

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

DOCKET NO. 3:11-CV-371

US AIRWAYS, INC.,)
Plaintiff,)
vs.)
)
US AIRLINE PILOTS ASSOCIATION)
and MICHAEL J. CLEARY,)
Defendants.)
_____)

VOLUME I OF II

TRANSCRIPT OF PRELIMINARY INJUNCTION HEARING
BEFORE THE HONORABLE ROBERT J. CONRAD, JR
UNITED STATES CHIEF DISTRICT COURT JUDGE
AUGUST 19, 2011

LAURA ANDERSEN, RMR
Official Court Reporter
United States District Court
Charlotte, North Carolina

1 APPEARANCES:

2 On Behalf of the Plaintiff:

3 ROBERT ALAN SIEGEL, ESQ.,
4 MICHAEL McGUINNESS, ESQ.,
5 O'Melveny & Myers, LLP
6 400 S. Hope Street
7 Los Angeles, CA 90071

8 MARK W. ROBERTSON, ESQ.,
9 Of O'Melveny & Myers, LLP
10 7 Times Square
11 New York, NY 10036

12 ROBERT REED MARCUS, ESQ.,
13 Smith Moore Leatherwood, LLP
14 525 North Tryon Street, Suite 1400
15 Charlotte, NC 28202

16 On Behalf of the Defendants:

17 JOHN WEST GRESHAM, ESQ.,
18 Tin, Fulton, Walker & Owens
19 301 East Part Avenue
20 Charlotte, NC 28203

21 PATRICK JOSEPH SZYMANSKI, ESQ.,
22 1900 L. Street, NW, Suite 900
23 Washington, DC 20036

24 BRIAN O'DWYER, ESQ.,
25 ZACHARY RICHARD HARKIN, ESQ.,
O'Dwyer & Bernstein, LLP
52 Duane Street
New York, NY 10007

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25I N D E X

OPENING STATEMENTS:

Mr. Siegel	15
Mr. O'Dwyer	174

* * * * *

PLAINTIFF'S WITNESSES:

DARIN LEE

Direct Examination by Mr. Robertson	18
Cross-Examination by Mr. Szymanski	38

KERRY HESTER

Direct Examination by Mr. Robertson	73
Cross-Examination by Mr. Szymanski	78

LYLE HOGG

Direct Examination by Mr. Siegel	83
Cross-Examination by Mr. O'Dwyer	98

ALLEN HEMENWAY

Direct Examination by Mr. Siegel	137
Cross-Examination by Mr. Szymanski	138

PAUL MORELL

Direct Examination by Mr. McGuinness	142
Cross-Examination by Mr. Gresham	161

DEFENDANT WITNESSES:

VALERIE WELLS

Direct Examination by Mr. Gresham	179
-----------------------------------	-----

ALEJANDRO MUNEVAR

Direct Examination by Mr. Gresham	204
-----------------------------------	-----

JOHN SABLE

Direct Examination by Mr. Gresham	223
Cross-Examination by Mr. Siegel	231

* * * * *

Plaintiff rests	174
-----------------	-----

P R O C E E D I N G S

AUGUST 19, 2011, COURT CALLED TO ORDER 10:10 A.M.:

THE COURT: Good morning everyone.

ALL COUNSEL: Good morning.

THE COURT: Again, for record purposes, would the parties introduce themselves -- or the lawyers introduce themselves and the parties they represent.

MR. SIEGEL: Good morning, Your Honor. Robert Siegel of O'Melveny, Myers for US Airways.

MR. ROBERTSON: Good morning, Your Honor. Mark Robertson from O'Melveny, Myers for US Airways.

MR. McGUINNESS: Good morning, Your Honor. Michael McGuinness from O'Melveny, Myers for US Airways.

THE COURT: Thank you.

MR. MARCUS: Good morning, Your Honor. Robert Marcus of Smith, Moore, Leatherwood for US Airways.

MR. SZYMANSKI: Patrick Szymanski for US Airline Pilots Association and Michael Cleary.

MR. GRESHAM: John Gresham of Tin, Fulton, Walker and Owens for the Defendants, US Airlines Pilots Association and Michael Cleary.

THE COURT: Mr. Gresham.

MR. O'DWYER: Brian O'Dwyer of O'Dwyer and Bernstein for US Airline Pilots Association and Michael Cleary.

1 MR. HARKIN: Zachary Harkin of O'Dwyer and
2 Bernstein for US Airline Pilots Association and Michael
3 Cleary.

4 THE COURT: Thank you, very much.

5 We're here for a hearing on a motion for
6 preliminary injunction, and my only advice at the outset is
7 that the Court is here in the role of fact finder and truth
8 seeker in this matter. I know it's a hotly contested matter,
9 and there's some amount of history to it, and with that comes
10 a temptation to argue across the aisle. And I would
11 encourage the attorneys as they consider the Court's role in
12 all this to make arguments with me and not with each other.

13 And so it is the Plaintiff's burden to go forward
14 on this motion. And Mr. Siegel, I'll be glad to hear from
15 you at this time.

16 MR. SIEGEL: Your Honor, good morning.

17 If I could just take a few moments to make a short
18 statement of about how we're going to proceed.

19 THE COURT: Very well.

20 MR. SIEGEL: Your Honor, what we'd like to do is,
21 in order to expedite the process and not repeat the
22 presentation of evidence to the Court that has been presented
23 in written form already, our plan is --

24 THE COURT: Before you go any further, you should
25 assume that I have read your briefing papers and accompanying

1 documents, exhibits and declarations. If you filed it, I've
2 read it.

3 MR. SIEGEL: And I know that we filed a lot, Your
4 Honor. Thank you.

5 So what our plan is, we actually would like to
6 follow the procedure that was followed and endorsed by the
7 Eleventh Circuit in *Delta versus ALPA*, which is that we will
8 plan to submit a substantial part of our evidence through the
9 written declaration testimony as direct testimony. Obviously
10 we have our declarants here for cross exam, if defendants
11 wish to take any cross exam questions.

