THE CLERK: All rise.

THE COURT: Good morning. Please be seated.

All right, we are here this morning for closing arguments in the 1113 proceeding in AMR corporation bankruptcy. Any preliminary matters before we proceed?

MR. GALLAGHER: Yes, your Honor. Very briefly. Jack Gallagher for American Airlines. We have a few more exhibits to offer your Honor.

I will hand up to the bench American Exhibit 1779, which is American's valuation of the TWU's last prehearing proposal for mechanics and related employees.

And we have agreed with counsel as a placeholder to reserve American Exhibit 1780, that number, for a similar price-out of the TWU's last prehearing proposal on stores. We

had a last minute glitch about exactly which piece of paper goes there, so we're going to work that out with counsel and we'll submit it as soon as we resolve that. So I've distributed it to counsel, I will hand up Exhibit 1779, and offer it into evidence and reserve a place for American Exhibit 1780.

THE COURT: All right.

MS. LEVINE: Your Honor, we have no objection to the admissions. We have reserved the right to let Tom Roth and Don

Videtich look at it, and we may, although I'm not sure we will, have a short supplemental certification to address any new issues that come out of it.

THE COURT: Remind me where 1779 fit, who it was offered in connection with and whether I heard testimony or whether there was written testimony.

MR. GALLAGHER: There was not separate stand-alone testimony, you're Honor, about the specific valuations that had been assigned by the company to the TWU's last proposal on mechanics and related. Mr. Roth testified about the differences, but he did not previously offer this exhibit. So

we're simply completing the record.

THE COURT: Thank you.

MR. GALLAGHER: Mr. Pollack has a couple additions, your Honor, as well.

MR. POLLACK: Good morning, your Honor.

THE COURT: Good morning.

MR. POLLACK: A few evidentiary housekeeping matters as well. You recall that we were going to amend Exhibit 1778, this was the revenue growth chart that we addressed with Mr. Dichter earlier in the week. We have

provided a new version of this Exhibit 1778-A, reviewed it with counsel, I don't believe there's an objection. I'll tender that to the

court and move its admission.

Mr. Flicker reminds me this is a confidential exhibit and we'll designate it as such.

There are two other exhibits, Judge. One relates to the disclosure statement that Mr. Resnick was examined on from the United bankruptcy, you'll recall that was a specific attachment to that disclosure statement and we wanted the opportunity to review the entire document. You'll be pleased to know we're only going to introduce a very brief excerpt from that document which we've marked as 1781. I also provided that to counsel. I don't believe there's an objection.

And then lastly, you may

recall that with Mr. Yearley, we examined him on a particular pleading from the Delta Airlines bankruptcy that we then marked as Exhibit 170 had. Mr. Yearley was not familiar with it, so we could not remove its admission at the time, reserved the right to do so and we'd like to do that before the evidence concludes today. Again, I don't believe there's an objection.

So I will tender each of those and offer their admission, 1778-A, 1781 and 1704.

THE COURT: Let me see them. All right, I think 1778-A is consistent with the conversations I recall counsel having. Any issues with this document?

MS. KRIEGER: None, your Honor.

THE COURT: All right. So that's in. The United Airlines, I

believe I had a couple of pages

that had been tendered and the debtors' reserved the right to tender a couple of other pages. Any objection to 1781?

MS. KRIEGER: No, your Honor.

THE COURT: Give me a second before I put it in the gigantic pile of papers I have. Is there a particular paragraph you'd like to --

MR. POLLACK: Yes, Judge.

THE COURT: I know counsel when offering the selection that she did, she pointed out, which was very helpful, in particular she wanted me to look at.

MR. POLLACK: It was the paragraph captioned "competition,"

it runs onto the next pages.

THE COURT: All right.

MR. POLLACK: We recognize we've given your a number of loose exhibits in the course of the rebuttal case. What we intend to

do is provide a binder for ease of reference to you last week.

There is one cleanup item --

THE COURT: Just want to get to 1704 just to make sure that, I think that was the last document you just mentioned, right?

MR. POLLACK: Yes.

THE COURT: You said there was a Delta exhibit?

MR. POLLACK: That was a pleading in the Delta bankruptcy case.

THE COURT: Ah, okay. All right, any objection to 1704?

MS. KRIEGER: Only it's not clear what this relates to since it has to do with distressed termination of a pension plan by Delta, but we don't --

THE COURT: We can handle that one of two ways. I could either ask for an explanation and we can go off --

MS. KRIEGER: We'll just leave it as is.

THE COURT: All right. I'll take it for what it's worth and trust that the parties will address it in their submissions to the extent that it warrants such attention. So that's in as well.

MR. POLLACK: Thank you. The last item is the APA has proposed certain redactions to Mr. Dichter's declaration and we have yet to reach common ground on the propriety or scope of those redactions. Ms. Krieger and I have agreed to continue discussions, not to belabor the record this morning with that, and we will attempt to reach an agreement next week. If not, we will seek your Honor's guidance.

THE COURT: All right. Would it be at all helpful to give me a preview of that or you do think

it's not worth doing at this time?

MR. POLLACK: I don't want to take up the time this morning. It

relates to a few discrete provisions in the declaration.

THE COURT: Are you happy to proceed that way?

MS. KRIEGER: We're happy to proceed that way.

MR. POLLACK: Thank you.

THE COURT: Thank you. Are we still talking about supplemental matters?

MR. CLAYMAN: Yes. Your Honor, I think we mentioned the other day that we were going to submit a supplemental declaration of Alex Roman which has been marked as APA Exhibit 401; so can I approach.

THE COURT: Yes. Thank you.

MR. CLAYMAN: Copies have been distributed to the company.

THE COURT: How long is Mr.

Rohan's original declaration?

MR. CLAYMAN: Actually, I don't recall, I believe it was probably around 10 pages or so.

THE COURT: I just ask because I note this is 16 pages. Give me a second. What is this offered --

MR. CLAYMAN: It's in response to Eric Briggle's declaration which went into an issue that had not been addressed by Mr. Rohan in his initial declaration.

THE COURT: All right, and that issue is?

MR. CLAYMAN: How the early out was calculated and whether or not any mistake was made in the calculation of the early out.

THE COURT: Any objection?

MR. POLLACK: No objection, your Honor.

THE COURT: Anything else to add to the stack? All right.

All right, I presume debtors

are going to go first, but just before we do this, I did take a look at the calendar and I think I had asked the parties for their submissions on June 6th. And I think when I originally said that date I think I was under the impression that we were probably going to be going into next week. I have no desire to move the date up in a way that is really pulls the carpet out from underneath anyone's feet, but if at all possible, so originally I was thinking next Friday, but I think given the weekend and expectations

about the 6th, I think it's too much, but if people could get it to me on the 4th, say, at noon, which would give me, again, the point is that you want them to be considered, and given the circumstances that would be particularly helpful if you could

do that. If that presents a particular problem let me know and we'll figure it out. But that would be helpful because again, I sort of expected we were going to just sort of slide into the Tuesday after Memorial Day. But here we are.

All right. With that said, proceed.

MR. GALLAGHER: Your Honor,

one last clarification. We weren't sure on our side if your Honor had indicated that our proffer of Exhibit 1779, the price-out of mechanics and related proposal by the TWU's, American's price-south, if that had been admitted.

THE COURT: Yes, that's admitted.

MR. GALLAGHER: Thank you, your Honor. For the record, Jack Gallagher for American Airlines, your Honor.

I would be remiss, your Honor, if I did not begin by, on behalf of the debtors thanking your Honor for the time and attention you've devoted to this matter, for your patience with all of us, and I must

say, for some valuable instructions, some remedial instruction and trial practice tactics.

THE COURT: I wouldn't go that far. Counsel of record all know what they're doing and are accomplished folks, so I'm have to have the benefit of the parties' expertise.

MR. GALLAGHER: Well it helps to get reminded, your Honor, and I'm sure all the parties join in those sentiments.

Turning to our case, your Honor, the courts agree that the debtor has the burden of proof in a section 1113 proceeding. We don't

disagree with that. And that the

burden is evaluated on the preponderance of the evidence standard. There's been a lot of rhetoric in this case, your Honor, but what I will focus on this morning are the facts, the facts that we believe are established on this record and that we believe we have established by far more than a preponderance of the evidence.

Now I'm going to mention a lot of facts in the course of my discussion, but our proposed findings of fact will include each item I mention today, many others of course, but we don't have enough time to mention them all, but each item that I mention here today will be highlighted in our proposed findings with citations to the record evidence, the transcripts, exhibits or both, which supports that statement of fact.

And it's our hope, your Honor, that clear findings of fact by your Honor will help both parties as we move forward to whatever the next stage of this process holds. I would like to begin, your Honor, by talking about Section 1113 and I've taken the liberty of putting a freestanding copy on the bench. I'm sure your Honor has access to many, many copies in many books and volumes on it, but this is a simple printout of the language of the statute itself.

And I share it, your Honor, because I want to talk about the wording of the statute. As your Honor knows, the heart of the requirements start in section 1113 (b)1)(A). And that's where the

core requirement of the proposal necessary to permit reorganization is found.

But I want to call your

attention first to words which precede that necessary language, which is in the second line. Because at the end of the first line there are other words that are not frequently the subject of dispute or discussion in the courts, but which we think do have a bearing on this case.

And those words are that the proposal that the debtor makes, that becomes the subject of the 1113 process must be, and I quote, "based on the most complete and reliable information available at

the time of such proposal."

We think that timing element is important, your Honor because it clearly sets up a time frame and a sequencing process which we believe flows throughout Section 1113.

And just as clearly, this language makes clear that the statute does not require the

debtors' proposals to anticipate future events that might or might not happen.

The key requirement of Section 1113 is in the next line, your Honor, and that is that the debtors' proposals must be "necessary to permit the reorganization of the debtor."

As I noted in my opening

statement, the Second Circuit has told us in Carey Transportation, that the necessary standard of Section 1113 means that the debtors' proposed contract changes must "increase the likelihood of a successful reorganization."

And the Second Circuit went on in Carey to tell us how to do that, how to evaluate, and they said, and I quote, in virtually every case it becomes impossible to weigh necessity as to reorganization without looking into the debtors'

ultimate future and estimating what the debtor needs to attain financial health."

So the Second Circuit has told us that this case is about the

future, not the past, and it's about the future of this company and all of its stakeholders. It's not just about preserving value for the creditors, important as that is, but about preserving jobs for the thousands of dedicated employees of American Airlines. And of course, yes, it is also about sharing the burden of reorganization, as fairly and as equitably as possible in the circumstances.

So that's what American has tried to do, your Honor, in our business plan, and that is why so much of our case focused on an understanding of the airline industry and American's business

plan for the future.

Now fortunately, much of the evidence on critical points in this case is undisputed on this record, your Honor. There is no evidence at all disputing the debtors' arguments in evidence on the following propositions: That the airline industry has become intensely competitive; that American has suffered staggering losses of almost 10 billion dollars over the past ten years; that American continues to be unprofitable at the rate of 80 million dollars per month in the first quarter of this year; the UCC's statement called this "sobering evidence," and indeed, it is.

It's also undisputed that despite this sobering evidence, these parties have spent almost

four years discussing American's

financial and competitive position, but have been unable to come to agreement on what to do about it; that even before Chapter 11 American's non-labor costs were in line with those of its competitors, and that bankruptcy will enable American to achieve further reductions in those costs which were not possible outside of Chapter 11.

It's undisputed that because of its financial position American has under-invested in its products and services over the past several years.

It's undisputed that American has a level of secured debt which

is much higher than its peers and much higher than other airlines which have been through the bankruptcy process.

It's undisputed that American has run out of unencumbered assets

to pledge for new financing.

Finally, your Honor, it's undisputed that American has a labor cost problem. All parties here have agreed that this debtor cannot successfully reorganize with the current labor contracts in place.

Counsel for the unions have stood up and told your Honor on the record that they agree that American needs a material reduction in its labor costs.

So one key issue before your Honor is how much labor cost reduction is needed. American's valuations show that the unions have offered less than half of what the company believes is truly necessary for a successful reorganization.

But this case, your Honor, is not just about direct labor cost reductions, there is another set of

major issues in the terms of these contracts. As the courts is now aware, the pilot scope clause contains restrictive provisions on how American can operate its business, especially in the area of regional jets and its commuter partners and code sharing with

other airlines.

In the TWU agreements, which remain at issue for the mechanics and related and the stores employees, they also contain a limitation on the total amount of flying that can be done by regional carriers on behalf of American Airlines, a 6 percent cap on the total ASMs available.

That brings, those two features, both the direct labor cost and the contractual restrictions bring us to this court to determine whether the debtors' proposals satisfy the reasonably

necessary standard.

The case law, as I've indicated, tells us that the

standard way to determine what is reasonably necessary is to start by looking at the business plan.

Now because we are the last airline rather than the first major network airline to go through this process, we do have those prior airline examples to help enlighten our perspective as we go through and evaluate the business plan.

Now, before I proceed on the business plan, your Honor, I want to know that we are very pleased to have the support of the unsecured creditors' committee on this motion because their professionals are the only ones other than the unions advisors who have done the due diligence to investigate the debtors' financial and business affairs.

THE COURT: Well let me ask, there was a comment made, you can tell me whether you agree with it or disagree with it, or explain the nuance, maybe the committee can, is I believe one of the union's said they're supporting the business plan for purposes of this motion but they haven't bought into the business plan for any other purpose?

MR. GALLAGHER: I would defer that to Mr. Butler, your Honor, because I certainly don't want to speak for the committee, but as we read their statement of support, they agree that the changes the debtor has sought are necessary for a successful reorganization and therefore, they support the motion.

THE COURT: All right. Well it's clear the debtors have the

burden. How am I to understand the burden as to the business plan

here? Than obviously comes up in the context of this transaction that has been much talked about. But first just talking about the business plan. In your view, what do I need to find for the debtors to prevail that the business plan is a reasonable basis for the proposed changes?

MR. GALLAGHER: Yes, your Honor.

THE COURT: What level of granularity do I need to make that kind of finding? Do I need to go through as in each proposal, to each union where I do have to look at each union separately? Do I

have to look at each part of the business plan? What should my inquiry be from your point of view?

MR. GALLAGHER: With regard to our proposals, your Honor, 1113 I believe would stand alone as to each union. But of course the

business plan itself is unitary, it affects all of the unions and that's one of the reasons why this is a combined case rather than three separate cases, because we didn't want to try the business plan three times over.

But we believe, your Honor, that in the setting of simply evaluating the business plan, the Second Circuit has said reasonably necessary.

In our view, your Honor, we apply the business judgment rule and we need not go down and inspect every tittle and jot of the business plan, but rather looking at it as a whole conclude that it has been created with sufficient due diligence, sufficient professionalism, sufficient attention to detail, as our experts have testified, that it is a reasonable basis upon which to

proceed to evaluate the total amount of labor cost savings needed and the type of savings.

THE COURT: I think you just articulated my question very well for me. Which is 1113, the debtors have the burden, but the business

judgment rule is deferential to the debtors, right, so --

MR. GALLAGHER: We agree with that, your Honor.

THE COURT: So how am I supposed to square those two in this context? Am I supposed to give the debtors the benefit of the doubt? Am I supposed to say no, the debtors have the burden so they don't get the benefit of the doubt?

MR. GALLAGHER: Well, we think, your Honor, the preponderance of the evidence standard answers that, that we think that the debtors have presented overwhelming evidence

about the quality of effort and results. No business plan can

guarantee success, it's a prediction of future performance, but in terms of level of effort and professionalism, we think we've carried the burden and have more than a preponderance of the evidence in place about the quality of our business plan.

THE COURT: But then how does the business judgment standard factor in if I'm talking about the preponderance of the evidence then? Because that's a deferential standard.

MR. GALLAGHER: We may not need it, your Honor. I would call it a back-stop. If it were a close case I think the case law does not call upon your Honor to second-guess each route selection or whether a particular route is profitable. But I don't think this

is a close case, your Honor. So in our view, the preponderance of the evidence standard would suffice standing alone.

THE COURT: All right.

MR. GALLAGHER: Now, unlike other airlines in Chapter 11, American did not rush immediately into Section 1113. Instead, it launched a major effort to review its business strategy and to define its economic needs.

Four witnesses testified about the process by which the business plan was developed, Beverly Goulet led the in-house team, David Resnick of Rothschild led a team which advised on financial issues and the proper financial metrics. Even the union expert, Mr. Owsley

attested to Mr. Resnick's expertise and reputation in the industry. And Mr. Resnick testified here on Wednesday that this was one of the

most thorough and substantial due diligence efforts he's ever been involved in.

Mr. Vahidi was here on the witness stand and he led the in-house team on scheduling and network planning and they developed the new long-term network plan.

Mr. Dichter of McKinsey, led a team of McKinsey people who worked with American to develop from the bottom up a new revenue model to cross-check the financial projections on the revenue side.

