than I do.

4 MR. MOLLEN: Your Honor, just
5 so we make sure that we understand
6 the guidance from the bench on
7 this, there were a series of other
8 documents that would have been also

9 pulled from the TWU website which
10 describe the terms of the ratified
11 agreements. We won't submit them
12 with our brief, but we would argue
13 them together in our brief.

14 THE COURT: What you can do is
15 work out a proffer as to what you
16 want me to accept as evidence which
17 they don't agree. Maybe you can
18 work out something sufficiently
19 narrow that you have agreement and
20 don't want to spend the time on it.

21 But if not, then give me, you
22 can give me a written proffer
23 because I think all the facts will
24 be undisputed, it's just whether
25 they should be in the record. I

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2 would ask you to do that in the
3 next couple of Daves so we can

4 bring this issue to close no later
5 than Friday.

6 MS. LEVINE: I'm not sure I
7 understand. If we're proffering
8 the facts, is that what I'm hearing
9 from your Honor?

10 THE COURT: Yes. It doesn't
11 mean I'll accept it. I don't know
12 how this is /KA /PWEUPBD off
13 precisely. Again, it seems that
14 I'm not sure what some of the ??
15 ^ ?? some of the heavy fire that
16 it's taking as a result of the
17 timing of it ^ ?? being after the
18 start of this hearings, in which
19 case you may be able to offer me
20 something that doesn't have that
21 concern. It may be the sheer
22 existence of the idea of this kinds
23 of a provision in which case I
24 think it's already in the record
25 subject to your arguments about

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2 relevance. So again, you know your
3 case better than I do. So if
4 debtors want the opportunity to not
5 only get this document in but other
6 documents in that are all the same
7 issue, they can just give me, you,
8 a proffer as to what they want to
9 get in, you can all give me a brief
10 on the general issue and then I'll
11 decide it either Friday or at some
12 point when I have to issue a
13 decision.

14 MS. LEVINE: At the risk of
15 overstepping, your Honor, can we
16 put in a proffer that your Honor
17 sees basically the result of the
18 settlement negotiations which we
19 intentionally entered into after
20 the start of the hearing to keep
21 them inadmissible. And it was part
22 of our discussion with the --

23 THE COURT: That's the first
24 time I've heard the issue phrased
25 that way.

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2 MS. LEVINE: Our understanding
3 and maybe, maybe it's just me that
4 misunderstood, but our
5 understanding with the debtor was
6 that none of this was going to be
7 part of this particular trial and
8 nobody was going to get penalized
9 because we actually tried to engage
10 in those kinds of conversations
11 before we got here today.

12 MR. MOLLEN: Your Honor --

13 THE COURT: Let me back up for
14 a second. Obviously I know that
15 there have been agreements reached
16 because they're not in front of me.
17 And I've been told, the only thing

18 I think I've been told is those
19 agreements have a provision whereby
20 those folks who have voted to
21 accept agreements won't be
22 penalized by virtue of doing that.
23 And that there's essentially a
24 provision that says that because
25 you've reached some sort of

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1
2 agreement you won't be penalized if
3 people reach a better agreement,
4 there will be some effort to keep
5 it fair.

6 That's the only thing I know.
7 I don't -- I'm having trouble
8 understanding that I should know
9 anything else, and so I certainly
10 don't want to get into settlement
11 negotiations. However, I don't
12 understand there to be a settlement

13 per se, I understand there to be an
14 agreement that was ratified which
15 is a little different.

16 So what I'd ask in the first
17 instance, I think I thought this
18 issue was going to go away, but I'm
19 obviously wrong about that.

20 So what I'd asking is that you
21 talk to each other and see whether
22 you can reach any sort of agreement
23 because again, I don't think it's
24 worth this issue sucking up all the
25 oxygen in the room which it seems

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1
2 to be doing.