12 And we have, for a couple of the witnesses, a few
13 supplemental questions on direct, but not much. And we will
14 not repeat questions or solicit testimony that has already
15 been provided in written form.

16 We have provided for the Court, Plaintiff's Exhibit
17 notebook, which I hope the Court has. And it's our attempt
18 to take the declaration testimony and the exhibits that have
19 been filed at various times in the last two weeks, and have
20 them for the Court's convenience today. And we've marked the
21 exhibits by sequential exhibit number in that notebook.

22 The -- our goal, Your Honor, is an expedited
23 process. We do not want to either inconvenience the court,
24 be repetitive or frankly delay the process. We are looking
25 for, as quickly adjudication on this issue as possible.

1 We're prepared to finish this presentation today.

2 We know Your Honor has scheduled today for the
3 preliminary injunction hearing, and we would do our best to
4 proceed on a pace that allows us to finish in a day.

5 I would like to make just a couple of comments
6 about how we're going to proceed, and a couple of the
7 exhibits which we think are the principal ones that I believe
8 the Court would want to focus on as we go forward.

9 First of all, I think it's clear from the papers
10 that the issue we bring to the Court is not one that
11 involves, at all, any attempt to limit individual captain
12 discretion regarding operation of airplanes, nor are we here
13 to quarrel with the union about its safety survey or its
14 views regarding a safety culture. We understand that the
15 parties have disagreements on these subjects. And we don't
16 anticipate or think that those disagreements are for
17 adjudication in this process.

18 The issue that's presented today in the preliminary
19 injunction, is the one that's been identified in the case
20 law, which is whether or not there is a concerted action to
21 change the status quo, to pressure the company in labor
22 negotiations. A concerted disruption of operations.

23 The legal standard that has been established in the
24 applicable cases that we know, the two United cases and the
25 Delta cases out of the Seventh and Eleventh Circuit has said

1 that the Union is subject to an injunction if we prove that
2 it has instigated this concerted action, or it has failed to
3 take all reasonable steps to stop it.

4 In this case we think the evidence shows beyond a
5 doubt that they have done both, instigated a concerted action
6 and they have failed to take reasonable steps to stop it.

7 We have an attempt to present today, Your Honor,
8 five witnesses to present that evidence. The type of
9 evidence we're going to present is -- comes into two
10 categories really. It's the type of evidence that the courts
11 and the cases say must be presented.

12 One is statistical proof of the deviation from
13 status quo. And the second is proof beyond the statistics of
14 concerted action.

15 Our first witness is going to be Dr. Darin Lee.
16 Dr. Lee will be introduced as an expert witness. He has
17 testified in many matters, and has published extensively in
18 the area of the airline industry.

19 His expert report and his testimony will present
20 the statistical proof of the deviation from status quo, in
21 violation of Section Two Firsts of the Railway Labor Act.

22 We'll ask him to submit on the written record, but
23 to take a few moments to at least explain to the Court how
24 the report was prepared, and to be available frankly for
25 questions from Your Honor, as well as cross-examine.

1 We will also present as a second witness, Kerry
2 Hester, who is the Senior Vice President of Operations and
3 Planning and Support.

4 Her declaration sets forth the impact on the
5 company's operations -- the adverse impact on the company's
6 operations that has been caused by the illegal concerted
7 activity that has been instigated by the Union.

8 And she will describe the irreparable injury that
9 is being suffered and continues to be suffered on a daily
10 basis by the airline because of this illegal conduct.

11 The next two witnesses that we will present are
12 witnesses who will present documents that generally come from
13 the Union, bulletins and other domicile reports from the
14 pilots that reflect the effort to engage in and start a
15 concerted slowdown of the operation.

16 The first of these witnesses will be Captain Lyle
17 Hogg, who is the Vice President of Flight Operations, and
18 also Mr. Al Hemenway who is the Vice President of Labor
19 Relations.

20 Again, we will submit primarily through the
21 declaration testimony, and make these witnesses available for
22 cross exam, with limited supplemental direct exam questions.

23 And then finally we will present Mr. Paul Morell,
24 Captain Paul Morell, who is Vice President of Safety and
25 Regulatory Compliance, who can testify about the issues that

1 have been raised by defendant concerning the safety survey
2 that they have identified in their papers.

3 Your Honor, a couple more moments just to summarize
4 what we see are the core facts here.

5 And we start with the proposition that defendant
6 has said we're concerned about a safety culture survey.
7 We're concerned about the company's response to our survey,
8 and therefore we're entitled to go to the pilots and ask for
9 a change in behavior by the pilots because of these safety
10 concerns.

11 We have argued to the Court and will present
12 evidence today, that this is not an excuse for illegal
13 conduct. The Union may not invoke its disquiet over the
14 safety survey to instigate and fail to control an illegal
15 concerted action.

16 And then our evidence is going to show, and I would
17 like to just point out a couple of the principal exhibits
18 that will show how the safety issue has been used as a
19 subterfuge for the illegal slowdown to pressure the company
20 in labor negotiations.

21 And I would start with Exhibit number 40, which
22 goes back just a little bit before the current slowdown.

23 On September 30th, 2010, the Union puts out a
24 bulletin, "The Iron Compass" that says, "We anticipate that
25 our safety survey will have strong implications beyond just

1 safety." Beyond just safety.

2 Our witnesses will point out, indeed, the
3 implications have gone well beyond just safety.

4 On March 1st, 2011, just before the slowdown
5 started, the Charlotte Domicile Update, Exhibit number 41.
6 There are notes from the vice chair at the domicile, while
7 Safety Committee Chairman Kubik was speaking.

8 Kubik is reported to have said, as he discussed the
9 safety survey, "Peer pressure is very important. Our
10 profession is under attack. Speak up to your fellow pilots
11 and let them know they need to be good union pilots. This
12 safety report gives us carte blanche authority to take back
13 our airline." That's the safety chairman on March 1st, 2011.

14 And the rest of the report from the Charlotte
15 Domicile, that same day, it was reported out to the pilots,
16 "Fly safe, remain focused, stay healthy. And if rushed, slow
17 it down. Remain committed to the goal of no less than an
18 industry standard contract by delivering no more favors. It
19 is time to engage in the battle to return you and your family
20 to the professional status we signed up for." That's in the
21 bulletin discussing the safety survey.