And Mr. Dichter testified here

on Wednesday about the construction and operation of that revenue model, about its granularity down to the route by route level, about the various sensitivities which his team did and which they discussed in meetings with the union advisors, that the model was given to the unions and their advisors so

that they can run their own sensitivity analysis.

THE COURT: Let me ask you about that. There's been a lot of talk about the model and the model is obviously many things discussed here proprietary and the parties seem to have not explicitly, but implicitly drawn the line in the sand that, you know, we each have

our proprietary models, no one is going to say that that presents an impediment to being able to offer a few about the proprietary model, but certainly I have perceived there to be criticism about sort of a black box nature of the model as to the business plan and how do you respond to that argument.

MR. GALLAGHER: Well, your Honor, not so. I think there may be a misimpression. The business plan model was made fully available to the unions. They were briefed

repeatedly and invited in to question and answer sessions with management who were familiar with the model on how it worked and all the different tabs and inputs that

were in there, the various things that could be done with it. We don't think that's a black box.

THE COURT: Well the testimony I'm thinking of is I believe there was a reference to how long would it take to run various scenarios we want to run and book end issues in terms of upside, low side and things of that sort.

MR. GALLAGHER: Right. Well Mr. Dichter testified, your Honor, that certain sensitivities like you can change the projected amount of macroeconomic growth in gross domestic product and its impact on passenger demand and therefore its impact on revenue. And those tabs are relatively easy to change in

the model.

What is not easy to change is one number, especially a revenue number, for example, the real discussion was around can you just say we're going to take half as much labor cost improvement, for example, and take, take $500 million of labor cost savings out and say, poof, the result will particular out from the bottom. And when they got to that problem, they said we can't do that, we can't do it simply, it's not linear, it doesn't just -- if you take 500 million and add it back of labor costs or that you don't remove.

The problem with that is that's going to impact many, many other things in the model. It's going to impact which flights are profitable.

THE COURT: That I understand

and I got the point. I guess what I'm trying to figure out for purposes of the 1113 analysis is where does that leave me? I suspect I'm going to see an argument that says that they lacked sufficient information because of that aspect, meaning that we can't, we can't run that, those particular scenarios for you and it sounds like the model is handed over but not in the sense of somebody else can run those scenarios.

So what's your response to that? Is it that that's sort of the way it is? Is it that folks can, as I think one expert talked about, we put together our own models and then run our own

simulations and everybody has a model. What's your response?

MR. GALLAGHER: My response, your Honor, is this is one of the most sophisticated models that's

ever been used and every model has its limitations and every debtor has a limitations on its resources and its ability to rebuild it or build multiple variations. But this is both not just a reasonable model, but a robust model and a very sophisticated model. Going back to Mr. Dichter and Mr. Resnick saying this is very sophisticated.

THE COURT: No, I understand. I'm getting into the information part of it. Meaning that folks will be able to say particular

because of its sophistication that they want to be able to wrap their arms around it and probe it.

And so there seems to be, and again folks can get up and correct me if I'm wrong, but there seems to be a criticism about certain assumptions but then also a criticism of we can't, part of our problem is that we can't quite wrap

our brains around certain parameters.

And so I'm not really talking about the substance of the model, but just the access as to various levels of detail and ability to run simulations. That's really my question.

MR. GALLAGHER: Well they

certainly had all of the details that were in the model, your Honor. They had it.

Now there's an impossibility issue, there's a question of how much is enough. I think in this case we have done as much or more as has ever been done in any other case. And we have to rest with that, your Honor.

I think parties could always make the argument that you want more, more, more, but there has to be a level of reasonableness.

What does a debtor ordinarily

do? What is a debtor required to do by the code?

We've certainly satisfied the standards and information requests

of our own creditors' committee.

So I do think there has to be some logical limit, but I stress that in terms of relative level of effort, we've done a tremendous amount here and far more than is typically done in most bankruptcy case.

THE COURT: All right.

MR. GALLAGHER: Mr. Dichter testified in great detail of the revenue model in granularity down to route-by-route level and that he had great confidence in the business plan.

So the evidence is that this business plan was carefully done from the bottom up based upon many variables and inputs. And they did have access to all of these inputs,

your Honor, the fleet plan, how many new aircraft were delivered, when, how many aircraft are retired, when, the revenue model broken down by detailed schedule, and the labor cost model, had all of the demographics and all of the other variables that were on the labor cost side.

And this business plan was designed to address precisely the five major problems which have held this company back prepetition. Its lack of profitability in ongoing operations, its unsustainable debt load, its need for an expanded network scope, and we address that both through organic growth and through synthetic growth with code sharing and use of regional partners. The scope clause restrictions on our ability to

generate revenue, and finally our uncompetitive labor costs.

And the results of the business plan, your Honor, are a 3.1 billion dollar improvement in annual financial performance by 2017.

And that 3.1 billion dollars is made up of one billion dollars in additional revenue, 600 million dollar per year improvement in non-labor costs, and 1.5 billion of labor cost reductions by year end 2017. And that translates, on a six year average, which we used in negotiations, to $1.25 billion in labor cost reductions.

Of that 1.25, 260 million dollars is targeted for American's

20,000 nonunion employees and the remaining 990 million is from employees represented by these unions.

As I've indicated, your Honor, their last proposals to us prior to this hearing only get us halfway

there, so the gap is quite large.

THE COURT: Let me ask about consideration of proposals. There have been a lot of proposals back and forth and I've heard the word agreement used in a lot of different contexts, meaning our 2003 agreement being something that was actually signed, sealed, delivered and everyone is operating under. But also as to individual things that prior to the hearing

folks had said well, we're not going to fight about this issue anymore, we're willing to do that.

How am I to understand these what I call less final, more interim kind of agreements in the sense that folks say, well, we've reached agreement about this issue, what am I to make of those?

MR. GALLAGHER: Well, your Honor, the unfortunate fact is that there's no agreement until there's

final agreement in labor negotiations. But the parties necessarily have to address one topic at a time.

And I'm sure my colleagues on the labor side will have their own view of this, but in our view, when

they say things, when they have said in court that they have agreed to PBS, we don't think that's accurate, your Honor. What they have done is made a proposal that said we will agree to PBS if, and every one of those proposals has conditions attached to it, that they get to approve the vendor, that they get to approve the final plan design, if you give us an early out, if you agree to thus and so.

And those conditions across the board have been unacceptable. So while pieces of the puzzle have been agreed to --

THE COURT: Let me ask it this way then. Certainly in the context

of 1113 we're talking about basis to reject the cases make reference to proposals made by the unions at issue and I guess I'm trying to figure out how to consider these agreements in that context.

Are you saying that I can only consider final agreements and say here's our package soup to nuts, or yes, you can consider them for purposes of good faith rejection but you don't think if even if you consider those they meet the standard or something else.

MR. GALLAGHER: Well, closer to the latter, your Honor. The proposals that you must evaluate under Section 1113 are the debtors' proposals and that's where our evidence has focused.

The unions, of course, introduced their proposals and they

are in the record, and we think they are relevant to the issue of good faith bargaining, we think they are relevant to the issue of whether they had good cause to reject. If they had offered us something at or very close to what we were seeking, they, the cases indicate that might be good cause to reject in the right circumstances.

We don't get that far, your Honor, because although individual little pieces might have moved in the right direction, none of the -- none of the contracts that are before your Honor, on none of them do we come close to anything like meeting.

And the contrast I would draw is to Judge Drane's decision just

last week in the Hostess bankruptcy which APA has put before you.

Judge Drane said the parties

were very close, so close that he didn't think it was necessary for a reorganization in order to grant the motion, but he spelled out exactly what the issues were and exactly how they could be resolved to make an agreement and he said, he denied the motion, but without prejudice, he said if they aren't resolved that way, you can come back to me and I'll look favorably upon a new motion.

So Judge Drane clearly in that case thought the parties were close enough that a judicial nudge could get them there.

Now I wish, your Honor, that we were that close, but we're not. We're miles apart. We're $500 million apart on straight labor cost valuation, but then we have the scope clause and then we have the TWU's ASM cap.

So the cases are clear that

your Honor must evaluate the proposals as a whole. And the only way in which the unions' proposals become relevant is did they come close -- first, once your Honor determines that we're right, hopefully, on what is reasonably necessary, and we don't think there can be any dispute on this record, for example, the scope clause changes are necessary, how do the

unions' proposals match up? Do they get us at or anywhere very close to the need that we've shown.

And if you look, for example, your Honor at the unions' proposal on scope clause issues alone, they are so restrictive, as Mr. Glass testified, that we just can't compete effectively without the relief we're seeking.

So we think, your Honor, first you look at the business plan and decide if that sets the right

benchmarks and then you look at our proposals and see are they reasonably calculated to get us there. And we think in both cases the answer is yes.

THE COURT: Since you

mentioned benchmarks, there was a lot of back and forth about EBITDAR and about the target number in the unions being too high and we won't get into numbers obviously because they're confidential, but one of the things that came up was essentially talking about other bankruptcies and the numbers there versus the historical numbers. How am I to understand other bankruptcy cases's numbers other than the fact that it's perhaps a cautionary tale for all bankruptcy judges everywhere about trying to evaluate numbers in a bankruptcy that are predictions? Because I can see at least two ways to view it. One is

to say that's what everyone has

done, we're doing what everybody else has done so you can't blame us for it.

The other is to say those numbers bear no resemblance to actually what happened, so should you, given this historical precedent change your numbers.

And so -- and I guess the third way would be well, maybe we should, maybe we shouldn't, but if we shoot high we're hoping to get where everybody else got.

What is your narrative about what to think of those numbers?

MR. GALLAGHER: Well, your Honor, first of all, the comparison numbers are in the record in paragraph 41 of Mr. Resnick's declaration and in the company's Exhibit 306-A.

And consistently, your Honor, the targets that American have set

are lower than the EBITDAR targets set by the other major network carriers in their plans of reorganization, consistently, both for the year of emergence and the out years. I think there may be one exception in one out year where one of those carriers was modestly less.

But Mr. Yearley did not -- he testified that our targets were high. But he didn't suggest what an alternative appropriate target would be.

There's a reason for that, your Honor. He couldn't do it.

The company experts, Mr. Dichter and Mr. Resnick offered thorough explanations which are

unrebutted on this record as to why an alternative EBITDAR calculation is not linear or straightforward as Mr. Yearley implied, because we'd have to go back and redo the model.

You could do the simple calculation if you took $500 million off the EBITDAR, off the bottom line number what effect would that have, but that would be very misleading because it wouldn't go back into the model and change the revenue and pull out the unprofitable flights and decide whether the capital investment was warranted now in light of the return on the investment.

And there are so many variables that that's when it

becomes imponderable.

But every one of those airlines targeted margins above what they and their peers had achieved in the past. Because going forward, your Honor, most businesses tend to look at the world as a bit more rosy than it ultimately turns out to be. They have optimistic projections, but

they also factor in risks. And of course in this industry the risks are well known. Because whether it's fuel prices or any of the huge number of variables that affect passenger demand, whether it's a terrorist attack, an epidemic, tsunami, weather events, the record is full of those kinds of events.

So we project what we would like to attain in an ideal world where business conditions are good, travel is good, the economy is moving positively. And our model takes into account the best current macroeconomic forecast available, current. Not past, current.

That's about the best we can do. I don't know how we could do it any better, your Honor, so.

THE COURT: Let me see if I can try this again, which is I guess the third thing of the three that I mentioned was what to make

of the fact that those bankruptcy cases predicted numbers that seemed to be higher than where they actually got. And I assume when

predicting higher numbers the sacrifices that are asked, that are requested are higher, whether they're consensual or they're some other means.

And so sort of struggling with what to make of that. It seems to cut both ways for all sides. In other words, if they were overly optimistic and everyone sacrificed to get to that target and even with those asks we didn't get there, but we managed to get what we needed, I'm trying to --

MR. GALLAGHER: Well, your Honor, it's an excellent question because of course the fundamental question for your Honor is one on which there's a broad definition. Reasonably necessary, that's the

standard. And of course your Honor has to struggle with it as the courts have struggled with it from the beginning under this statute.

But the case law gives us guidance that it's business judgment and, your Honor, we have projected EBITDAR less than all of our peers, less aggressive, less optimistic, because we thought that was reasonable.

We did not want to overreach.

But then the question is well how low can you go and still keep enough room there for all of the exogenous events that might happen? What is reasonable? That's a very cuff call. But we concluded that by going less than what others had we were satisfying ourselves that we were not overreaching, but we were still coming within where our financial advisors told us was a

zone of reasonableness in terms of

what the financial markets would expect of us in order to make us creditworthy, in order to make us a viable candidate for investment, for the new equity which we will need.

So at the end of the day, your Honor, there are a whole series of business judgments that go into that.

What your Honor is called to do is to evaluate those. We don't think piece by piece, we don't think you need to get in with a fine tooth comb, but to look at the total big picture and say did we do a reasonable job. We think we've done an exemplary job, your Honor.

And we don't think it can be the law that your Honor is then required to pick apart a business plan for any single imperfection because perfection is not attainable. This is a business

plan. It's inherently predicated on assumptions and hopes and aspirations for the future. And the question is are those aspirations and hopes and plans reasonably grounded and we think they are, your Honor. We think we got the best talent available to put it together and that's what we did.

And we did not start off with preconceptions. We did it from the ground up.

THE COURT: Before we get to the individual unions, and I realize that we have to get there shortly, I just want to talk about other transaction argument and here there's something that is in your view too speculative, in the unions' view concrete because it is memorialized in term sheets.

Let me hear your view as to other transaction. Are you telling

me that I should ignore the concrete term sheets? And if they are not enough, what would be enough in your view to push the nose in the football over the goal line.

MR. GALLAGHER: Your Honor, we think the suggestion that there is

a transaction likely with US Airways is wholly speculative wishful thinking.

There is, US Airways is apparently willing to pay a premium to our unions for support of a merger. That does not constitute evidence at all, and there is none in this record that our proposed cost reductions are not necessary for a successful reorganization. Because the unions have not proffered any evidence at all of a viable transaction. They have not proffered evidence of corporate agreement or even negotiations.

They have not proffered a business plan, they have not proffered financial projections, they have

not proffered a fleet plan, a route plan, a cost structure. They have not proffered support from the creditors' committee.

We think it's ironic, your Honor, that the unions are so quick to embrace this ephemeral acquisition scenario on which absolutely no due diligence has been done, and yet they question to pieces the American business plan which has been very professionally developed and thoroughly vetted.

THE COURT: Let me ask you what am I supposed to make of the fact that, the fact of all the other airline mergers that have occurred and what seems to be the universal view that yes, that's something that's appropriate to look at, because if you take that

predicate, I think the union then makes the argument that this is about timing, and therefore, you could use that timing issue in the context of an 1113 argument to say the time is not now.

MR. GALLAGHER: Well, 1113, your Honor doesn't have a timing requirement. It says is the debtors' proposal in the time in which it is made necessary for a successful reorganization on the record before the court.

Now all of the other mergers that occurred, your Honor, have had Northwest and Delta, Continental and United, all of those carriers had been in bankruptcy. In Continental's case many years before, but in United's case they came out of bankruptcy in 2006.

They didn't consolidate until 2010 and '11.

Delta and United were --

excuse me, Delta and Northwest were both in bankruptcy, came out in 2007. Did not announce a merger until more than a year after they came out.

So we don't know whether consolidation is in the future, your Honor. What we do know, and this was strong evidence from Mr. Kasper, Mr. Dichter, Mr. Resnick and Ms. Goulet, that American Airlines is strong as a stand-alone company. American Airlines does not need a merger, it needs a competitive cost structure and with a competitive cost structure it can

live and thrive successfully.

Then it can, with that strength and with that value created for its stakeholders, then it can see what's out there in the real world over a long period of time in the future, and if one consolidation or another makes

sense to expand its network, it can do that, but it will do it in its business judgment, with the consent of its shareholders, or if it were still in bankruptcy, it would be its creditors.

But the record is crystal clear that this company is not only viable, it is strong. Look at US Airways today as an example of a smaller carrier that's profitable

as a stand-alone entity. It doesn't need the network scale. It might like to have it, but it doesn't need it to be profitable because it's got a lower cost structure.

And where is its big advantage? It's in its labor costs, your Honor. So what we need, and everybody agrees with this, first and foremost, to get out of bankruptcy we need a competitive labor cost structure.

That's what we seek. That's the sina qua non of a successful reorganization. Not matter what else happens, that is what we need.

So we think there's no question that we need these changes

for a successful reorganization, no reasonable question at all.

And then what may happen in the future, we don't think your Honor can determine that. We can't determine that. No one can.

But on this record in terms of the evidence there is no basis upon which you can evaluate the likelihood of a future transaction.

These unions have signed term sheets, they're agreements to agree, they are contingent on their face, they're contingent on membership ratification if and when the transaction ever happens. So we don't know if there'll be a transaction, we don't know in

there'll be membership

ratification.