3 Secondly, if you can't, I'd
4 ask you file briefs by Friday to
5 tell me legally what to make of
6 what I just identified as the
7 operative fact, no other facts, I

8 don't understand debtors to be
9 offering any other facts. Am I
10 wrong about that, in terms of other
11 than --

12 MR. MOLLEN: We will not refer
13 to any other facts in the briefs,
14 your Honor.

15 THE COURT: So that's the only
16 thing I understand it's being
17 offered for. If there's anything
18 beyond that, people are going to
19 have a real hard time explaining to
20 me why I should care and again, I
21 understand the other thing just
22 essentially to be historical.
23 Obviously when you tee up a 1113
24 for a number of agreements and
25 certain agreements disappear,

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2 obviously I can figure out that

3 there's been some sort of an
4 agreement and the fact that there's
5 some sort of a me too provision is
6 not at all surprising.

7 So it's just a fair thing to
8 do both by -- it would be, you
9 know, surprising if the union
10 didn't insist on that kind of
11 language. I don't know who
12 insisted upon it, it doesn't really
13 matter, so I'm not crediting it to
14 any side. I'm crediting it as it's
15 in the agreement that was rat
16 /TPAOEUGSD.

17 So that's how I think of it.
18 And it may be that I'm misinformed
19 and therefore there's an issue out
20 there that I'm not /SAOEUG /SAO*EG,
21 but you can tell me that on Friday,
22 by Friday in your briefs so we can
23 chat about it if we have nothing
24 else to do Friday afternoon.

25 MR. MOLLEN: Very well, your

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2 Honor.

3

THE COURT: But again, so

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please talk to each other first

5

because these things are always a

6

little bit easier to deal with if

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you can all can cabin off what it

8

is somebody is trying to get in,

9

what the precise objection is.

10

It's just frustrating to get bogged

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down in witness testimony, I mean

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at least we don't have a jury here

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who would really lose their mind,

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because the jury is sitting there

15

and having all these interesting,

16

/EPB lightning discussions. There

17

are witnesses here, we'll try and

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get through them.

19

That's what I'd like /#20UGD

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/*F to do and I'll figure it out as

21 I need to either Friday or if I
22 have to issue a decision, I manage
23 to get a chance to deal with it
24 before then.

25 MR. MOLLEN: Very well, your

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1
2 Honor. Thank you.

3 THE COURT: Thank you. All
4 right. So let's -- are we
5 proceeding with another witness or
6 is it -- people want to take a
7 break for the day?

8 MR. MOLLEN: I don't believe
9 we have another witness ready to
10 take the stand at this point, your
11 Honor.

12 THE COURT: All right. So
13 let's, I think we did it earlier
14 today, but these things sometimes
15 change, so let's talk, has anything

16 changed from the list that was
17 provided earlier?

18 MR. FLICKER: No, your Honor.
19 You're going to test my memory if I
20 have to actually repeat it.

21 THE COURT: No, I'm not asking
22 you to repeat it. I just want to
23 make sure everybody is informed as
24 to what the proceedings are so
25 everybody can get ready and feel

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1
2 like they've had a chance to know
3 where we're going.

4 So is the expectation we
5 should be done with the rebuttal
6 case sometime Wednesday, is that a
7 safe assumption?

8 MR. FLICKER: Yes, your Honor,
9 that is /SA assumption on a three
10 or four witness a day pace. Either

11 one, we should be able to to do it.

12 THE COURT: Four witnesses may
13 be optimistic, but we'll see.

14 All right, are there any
15 matters that we need to discuss
16 before we break for the evening?

17 MR. FLICKER: Not from the
18 debtor, your Honor.

19 MR. GALLAGHER: Your Honor, it
20 would help from a planning
21 standpoint to talk about timing of
22 closings. I've had some
23 discussions with counsel about some
24 time limits, but we haven't been
25 /PEUPBLDZ down the date in terms of

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1
2 immediately following the
3 conclusion of the evidence or some
4 date thereafter.