22 On May 3rd, 2011, not from the Safety Committee but
23 from the Strike Preparation Committee, May 3rd, 2011, just as
24 the slowdown started. This is Exhibit number 11, Your Honor.

25 The Strike Preparation Committee starts out by

1 telling the pilots, "Why on earth should we be willing to
2 accept anything less than industry standard wages and working
3 conditions. Friends, it is time for us to make a concise and
4 powerful statement that we will no longer tolerate unfair
5 working conditions. What should we do? First and foremost
6 is the safety culture. We must meet or exceed the safety
7 standards of the FOM and the FAR in every single decision we
8 make."

9 An expressed connection of their so-called safety
10 culture with the labor negotiations, precisely what the
11 statute and the cases have said is illegal.

12 June 23rd, 2011, in the middle of the slowdown from
13 the Charlotte Domicile Update, Exhibit list number 13, Your
14 Honor.

15 From the Charlotte Domicile, they announce and
16 initiate an attempt not only to direct pilots to change the
17 status quo, but to disparage them and to retaliate against
18 them and to expose them if they won't cooperate.

19 They announce "The Doug Parker Golden Bonus Award".
20 Doug Parker is the CEO of the airline. And they announce
21 that they're gonna give this award "in recognition of any
22 pilot who goes above and beyond the call of duty to make sure
23 Doug Parker and his management team continues to 'earn' their
24 hefty bonuses."

25 "We plan on implementing this award with your

1 nominations and inputs and look forward to publishing the
2 list of contenders who are on board with Doug to move the
3 metal at any and all costs."

4 What happened after the Union instigated this
5 concerted activity? Well, what happened, starting in March
6 of 2011, just prior to the slowdown, is that the Safety
7 Committee Chairman, Captain Kubik, issued a road map, a
8 written road map for the slowdown. He told the pilots what
9 to do to slowdown the operation.

10 Now, I understand the declaration testimony says he
11 had to do it because the company didn't cooperate with him on
12 the safety culture survey. But that does not immunize the
13 conduct and make a violation of Section 2, First legal,
14 because Captain Kubik didn't like the company's response to
15 his safety survey. What did he do?

16 He actually directed the pilots in writing to
17 change the status quo to disrupt the operation, and in a
18 manner that actually then occurred. And Dr. Darin Lee will
19 show that the pilots started doing what Captain Kubik told
20 them to do to slowdown the operation.

21 And this is after the brochures and the
22 announcements that I have mentioned tying the safety effort
23 to the contract negotiations. I'll end this very quickly.

24 Captain Kubik says in his own declaration, he put
25 out part one of his guidance regarding the issue of on time

1 pressure distractions, and gave directions to the pilots as
2 how to slowdown the departure procedures and the arrival
3 procedures of airplanes.

4 And in times he said, "This differs from the
5 standard operating procedures of the company, but this is
6 what you should do."

7 This isn't about individual captain discretion in
8 those guidances. This is direction on a concerted basis by
9 the Union.

10 Part Two: Captain Kubik puts out a Safety
11 Committee directive on pilot fatigue calls and says, "If you
12 don't get a good sleep at the hotel, it becomes your
13 responsibility to either delay the ensuing flight, or inform
14 the company that they will need to find another pilot to
15 captain the flight."

16 That's not discretion, that's Captain Kubik's
17 direction what to do.

18 "When enough of our pilots fully understand this
19 requirement, and more importantly act upon this requirement,
20 then our substandard hotel situation will disappear with a
21 speed likely thought was not possible. This fact must be
22 clearly understood by our pilot group. We must stop this if
23 we expect the situation to improve."

24 The hotels are a subject of collective bargaining.
25 Safety Committee chairman is discussing what to do about that

1 collective bargaining subject.

2 Part Three of the directive, the guidance from the
3 safety issues. The MEL issues.

4 The directive instructs the pilots to change the
5 status quo, regarding what they do with discretionary MLE
6 (sic.) maintenance items.

7 This is Exhibit number 80 by the way.

8 Gives specific discretions. It tells the pilots,
9 "You know what, your get it done attitude plays perfectly
10 into a flawed management reliance on the MEL. We simply have
11 to force this company to maintain these aircraft. Our
12 guidance here is simple. Do not accept one that puts you and
13 your crew in the yellow. Make the call, and allow us the
14 Union to back you up if you are harassed or pushed. A call
15 to arms from the safety chairman."

16 I'll conclude by pointing out, Your Honor, that
17 when this occurred, US Airways knew this was illegal. US
18 Airways knew this was an instigation of concerted activity to
19 pressure the contract. It's not hard to read this and
20 understand what's going on.

21 We did not want to sue our union. We reached out.
22 As Your Honor knows, there are a number of documents in the
23 record, Exhibit 11, Exhibit 6, Exhibit 9, Exhibit 7, where US
24 Airways wrote to the Union, to the president of the Union,
25 Defendant Captain Cleary and said, this is illegal. We call

1 on you to stop it.

2 And each time US Airways wrote, Captain Cleary
3 wrote back and said, I don't agree it's illegal. This is
4 about safety and we're gonna keep doing it. We're gonna keep
5 doing it.

6 We finally were compelled to file this lawsuit and
7 seek this injunction. Even after we filed this lawsuit and
8 we sought this injunction and sought the TRO previously,
9 USAPA and Captain Cleary have continued -- have continued to
10 tell the pilots to engage in this slowdown under the moniker
11 of safety.

12 On August 3rd after we filed the lawsuit, USAPA put
13 out a legal update to the pilots and it proclaimed, "US
14 Airways did not file the lawsuit because the many actions of
15 the pilots, but rather to muzzle USAPA's safety concerns."

16 That's not a "taking all reasonable steps to stop
17 it".

18 On August 9 USAPA issued another legal update --
19 this is Exhibit 24 -- calling our filing "just another
20 attempt to silence USAPA pilots in an effort to secure the
21 safety of US Airways."