We think that's smoke and mirrors, your Honor, that it's a distraction, that it's a red herring and it's not really an issue before you on this record.

THE COURT: All right.

MR. GALLAGHER: One other thing I can comment on, your Honor, is to contrast the approach of the unions. As your Honor probably understood from the record, bargaining stopped with the pilots and the flight attendants once they signed the TWU term sheets. They just weren't available for further negotiations.

So rather than use the time leading up to this hearing after our motion was filed for intense last minute negotiations to try to reach agreement, they went to Phoenix. That's their prerogative.

But they walked away from bargaining with American.

Ms. Glading admitted on the witness stand, or perhaps it was Ms. Loew, that they spent a total of 3 hours after the end of March with the company.

We don't think that that's a sign of -- we don't think that's the right way to do it, your Honor.

We contrast that with the TWU's approach, because what the TWU did was they said to their members we've signed a term sheet with US Airways so that if that ever happens we're protected, we have a deal, just like the pilots and the flight attendants.

But then they said, but now we're going back and we're going to

engage with American Airlines because that's where we are today and we're going to try to work out the best deal we can with American

Airlines. And they did.

And they took those packages out and five out of seven ratified.

We think that's the responsible way to do it, your Honor, and we think that indicates good faith bargaining by the company and by the TWU.

Now, they're not in love with us and we're not in love with them, but we found a way to make a deal. That's what's supposed to happen in section 1113. It has not happened with the pilots and the flight attendants. But on this record

about the reorganization of this company there's only one business plan in the record and it is real and it is viable and it is necessary.

Now the unions have many, many arguments about their problems with our business plan and I don't have time to address them all, so I'm

going to try to address just a few of them.

The argument that American is not viable on a stand-alone basis, we think that's pretty flimsy, your Honor.

Dan Kasper testified here on Monday that he's been involved in all of the other major airline restructurings and that he sees no

reason, and I'm quoting, "No reason why American, which has more fundamental strengths and strong reputation and brand recognition, I see no reason why American cannot do what United, Continental, Northwest and Delta and US Airways have done previously."

And that is emerge and achieve profitability on a stand-alone basis.

Mr. Dichter agreed that American is very viable as a stand-alone.

Now Mr. Akins was the primary advocate of the theory that stand-alone is not viable, but he couldn't really decide which way to go on it because he said first that

our stand-alone plan is not viable because it has too much growth, but then he says our network is too small and we need to grow.

We don't think he can be right on both points.

He criticized, Mr. Akins did, our cornerstone strategy as if he thought it was unsuccessful, but Mr. Kasper and Mr. Dichter both testified that all network carriers use a hub strategy, Delta has a fortress in Atlanta. United has a fortress in Chicago, in Denver, in San Francisco.

But Mr. Dichter testified that he had analyzed alternative hub scenarios, he'd actually done the detail work, and found that various

changes consistently yield worse financial results.

So he validated our business plan on the hub strategies.

The other argument that our plan is a placeholders simply not supported, your Honor. We have union rhetoric, but we do not have evidence. In fact, we have strong evidence from the company that that is not the case.

And the unions talk about the protocol agreement between the company and the creditors' committee as if it were some type of a glaring signal that a merger is inevitable. Not so.

The protocol agreement is simply a reflection of the agreement between the company and the UCC on an appropriate schedule of due diligence. The kind of due diligence that has to be done in

every case where the company will

have a stand-alone plan, share it with the creditors, fully evaluate it, achieve it, but then take all the steps necessary to achieve it and then will explore whether there are any other options available now in real-time that will achieve better value for the creditors, better benefits and viability for the estate.

That's it. It doesn't say they will or they won't, where they end up because that has yet to be determined.

But it is, that's all it is, it's nothing more, it's nothing extraordinary.

It drew media attention

because it was announced maybe 10 days after it was actually agreed to at the same time the unions were trying to and if the flames of publicity on US Airways.

Their last argument about what

we seek, your Honor, is that it seeks too much. It's just not necessary.

And that's a more conventional argument. And it would be much more understand if American were the first major airline to seek to reorganize under Chapter 11.

But the charts introduced by Mr. Kasper this week make very clear that American's proposals will generally place American's employees in a better relative

position to their counterparts elsewhere in the industry, employees in the same jobs at other majors, in terms of the labor costs. Where everyone else moved to the bottom of the pack, American is moving to the middle.

We have consistently been on the high end, your Honor. Given the decibel level of protest you would think that we were falling

off a cliff and going to the end of the earth on the bottom.

Mr. Kasper's exhibits show you that's not the case. .

So we urge you not to be deterred by the rhetoric, but to look at the evidence and the evidence shows, Mr. Glass testified

to this as well, that American's proposals, and remember we protect compensation, so the proposals necessarily affect work rules and benefits, Mr. Glass testified that our proposals consistently place us in the middle of the pack, consistent with market competitive terms.

Section 1113 doesn't require that, your Honor. At US Airways they went to the bottom because they had to from a financial perspective because their financial condition was so bad. We haven't done that. We've gone from the top

to the middle. We think that's appropriate.

Now your Honor asked about the

unions' counterproposals and when they say agreement, I urge your Honor to go look at the term sheets they passed across the table and when they say things like we agree to PBS, look at the conditions.

There's a reason why there wasn't rapid agreement on those terms that they offered, because the conditions were unacceptable. And the company remained available to continue to bargain to try to find a way to make it work, but without success.

THE COURT: There's been some discussion about, from the union side about the company not moving off of its original 1113 ask and that the idea was that you could change where the savings were but you couldn't change the savings

needed and so they characterize it as sort of a take it or leave it.

I realize the statute presents challenges to all sides in terms of trying to understand what you can and can't do without damaging your own position, but how do you respond to that argument?

MR. GALLAGHER: Well, your Honor, that argument simply ignores the very substantial change of position that American made on the pension freeze versus pension termination.

Now that change resulted in a dramatic shift of the balance sheet of this, of the reorganized company, the prospective balance sheet because it retained more than 4 billion dollars of long-term liabilities on the balance sheet.

So that required a rerun and

major revision of the business plan.

But American did not -- because of that added burden, we could have gone back and said well now that we're keeping those costs in order to be financially stable, we need more from labor. That is not what the company did.

You heard the testimony. What the company did was they said we're not going to ask more from labor, we are going to project and go to the marketplace for additional equity we'll find a way to make it work with investment, additional capital and not ask labor for more.

So we think that in and of itself is a response to the take it

or leave it argument.

But the second part of that, your Honor, is we did what the statute requires. We tried to figure out what do we need to successfully reorganize, to come up with a solid business plan and then

ask for that.

We did not do what often happens in conventional collective bargaining where both sides ask for too much because they know they're going to end up compromising in the middle.

This statute doesn't call for that. This statute is very different in that respect. We believe we would have been called to task had we done that.

So American was very careful to build its need, but then Mr. Brundage testified that if the unions had come back to us and convinced us that there was a fundamental flaw in the business plan or, for example, persuade us to change the pension plan position, we would do it.

And the pension issue is a terrific example of the fact that we did.

So we think we were responsive, that it wasn't take it or leave it, it was we think we've worked hard to come up with a rock solid set of projections of our need, and unless you can show us that that need is not real, that's

the number we have to get to.

We don't think that's take it or leave it bargaining, your Honor.

Now related to that in terms of the good faith bargaining is the valuation issues. And quite frankly, your Honor, I'm not sure exactly how to deal with that because APA and TWU have raised a number of valuation issues and APA has accused us of manufacturing some valuation disputes.

APFA does not disagree on valuations. Mr. Akins agreed on the witness stand that he had no issues with the company valuations.

But let's look at the record,

your Honor. First and foremost, first and foremost, when they went

to US Airways, the unions agreed to use American's valuations across the board as the basis for the valuations of their agreements with US Airways.

That alone should end any debate on who has better numbers.

And the record is clear, your Honor, that American was open to discussion of its valuations and agreed to change several of them multiple times in negotiations with both pilots and the flight attendants. Ms. Clark for the APA acknowledged that American had changed its valuations in APA's favor by 29 million dollars a year.

Ms. Loew, for APFA agreed that American had changed its valuations for the flight attendants by 20 million dollars a year.

Ms. Clark acknowledged that

the parties worked together for a long time, generally trust each other, and that they used the same data and the same methodologies and the real differences are in assumptions.

And in our view, the record clearly establishes the validity of the company's position.

One vivid example of that, your Honor, is medical plan utilization. The difference between the parties on the value of medical plan utilization, that one item, is 88 million dollars per year. A huge chunk of the total difference.

Your Honor heard the chief actuary from Mercer & Company, the largest benefit consulting firm in

the United States. American relied on Mercer.

The unions purport to have relied on Segal and company. They

pulled one of the Segal witnesses and the other one could not explain the basis for the assumptions that were in their black box.

So we think the record evidence shows, your Honor, and the Mercer actuary explained what they do and how they do it and the data they used to get to their conclusions.

And that's simply one illustration of these valuation differences.

They question our assumptions, they question our methods because

they want the total number to be lower, but time and again when you look behind the numbers, ours turn out to be solid and theirs turn out to be soft.

We understand that, your Honor, that's one of the reasons why we found value in doing it on the record in open court where it

can withstand the light of day and cross examination, because that's the way to find what's real and what isn't.

And our numbers across the board, your Honor, are real.

THE COURT: In your view, it's the valuation disputes that leads to the parties' differing characterizations as to whether the

proposed contract will be at market, in the range of market or I've heard some argument that, you know, one's proposals are supposed to be 30 percent below market, so really those are driven by the valuation disputes?

MR. GALLAGHER: Very heavily, your Honor, because we've put into evidence comparisons into Mr. Glass's declaration primarily to what is in place at other carriers. You heard Mr. Glass testify here that our flight attendant wages

would remain, even with the brand new United agreement, we will -- excuse me, US Air agreement, the one that failed ratification, we would be ahead of those flight

attendants going forward if that agreement had ratified.

We don't know what the future holds, but we don't think there's any credence to the 30 percent below market. We don't think there's anything other than conclusory witness statements that support that proposition.

One other example on productivity, your Honor, is the pilot productivity and work rules. You'll remember Mr. Rosselot was here and he testified, he was an expert on pilot productivity and work rules and the issue was how many reserves the company should have, and it was a big issue to the pilots, the difference is $17

million.

And Mr. Rosselot testified that he thought the company's reserve projections on the need for reserves were too conservative. We were going to keep too many and if we could credit them with removing more reserves then we get to their value.

But when we got to ask him on cross examination how low can you go, he agreed that American's projections already took us down to the range of the most productive pilot work force at Continental, the 12 or 13 percent reserve level and he said he wanted us to go lower than that. And they already have a PBS system.

So we think that repeatedly, your Honor, when you look at these kinds of issues, our assumptions and our rationale stand up and theirs doesn't.

So I've covered a greet deal of testimony, your Honor, on the question of their asking for of asking for too much. I do have some responses. American has an urgent need for capital investment in its product, we need to build our liquidity to withstand shocks in this marketplace, and I emphasize that American today, the amount of money on hand sounds like a lot, certainly to the man on the street, but in a company with 25 billion dollars of annual revenue, the analysts say we should have 20 percent liquidity just for prudent day-to-day management of the airline to withstand the day-to-day vagaries in things like fuel prices

and market demand.

And as long as we are not earning profits, we continue to lose money, we will have to fund those losses and the available cash

will diminish very rapidly.

It gets back to the urgency factor, your Honor. For this debtor in its current financial condition that would be catastrophic because we're not creditworthy and we have virtually no assets left to pledge.

Thirdly, American has nowhere else to cut costs. Ms. Goulet has testified to the overall level of cost reduction effort over many years.

And you heard from some of the

witnesses on the witness stand how the management departments have been cut dramatically over recent years, including outsourcing. Mr. Yearley agreed that there was no place else to cut.

Fourth, your Honor, profit sharing. If we are successful, if we attain our business plan targets, the plan projects

substantial profit sharing, many millions of dollars. The numbers are confidential but they're shown in Exhibit 132-A.

The key of course is that profit sharing is contingent on the very first word, on profits. So if we are profitable, if we -- if by chance we do seek too much, market

conditions turn out to be extraordinarily favorable, the employees will share in that success. And if we get spectacularly successful they'll share even more, 15 percent from the first dollar of profits. And those out of year projections of profit sharing would give back a huge percentage of the amount we're currently seeking, your Honor. If the plan suck seeds.

Fifthly, your Honor, jobs, the employees who remain with the company get something that other

stakeholders will not get in chapter 11. The employees get to continue with good jobs, with at least industry average pay and

benefits, including travel privileges. Even those who are furloughed retain recall rights, which are likely to ripen during the term of this business plan in light of the expected growth and the average age of our current work force.

So we don't think we've sought too much, we think our proposals are fair and equitable, they preserve compensation, provide for future increases, provide for uniform employee benefit plans from the senior executives to the lowest paid in the company. The uniform percentage allocation is fair and equitable, your Honor.

And I want to note what the Second Circuit said in Carey about

that because there's been some discussion about whether 20 percent right across the board is fair. If we didn't do 20 percent across the board, your Honor, the only group for which there's evidence in the record that they are currently below market is management and nonunion employees. If we had not done 20 percent across the board, that group would have had to give less and we would have heard loud screams from the unions' side.

But what the Second Circuit said about across the board cuts in Carey Transportation, and I quote, they said that the wage and benefits do not always have -- I'm not quoting yet, the wages and benefits do not always have to prove, have to be cut to the same degree, but "to be sure, such a

showing would assure the court that the affected parties are being

asked to share a proportionate share of the burden."

The company's evidence shows that our proposals are market based and the balance of equities, your Honor, it is that approving the company's proposal would save 67,000 jobs.

I need to conclude, your Honor. American Airlines is a great name in the history of aviation in our country it has faced financial difficulties in recent years, but it has core strengths that most businesses would love to have. It has name recognition and goodwill, it has 67

million members in its frequent flyer program. It's trusted by hundreds of thousands of passengers every day to deliver them safely to their destinations. And those core strengths include 67,000 dedicated employees.

American's title for its new plan in bankruptcy is titled very simply, a Plan For Success. We urge you to grant our motion in order to permit this great company to move forward with that plan, not only to achieve a successful reorganization, but to provide for the long term success of our company, our employees and all of our stakeholders. Thank you, your Honor.

THE COURT: Thank you. I have two very specific questions before you sit down.

One has to do with the regional jet number. It was pointed out during the, maybe Mr. Glass's original cross about the provision providing for 50 percent mainline and what that resulting number would look like. And my question for you is in your view, one, do you agree with that number,

I believe it was, I don't know, 524, something in that ball park, do you agree with that number, and two, if you do, how am I to understand that number as compared to other competitors? Is it in the ball park, is it aggressive? Is it

aggressive but with an explanation?

MR. GALLAGHER: I am confident, your Honor, that American Airlines does not have a thousand mainline aircraft, it is more in the neighborhood of five or 600 mainline aircraft. So 50 percent of that would be in the 250 to 300 range. I don't have the exact numbers in front of me, but I believe they are in the record and we'll certainly address that in our proposed findings.

We have in the record, your Honor, both the actual number of regional jet aircraft at each carrier and at American and what

our proposals would permit and we think they're entirely in the zone

of reasonableness. And our business plan, of course, laces out exactly where that regional jet capacity would be allocated. It's not some abstract pie in the sky. It is calculated to serve a specific business need.

As Mr. Dichter and Mr. Resnick testified about re-gauging in certain markets where it makes much more sense to fly a 70 seat plane than a 120 seat plane with 50 seats empty.

THE COURT: All right.

The second question I had had to do with the argument about code sharing, claiming that what American is asking for in the view of the union is not in line with the industry because they asked for essentially no restrictions on code sharing. And there's obviously a

lot of testimony about details of other airlines and what they do and what they don't do.

But, one, do you agree with that notion that it is a unrestricted codeshare that's sought, and two, again, how am I to understand that in the context of the industry?

MR. GALLAGHER: Well, your Honor, Mr. Glass testified that both Northwest and United when they came out of bankruptcy had what labor people called a meet and confer requirement, that means we'll talk to you about it before we do it. But it does not require your Honor agreement. And so they said they have provisions that say we'll talk to you about any proposed code sharing and then the

company will go and do what it deems appropriate in its business judgment.

And the only restrictions beyond that, both Northwest and United coming out of bankruptcy, were certain very narrow limits on hub flying, certain places they could or couldn't fly to. But beyond that, they had unlimited code sharing partners and nationwide coverage of codeshare opportunities.

THE COURT: So the question for that then, in your view is how do you define the relevant comparable set? You're using those two airlines coming out of bankruptcy. I assume the unions

are using the existing circumstances today.

MR. GALLAGHER: I think that is correct, your Honor. And of course today the world has changed. Five years ago American was the largest and it was not fighting for -- it was not the small guy trying

to match the scale of the larger guy.