5 THE COURT: I know that's

6 always a mixed bag when I was a
7 litigator there were times when you
8 said Judge, please make it
9 immediately after so we can do it
10 and go home. So I'm synthetic to
11 that, but I also know there are
12 people who say I'd love to be able
13 to say that but I'd prefer the
14 time.

15 That's why I'm asking if we're
16 done sometime Wednesday, I hate to
17 even ask, but is there a
18 contemplation of surrebuttal case
19 at this point? I know that's
20 probably an unfair question since
21 we've only been through these two
22 witnesses.

23 MR. JAMES: Hard to tell,
24 probably not. Just because the way
25 Jack butler drafted it. We don't

1

2 know that yet, but I think the
3 unions would prefer just to have a
4 closing and be done with this.

5 THE COURT: Well that's fine.
6 So let's, unless something changes
7 we should be done with the rebuttal
8 case Wednesday. There's an AMR
9 omnibus on things other than the
10 1113 on Thursday. So if we
11 actually get done with the case
12 Wednesday, what we could do is sort
13 of have a hybrid, we'll take
14 Thursday off so I can do the
15 omnibus and then have closings
16 Friday. Because Thursday afternoon
17 I'm not sure I've got a couple of
18 those matters are heavily contested
19 so I'm not sure how many hours it's
20 going to take.

21 But unless there's a sigh or
22 just come in here Thursday and lock
23 all the doors and the windows and
24 be done with them.

25

MR. JAMES: I don't know

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Jack's view on that. I think

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there's a movement afoot among the

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lawyers to try and limit the amount

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of closing, you've heard the case,

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we don't need to go over the facts

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again. I think our opening

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statements laid out a lot of our

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argument. We'll work that out with

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Jack.

11

THE COURT: In terms of

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timing, the reason why I'm hesitant

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to wade into timing is because that

14

puts me in the position of policing

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timing and people never really,

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it's -- it's the rare lawyer that

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hits their mark.

18

So --

19

MR. JAMES: How about we

20 self-police, but we all understand
21 you may have questions of counsel
22 and that's not, I mean if you have
23 questions, we want to hear the
24 questions, but we can agree on time
25 and just all agree.

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2 THE COURT: If we get done
3 Wednesday, here's what my thought
4 would be, is that we set aside
5 Friday morning for closings,
6 meaning not Friday morning until 3
7 o'clock, Friday morning actually
8 means the generally accepted view
9 of the term, we start at 10 and
10 we'll be done by noon, one o'clock
11 the latest. And that people should
12 shoot really for no more than half
13 an hour because there's a certain
14 point of diminishing returns

15 frankly in closings. So the more
16 you talk the more you tell me that
17 every particular detail is less
18 important, that's just the way it
19 works. So if you do it in 20
20 minutes it will probably be
21 considered punchy. So that's -- so
22 why don't we plan on doing that if
23 we finish Wednesday, we'll still
24 make it Friday morning, and we'll
25 be done.

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2 MR. GALLAGHER: Just to
3 clarify, your Honor, the 30
4 minutes, there's three to one here,
5 so the debtor would presumably need
6 somewhat greater allotment.

7 THE COURT: What would you
8 like?

9 MR. GALLAGHER: /TPE /*F if

10 they took a half hour /#50E67, I
11 would like an hour. Let's say no
12 more than an hour.

13 THE COURT: That seems to be
14 an appropriate discount, an hour
15 and a half to an hour. So that's
16 fine.

17 MR. BUTLER: Judge, the
18 committee will only take 15
19 minutes.

20 THE COURT: Then I start
21 /A*RDing people who are on the same
22 side of the issue, I start adding
23 their time together. Talk to each
24 other about that. We can talk some
25 more about it tomorrow. If we get

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2 done Wednesday, we'll plan to have
3 closings Friday morning. Thank you
4 very much.

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(Time noted: 6:15 p.m.)

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