22 USAPA issued an update last week after the court
23 hearing, proclaiming inaccurately to the pilots that this
24 court had denied the request for TRO, instead of accurately
25 reporting it had been taken under submission.

1 Then it reported to the pilots, "We are confident
2 that the court will allow us to continue to advocate for our
3 safety initiatives."

4 Their code word for an illegal slowdown. Not a
5 scintilla of effort to take all reasonable efforts to stop
6 it.

7 It gets even worse, Your Honor. Just yesterday the
8 company receives and we have this in our exhibit notebook,
9 the Union, in the face of this litigation, is now handing out
10 bag tags for the pilots. In fact they mix-up their message.
11 On the one side it says, "I'm On Board/Safety First." On the
12 other side it says, "I've had enough I'm ready to strike."

13 The interaction of the safety message with the, "We
14 want our contract message", is precisely what the court said
15 is illegal. The code words don't work and do not obviate the
16 obligation under 2, Firsts of the Railway Labor Act to avoid
17 disruption of operations and avoid illegal pressure on
18 company in contract negotiations.

19 The case law has addressed this many times. This
20 is not the first time a union has used the safety card as a
21 method to try to justify illegal conduct.

22 On several occasions, including most expressly in
23 *United versus IAM* in a Seventh Circuit case, the courts have
24 said those are code words and does not cure the illegality of
25 the conduct.

1 Your Honor, that's the principal evidence the
2 witnesses will speak to today. I don't want to take anymore
3 time of the Court, and we're certainly ready to call our
4 first witness.

5 THE COURT: Very well. Before you do that,
6 Mr. Szymanski, you can respond now or defer to your
7 presentation of evidence, whatever you prefer.

8 MR. SZYMANSKI: We'll respond later.

9 THE COURT: Very well. Then call your first
10 witness.

11 MR. SZYMANSKI: And --

12 THE COURT: I'm sorry.

13 MR. SZYMANSKI: -- before they do that, Your Honor,
14 I want to indicate that we have no objection to the procedure
15 that Mr. Siegel has outlined about using the declarations and
16 calling the witnesses.

17 THE COURT: Thank you.

18 MR. SIEGEL: Your Honor, my partner Mark Robertson
19 will take the first witness. And I'll just introduce
20 Mr. Robertson.

21 MR. ROBERTSON: Good morning, Your Honor. US
22 Airways calls Dr. Darin Lee.

23 THEREUPON, DARIN LEE, being first duly sworn, testified as
24 follows during DIRECT EXAMINATION BY MR. ROBERTSON:

25 MR. ROBERTSON: Ready, Your Honor?

1 THE COURT: Yes. Go. When you're ready, you may
2 proceed.

3 Q. (By Mr. Robertson) Dr. Lee, could you please state your
4 full name for the record.

5 A. Darin Norman Lee.

6 Q. Have you recently prepared a copy of your curriculum
7 vitae?

8 A. Yes, I have.

9 Q. Let me direct your attention to Exhibit 83 in
10 Plaintiff's Exhibit binder, and ask you if this is a true and
11 correct copy of your curriculum vitae.

12 A. Yes, it is.

13 Q. And could you summarize for the court, your educational
14 and professional background contained in your CV?

15 A. Yes. I have a Ph.D in economics from Brown University
16 which I received in 1998. A Masters in economics from Queens
17 University in Ontario, which I received in 1993. And a
18 Bachelor of science and economics, which I received from the
19 University of Victoria British Columbia in 1991.

20 I'm currently employed as a senior vice president at
21 Compass Lexecon in Boston, Massachusetts, where I began on
22 March 1, 2011.

23 And for approximately 12 and a half years prior to that
24 time, I was at LECG, which was formally known as The Law and
25 Economics Consulting Group, where I held many positions

1 before and was most recently a director at that firm.

2 In both of these firms, my professional time was spent
3 on analyzing statistically -- statistical and economical
4 issues related to the airline industry.

5 Q. Have you published any articles in academic journals or
6 other publications regarding the airline industry?

7 A. Yes, I have. If you would turn to the second page of my
8 curriculum vitae -- actually the second and third page, you
9 can see that I published approximately 12 articles and
10 peer-reviewed journals, all of which involved empirical
11 analysis of airline data.

12 I am also the editor of the *Advances in Airline*
13 *Economics* book series.

14 Q. Dr. Lee, have you previously served as an expert witness
15 in matters related to the airline industry?

16 A. Yes, I have.

17 Q. In what context?

18 A. Well, I've served as an expert witness in federal court.
19 I have served as an expert in numerous -- before numerous
20 system boards of adjustment in arbitration matters.

21 I've served as an expert in numerous matters that are
22 currently pending before federal court. I've also served as
23 an expert witness on the airline industry in matters before
24 the U.S. Department of Justice, the U.S. Department of
25 Transportation, and before many international competition

1 authorities.

2 Q. In those proceedings, what subjects in the airline
3 industry have you testified regarding?

4 A. A fairly broad range of subjects, including competition
5 and anti-trust issues, mergers, airline labor matters and
6 finance and damages.

7 Q. And do all those subjects typically involve statistical
8 analysis?

9 A. Almost entirely, yes.

10 MR. ROBERTSON: Your Honor, we offer Dr. Lee as an
11 expert in statistics, economics and finance in the airline
12 industry.

13 THE COURT: Do you all want to voir dire now or
14 wait for cross?

15 MR. SZYMANSKI: I'll just make this short. We have
16 no objection on his qualifications as an expert witness.

17 THE COURT: I'll let him offer opinion in those
18 areas.

19 Q. (By Mr. Robertson) Dr. Lee, were you retained by US
20 Airways to analyze issues related to the current case before
21 this court?

22 A. Yes, I was.

23 Q. And what were you asked to analyze?

24 A. Principally three questions. The first was to provide a
25 statistical analysis, to ascertain whether or not the

1 increase in certain measures of pilot behavior that the
2 company was seeing amongst its East Mainline pilots since
3 May 1st of this year, could have been the result of random
4 statistical variation.