Back at that time, Delta, Continental and Northwest were you will much smaller than United and American and they had blanket code sharing across their systems, all three airlines, very, very elaborate code sharing, because that's the way they expanded their network and it benefited all of

them in competing for scale against American.

Now, the shoe's on the other foot. United and Delta are much larger and our need for code sharing is much more like Delta and Continental and Northwest needed back then.

But if you look today at what United or Delta might agree to or limits they might accept today, they can afford to accept greater limits today because they're the

king of the hill. They have the network scope. They don't need code sharing as much to expand their reach affairs we do.

THE COURT: Thank you.

MR. GALLAGHER: Thank you,

your Honor..

MR. BUTLER: Good morning, your Honor, Jack Butler from Skadden Arps on behalf of the Official Committee of Unsecured Creditors.

While the committee is a statutory party in interest and in this particular proceeding a full Section 1113 party by way of a stipulation and consent of all the other Section 1113 parties that are reflected in your Honor's pretrial order, we have sought from the beginning, as we indicated in our opening statement and again the pleadings we filed in this pendency of this Section 1113 proceeding, to

mod rate our participation, to

follow the guidance that really Judge Drane had laid out in the Delphi case about the fact that what committees ought to focus on isn't necessarily the stair step 1113 and each and every element, many of which are better adduced between the labor organizations and the company, but rather, the committee should focus on, among other things, investigating considering whether the debtors' decision to reject the CBAs, in this case the four remaining CBAs, is a proper course of action. That it reflects an appropriate exercise of business judgment.

And unlike Mr. Gallagher, I'm not sure there's any deference the court place in 1113 to the business judgment rule in that regard. I think the statute in this particular statute, the way it's

constructed requires your Honor to find by a preponderance of the evidence that the debtors have exercised reasonable business judgment in formulating their necessary asks and reaching the necessary, it's necessary for the reorganization.

But I do think it's important and we had some difference of view in opening statements among the parties, as to what the evidentiary standards is and I think it is very clearly in the Second Circuit, preponderance of the evidence, on all of the elements. And that's important because one of the problems with 1113 is that people sometimes forget, we said in our

opening statement, people ought not be confused about what we're here to do. This is part of the process. Every road here ends back at a bargaining table with these

parties, American on the one hand, these labor organizations on the other hand, to sort out their differences. In some respects, no matter what your Honor does, that is really the key issue here.

And as a result, Congress gives your Honor and the committee recognized your Honor said this on at least half a dozen occasions during this case, Congress has given your Honor a very specific but as your Honor has said very narrow mandate on what the court

ought to be doing here.

And that is determining not winners and losers, and not by clear and convincing or some other huge evidentiary standard, by simply a preponderance of the evidence whether the debtors can demonstrate they have met the stair step and they have in fact proposed modifications that Carey

Transportation the Second Circuit tells us is necessary for to increase the likelihood of their reorganization. It is an inward looking examination. And I want to come back to that in a moment because that's an important element of this.

And it's only necessary for

the debtors to be more right than they are wrong, not to be perfect, not the to have it substantially correct view, but to simply have the scale weigh at the end of the day slightly more in their favor. I know Mr. Gallagher would like to say he's way more, but the reality is, your Honor, he doesn't need to finds that. Your Honor only needs to conclude on this record and on the evidence that's in this record that the debtors are more right than they are wrong understanding that if you find that they still

have to go back to the bargaining table with these labor organizations.

Your Honor, one of the things

I hope that your Honor will find and certainly will be I think in the findings of facts submitted by the parties and I think it's important, and that is that in this proceeding, unlike some others I've witnessed over the years there can be no question about the good faith of the parties, all of the parties that are before your Honor here.

All of them have acted in good faith in what they tried to accomplish here. All of them are continuing at least in the committee's view to act in good faith, but we also recognize and I think the record reflects, a level of frustration here. Good faith with a degree of frustration. On the company's side, they talked

about the four years of negotiations since the agreements became amendable without success being in their view forced into bankruptcy only to have one of their more significant unions make a $500 million move in terms of moving chips around on the bargaining table which wasn't available to them before they filed bankruptcy. For a company that spent a decade trying to avoid bankruptcy, you can imagine the frustration on the management team of having to do that and then having that result that it took bankruptcy to do that.

You could also imagine the record is clear here as it relates to the scope provisions and certain of the other provisions of the pilots' contracts and some of the TWU provisions and certain other

provisions even in the APFA

agreements that there have been restrictions on competition that have over the last indisputably over the last ten years caused American to, or have contributed to causing American to lose its way from being, and there are a lot of other factors that go into that, but the fact of the matter is the company is not, the status quo is not sustainable, it is not competitive and why is that important to the committee? Well it's important, your Honor, because as you heard Ms. Goulet testify on Wednesday, the company has no intention of paying off the unsecured creditors in cash, either

at par or at any other dollar in terms of cash. They intend to pay the unsecured creditors at some amount less than par, to be negotiated with us, in the reorganized equity of the

reorganized company.

So the creditors care very, very much about whether or not the reorganized American Airlines is competitive in the marketplace and has the ability to move forward and hopefully at some point, as we indicated in our prior statements, to reclaim that place that they were over the storied part of their 80 plus year history.

This is the airline that was the most innovative, that was the

most creative, that had in some respects over its 80 year history some of the best labor relations during that period of time and was indisputably the largest and most dominant airline on the planet.

And it's now in a different place and it needs to come back, in a place where the status quo we all agree is completely unsustainable.

So how does your Honor

approach that? Well, again, we think this is a very narrow issue. We think that while your Honor recognized and it's hard for any of us to dispute, that the parties have presented you a blizzard of evidence before the court. Much of it relates to matters that the

committee believed at the end of the day are at best, at best tangential to the narrow issues properly before the court and we think that evidence should, that blizzard should and will melt away under this court's scrutiny as the finder of fact of those specific things that the court needs to look at.

The court is not here to resolve the parties' disputes, 508 I'm going to talk about that in a few minutes because it's so important to the committees and I think the parties, or to set the

new terms to govern the parties relationship. Rather, the court must decide whether the existing

CBAs will continue to govern the parties during their negotiations or whether the debtors will have the authority to abrogate the existing agreement and then to impose other terms of employment as they move forward to negotiate outside of 1113 under the R LA.

So how doings a debtor approach that? How does every debtor who's ever involved in 1113 approach that assignment? They started with a stand-alone business plan, not a plan that looks at every possibility in the world, not a plan that looks at every alternative, not a plan of reorganization, a business plan that says here's how we think about our view of what we have, our assets, you know, our liabilities,

our ability to generate profits internally, how do we move forward?

And they generate a business plan. And that business plan is vetted.

And the evidence here shows the debtors' stand-alone business plan is at present, and I say at presents and I'll discuss that in a moment, to answer the question your Honor put to Mr. Gallagher that was directed in part to the committee, but at present, it is the only, well actually at this point it's true it's the only stand-alone business plan that the debtors or anyone else has constructed.

The evidence is clear that not the labor organizations, not the committee, not anyone through all the due diligence that's been done

has suggested there is a materially different stand-alone business plan. There's only one business

plan before you, your Honor, it's the stand-alone business plan the debtors have constructed.

All right. And there's no evidence that the debtors, not a single bit of evidence in this record that the debtors have failed to consider other viable stand-alone plans. Nor is there any credible evidence, really, your Honor, that supports the context that the other major components of the stand-alone business plan, the projected billion dollars in incremental revenue or the $600 million in non-labor savings are

understated and I mention the word understated because overstated leads to entirely different conclusion, that they're understated, these are not understated results because if they were overstated we'd be looking for more labor savings, not less.

And so it's important to know that.

It's also important to know what the stand-alone business plan is and is not. It's not a plan of reorganization. This is not a confirmation hearing. We're not applying 1129 of the bankruptcy code here. For that reason alone, it's important that the court, and everyone else understand that we

don't conflate the requirements under Section 1113 with the standards for confirming a plan under section 1129 of the bankruptcy code. The relevant inquiry, the narrow inquiry, that Congress asked and the Second Circuit in Carey and other cases, Northwest and others suggested this court needs to do is to ask itself two questions as it relates to the business plan. Does the business plan require the labor concessions

that have been requested? And does the business plan if pursued, quote, increase the likelihood of successful reorganization as Carey Transportation the Second Circuit said at 816 F.Second at 89, that's

the standard, it's not a guarantee, it's not we have to get this done no matter what. It's does this increase the likelihood of an internally focused reorganization of the debtor. The statute says the debtor. A reorganization of the debtor.

And so we have to sort out whether that, that standards has been met by what the second circuit tells us is a preponderance of the evidence. The only question before your Honor is is Mr. Gallagher and his colleagues, has the debtor, are they more right than wrong on that question. And if they are, and they've otherwise met the standards

that have been, of the stair step

of 1113, then the court needs to grants the relief that was requested.

Now that's not to deny that there aren't points in the company's case that have caused all of us, including the committee, to reflect and to be concerned.

And that's why this is not a -- the burden of proof here isn't clear and convincing or some higher standards or some other sets of issues.

And Mr. Gallagher and I might in good faith disagree with each other on how far they've exceeded the standards. The committee believes and we put in our papers they have exceeded the standard, and we think the record is clear on that point that the balance sheets in preponderance to the debtor's favor.

But there are concerns, for example, about the fact that the evidence shows the company never moved off their ask during the entire set of negotiations that are relevant here.

Although there was on cross examination and on direct examination Mr. Brundage made it clear in his responses that at an appropriate time they would have, but how does somebody kind of move off something if people aren't close to them. How do you move off your request, how do you negotiate against yourself and how do you maintain, as your Honor recognized, how do you maintain some sanity with the statutory requirements if you keep arguing against yourself

if what you're putting on the table is supposedly necessary.

So you start, as Mr. Gallagher says, in 1113, unlike in section 6

and other kinds of negotiations, companies are forced to start at the end, not at the beginning or the middle point, and the fact that they don't move much is a tenet of 1113 and a properly advised client. It's not really as frustrating as it is, it's not really an element of people acting in anything other than good faith.

Similarly, we've heard a lot of testimony about the business plan, the 3.1 billion in annual improvements, EBITDAR margin not to be mentioned, but a target that is,

that people have challenged as to whether it's competitive or not, but I have to echo what Mr. Gallagher said on this point. There was no evidence in the record, none, that suggested there should have been another target that was credible. And how you would construct a business plan

based on that target.

This was not a case where people came in and said no, no, not that plan, this plan and here are all the elements and how all the drivers went through.

As much as I respect Mr. Yearley because he's one of the people very well known in this business, his testimony said that

the 17 point -- excuse me, the percentage of whatever it was 17, excuse me, the numbers that he put in his declaration, that all the numbers he was talking about Mr. Yearley spoke to, he went through and he talked about why they were important to him, but when asked, when trying to sort of put in perspective how it could be different, he just simply did arithmetic, he simply said if it was something less than there -- then that something less would

automatically equate in less labor savings.

That argument, that a change of one amount in the plan would automatically equate into another

-- automatically into labor savings was I think entirely refuted and rebutted effectively by the debtors' case. The one thing that I think we all recognize is there's so many interactions in this model and so many other issues that go into play, Mr. Dichter discussed this in great detail on his rebuttal case. The fact is everything is interrelated.

And so while I think everyone has to to acknowledge there would be some positive change, there's nothing in this record to give your Honor the comfort there would be a concrete level of savings or that another target would be the more preferable or achievable target or

that there was a viable business plan based on that target. That evidence is simply lacking in the record.

Now, your Honor, we're concerned at times with the debtors' case in that the evidence does show that in a number of situations the debtors appeared at least to be, with respect to some line items, adopting an all or nothing approach, where it had to be X or zero.

And they valued some of the elements, the evidence shows, some of the elements of their proposals at zero or some of the elements of what the labor organizations offered at zero even though they had previously attributed value to those asks or those offers and that's troubling where the committee's perspective. The

valuation of crew rest seats, for

example, comes to minds as one good example that there was a lot of colloquy on.

And the committee's also concerned about the scope and code sharing proposals made to the pilots because they're very broad and they could significantly reduce mainline flying and that is a legitimate concern of the pilots when they believe under their collective bargaining agreement they own the flying at American. That's what they're there for.

But having said that, your Honor, again, the case law instructs us and Congress instructed us and your Honor that

it's not a line by line analysis that we all do. At the end of the day, we listen to the whole record and then we sort out what we can consider to be in determining necessity when you look at the

operative proposal you have to view it as a whole and not by its specific elements and when you do that, you have to conclude whether it's reasonable and necessary by a preponderance of the evidence. I mean that's the box we're in. It's a very narrow box and I think everyone has to understand that doesn't -- that's not where this all ends. That's the narrow where your Honor has to make.

It doesn't make things right

or wrong, it doesn't put a stamp of approval on the debtors, it simply answers a statutory question that Congress asked you to make.

I have less time to speak than anyone else, I'm almost done so I'm going to end with two other points.

One I do want to talk about strategic alternatives. The labor organizations have presented a number of arguments regarding

sequencing. The import of those arguments, your Honor, is that the debtors can't seek 1113 relief based on a stand-alone business plan unless they first compared that plan against a particular set of strategic alternatives. That's not required by Section 1113 of the

bankruptcy code, in fact it's nowhere in the bankruptcy code, it's certainly not required by the case law in this district or anywhere else. The focus of 1113 is inward looking, it focuses on the debtors' proposal, based on the debtors' business plan and asks your Honor to determine whether that business plan and those proposals increased the likelihood of the debtors' reorganization.

Not other alternatives that we may all be looking about in a plan process, looking towards a plan of reorganization.

The preponderance of the evidence here supports the debtors' view that abrogation of the CBAs is

necessary to the debtors's successful reorganization on the current time tables so the debtors can validate the assumptions in the stand-alone plan.

We believe that relief is necessary for the debtors and the committees and others in this case to move forward to expeditiously compare that plan to available strike alternatives, before a plan is formulated, a plan of reorganization is formulated, before it's prosecuted.

We believe the company has acknowledged that in its protocol with us, we disagree with Mr. Gallagher's view that the agreement we have between the company and the committee is not extraordinary, we think it's extraordinarily

important and there's a lot more to talk about than that, but not in this 1113 proceeding.

Second, there's been a lot of time talked about the importance of the proposed term sheets that each of the labor organizations have negotiated with US Airways. As the committee argued in our papers, that transaction, and by the way, the cross examination of one of the very limited ones I did of Mr. Akins on this point was to get this point into the record, was that that transaction is completely speculative. There is no financial deal of any kind with anybody other than an agreement about how labor organizations will be treated if and when those transactions occur.

And that's extremely importantly in connection with the

record.

And the fact that they exist

does not by itself establish good cause for the labor organizations to reject the proposal or in our view affect in any way the balancing of the equities your Honor is required to do under the statute.

But I'll go one step further, your Honor. The evidence shows that during the period of time between the filing of the 1113 motion and the commencement the of the hearing on April 23rd the labor organizations negotiated term sheets with US Airways and there was at least the record suggests and certainly the debtor's

suggested, there was a, with certain exceptions, a significant lack of negotiation with the debtors.

That lack of bargaining certainly in some degree continued during and up to the commencement

of the hearing.

We believe that course of action, the committee believes that course of action should preclude the court from finding the labor organizations had good cause to reject the debtors' section 1113 proposals and weighs in favor of American when the court business balances the equities. Because as we understand it, those proposals didn't prior to the commencement of

the hearing get pushed across the table to the debtors and let the debtors accept those proposals if they wanted to. They were hold over here in abeyance on the side.

And at the end of the day, right, there's nothing wrong in fact we've suggested to the company the company kind of needs to think about why the labor organizations actually were motivated to go do what they did and there should be

some reflection in the company's locker room about those issues, but the fact is the relevance in this Section 1113 case is really only two.

One, as Mr. Gallagher suggested, the labor organizations

did use, as best we understand in the record, American's valuations in pursuing those discussions which we think is a probative point for your Honor.

And two, the fact is that as you evaluate whether anyone has good cause to reject, you have to evaluate how they conducted themselves up to this point in the hearing. It's a narrow evaluation, but it's an important one.

I'm going to close on one other point. The form of the order that your Honor enters, if your Honor grants relief we think should be very different than the order

that was proffered by the debtors. First the committee believes it

should authorize the debtors to reject the contracts if that's what your Honor finds, but not directed at that moment in time. There's a distinction there and it's been true to other cases, because having the authority but not the direction to immediately abrogate the contracts provides and oftentimes enhances continued negotiations between the labor organizations and the debtors, which is really what this all rolls back to, all roads lead there.

Second, we absolutely believe a portion of the order that suggests that your Honor ought to approve or ratify or in any way weigh in on what is to be imposed by the debtors should be eradicated from the order, it has no place in the order, it's not what 1113 asks

the court to do.

Finally, your Honor, like everyone also else in this case, I've had a few sleepless nights and reflected about all this because we all know we need to get to a deal.