5 Second, I was asked to perform a similar analysis to
6 ascertain whether or not the increase or the degradation or
7 the deterioration in the company's operational performance
8 that started around May 1st of this year, likewise could have
9 been the result of random statistical variation.

10 And finally I was asked to assess the degree to which
11 the company and its passengers have been harmed by the
12 decline in operational performance since May 1st of this
13 year.

14 Q. How did you go about conducting your analysis?

15 A. Well, I used the same general methodology that I use in
16 all of the matters that I just spoke of.

17 The first thing I always do is get a sense of what the
18 data I think I'm gonna need to get a hold of, to analyze the
19 questions before me.

20 In the airline industry, we're fairly fortunate to have
21 a wealth of data, much of it public data provided by the U.S.
22 Department of Transportation.

23 In this instance, I needed to request additional data
24 from the company, because some of the data that I would
25 normally use from the US DOT is provided at kind of a bit of

1 a lag. And so they haven't released the most recent data on
2 operational performance. So I requested that data from the
3 company.

4 Once I had all the data in hand, I applied the same --
5 or the same statistical and econometric techniques that I use
6 in all of my matters to answer the question before me.

7 Q. Dr. Lee, to your knowledge, do other experts in the
8 airline industry normally rely on this type of data?

9 A. Yes. Like I said, there's kind of a standard set of
10 data that economists, both academic economists, as well as
11 government economists, and just people who study this
12 industry rely on to analyze the airline industry.

13 Q. Let me direct your attention to Exhibit 84 in
14 plaintiff's exhibit. Is this a copy of the expert report
15 that you prepared in this matter?

16 A. Yes, it is.

17 Q. Dr. Lee, I note that the title is "Supplemental Expert
18 Report". Can you explain to the Court how this is different
19 than the report you originally submitted in this litigation?

20 A. Well, there's really only two -- two differences.

21 On page one you'll note that I have a preamble
22 paragraph -- unnumbered preamble paragraph, that notes that
23 the first 56 paragraphs of the supplemental declaration are
24 identical to the expert report I filed on July 29. The only
25 difference is that this report was filed under penalty of

1 perjury.

2 The second main difference is that after having filed my
3 original report, I received a -- had a chance to review the
4 declaration of Captain Cleary in this matter. And so I added
5 an additional short section, Section 7 to this report, that
6 addresses some of the assertions or issues that he raised in
7 his declaration as they apply to my initial first report.

8 Q. Dr. Lee, at this time I would like to have you summarize
9 in general terms, the conclusions you reached in your report.

10 A. Well, I have three principal conclusions.

11 The first is that when you apply standard statistical
12 techniques, it's quite clear that the increase in several
13 measures of pilot behavior, for example, maintenance
14 write-ups, pilot fatigue calls, pilot induced delays, longer
15 taxi times, all of those measures are well outside the range
16 that one could expect to occur, since May 1st, because of
17 random statistical variation.

18 My second conclusion -- or my second main conclusion is
19 that the operational disruptions that the company has been
20 experiencing since May 1st, after controlling for all of the
21 normal factors that impact operational performance at an
22 airline, as well -- are also since May 1st, well outside the
23 range one would normally expect to occur due to random
24 fluctuations.

25 And finally, the operation of disruptions that the

1 company has been experiencing since May 1st, have caused
2 significant harm to the company's passengers in terms of
3 literally thousands of -- thousands of delayed flights,
4 hundreds of flight cancellations, and tens of thousands of
5 passengers that have been inconvenienced, either from a
6 flight cancellation, or having their bag not make its
7 connection.

8 Q. In conducting your analysis and reaching your
9 conclusions, what methods did you employ to ensure that the
10 changes you described occurring since May 1, were not the
11 result of random variation or other factors?

12 A. Well, I principally applied the two main statistical
13 methods.

14 The first was, and this was primarily for the pilot
15 behavior measures, was to compare the current rates that
16 we've seen since May 1st of these measures, versus the
17 distribution of those rates from a historical control period.
18 And that control period goes back for a little bit more than
19 three years.

20 The second method, which is applied primarily to the
21 operational performance measures, was to use a regression
22 analysis that more directly controls for all of the various
23 factors that are likely to influence operational performance.

24 So, for example, with regards to on time performance,
25 it's well known that things like weather, load factor

1 seasonality, impact on time performance. So when you want to
2 analyze whether or not the change since May 1st, it's
3 statistically significant, one wants to separately control
4 for all of those factors.

5 Now, layered on top of those two methods, I also
6 performed some additional, what I would refer to as
7 robustness tests to determine, or to give me even further
8 confidence that the changes that have occurred since May 1st
9 weren't due to other factors.

10 And principally what I've done there is compare the
11 rates of change since May 1st for the East operations, for
12 the East Mainline operations to two different control groups.
13 And the two different control groups that I used were the
14 company's West Mainline operations.

15 And as Your Honor likely knows, the West operations are
16 those performed by pilots that were formally pilots of
17 America West prior to the 2005 merger.

18 The reason why they serve as a natural control group is,
19 for example, if you're looking at a safety issue, these
20 pilots are subject to the exact same operating procedures as
21 the East pilots.

22 And so if there was a legitimate safety change since
23 May 1st, one would fully expect to see any increase, for
24 example, in write-ups, applied to both the East and the West
25 pilots. So that they form a very nice control group for

1 that.

2 For some of the operational measures of the other
3 control group I used was the company's Express operations.
4 And the Express operations are those flights that are on the
5 relatively smaller regional jets.

6 And the reason why they make such a nice control group,
7 is that these aircraft -- and there's actually more Express
8 flights than Mainline flights, they operate out of the same
9 hubs as the Mainline flights do, Charlotte, Philadelphia, et
10 cetera, and are subject to the exact same weather conditions,
11 the exact same airport conditions. So, for example, if there
12 had been runway construction, or ground congestion, the
13 Express operations are subject to those same external
14 factors.

15 So again, if any of these external factors were causing
16 the increase since May 1st that we observed in the East
17 Mainline operations, one would also expect to see a
18 comparable increase amongst the Express operations.