And if we think about it from the committee's perspective as we evaluate the good faith of these parties, and we weigh on before your Honor indicating we think they all have good faith, they're all working hard to get to the right place, we try to, this concept came to mind to me and I'll close on it and that is simply I thought about a movie that Matthew Broderick, a resident of the city, starred early in his movie career and it was called War Games and I don't know

if anyone remembers the movie or if your Honor ever saw it, but it was really a situation where Norad had taken, had allowed its -- the North

American defense system to go into a black box and the computer control it. And not surprisingly the black box went a stray, we're on the edge of thermonuclear war in responses to perceived but not real threats from other places, and lo and behold, Matthew Broderick, the young Star shows up and asks the computer a question and it shuts down and everything goes back to normal because he plays a game with him, a game of chess actually. And at the end of the -- all of a sudden it turns out that the

computer can't within and when the computer shuts down the computer says, it says I have to stop this, the games every over because "the only way to win is not to play."

And we say that your Honor because we think here while this is not a game, just like thermonuclear war is not a game and this is not a

game. We do think that everyone has to consider that fact.

There is 28 days between today and the time your Honor is scheduled to issue your ruling, and we believe committee believes that the way for everyone to win is for people not to play the outcome of what 1113 relief might be, but rather to settle between here and

there. Thank you.

THE COURT: Thank you.

MR. JAMES: Your Honor, may I take a three minute break.

(A recess was taken.)

THE CLERK: All rise.

THE COURT: Please be seated.

MR. BUTLER: Your Honor, before seating, I was reminded at a recess by apparently there is a large number of War Games fans in this.

THE COURT: Checkers.

MR. BUTLER: No, actually tic

tac toe, so just so the analogy is correct and the record is correct, your Honor, thank you very much.

THE COURT: I should know that because as somebody who has

children in the age of one to 17 I've seen that movie in the last number of years, so. So Mathew Broderick would be happy there are enough people out here who could correct your statement.

Good afternoon.

MR. JAMES: Thank you, your Honor. I'm not going to go back over the points my colleague Jack Gallagher raised, but it's a little like chasing a raccoon on a sit down lawn mower. There are so many I would be zipping around here. Minor ones. But US Air, we gave the company our valuations. What we gave US Air, they're our valuations, they're not the company's valuations. Indeed, in

this case, there was no cross examination of our witnesses on our valuation of our proposals, the 270 million we offered the company.

I would say it's a little more complicated than Jack Butler suggests in that Royal Composing, the court says -- well, let me jump back to this statute. The statute says in (b)1)(A) that the 1113 must have necessary modifications that are necessary to permit reorganization.

If the union makes a counterproposal on an item then unfortunately there's a burden on the court to see, to examine that proposal and whether what the company's proposing is necessary. That comes up you'll see in Royal Composing. And what Royal Composing said, if the union refused to bargain then the court could just look at the overall

proposal.

You'll see that in Carey. The proposal must contain only the necessary elements, the modifications, and there are a couple jurisdictions, court cases outside here, valley kitchen, south district of Ohio, and express freight lines.

I'm just saying it's a little bit more complicated than to just look at the global ask.

THE COURT: I understand that. But let me ask you to address it in a little bit more specific terms. I understand it goes good faith bargaining, it may even go to good faith cause for rejection. But I guess the term has been used

loosely in terms of agreement and obviously it almost seems, and I think people use the term supposals at one point just to try to put various shades of gradation on

where parties were.

But obviously is an agreement the same way the 2000 agreement is an agreement. It's something else, it's part of a well, we're trying to put in a bucket everything we're willing to do, you have your bucket, we have our bucket and hopefully some day we'll come up with one everyone agrees with.

So I'm wondering how to consider that for purposes of necessary. In other words, is it really a proposal, is it evidence

of good faith, is it a basis to say that rejections of the proposal is appropriate? Is what is it?

MR. JAMES: I believe it goes to good cause, certainly good faith, but also necessity. I'll walk you through scope for a minute just to give you an example.

The parties never in bargaining 1113 actually inked

deals and say this is the final deal. Everybody understands the whole thing is contingent upon the final agreement. That if the union says here, I'm prepared to do this, then the question is is what the company asking necessary, is that a necessary element.

Let me just walk you through

your Honor --

THE COURT: My question is when you have one part of an overall agreement, I understand that everything's contingent, it's got to go out to a vote.

MR. JAMES: Correct.

THE COURT: My question is when you don't have, essentially when lawyers say to each other I can't tell you what my client is going to do but I'm willing to recommend that. You can have that circumstance where you say here's my bucket, I've got everything in

here, this is what I'm willing to recommend, what if you only have two things of ten in there, what am I supposed to make of the relevance

of those two things because are you 20 percent there, if they're big things are you 80 percent there? What am I to make of that?

MR. JAMES: I understand that's complicated. Let me walk through, I think scope is an example where they have to show more to show necessity of their scope proposal. If I may.

This is an example of an ask, most of the plan is coming out of the pilots. I think they have a billion in revenue and there are three elements of that revenue. It's the joint business agreements, that's British Air and Iberia, no real numbers there. Most of it's the RJ and domestic codeshare.

Now, it's a non-monetized item

because they say we're not going to give the pilots any credit for that because they didn't get credit at Northwest, Delta and United. My reaction to that would be none of those were litigated on what the consequence of that was. The pilots did end up with a large unsecured claim. I'm suggesting that there's the 370 million and I think it's not just the 370 million that they won't move on, it's the elements within the 370 million, it's Dichter said we can't remodel elements within that, it's too difficult. I'll get to that in a minute.

But on scope, this is the iceberg that they're hoping you let go into the shipping lane. You can see the 370, that's worked out very tightly. When it comes to the ones

they don't monetize, they're huge and it's basically below the

surface.

For example, the -- and scope is nothing more than a job security provision. We're talking about real jobs.

Domestic code sharing, they have one in their business plan and they've already talked about it in open court, that's JetBlue. That's the one in the business plan. Before the bankruptcy they had a number associated with that JetBlue codeshare, it's the same number they're using post-bankruptcy. The value that that's going to contribute to revenue.

Pre-bankruptcy we gave them

the routes they wanted on that JetBlue code sharing agreement.

Post-bankruptcy -- and we gave them two others. The codeshare they talked about on the shuttle and Alaska, that's now out in open court.

Now they want it unlimited. They want with anybody in the United States they can do domestic code sharing. The industry standard is there are limitations at every carrier on the scope of that domestic code sharing, so they went from wanting one in their business plan to now wanting unlimited. Their business plan has one. I'm not saying one's enough, I'm just saying that was the

business plan demand.

RJs, we gave them the exact, almost the exact number, they're six planes off from that number they have in their business plan. They say we need X number of RJs. We gave them that number. They want 300 percent of that, they went three times that, that's four times the size of JetBlue.

The dispute we have is an industry, is a gauge issue. In the

industry there are two different ways they handle that, one, they have a seat gauge of 50, 70, 76 seats, or you can do what US Airways does where they fly these, a lot of RJs right at the break point and so they have a larger

gauge at US Airways, but they're flying a gauge continuous through there and they're having the pilots fly those larger RJs at the mainline.

The company wants three times what's in their business plan in terms of the RJs. They want a seat gauge that's well beyond what anybody in the industry has among the major competitors, that's United, Delta, well, Continental and United are not yet have figured out what that gauge is going to be.

I just say something about the weight just because it came up. This is only a footnote --

THE COURT: Before we get to weight let me go back and ask you

about codeshare. The argument that I heard this morning was that you don't measure the current industry standard, you have to look at what other airlines had coming out of bankruptcy when they didn't have the market share that they have now. What's your response to that particular argument?

MR. JAMES: Well, United, the codeshare, they cited their codeshare, their scope clause, but the United codeshare actually has some restrictions on it. It's not unrestricted coming out of bankruptcy. What they negotiated on the same day they got their scope clause, they negotiated the codeshare agreement, it has restrictions in it. None of them are completely open-ended.

Now the company put in this

1.H provision they now want to get rid of that said we don't know who we're going to codeshare with, we'll agree that we can codeshare with anyone in any part of the country, as many as we want, but the arbitrator within 30 days will determine what you are industry standard protections, so it's going to look at what's in the industry. They want to get rid of that.

Basically their only alternative, they want to get rid of any restrictions on code sharing limitations.

THE COURT: I guess my question is more almost theoretical which is what's the relevant time period for me to look at? Now or a company coming out of bankruptcy or look at both and side how they fit?

Because obviously you're using the metric of what is codeshare, what code sharing is going on right now

among these carriers. The debtors are using what are these companies have coming out of bankruptcy. Those are two different time periods.

MR. JAMES: They're actually three different time periods. Before they went in bankruptcy, while they're in bankruptcy was the time of big code sharing. Northwest, Delta, then United, US Airways, and there were limitations on extending that code sharing and I think those have carried forward. For example, in the US Air/United deal. That's something you would

look at, that's what the arbitrator would look at, that's what the parties ought to be looking at, what are the protections. There are certain things parties don't permit, you don't allow the competitor to be feeding your hubs. It's basically a way to set up

another hub, a virtual hub. What Northwest did is they didn't have a lot reach on the West Coast so they agreed to allow another carrier to use their hubs to expand the synthetic network. That's what American wants to do with Alaska. They still have capacity left under the Alaska deal.

JetBlue, it's now in open court, they want to do JetBlue

because --

MR. FLICKER: What's in open court is that there have been news reports about a possible codeshare. There's been no testimony about what the business plan provides.

MR. JAMES: Fair enough, Scott. The way that 1.H was structured, your Honor, that they put in in 2003, was that the arbitrator would look at the existing protections that exist. It doesn't give an exact time frame

of what he's supposed to look at but that was designed to be an expedited process.

The scope ask goes well beyond the plan.

The other point is furlough

protections is another example. They want to get rid of any furlough protections in the contract. Right now they can furlough down to 2,000 pilots. In Denny Newgren's declaration, paragraph 1515, he said we may have to furlough up to 400 pilots. They want to get rid of any furlough protection. They have a force majeure provision. They used that after 2011. 9/11. Why do you need to gut the furlough protections? Why do you need to move the scope provisions that are well beyond what's in your plan or that other people have in the industry? That's the conundrum for the

pilots.

Just a point on relief which is a minor, it's a footnote. Jerry Glass said we need to have, we ought to -- the highest weight for a subcontracted RJ in the industry is 90,000 pounds. They're asking for 114,500 pounds. He said if you put bigger engines on these things, airplanes get heavier. In fact, the trend in the industry is the opposite. 787 is the same as a 777, it's a hundred thousand pounds less. Airlines are getting lighter rather than heavier.

Back to -- let me just talk about the pilots and the plan and I made this point, I don't want to belabor it, but if there's one group that cares about the success of this airline, all groups do, the pilots have a deep abiding interest in it. They're going to go through five sets of management, they can't

take advantage of the Wall Street rule and take a walk.

We've historically been opposed to mergers because they have not a pretty history at American Airlines, but we've gone into thinking that consolidation is the way -- what's happened in this industry is the effect of Northwest and Delta and United/Continental and US Air and America West has fundamentally altered the landscape of this industry.

THE COURT: Let me cut you off here. Let's assume for a moment that I found persuasive that a transaction, some sort of merger is a likely scenario. I'll just use likely meaning more than 50

percent. Legally what am I to make of it in 1113? Because 1113 on its terms, the question where in 1113's terms am I allowed to consider it under your reading of the statute?

MR. JAMES: I guess two places, your Honor. I'd say this is an unusual case in that you have to determine whether this term sheet is necessary to reorganize and what we're seeing now is a sequencing going on. And we argued it and it's now happening.

And that you had testimony from, I think it was Resnick that his team was exploring consolidation. When he got involved he was told not to do that. Bev Goulet was looking at

consolidation up to the point she's trying to design this plan. They put on blinders, it's willful blindness, it's great for horses, it's not good for airlines. They said we're not going to look at anything except this plan.

Then you have the application filed by McKinsey a couple of weeks ago saying we're now looking at

alternative business plans --

THE COURT: My question is a legal one. Where in the statute am I allowed to consider it?

MR. JAMES: How do you make the determination, your Honor, that this particular term sheet is necessary to reorganize when they just told you they're picking up

and moving that metric? They're now through the protocol, they admitted publicly on their own, they expanded scope, McKinsey is going to see what's necessary.

THE COURT: Again, I'm asking sort of very bankruptcy question. In a way 1113 is really, it's so much more like a district court kind of proceeding, that in a lot of ways bankruptcy is just a backdrop but not -- but not, you know, really what the case is about. But in some ways it very much is the statute, the 1113

statute and when people talk about other alternatives, obviously that always comes up in a plan context and people say, well what are the

other options and what -- usually it's in a comparative way. What did you compare did you compare somebody you want to sell this asset, you want to reorganize, you want to merge, you want to abandon, whatever it is.

But here the question is for 1113 does 1113 require that those things be done at this part, at this time or have a bar to using 1113? And my question is where in the statute do you find that, or in the bankruptcy code generally? That's what my question is.

MR. JAMES: I think I understand, your Honor. I would say it's hard to say we've been given the most complete reliable information when they say they

haven't examined what they admit they're going to examine.

How do you determine as necessary that the cuts they're inflicting on these employees are necessary when they basically said we're going to take a broader view. You had Resnick say before they exit they will examine M&A activity and a possible merger.

Our argument is deny this pro tem without prejudice. They're going to go look at alternatives, come back. They're the one group that will be stuck -- how is it fair and equitable, they're going to take cuts out of the employees that are permanent and they make all these representations, they're not going to furlough anybody because of the RJ and so forth and they need these cuts to reorganize. This thing is going to move,

they're going to examine a broad

array of options and come back and the other creditors are going to get the benefit of maybe a different plan, maybe not such deep cuts. There's no way to undo you this for us. 1113 is permanent. They can keep coming back with new 1113s, that's happened in a number of these bankruptcies. We can't come back and say what they told you was necessary is now no longer necessary. That doesn't happen. It makes a mockery of the statute that we're going to take these deep cuts right now and the thing's going to move and you don't know what other people are going to take. I think that's a tough

position.

What we've said is we pointed out in the supplemental authority, if you go to what we've offered the company, 270 million, that's .3 tenths percent off their EBITDAR.

I can show you, I've got the exhibit. I don't want to bore you with exhibits, if you look at exhibits, despite what Mr. Gallagher says, it's 305-A --

THE COURT: Let me get back to what you just said before. Okay, I understand where in the statute your positioned, but then it becomes a question of degree. And certainly all the parties have talked about these other bankruptcies. And the proximity in

which, to which they reach some sort of agreement about a merger. Some were a year later, some were in the bankruptcy.

What is your sort of test as how close is something that triggers the stop period and how close, how far out, where someone says well, we're obviously going to look at it but we haven't looked at it yet and they have their own sort

of sequencing as the debtors-in-possession, particularly when they have an exclusive period in the bankruptcy?

MR. JAMES: I think if you look at United, Delta and Northwest, those went in -- and nobody's argued despite their reply

brief, I understand you get a plan in bankruptcy, it's fluid, it's going to change as you go through the bankruptcy, the numbers are going to change. But every one of those was a company that's going in and the employees supported it. United going in, coming out, Northwest going in and coming out Delta going in, coming out.

Here you don't have that. What you have is their own expert witness, you have the company's statements, you have the protocol, you have McKinsey saying what their witnesses said is we put on

blinders in November, we stopped looking at alternatives. We designed this plan and then right

in the middle of our hearing, ten days before the hearing they say oh, by the way, we're going to expand and look at consolidation in the industry. This thing just moved on us.

I think Mr., it was Dichter yesterday said and you get this from the Unsecured Creditors Committee from my good friend Jack here saying, he didn't say it this time, but he said it before and he said it in his papers, we want the stand-alone plan because we need something with which to bargain a merger transaction. Dichter said two days ago, we need a stand-alone so we get a bigger slice of the pie in merger.

The idea that this is a prop that the employees are going to be

cut based on this plan so we can use it as a metric to bargain with another company is quite odd in the bankruptcy and they admitted they're going to look at it in the course of this process. I'm just saying how --

THE COURT: Why do you say it's odd in bankruptcy? I mean certainly in bankruptcy companies come in and do all sorts of things to reorganize to make their enterprise in healthier shape. Now again I know that's a very polite euphemism for something that has real life consequences, I'm not trying to be flippant about it.

But companies do that and then lots of things can happen. They can sell, they can reorganize, but they say well, we'll have the best

options if we take those steps to get ourselves on a more stable footing, we stabilize our

situation.

MR. JAMES: Then the question for you, your Honor, not for me, of course is when that has been told to you that that is likely to happen, is happening, this broad a look, it doesn't mean the transactions's going to happen, but they're going to at least look at it, why 1113 to make permanent cuts out of one class of stakeholders and not the others who are going to get to go free and they'll show up at the end of the case and get whatever they get.