19 And then I should just add that the pilots that operate
20 the Express operations are not USAPA members. They are
21 represented by a variety of different bargaining units.

22 Q. At this time I would like to have you walk the Court
23 through some examples of the two methodologies you just
24 described, as well as examples of how you conducted your
25 further, I believe you called it robustness testing. Let's

1 start by directing your attention to Exhibit 5 at page 18 of
2 your report.

3 A. Okay. On page 18 of Exhibit 5, this is an illustrative
4 example of essentially the first method which is to compare
5 the current rates of pilot behavior versus a control
6 period -- or versus the distribution from the control period.

7 And the measure that I'm looking at in this instance are
8 the write-up rates, the maintenance write-up rates by the
9 East Mainline pilots.

10 What the exhibit shows, along the bottom horizontal axis
11 is time. Okay. And this is a one-year period here.

12 And the vertical axis is the rate at which pilots are
13 writing up maintenance issues on the aircraft.

14 Okay. So the dark -- the dark black line, which is the
15 one that goes from January through approximately the end of
16 July, are the 2011 rates.

17 Okay. The blue, kind of dashed variable line there is
18 the 2010 rates, just to show a comparison period.

19 And the light gray horizontal line is the average rate
20 at which East pilots, through the control period -- now
21 control period goes back to 2008 -- the average rate at which
22 the pilots were writing up maintenance issues on East
23 Mainline operations.

24 And what that shows is that for the control period,
25 okay, which goes from January 1st, 2008 to March 31st, 2011,

1 the rate was approximately 23.56 percent.

2 Okay. Now what you can also see is that there's this
3 red dashed line, okay, called the 99 percent confidence
4 threshold.

5 The confidence threshold is formed by looking at the
6 statistical distribution of the write-up rate from the
7 control period.

8 And using standard statistical techniques, what I can do
9 is determine the level above which if you were to see a seven
10 day moving average rate go above that line, you would be
11 99 percent confident that it was not the result of random
12 statistical variation.

13 So what you can see in kind of the highlighted area of
14 the middle of this exhibit is starting on and around May 1st,
15 the write-up rate amongst the East operation -- amongst the
16 East pilots, rose rather dramatically above that 99 percent
17 confidence line, and has stayed above that 99 percent
18 confidence line since that time.

19 And I would note that the last point -- this be my last
20 point on this exhibit -- the last point which is the week
21 ending July 26 of this year, the rate was 33.48 percent.

22 Put differently, the probability of observing a write-up
23 rate for a seven day period of 33.48 percent based on the
24 historical data, is that the probability that you would
25 observe a rate that high is about 1 in about 800,000.

1 Q. Thank you, Dr. Lee.

2 Let me now contrast that to Exhibit 6 on page 19 and
3 have you explain to the Court what that shows.

4 A. Well, as I mentioned earlier, you know, what I'd like to
5 do is just perform some additional robustness testing. And
6 so a natural control group as I mentioned is the West pilots.
7 So this exhibit, Exhibit 6, replicates the exact same
8 analysis except for the West -- now we're looking only at the
9 west pilots.

10 And what you can see on Exhibit 6 is that nowhere since
11 May 1st, and in fact the entire time of this chart, does the
12 write-up rate exceed the 99 percent confidence threshold.

13 And what that means is that there has been no
14 statistically significant change in the pattern of write-ups
15 amongst the West pilots.

16 And that provides me with greater confidence that what
17 I'm observing on the East side, is not the result of a
18 legitimate safety issue.

19 Q. Dr. Lee, the second method you mentioned is regression
20 analysis. Can you explain in general layman's terms what a
21 regression analysis is?

22 A. Sure. I'll try my best. So a regression analysis is a
23 slightly more complex form of analysis, but it's really the
24 most common -- or one of the most common techniques used by
25 economists and statisticians to ascertain whether or not the

1 change in one variable, which is referred to as the dependent
2 variable, how that changes in that variable are affected by a
3 series of other variables that explain the dependent
4 variable. And so let me put this more concretely.

5 One of the variables I'm interested in understanding is
6 the on time performance of US Airways East operations. Okay.

7 And I know that it's well documented in the literature,
8 that on time performance is impacted by a number of factors.
9 You can have weather, daily weather patterns, you can have
10 load factors, time of the year, day of the week, et cetera.

11 Okay. So in trying to understand whether or not the
12 increase, okay, in the rate of delay since May 1st is
13 statistically significant, one has to be careful that they've
14 controlled for the other factors. And a regression analysis
15 allows me to systematically control for all of these other
16 factors.

17 Q. Okay. Let me direct your attention to Exhibit 14 at
18 page 35 of your report. Can you explain what Exhibit 14
19 shows?

20 A. Well, Exhibit 14 is a table summarizing the regression
21 results for two different delay measures, A-14 in minutes of
22 delay for the company's East main lane, and then a subset of
23 the Charlotte Mainline flights.

24 And so the two measures of delay that I'm looking are
25 A-14. And A-14 is the standard DOT measure of delays, which

1 measures the proportion of flights that arrive more than 14
2 minutes after their scheduled arrival time.

3 Okay. So by DOT standards, if a flight arrives, you
4 know, five minutes after its scheduled arrival time is not
5 deemed to be late. Once it goes beyond 14 minutes of delay
6 is deemed to be late.

7 And all airlines are responsible for reporting this data
8 to the U.S. Department of Transportation. This data then
9 gets disseminated publicly on the DOT web site and throughout
10 the media and is a common means by which on time performance
11 is compared across airlines.

12 Now, let's just focus on the first column, column one,
13 the first set of numbers in column one. This is the results
14 of the regression model.

15 And the key variable of interest is the modest --
16 variable at the very top called post May 1. This variable
17 captures the increase, or the change in the A-14, the on time
18 arrival rate of the East Mainline flights. Okay. Since
19 May 1st.

20 Okay. All of the other variables below are other
21 control variables that also impact delay.

22 So it's important that you just don't want to look at
23 the change since May 1st, because there's a lot of factors
24 that can influence on time performance. And this data,
25 again, is looking at essentially a three and a half year

1 period.

2 Okay. So, for example, you can see that I've controlled
3 for the computer outages that have occurred fairly recently.

4 The reason why it's important to control for those, is
5 because if you didn't control for that, then you might
6 mistakenly attribute a poor on time performance to pilot
7 actions, when it was really because of the computer delays --
8 the computer outage.

9 And there's a series of variables, load factor, weather,
10 different measures of the weather, et cetera, and I will also
11 note this in the notes, but it's not on the table, that there
12 are other additional controls, namely the seasonal controls,
13 the day of week controls, the month of year controls, et
14 cetera, that aren't reported here but are part of the
15 regression.

16 And so just turning to the result -- the main result on
17 A-14 for East Mainline, what this shows, the negative .109.
18 The way to interpret this, is that, since May 1st of this
19 year, there has been approximately an 11 percentage point
20 decline in the company's A-14 performance, or the proportion
21 of flights arriving on time, okay, has gone down by
22 11 percentage points after controlling for all of these other
23 factors which are known to influence on time performance.

24 Q. Could you quickly show the same results for your columns
25 two, three and four?

1 A. Yeah. Column two is, instead of looking at A-14 is
2 looking at the minutes of delay. And again, so the minutes
3 of delay is six and a half minutes, approximately.

4 It's important, Your Honor, to emphasize that this does
5 not mean that on average flights are delayed by six and a
6 half minutes. What this means is that since May 1st there
7 has been an additional six and a half minutes of delay, okay,
8 relative to the normal level of delay, okay, after
9 controlling for all of the factors that cause delay. Okay.

10 Columns three and four repeat that analysis for
11 Charlotte Mainline flights.

12 And the last thing I should just mention is that the
13 asteric next to the numerical coefficients, what those
14 represent are the statistical significance of the results.

15 So it's standard in this type of analysis to use two
16 stars indicates that the result is statistically significant
17 at the 99 percent confidence level. And one star means that
18 it's significant at the 95 percent confidence level.

19 As you can see the delay coefficients are always
20 statistically significant at the 99 percent confidence level,
21 which is a very strong statistical result.

22 Q. And are columns three and four focused specifically on
23 Charlotte?

24 A. These focus specifically on Charlotte, yes.

25 Q. Dr. Lee, let me direct your attention to Exhibit 15 at

1 page 37 of your report, and have you explain Exhibit 15.

2 A. Well, Exhibit 15, again, is just an example of the
3 additional robustness testing that I spoke about earlier,
4 here applied to the regression model. So the robustness test
5 here that I think is most relevant, is the one that compares
6 it to the East Express flights.

7 And as I mentioned earlier, the East Express flights
8 operate at the same, the same set of airports, and especially
9 the same hubs, and are subject to all of the same weather
10 conditions, et cetera.

11 And so if it were the case -- okay -- that airport --
12 changes in airport conditions since May 1st, okay, were
13 really the cause of what we just looked at on the East
14 Mainline side, because the Express operations operate under
15 the same hubs, face the same weather patterns, et cetera, it
16 would stand to reason that you would see the same or
17 comparable effect on the delays on the Express side since May
18 1st.

19 Now, as you can see, across the top of this chart, okay,
20 the May 1st variable is not statistically significant for any
21 of the measures. So it's not statistically significant for
22 A-14, nor is it for the minutes of delay.

23 And so what this means is that there has been no impact,
24 okay, relative to the base period, on the on time performance
25 of the company's East Express flights since May 1st, after

1 controlling for all of the factors which affect delay.

2 Q. Have you also conducted a similar regression analysis
3 for Charlotte Express flights?

4 A. Yes, I did. And I mention that in the new Section 7.
5 When look at only the Express flights that are isolated in
6 Charlotte, you find exact same results. There's absolutely
7 no statistical significant change since May 1st on Charlotte
8 Express on time performance.

9 Q. Switching topics, I believe you testified earlier that
10 you reviewed the declaration of Captain Cleary and addressed
11 that in your supplemental report?

12 A. Yes, I did.

13 Q. Can you point us to where in the report that you're
14 addressing Captain Cleary's declaration?

15 A. That would be in Section 7 at the end of my report.

16 Q. And can you explain, without going through each
17 paragraph, but in -- let me ask you this first:

18 Did the assertions made by Captain Cleary in his
19 declaration, alter any of your conclusions?

20 A. In no way whatsoever.

21 Q. Can you explain in general terms why not?

22 A. Well, the essence of paragraphs, I believe it was 49
23 through 54 of Captain Cleary's declaration, were that the
24 changes that have occurred, there's the deterioration in the
25 East Mainline performance since May 1st, were attributable to

1 factors other than pilot actions. And he pointed to numerous
2 factors. And when you look at each of those factors one by
3 one, and I describe them in my report, they kind of fall into
4 one of three categories.

5 Either he points to something which is actually in fact
6 directly controlled for in my model. So, for example, one of
7 the things he mentioned is load factor. Load factor as I
8 discussed, is a variable which is included in my regression
9 model. So load factor cannot be an explanation.

10 The second kind of type of assertion that he has, has to
11 do with changes, for example, in the number of checked bags
12 that people are not -- no longer checking and bringing on
13 board which is slowing down the boarding procedure.

14 The company instituted its bag policies well before
15 May 1st, going back to 2008 in fact. So this would be an
16 example of one of the causes that is already accounted for in
17 the control period. So it long predates May 1st of this
18 year. That therefore cannot be an explanation.

19 Then the last set are typically things dealing with
20 changes that may have occurred at the airport level, and
21 that's fully controlled for in this comparison to the Express
22 operations which we just spoke about.