Right now they filed, they say

they didn't file quickly, they filed within two months. The labor ask between November 27th and February 1st moves by an enormous amount of money.

Horton says on November 29th, I believe is the day they filed, we have a 600 to 800 million dollar

labor cost gap. It goes to 1.25 billion on February 1.

They file this thing very early in the bankruptcy. You see Ms. Goulet and Mr. Resnick say we did not look at consolidation, Ms. Goulet specifically stopped looking at consolidation. You're just going to look at what's necessary, this 1113, what cuts are necessary and then before the hearing begins

they say now we're going to look at a wider range of options. That I think puts the court in a tough position.

We're not arguing no never, we're not arguing the status quo is sustainable.

We're saying that this ought to be like some of the other bankruptcies with 1113 where you deny it temporarily and they come back, I think that's what Judge Drane said is one percent

difference in the EBITDAR margin.

Our difference, the labor difference, if you look at what the employee groups did with US Airways, it's one percent off the EBITDAR. That's the driver. Ours

is .3 percent off the EBITDAR. I can show you the charts to show you where American is on the EBITDAR coming out of bankruptcy and it's over the top of their competitors.

It's not over the top of the low cost carriers, but that's an argument you've heard over and over again. I don't think the fact that American competes in Las Vegas for gamblers going to Las Vegas with Allegiant means they match Allegiant's business model. We represent the pilots at Allegiant, it is a tiny little airline. So to use the LCC EBITDARs or their business models, they're radically different business models and the

big legacy spoke and hub carriers.

Just to be clear, the labor ask is solely driven by that business plan, the stand-alone business plan. That's in their, it's in the business plan itself, the chart you have, Exhibit 1505.

THE COURT: Let me ask the same question I asked debtors' counsel, which is what am I to make of the fact that those companies coming out of bankruptcy predicted very aggressive EBITDAR margins in a lot of cases higher than what's predicted here? It seems they didn't meet them and that seems to cut a variety of different ways depending on which side of the room you're on. What do you want me to make of that?

MR. JAMES: Well, you know, I guess I have a number of reactions. One, I don't know there's any testimony that says in those other

bankruptcies the EBITDAR was the sole driver of the labor ask. Number 1.

Number 2, post-9/11 I think everybody was trying to figure out what the EBITDAR margins ought to be and now we have, we're a decade into it, we have a pretty good idea what the realistic EBITDAR margins are. The fact that somebody else used numbers that aren't real, if I find intellectually unsatisfying that I'm allowed to use the same unreal number because somebody else did. It doesn't make sense to me.

Mr. Dichter said, you know, they couldn't model, they couldn't even model a piece of the labor ask, not just the 370, but elements within, it was too difficult to

grind that in the model and see what the result is.

I've got a couple of exhibits where they did exactly that. When

the freeze occurred, immediately turned around to figure out what that was going to do to the EBITDAR. There was another chart much these are American, I think it's 005 and 006. They changed numbers in their business plan, they ran it quickly and it just changed the bottom EBITDAR. It changed the EBITDAR margins. It's not that they can't, it's that they don't want to.

I think one of the problems we've got also is how do you, how do you figure out the necessity and

the validity of this business plan when they wouldn't give Lazard the re-fleeting documents. This is the largest aircraft order in American history. It's, and I forgot, I had the number of airplanes, but it's just enormous. You've got -- it's 460 aircraft. In connection with that aircraft order, Ms. Goulet

said they did a three, four year business plan and a financial analysis to justify it. Vahidi said it drives the profit and loss. Dichter says that re-fleeting order -- he said why didn't you model upside because the re-fleeting order has sufficient flexibility to react to opportunities and respond.

We don't know, we couldn't get

the data on the amount of that order, the magnitude of the dollar cost and a timing, the sequencing of that.

I think that makes it very tough for our financial advisors -- and if you look at the number of that re-fleeting order compared to their revenue in 2017, there's not a significant disconnect. Those are B numbers and they're huge B numbers. That is a huge driver of the company's financial difficulty right now. It's a huge driver of

the business plan. We should have been allowed to see that. We didn't get that from Rothschild.

Now I'm completely off my order of battle.

THE COURT: Let me ask you if that's the case to address a very specific issue which is I also asked debtors' counsel, which is the number of RJs and I think there was testimony and argument dealing with this 50 percent of the mainline and therefore people had warring charts, so they had charts and you would remark some charts and then you had charts and you would remake your charts and the numbers would change. So I'm trying to get a handle on what is the number from your point of view and how that then compares with the industry.

MR. JAMES: We worked off the number in their plane. The number

in the industry I'd have to go back through exhibits, but we have for various carriers the number of RJs and seat capacity.

THE COURT: Which number are you talking about? I think what I heard was -- is it a current number on the mainline that you're using or some other number?

MR. JAMES: The number we offered them at bargaining is the number they have in their plan that they say they want to buy. They want 300 percent of that. We say that's not necessary, it's not reasonable. We have to work on a different number. We haven't gotten a different number.

The other issue we have is the speed of that gauge. Right now it's, I don't think the seat gauge is confidential, Scott?

MR. FLICKER: Which is?

MR. JAMES: The seat gauge of

the RJ ask. It's 88 seats. That's higher than the other big leg sees. Unless you go to US Air where you have a very different way of dealing with the RJ flying.

Does that get you --

THE COURT: That helps. Thank you.

MR. JAMES: I want to spend a minute on the labor ask. Despite the testimony of my friend the other day that it's always been a billion, it's not always been a billion. It's been 600 million repeatedly to the union, the Securities and Exchange Commission, Horton gave the 600 million on the date it filed for bankruptcy. When

Mr. Brundage was asked did you build that number in the business plan, only my direct, he said no, I was given a number. Taylor Vaughn said the same thing. I believe Jack Butler crossed him on, well

you built that for market and he said no, I didn't, I was given a number to fill. He said how do you plan to get this ratified with flight attendants and he said that's not my job to worry about how to get this thing ratified with flight attendants. I was given a number and he built to that.

Now Mr. Brundage said if you want me to, I can build to that, there's fleet discontinuities, there's all other work force. You

can build to that number, but we submit that the labor disparity, the contractual gap is shy of that. That the one percent shaving of the EBITDAR gets us down to what we believe and I believe the flight attendants testified about is the real labor cost gap and it's very close to the deal that the employees did with US Air.

If you take one percent off

the EBITDAR, that takes the pilots down to 270 million exactly. That's exactly what we offered the company.

Mr. Gallagher crossing Larry Rosselot and Allison Clark said he didn't have questions about our valuation of our proposal. That

was what we offered. The company we believe and we do have a dispute about this, we believe their number is not 370, it's 460. But if you look at the chart and the way these numbers work over the term of the 1113, they start with one number and by six years out they just have gone through the ceiling. Once you've got this six year agreement with those numbers and ours we're now, let's not take my 460 as the average over six years, take the company's, their 370 is well in the middle pack of 400 million and it just keeps going up. These numbers

go through the ceiling.

Now, the company says why did we need such a big reach, what

changed dramatically at two months, fuel didn't go down, economy didn't improve and convergence didn't occur.

And their own chart in that November board presentation you'll see is the AMR board, and I forget which AMR exhibit, they have not what Mr. Glass calls convergence where all the pilots have the same wage rates, that's not what we're talking about. The company's idea of convergence is we are a notch above the next one down. At what point did they converge on us and go through the top of us with the pilots and flight attendants I think it's 2014. They say that wasn't occurring fast enough. We just had Delta take an enormous jump. United is in bargaining.

In a six year agreement in the new Delta deal and that was in the testimony of Jerry Glass, he agreed with it, in 2015 they're 40 percent higher than we are, the pilots wage rates. That convergence in six years they're going to go way over the top of pilots and they're locked into a six year deal that just keeps going down.

Your Honor, if they constructed a deal that had a gyro compass or at some point snap-backs and that shows up I think in the Mesaba case and in Wheeling Pittsburgh that said okay, if we do another plan or if we come out of bankruptcy, the profit sharing you'll hear about, that doesn't even begin to address it, we'll snap you up to some relative level instead of just going through the

floor. That's where 1113 has us.
If in this bankruptcy they had had

a proposal that said look, we'll
throw in some kind of a gyro
compass that will maintain you
steady state so you're not falling
through the floor on these cost
savings going out in view of maybe
we have a different plan in this
bankruptcy, or what's going on in
the industry, we'd have a different
kind of bargaining, but we don't
have any of that. I'm not going to
run the math on the profit sharing,
but it does not come -- you'd have
to have an enormously large profit
sharing to deal with that.
I dealt with the EBITDAR, the
pension freeze, the labor ask, the

fleet order. Jeff Brundage says no one asked us to change the business plan or we would have, that's in the transcript.

We didn't have the fleet order to know what you'd suggest ought to be redone in terms of the business

plan. We didn't get that from Lazard, or Lazard didn't get it from Rothschild.

I dealt with fair and equitable.

I just want to say not only does the 1113 have to be based on the most complete and accurate information, but there is an additional information requirement in 1113. Which basically says they have to provide information

necessary to evaluate the proposal. I'd suggest the re-fleeting comes up in two places. One is that first prong that is in order to evaluate their plan the best and most complete information we needed the re-fleeting information necessary to evaluate the proposal. We needed the re-fleeting information.

Also the AAMPL model. Now, despite some kerfuffles, the

company admitted finally they never gave us the AAMPL model runs. We find out about the AAMPL model in March bargaining, ask to see it, but we can't see it because it's proprietary, it's their black box. We say run scenarios, we never got

the scenarios. We complained about it several times. We still didn't the scenarios. Mr. Newgren had to admit on the stand we never got the run.

That's where you find out where the head count is going to be going forward. I think we have productivity models to know how to value prep bid, sick and so forth, what effect it has on head count and reserve.

What we don't have is the manpower planning model and they didn't give it and they never gave us the documents.

The final point I'd make, your

Honor, about good cause, is for those reasons, and for the reason

that we offered 270, it's a roughly with if all the other employees got the same deduction and frankly that is what is modeled in their US Air term sheets, it's a one percent reduction of the EBITDAR. And it's market based. It is what they show as the contractual labor gap. The one thing they do have in there is they say well there's more money because you're older. Allison Clark came back and said well US Air is older and your own business model shows that what's going to go on is the employee age is going to trend down.

We're saying we have enough additional basis, good cause for turning down this particular proposal.

The only thing the pilots are saying, your Honor, is we're asking

you to deny temporarily while they take a look, if they come back in several months and say look, we've looked at alternatives, we don't think that makes sense, that's a different game. The unions will stipulate to carry the record forward, we're not talking about retrying this case.

We're saying you can't, you can't go into a bankruptcy and put on blinders and say we're not going to look at anything and early on the bankruptcy, just before you go to your hearing on the unions say now we're going to look at a range of alternatives. We think they ought to be looking at -- they're saying it's very inward looking, has to be their proposal. Well,

all the testimony by Kasper, Dichter and Goulet is we live in -- we don't live on an island, we live in an industry with lots of other

players. We're just saying you better look at what's going on in the industry, you've admitted you're going to do that and then come back.

Because as to us, once they HIT us it's a permanent hit. There's no going for us to say by the way, it was a mistake, your Honor, it was based on change premises. We're the only ones who are going to be stuck with a permanent deal. The other creditors are going to wait and see where this thing goes.

THE COURT: Thank you.

MR. JAMES: Thank you, your Honor.

MS. PARCELLI: Your Honor, good morning. Carmen Parcelli on behalf of the Association of Professional Flight Attendants.

Your Honor, at the risk of chart fatigue for all of us, I have

a couple of things that particularly aid if you're going to talk about anything confidential, easier to put material in front of you, if I may.

THE COURT: Thank you for being worried about chart fatigue. I caught it awhile ago.

MS. PARCELLI: These are just materials that have been previously

entered into the record. Things for ease.

THE COURT: It is helpful as a way to avoid confidential numbers but still make your point.

MS. PARCELLI: Now, your Honor, as the APFA has made clear from the outset, it is American's term sheet that it placed before the APFA that is on trial in this proceeding. It is the substance of the term sheet itself, as well as the methodology that the debtor used to derive its term sheet.

It's also, of course, the company's conduct in negotiating over that term sheet.

So those are the key elements that must be judged against the

demanding standards of 1113.

Now, as you're well aware, Judge Drane has recently issued his decision in the Hostess case denying Section 1113 there.

And in that decision, Judge Drane reiterated what several courts have said before, which is that Section 1113 is a higher standard than you find under section 365 of the bankruptcy code. And in particular, it's the requirements that the debtor prove that the contract changes that are sought are necessary, that there is fair and equitable treatment, and also the assessment of the unions' good cause. These are factors far removed from the business judgment

type of analysis under Section 365.

So in our view, there are three primary reasons why American's term sheet fails to satisfy Section 1113's stringent standards.

The first, it fails because the term sheet seeks a commitment to six years of concessions from the flight attendants, even while American is exploring consolidation as the obvious strategic alternative to its stand-alone plan, so that's the merger argument, your Honor, the first point.

Our second key point. The term sheet fails because it's predicated on an arbitrarily selected and unnecessarily high EBITDAR target. So of course the ever popular EBITDAR argument.

And lastly, your Honor, the term sheet fails because the amount

of concessions sought from the flight attendants are simply not market based.

Now I will address and hope to get through all of these key points in turn, and at the end hopefully give an explanation that somewhat weaves them together. But your Honor, even standing alone, each of these arguments, as well as others of course that we've raised in our brief, require denial of the Section 1113 motion.

Now turning to the merger argument. Embedded in the Section 1113 analysis of necessary is the question necessary to what. So here American says that its Section 1113 terms are necessary for the

success of its stand-alone plan. American has even con ceded that the concessions that it seeks might not be necessary to a business plan that's based on a strategic

alternative, obviously merger.

Now as set forth fully in our brief, we believe that merger alternatives now or very soon to be actively considered by the debtors, American simply cannot satisfy the 1113 requirements, particularly the necessary requirement.

But also, it speaks to APFA's good cause to reject under the present circumstances.

Now, in response to our argument and similar arguments raised by both APA and the TWU,

American filed a reply brief with this court on April the 19th.

Now, in that brief the company contends that the merger alternatives are entirely irrelevant to this case, okay, that's the factual and legal position that they stake out.

They say, "Speculation about a possible strategic transaction at

some point in the future is not relevant to the timing or content of a motion to reject under Section 1113. Not that it's just not relevant here, it's just not relevant period."

That's their position. Now, as a first hold matter, your Honor, American simply misrepresents the

likelihood of a consolidation in its future.

In fact, during this trial, chief restructuring officer Beverly Goulet was asked whether or not she agreed with the following statement that Mr. Resnick made during his deposition in this case. So this is Mr. Resnick's statement well, I think the CEO of American, Mr. Horton, has always said that he believes consolidation is something that has to occur in the industry and something where American needs to participate. And that there are

a number of options available and the question is really when to pursue consolidation and then also to analyze with whom and where

there would be most value."

Okay. So when she was asked, when Ms. Goulet was asked whether or not she agreed with this statement, she said the following, testified the following: "Yes, I believe that's an accurate statement, an accurate reflection of what Mr. Horton's views would be."

Thus, according to American's CEO, it is not a matter of whether or not American will merge, only a matter of when.

Clearly, our expert, Dan Akins is hardly alone when he says that a merger is inevitable.

Now throughout the course of this bankruptcy proceeding the question of when a merger will

occur has come more sharply into focus.

Now in our brief we've traced for the court the evolution of Mr. Horton's own statements regarding consolidation. Tracing that from his initial position that consolidation would only occur following an emergence from bankruptcy to his most recent pronouncement that merger alternatives will now be vetted in conjunction with the UCC.

Also as Mr. James mentioned, as of April 13th, American expanded McKinsey's retention to include the evaluation of alternatives to its business plan.

We also know that there is a protocol in place with the UCC to explore strategic alternatives.

Now, although the details

regarding the timelines under the protocol are not public, what we do

know is that American's exclusive right to propose a plan of reorganization extends until September 28th of this year.

Now your Honor, equally well known is US Airways' desire to acquire American. In fact, US Airways has gone so far as to reach out to each of the three unions in this case and enter into contingent collective bargaining agreements with them triggered upon a merger.

Now these agreements as you have heard throughout this case, contain terms far more favorable to employees than what you find in American's Section 1113 term sheets

that are based on the stand-alone plan. They represent a substantial step forward in a merger process.

In fact, to the extent that merger alternatives are not more fully developed at this point, it is only because of American's own

actions, or rather inaction. As testified to during the trial, initially American simply did not task its advisors, McKinsey and Rothschild, to consider alternatives to merger.

Again, it was not until April 13 that McKinsey explicitly received this mandate from the company.

Now, to the extent that US Airways is still waiting on the

sidelines, it's do in large part to the fact that they have been denied access to American's confidential data room.

Given these facts, American should not be heard to complain to this court that alternatives are now too speculative for consideration.

So the factual predicate of American's reply brief, that is that a transaction is too

speculative to bear consideration in this proceeding, is simply not supported by the record we have here.

Similarly, the assertion, the legal assertion that strategic alternatives are simply irrelevant

under the Section 1113 analysis lacks support.

We are not aware of any case and American has cited none, that holds that strategic alternatives always are irrelevant as a matter of law.

In fact, the case law supports the contrary conclusion we believe.

I don't want to get too bogged down here. The two sort of primary cases that are discussed in their reply brief are In Re Horsehead and In Re, I'll probably say this wrong, Karykeion. Just in a nutshell, both cases involve debtors where several attempts were

made to finds a buyer for their business, including in instances a

buyer that was willing to provide terms that the unions thought were more acceptable. But in each case after those transactions failed to materialize, the court did offer rejection -- I'm sorry, authorize rejection under 1113.

And it was literally in both cases when the company -- the companies were on the verge of having to go through a liquidation.

So the relief was deemed necessary in that context in that setting, and frankly, after a number of alternatives had been vetted.

Frankly, in reviewing these cases, we only wish that American had made similar efforts here.

So now not only is the merger question really at the heart of the necessary requirement under the

bankruptcy code, but we also believe it speaks to the unions' good cause very directly.

Your Honor, how can APFA members reasonably be expected to commit to six years of concessions under the present circumstances, with merger alternatives now or soon to be considered. Similarly, why would APFA sign away its right to bargaining over contract terms for a six year period when American itself is of the view that consolidation is something that it, "needs to participate in.

And, when we have indication of a transaction likely to take place during this bankruptcy or not long afterwards. Why is the union expected to lock itself in or close the possibility of negotiating more

favorable terms in the event that a merger transaction substantially improves the outlook for American.

On a related note, as Mr. James mentioned, and it really does bear emphasis, that Section 1113 ruling at this point in all likelihood could not be revisited, even if a reorganization plan far different from the current stand-alone plan were ultimately put before this court in a plan confirmation process.

Now this court found in the Northwest bankruptcy case that Section 1113 does not contain a mechanism for revisiting rejection. And in fact, that once a contract is abrogated "there is nothing to

revive pursuant to the terms of Section 1113." That's 366 bankruptcy 270. Now, your Honor, employees, we believe more than any other stakeholder, frankly, in this case want to see an American Airlines that is a long term viable competitor in this industry. As

APFA president Laura Glading testified, APFA very much wanted to see a viable business plan for the company at the beginning of this process.

You know, frankly, it was disappointing when APFA's experts and the other non-company experts involved in the case, you know, they performed their due diligence on the plan only to find that in

their view it did not hold up.

I'm not going to reprise all the considerable evidence and testimony that we put into the record with respect to the defects of the current business plan.

But I do want to emphasize sort of one key defect, because I think it speaks very directly to the whole issue of merger. And that key defect, your Honor, is the timing of when growth occurs under the business plan. And of course

this is one of those topics that's in the confidentiality minefield, so if I could refer you to the first chart that I provided in order to enable some kind of discussion of the matter.

Now this is a chart prepared by Mr. Akins and was accepted into evidence and hasn't been refuted in the record. And what the chart illustrates, your Honor, is the progression of growth over the six years of the business plan. Okay. And if you recall back to the closed door session with the court in which this information was presented, I think Mr. Akins articulated quite clearly what the concerns are in terms of when within the business plan life the growth is projected to occur.

Now even aside from this chart, your Honor, we also have the testimony that was not, not in any

way under seal, of McKinsey's Alex

Dichter, and he made very clear that over the entire course of the business plan the size of American's operations will remain unchanged relative to its peers. Okay.

And that, that also, by the way, is assuming that its competitors just stands by and allow American to execute on its plan.

But assuming that, its relative size through the course of the business plan will not change.

So your Honor, ultimately American standstill under the current business plan.

Now in this proceeding, we heard American's own executives sort of derisively describe their pre-bankruptcy strategy as the limp along plan. But how is this current standstill plan any better?

How is it worth the huge sacrifices that the company is demanding of its flight attendant work force?

You know, if it now appears, or as it now appears that the company's incapable of devising a stand-alone that really begins to take on the deficiencies vis-‡-vis the network, other network carriers, you know, in the near term, than the merger option, that option that American concedes will eventually occur, but does not model in the current plan, will that merger option become all the more imperative?

Now your Honor, APFA has not lightly embraced the alternative of the merger. There is no doubt that

a merger raises a number of difficult issues that the combining employee groups must work through.

However, in the final analysis, APFA finds that a

proposed merger with US Airways offers greater job security for its members, requires less sacrifice, and provides a surer path to make American a premier airline once again.

So unlike American's Section 1113 proposal, which will force 2000 flight attendants onto the street, the US Airways term sheet does not require any flight attendant job cuts.

Significantly, the US Airways term sheet also includes an early

out program which as your Honor heard through testimony, that APFA firmly believes is a win/win proposal for the company.

It also includes, I'm not going to get into the details, many of the other creative solutions that APFA offered during Section 1113 negotiations, but which American unfortunately refused to

seriously entertain.

And then perhaps most importantly, and I will return to this point, the US Airways term sheet provides for a process that will ultimately lead to a long term agreement based on market rates. So for all these reasons, the merger question could not be more

relevant for the association in this proceeding. And the company's argument that this court should simply ignore the entire merger issue, well, your Honor, it's simply not supported either by the facts or the law.

Now if I may, I'll turn to the EBITDAR argument.

Again, the term sheet is predicated on both an arbitrarily selected and unnecessarily high EBITDAR target. You know, despite the company's development of a very extensive record in this case

regarding matters of great and small, there is precious little evidence in the record about how the company selected its EBITDAR

target.

Now, as the court is aware, the EBITDAR selection is really a critical component in this case since the target ultimately drives the amount of labor cost savings that the company is seeking.

So what did we learn? Well, we did learn in this proceeding that Rothschild's development, rot chide did work that developed a wide range of EBITDAR targets. Okay, and if I could refer you to the second page in my handout, that is from David Resnick's materials, and represents this wide range of EBITDAR targets that Rothschild developed for the company.

But we also learned that Rothschild itself didn't recommend

any particular EBITDAR target to American.

So okay, so we have the Rothschild wide range and, your Honor, I think everyone would have to agree it is a wide range.

So from that point exactly how was the EBITDAR target selected? And your Honor, it's essentially unknown. In her direct testimony CRO Beverly Goulet indicated that she worked with Rothschild to identify appropriate financial metrics, but, you know, we never heard exactly who determined the precise EBITDAR number, or how the ultimate decision was arrived at, what considerations, what factors were taken into account.

Now we do know from Rothschild's David Resnick that American ended up in the, quote, middle of the pack, which means

according to his chart here,

literally the median position. It's not an average, it's not a weighted average, it's just the median position on the chart given these particular comparators that we selected.

Now, it's become an overused term in this case, but I will use it once again, the EBITDAR selection is essentially a black box. Now why a certain target was deemed necessary as opposed to any other target within the wide range of reasonableness that was suggested, it's simply unknown.

Accordingly, American has failed to explain, much less justify a central predicate for its

section 1113 ask.

Now I heard this morning that I guess Mr. Yearley or the unions' other advisors were supposed to themselves come up with some kind of EBITDAR target or suggestion on

that matter. I think that very much misconceives the burdens in this case.

You know, if you're justifying and predicating your Section 1113 ask on targeting a particular financial metric, we firmly believe that it's the company's burden to show why that was selected, particularly why it was appropriate.

Now, your Honor, just briefly, beyond the arbitrariness of simply

age for this middle of the pack, as you heard, and I won't go into in great detail, but APA's expert Andrew yearly submitted ample evidence that Rothschild's range of EBITDAR targets is not in fact reasonable.

Most specifically it's the inclusion of low cost carriers in the target group, simply can't be supported. Those carriers operate

under a fund tally different business model, as frankly, Mr. Kasper, American's own expert testified and they're simply dwarfed in size by the network carriers.

But one thing I did find interesting, your Honor, I mean

there was obviously a lot of discussion about comparators throughout the course of the trial and the course of the case, but I think it was a topic that as the case moved on we really got consensus among American's only airline experts as to what the proper comparators are.

So we heard Jerry Glass and Alex Dichter, they both agree that the proper comparators are other network carriers. Obviously Delta, United, now including Continental, and US Airways.

And then in addition, Mr.

Kasper in the materials that he presented to the court on rebuttal, he also limited himself to the

network carriers.

So although we have Mr. Resnick testifying that he relied on Mr. Kasper's testimony that American in fact competes with the low cost carriers, we also have Mr. Kasper testify quite fully that the low cost carriers have a lower cost structure and that even the successful network carriers would not expect to match that kind of cost structure.

So, you know, in addition to all this evidence, you know, we have American itself consistently relying on its network peers as appropriate comparators, so given all of these facts, Mr. Resnick's reliance on LCC comparators is simply not reasonable.

Now, as for the topic of

EBITDAR, of course in Judge Drane's recent decision in the Hostess case we had a ruling that bears directly upon the issue. In Hostess the debtor failed to demonstrate that it could not successfully reorganize with their EBITDA target that was slightly lower than the amount that formed the basis of its labor demands.

You know, similarly in this case, American has made no such showing. In fact, just earlier in the we can we had Mr. Resnick testify that he hadn't done any analysis regarding the impact of lesser labor cost reductions on American's EBITDAR.

So, you know, that analysis simply hasn't been done here, according to the company.

Now they say they haven't done the analysis. I mean, you know, our experts have submitted

indications that, you know, roughly estimated and I believe the figure was said earlier so this is not confidential, but if you have 25 billion in revenue, as American historically has had, that a one percentage point and admittedly there might be some rough math and need refine; would be a 250 million reduction. So a one percent reduction in EBITDAR yielding 250 million on a basis of 25 million in revenue.

So your Honor, for these reasons American has failed through its reliance on EBITDAR to show

both that it's, you know, that its proposed labor cuts are really necessary for the reorganization.

Now I'd like to move to the question of market based compensation: So as we well known, American's was a top down approach. So starting with the EBITDAR target

and then working back to its labor ask.

And we believe, your Honor, that it's simply the wrong approach. Instead, what American should have done, it should have taken a bottoms up approach based on market comparisons for its flight attendants.

So after building up from the bottom, comparing flight attendants

other groups to their market peers, American then could assess, you know, whether or not cuts were sufficient to get them to market, were sufficient to yield acceptable financial metrics. So to go about it in precisely the opposite order.

You know, and if through this process we believe, your Honor, that the debtor finds or concludes that it can't operate profitably with labor rates that are reflective of the market, well then

it tells you something, it tells you that, you know, a labor cost problem is not your only problem, and again, it leads you back to considering other alternatives.

Now, the market based process

that we described, you know, this is not something that APFA has just invented or dreamed up. Instead, it is exactly the process that the company used in 2003. More significantly really, for your Honor, this is the approach the company is taking currently with respect to work groups at American Eagle. It is marking their rates to the rates of competitors. Just for background, this is also the approach taken by other airlines in bankruptcy.

So again something I think Mr. James mentioned this, to keep in consideration when you discuss their EBITDAR targets, how were

they booked.

And in terms of just the Section 1113 standard, a market based approach is plainly the correct one. Because a market based approach provides an ascertainable standard for the necessary requirement. So we're not left with the black box of EBITDAR and what EBITDAR is the right EBITDAR and, you know, we have something concrete to work from.

Second, a market based approach for all groups is undoubtedly fair and equitable. I don't really think it can be assailed.

In addition, frankly, it seems unlikely that an organization would have good cause to reject a contract that's based on market rates.

And lastly, one of the factors

explicitly to be considered by the court in balancing the equities is where a debtor's 1113 proposal places employees relative to the market.

Now, APFA is not the only party that believes that market based rates are relevant in this proceeding. Plainly American thinks they're relevant. In fact, the company has gone to great lengths throughout this proceeding to argue that its proposals, although they originate with the EBITDAR target, nonetheless yielded at the end product a market competitive term.

So in their attempt to bolster this position, basically the company's put on evidence of kind

of two types. One, evidence that discusses labor costs in the aggregate, so all employee groups included. Or they've also

discussed, presented evidence that gets at selected provisions of the flight attendant agreement as opposed to looking at it as a whole and comparing it to market.

But in the final analysis, your Honor, I mean we feel very, very comfortable saying American has not offered a single piece of evidence in this vast, vast record that establishes that the current terms of the flight attendant agreement, when considered as a whole, are 20 percent above market rates. You just will not finds

that piece of evidence, your Honor.

And in fact, the evidence that is in the record is to the contrary.

So as APFA has shown, you know, relying on the company's own convergence analysis, American flight attendants are currently close to market rates. And I

direct your attention to the next page in my handout. And this is a page from a presentation to American's Board of Directors that was given in November of 2011.

And what this chart shows, your Honor, is that even considering the proposal that American then had on the table to its flight attendants, and that

proposal would have increased flight attendant costs by 65 million annually, even considering that, the company was still projecting that its flight attendant labor cost gap would be eliminated by 2014. Okay.

And if I can direct your Honor to the next and final chart in the handout, this is a chart that Mr. Akins prepared, and what he has done here, your Honor, is simply this. Two things. He has taken the company's own convergence

analysis, the figures and analysis that we were just looking at in the prior chart and he has backed out the then table position that would have increased flight attendant

costs by 65 million, as I said. So that's the first thing he did.

And the second thing he's done is he's reflected the 230 million dollar Section 1113 ask.

So having done those two things, you can see that using the company's own methodology, their own analysis, the Section 1113 proposal will place flight attendants substantially below market, your Honor, even in 2012.

THE COURT: Let me ask, I believe there was some testimony when coming up with the US Air term sheet as to how that number was arrived at and I believe there was testimony that it was sort of an accumulation of outliers. And that

it led to that 153 million.

So how am I to understand that testimony when compared with the argument you're making now.

MS. PARCELLI: I mean admittedly, your Honor, both in proposals that APFA has presented to the company in Section 1113 and in the US Airways term sheet, we see the realities of bankruptcy and we see the realities of this process, and the give there even puts us below market. It's true.

But difference between the section 1113 where a consensual agreement requires signing on for six years as I think was emphasized when we presented the US Airways term sheet to you, that that has a mechanism, because if there is a merger the agreements on either side, at American and at US Airways would need to be integrated. So

there's a process for doing that.

And the touchstone for that process is market based rates. That's explicitly set forth in the agreement.

So, you know, recognizing the realities of the situation there might be an interim period, but again, that is the goal.

Also I would just clarify, your Honor, I think something was said by Mr. Gallagher that some of this market based analysis was driven by valuation disputes. That's not correct and the evidence was presented. We are simply taken the company's only analysis, backing out those two elements and that shows you where we stand at a

market level according to their own terms.

Your Honor, if I could just, I should wrap up, I'm pushing my time. Your Honor, Mr. Gallagher remarked in his opening statement

at the very outset of the section 1113 proceedings that on such a motion there are no winners. And I must say as a general proposition I probably agree with that assessment.

But it's also equally true that each one of these cases is unique to its own particular facts and perhaps this case even more so than the run of them.

Now undoubtedly, your Honor, it is true if the motion is granted

both employees and the company here will lose. That's a lose/lose.

But if the motion is denied, we believe there is a sound prospect for a win/win outcome for employees, for the company, and for all the stakeholders in this case. And that opportunity lies in all the parties coming together to determine what is the best strategy for the company going forward.

Frankly, that's the road that we should have been on from the commencement of this bankruptcy proceeding, and it's a path that's still open to us at this time.

And if I had to tie it into section 1113, that's where the balance of the equities dictates we

should be.

Again, we would like to thank your Honor for your considerable patience in receiving this truly massive record, and just in conclusion, if there's anything that the APFA can do to assist the court in its work from this point forward, you need only ask.

THE COURT: Thank you.

MS. PARCELLI: Thanks.

MS. LEVINE: Good afternoon, your Honor, Sharon Levine and Paul Kizel from Lowenstein Sandler, for the Transport Workers Union of America.

First of all, like all the other parties here, we want to thank the court for your patience

over this extended period. We appreciate the time that your Honor has dedicated to this difficult process.

THE COURT: Thank you.

MS. LEVINE: Secondly, we'd like to address a couple of issues briefly without re-going over everything that we addressed in our opening and the massive record that your Honor is going to be grappling with over the next month or so. But we do feel it's important to point out to the court that the unions and through the debtors' rebuttal case seem to be targeted as a homogeneous group and a targeted group. We're not the unions, we're not the labor organizations, we're the men and women that come to work every

single day that make the layer work and we don't want that to get lost in some of the more technical arguments that have been going back and forth.

Secondly, the use of the phrase the unions, the labor groups, make us almost sounds like the defendants, like we should be targeted for a concession and that's a litigation against us, to get a get and then do better elsewhere. And the sequencing argument that you've been hearing which we'll talk about a little bit more when we talk about the legal standards of the business plan almost is setting us up like bait so there could be a better negotiated stand-alone plan and/or better negotiated consolidations in merger and that process which will

benefit other constituents, not us, will take place because we would

have been taken care of through this process.

There also seems to be an assumption that if we go through this process and the court abrogates these agreements, that it's not really that big a deal because we just go back to the bargaining table. And committee counsel has suggested that you should enter an order that authorizes the rejection but doesn't require it. We would respectfully submit that for our purposes that's a distinction without a difference.

If the court believes, as we

suggest, not that there's no need for restructuring or reorganization here, but that the process perhaps isn't yet ripe, the motion needs to be denied without prejudice.

And we would respectfully submit that the reason for that is

at least with the relief that's being asked of M&R and stores, that's 4600, that's 4600 jobs, your Honor, that's 40 percent of the M&R work force. There's nobody to go back to the table. Once those jobs are gone, once those stations are closed, it's irreparable and it's permanent. And we'll talk a little bit more about that when we get to valuation as well.

But to imply that this is a

step in the process and how your Honor handles it really doesn't matter to the next step in the process we would respectfully submit is inappropriate.

Your Honor, at the start of this 1113 process the debtor asked for 212 million dollars from M&R and an additional ask from stores. And has taken the position that that's appropriate and necessary.

We've disagreed, you've heard

the arguments, but just to talk about actually physically what we did at the table and why it's important for your Honor's consideration in terms of this analysis, we also have an argument here and facts here that are

slightly different than perhaps you've seen from some of the other labor groups.

When we came to the table, we came to the table with certain constraints, okay, we were and are the lowest paid work group in the industry. And it's telling that Mr. Glass's declaration which cherry picks comparables at other CBAs in other, at other airlines, does not at all mention M&R wages. That's an almost an astonishing omission.

In addition to that, you know, we talk about healthcare and the fact that the healthcare here is at

the top -- I don't know if the right phrase is the top or the

bottom, but it's the most expensive that's out there. And while we, you know, we're not revisiting the history since 2003 and before, there were difficult decisions that were made in all of these difficult times which resulted some things which now make it even more difficult for other things to happen go forward.

If you have somebody who's take home pay is such that they're barely paying their rent, feeding their family, and then they're looking at whether or not they can afford the supplemental choice of co-pay or added healthcare, they're not going to the doctor, they're not going to the doctor instead of feeding their kids or sending their kids to the doctor.

That's a very difficult choice

especially off of these wages. Despite that, your Honor, despite that, we took the February 1st offer that we got from the debtors and we put forth the March 21 offer that your Honor has heard some discussion about. And in that March 21 offer your Honor, we proposed 2100 jobs of the 4600 that they were looking for.

And when we valued that proposal -- and by the way, that proposal also asks for, you heard some colloquy with regard to the ASM cap, that proposal also offers 15 percent with regard to the ASM cap which is the top of the industry if you're looking at market rates.

And when you take a look at

that proposal, your Honor, and you value it, we would respectfully submit that at least as we view the values, and I'll get into a little

bit where the differences are and how we view the values, we have met the debtors' need. So in addition to agreeing with all the arguments that your Honor has heard with regard to why it's inappropriate to use the EBITDAR targets and all the other issues that there are with this business model, we still recognize the process that we're in and the court that we're in and we've tried to work within those difficult parameters and come up with a way that's less alternative than simply wiping out 40 percent

of our work force. And leaving us at the bottom of the market on top of that.

You've heard some discussion, your Honor, with regard to terminal value and there was some colloquy with regard to whether or not, you know, Mr. Roth used that term appropriately, whether or not Mr.

Glass had actually heard that term before. Let's set the vocabulary aside. The bottom line is when you go through a contract and there's a give in that contract, that give occurs in one of three ways. Either it lasts for the term of the contract and then there's a snap-back. And the total values is gone at the end of the contract.

Nobody is suggesting that here.

Alternatively, there's what's been referred to at least in the Northwest case as the steady state, which means that at the end of the term of the contract there's no further benefit to the company and no further give other than what's already been contractually given, but it stays.

And then you have, your Honor, what's being asked of the TWU here, which are permanent concessions and

we're getting hit with those permanent concessions without, we believe, fairly being treated with regard to present valuing the post-end of the contract value.

Once a job is gone, once a station is closed, it's closed. That give-up is permanently gone.

Your Honor, we think it's telling that despite the fact that we've raised that concern and those valuations with the company at the table as indicated in the declarations, which by the way there was no cross examination of those witnesses, that the company came back then on March 22 with a counterproposal that was virtually identical except for the pension and the healthcare, to the February 1. And despite the fact that the TWU was at the table constructively, imaginatively contributing for the entire time

during this 1113 process.

We understand your Honor is not looking at history since 2003 with regard to the math problems that have to get done in this case, but briefly just want to note not only were we constructive and at the table and trying to do the right things here to make sure we would wind up with as much jobs as we could with a healthy employer, putting all those pieces together, but we have a history of doing that.

Since 2003, the TWU has been communicating with the debtor. We were involved, for example, in Tulsa, in programs that increased value, that actually resulted in in-sourcing. And that drove value in ways that were not only constructive, but mutually beneficial.

Your Honor, so we have two

things that are happening here. Number 1, we are at the table trying to do the right thing.

Number 2, we believe that we're being asked to take concessions that are not really truly necessary, even if we're assuming arguendo and I'm going to get to that second point in a minute, that we're just negotiating, in the very small box of the debtors' 1113 plan, and in that regard, on that alone, we would respectfully submit that at least with regard to the TWU the motion needs to be denied. Denied without prejudice, we want to finish the work. We're not saying to this court maintain the status

quo and we're done with it, but we need to be able to finish the work.

But importantly, your Honor, on top of that we'd like to talk a little bit about the 1113 plan and

the sequencing.

Your Honor, we discussed sequencing in our opening. What we discussed in our opening has been stated back to your Honor in slightly different ways than we intended it, and we would like to go through that a little bit because we think it plays into what your Honor's job is with regard to making findings under 1113.

I believe the statutory section your Honor is grappling with is and 1113 (B) and the nine

elements that come out under 1113 (b)(1) and 1113 (b)(2), to evaluate whether or not a proposal was made in good cause and then what happened during the course of those negotiations.

And the changes and the added burdens that are embedded in those, in that section and in that case law over and above the mere

business judgment standard that applies under 365. But there's more than that, your Honor. There's also the overlay that can't be ignored and excluded of the debtor and the debtor's officers and directors fiduciary duty to all of their stakeholders and the committee's fiduciary duty to all

of the unsecured creditors, including the TWU.

So for the debtors to say they want to do this separate stand-alone plan now and then negotiate with the other stakeholders we would respectfully submit is wrong.

For the committee to come in and say we support this 1113 process and it would be good to get a stake in the ground because then we can have better negotiations with the other stakeholders at a later date is also inappropriate.

Not only that, your Honor, but it drives a precedent that would say cut labor to below minimum wage, to below market rates and

then go out and do your real chapter 11 case with your real stakeholders.

That can't possibly be what Congress intended under 1113 and it's not the way the process should be work in.

The debtors have indicated that they do not dispute that there's more work to be done on this business plan even if it is a stand-alone business plan along with looking at consolidation and merger and other options.

And in addition to that, your Honor, they're not saying that this is the final real business plan, which is what we saw in Northwest, Delta, United and US Air.

There's a difference between

using a business plan like it was used in those cases where a business plan, a business model is really a euphemism for an Excel spreadsheet. So we understand that it's a live thing, that it matures.

That's different, your Honor, than a wholesale structural change in direction.

So we don't have an improved business plan, a maturation of an existing stand-alone business plan, where all the constituents buy in like you saw in Delta, Northwest, United and US Air. What we have is a business plan that is still suffering or growing in a positive sense from wholesale structural changes.

We've had two examples since the start of just this 1113 process, your Honor. First, we

started out with a business plan that included terminating the

pensions and had a large liquidity infusion by a back-stop.

Through negotiations with major stakeholders the debtor made the decision that it would actually not need that liquidity infusion but would do better to pay investor creditors more equity without them having to pay cash to reinvest and help the debtor post-emergence with its liquidity.

Two, we saw the pension, we saw the pension go from terminating to freeze and we would respectfully submit that that's a model of actually how this process works at its best as opposed to we're saying

here today.

The PBGC said we don't want to become the largest creditor through a pension termination.

The institutional debtor type creditors said they don't want the dilution of that kind of a claim in

the capital structure and labor thought to itself this isn't a bad thing to be able to keep your pension benefit and all four of those stakeholders, although they diverge on a lot of different issues, were able to sit across the table on this issue and better develop the business plan together.

The debtor and the committee have both admitted that this business plan development process

is not done.

Committee counsel stood at this podium and talked about a lot of different things, but not once was there acclamation or support for this business plan.

We heard testimony with regard to not one but at least two ad hoc groups of Hoyle determines that have not yet weighed in or started the process of talking about this business plan.

It's extremely important, your Honor, that we not be used as the bait and that is not used the standards under 1113.

Your Honor, we've heard from McKinsey that it's extremely important that your revenues exceed

your costs and that's basically the sum and substance of how they drove down to these labor concessions. We get that.

But that does not mean that you can take your labor costs and put them at below market.

Especially when you're not asking that equally of anybody else.

We have large trade creditors that are in the process of and your Honor has already approved lucrative new agreements with the debtor. Aircraft agreements with the debtor.

We have the debt holder

creditors already gearing up to enter into though negotiations.

But we're stuck, your Honor, in an 1113 process which as your Honor has already heard with regard to the Northwest decision, is not subject to a do-over.

And there's just one other point that I wanted to raise with regard to the valuation of the ask. So in addition to the healthcare, in addition to the wages, in addition to the fact that we offered job cuts, which we thought were reasonable, we also heard Mr. Glass testify that he actually had not really considered the fact that under the M&R existing collective bargaining agreement there are an additional 3,000 jobs at risk. And those 3,000 jobs are tied directly to the age of the aircraft. American's business plan, one of the things the American business

plan is designed to do is to take that aging fleet and make it perhaps even the newest in the industry. So in addition to the 2100 jobs that are already there through negotiation, there's an additional 3,000. That puts us over the debtor's ask.

As you'll see when you get to review all the evidence here, according to Tom Roth's declaration, on outsourcing alone we've met the debtors's stated need. We respectfully submit that both under the case law and the way your Honor has to interpret 1113 with the timing and the sequencing and the fact that this business plan is not yet ready for prime time, coupled with the fact of the way the TWU has conducted itself

throughout this 1113 process and importantly, during the negotiations, that the debtor has

not met the elements under 1113, at least not with regard to the TWU. And that terminating or abrogating those agreements would do nothing to move this process forward because once those folks are not at the table, once those stations are closed, they're gone. The company hasn't shown need, the company hasn't shown good faith, and the company hasn't shown that we've turned down the March 22 proposal, especially in light of all we gave in the March 21 proposal, without good cause and especially in light of the fact that the process to

finish the business plan is far from concluded. Again, it indicates good cause.

Thank you, your Honor.

THE COURT: Thank you.

MR. GALLAGHER: Your Honor, may I have five minutes for rebuttal?

THE COURT: I would say five minutes because I think otherwise we may never conclude.

MR. GALLAGHER: I understand, your Honor, and I will be brief.

I wanted to address the spectre of consolidation issue, your Honor, not just US Airways, but whomever might be out there.

Because as you think about it, as I think about it, as the lawyer

who is responsible for trying the case, I wonder how is a debtor ever to build an evidentiary record for an 1113 if we have to go out and explore and evaluate every conceivable possibility. How many options or possibilities do we have to go out and consider. Which ones? And when do we have to do it?

Quite frankly, your Honor, it would be a smart strategy for unions to avoid or delay 1113

forever. Because there's always something else you might have considered, some other airline you might buy or that might buy you, some other city you might go into, some other code sharing deal you

might do.

Where do we stop? 1113 doesn't have a standard for when the debtor must file a motion. It simply says when it files a motion it has to make it on the best information available.

And the decision in this case has to be played on the basis of evidence that's in the record, and on this record, your Honor, there is no there there. It's all rhetoric.

On the question of pro tempore, of denying momentarily, well exactly how long are they proposing that it be denied, your Honor? And what are the collateral

consequences of that at 80 million

dollars a month in ongoing losses.

What are the collateral consequences of that in all the other fronts, like exclusivity?

So we think that there is a lot of severe conceptual problems and matters of principle with their view of how 1113 should work.

Turning briefly to some nits, your Honor, there have been thousands of jobs lost in every other airline bankruptcy and you heard Mr. Glass say that there's no such thing as terminal values.

For APA's argument on domestic code sharing, your Honor, all we have to say is look at their proposal, look at the conditions they put on it, handcuffs, once again, the most restrictive scope clause in the industry.

American made that mistake once, your Honor, it can't go back.

And lastly, on information sharing, your Honor, Mr. James grossly overstated the issue with Lazard and information sharing. They saw the fleet order, they know every airplane delivery schedule, they got all the documents that went to the company's Board of Directors in connection with that. Look closely. If they want to press that issue, we welcome it, your Honor, because when you look closely, again, there's nothing there.

Lazard, what Lazard requested was an analysis of capital expenditure on that fleet order as if it had been a purchase rather than a lease. And the company said

we didn't do that and we can't do it without, with our capability. But under 1113 we don't have to create new information just because Lazard says we'd like to take

another look at it.

We gave them what we had and then as an accommodation we said we'd go out and do a return on invested capital analysis in addition to the net value analysis they'd already received.

So we think that's grasping at straws, your Honor. We again very much appreciate your time and attention.

THE COURT: All right. Two things that I want to say before we adjourn. The first is that I again

want to express my appreciation for all the hard work of counsel. It's not an easy case. And everyone's patience and I think it's been a very well presented case by all parties. So thank you very much for that.

And the second thing is I just have a brief comment about the proceedings and where to go from

here. I'll take the War Games analogy one step further. Not only isn't it a game that can be won by playing but it's also a destructive game to play.

It reminds me very much of labor arbitration in baseball which companies and players never want to go through because it forces

parties who hope to have a long term future together to criticize each other, often harshly because of what they see as a zero sum game.

Then there are always very bruised feelings, understandably so, as a result of that process. And it's a shame, because I've been impressed with the folks that I've heard from each side, the hard working employees who are understandably concerned about their futures and the future of their families in what are clearly

difficult economic times.

And also, the folks who are involved in restructuring, who obviously hope to turn around an

airline that has a proud heritage.

So in that context, I'm going to say what I -- I'm going to reiterate what I told the parties at the end of that first week of trial when we adjourned. The only thing I have in front of me under Section 1113 is whether or not to reject the existing collective bargaining agreement. So regardless of who wins and who loses, you're all stuck with each other. And the parties are still going to have to negotiate new agreements.

It's not like a employment case where somebody says I was fired by just cause, I want to go back and I want back pay and I want damages and judges in district

court will say okay, you win, you lose, if you get rehired this is what you get and if you get reinstated you get this.

It doesn't work that way, I just get to say whether the existing agreements under the very detailed, although one might say not particularly helpful standards in 1113, whether they apply.

And so you still have to negotiate new agreements in the context of trying to make sure that this airline turns around in a way where everyone benefits because that's what everyone wants.

And with that, you're going to have to, everyone is going to have to grapple with difficult economic facts that caused the filing of the bankruptcy and it's because everybody cares about the ongoing success of the enterprise in front

of me, that is the airline.

I understand that's what parties are trying to do. So given this context, I urge and I cannot urge anymore strongly, that the parties resolve this dispute where it should be dealt with, in the negotiating table and that means that people are going to have to pocket some really hard feelings on both sides that go back quite aways. And so I urge the parties to try to do that.

And I know it's difficult. I confess I probably can't appreciate how difficult because no one's been talking about me for three weeks.

So I don't, I don't underestimate the difficult task it

is, but regardless of what I do, you're going to have to do it anyway. So and I think I just add a level of uncertainty, a level of cost, and an opportunity for further hard feelings to the

process.

So in bankruptcy court we always talk about adding value, I don't know how much value I really add to the process in terms of what you all are trying to ultimately get done.

So that said, I'm here, I have a job to do, and I will do it even if I'm reluctant to have to do it.

So I have, we all talked about the date, and I will continue to work to get it done by that date.

So it's not a matter of you saving me any work. I've sat through three weeks of trial and I'm going to continue to work and I must continue to work, and so however, if I am finished and I am ready to put my signature on an opinion and you all rush in and tell me, Judge, don't issue that opinion, I will, it would be a matter of great happiness to hear

those words.

So I will do what I'm supposed to do, albeit reluctantly, and I hope that you all can do what you need to do even if reluctantly.

So thank you very much and happy Memorial Day weekend.

(Time noted: 2:02 p.m.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25