23 MR. ROBERTSON: Thank you, Dr. Lee.

24 No further questions, Your Honor.

25 THE COURT: Any Cross?

1 MR. SZYMANSKI: Can I have just a moment, Your
2 Honor?

3 THE COURT: You may.

4 CROSS-EXAMINATION

5 BY MY SZYMANSKI:

6 Q. Mr. Lee, first of all, how long have you performed work
7 for US Airways?

8 A. When you say -- in this matter are you referring to?

9 Q. No, overall?

10 A. How long have I --

11 Q. When did you first do any expert work for US Airways?

12 A. Let me just reflect on that for a minute. It's been
13 several years.

14 Q. Several years?

15 A. Yeah.

16 Q. And you've testified on their behalf in several
17 proceedings, five or six proceedings at least?

18 A. That sounds approximately correct.

19 Q. And on this particular matter, when did they come to you
20 with the questions that you testified to on Direct?

21 A. I think it was initially some time just as I was
22 arriving at Compass Lexecon. So sometime in the -- at least
23 I received a phone call sometime in the March 2011 period.

24 But I didn't start doing any analysis till much later.

25 Q. When did you start doing the analysis?

1 A. It would have been sometime in, I believe mid May.

2 Q. And was that before or after you asked, I think you
3 described essentially two stages, one gathering data and
4 information and then performing the analysis. Was that after
5 the data had been gathered, during, before, what relation to
6 gathering the data did that happen?

7 A. I'm sorry. To the mid May date?

8 Q. Yes.

9 A. Well, by mid May I had received some of the data and had
10 started to look at some of the data.

11 Q. And I imagine it was a rolling procedure because you
12 were doing analysis. And as your report indicates, you've
13 got data here at least through July; is that right?

14 A. Correct. I was looking at data on an ongoing basis.

15 Q. Do you know how many hours you spent overall on this
16 particular report?

17 A. As I sit here right now, no, I don't have an exact
18 number in mind. It was, you know, it took sometime to put
19 together.

20 Q. Are we talking 100 hours, 200 hours, some ballpark?

21 A. On this report?

22 Q. Yes.

23 A. Again, it would only -- I would be speculating to put a
24 firm number on it, but somewhere in that neighborhood of 100
25 hours would probably seem reasonable.

1 Q. You have time records, I suppose?

2 A. Yes, I do.

3 Q. And records that -- on the basis of which you billed the
4 airline, right?

5 A. Correct.

6 Q. And you would be able to look at those records and let
7 us know how many hours were involved in preparing this
8 report?

9 A. Correct.

10 Q. And in gathering the information, did you use the
11 assistance of other people in your firm?

12 A. Yes, I did.

13 Q. How many people worked with you?

14 A. I have two people that I've been working with on this.

15 Q. And did you also have the assistance of staff at the
16 airline to gather information for you?

17 A. I received data from the airline, that's correct.

18 Q. And were there questions when you received data, you
19 wanted more data, or some different data you would have to go
20 back to the airport -- to the airline and ask the airline for
21 that information?

22 A. If you're asking did I have multiple requests --

23 Q. Yes.

24 A. -- more than one request. The answer is, yes.

25 Q. Any of the data that you received from the airline, did

1 you do any independent verification of that data or you
2 accepted it as it came from the airline?

3 A. No. I always do an independent verification of the
4 data.

5 Q. What sort of independent verification did you do of the
6 data you received from the airline?

7 A. Well, I mean, there's a variety of things you can do.
8 You can compare it to the DOT data. You can compare it to
9 the OAG, the Official Airline Guide data. You typically plot
10 the data to see if there's any data which appears to just be
11 an error, something like that.

12 Q. But did you go and ask anybody at the airline who
13 produced the data, where it came from, go and look at
14 individual reports and so forth, other than these sort of
15 gross measures?

16 A. Well I certainly asked questions as to how the data's
17 collected, if that's what your question is.

18 Q. But then you didn't go and actually question any of the
19 people who actually recorded the data, for example?

20 A. Well, I certainly had conversations with representatives
21 from the company who oversee that data, who were kind of the
22 owners or experts in that data.

23 Q. Other than people who oversaw the collection of the
24 data, did you go below that level to verify any of the data?

25 A. Well, not exactly sure what you mean. But as I said, I

1 spoke to the people at the company who are the experts and
2 know how the data's collected and know, essentially, are
3 responsible for collecting that data and making sure that --
4 in charge of the integrity of the data. And I was confident
5 that the data was good data.

6 Q. Let's move on. Let me ask you some general questions
7 about the operation of the airline. First, East versus West.

8 As I understand it, although to the outside observer,
9 it's one airline. As far as the pilots are concerned, there
10 are two separate bid lists and two separate seniority lists;
11 is that right?

12 A. That's my understanding.

13 Q. And one is for the America West pilots and the other one
14 is for the former US Airways pilots; is that right?

15 A. Yeah. Well, one is for the former America West pilots
16 and one's for the former stand alone US Airways pilots;
17 that's right.

18 Q. And in terms of the flights that each pilot group bids
19 on, what's your understanding of what the former America West
20 pilots bid on?

21 A. Well, primarily the former America West pilots fly what
22 are known as the West operations. And those are primarily
23 the flights that are based out of the Phoenix hub, as well as
24 some flights to and from Las Vegas. And then the East
25 pilots, primarily, fly the routes that are based out of the

1 three East domiciles, which are Charlotte, Philadelphia and
2 Washington, DC.

3 Q. Okay. And if I understand correctly, the former America
4 West pilots bid on the -- we'll call them the West flights
5 that are primarily out of Phoenix and Las Vegas. And then
6 also the former US Airways pilots bid on primarily the
7 flights out of other three domiciles; is that right?

8 A. I think that's what I just testified to, yes.

9 Q. Okay. And then only if there are remaining bids left,
10 do pilots from one side bid on flights that are available --
11 or might still be available on the other side?

12 A. I have actually no particular knowledge of that last
13 question.

14 Q. Well then let me ask you, all throughout your report you
15 talked in some situations about West Mainline flights, East
16 Mainline flights, East Express flights and so forth. How are
17 you identifying those flights in the course of your analysis?

18 A. Well --

19 Q. As East -- East Mainline flights, for instance?

20 A. I believe the convention has to do with the flight
21 numbers 699 above or below. And so that distinguishes which
22 are the East versus the West. The Express are much easier --
23 they're all easy to determine. But the Express flights are
24 those that are not operated by carriers that are -- have the
25 designator code U.S. They're operated by Piedmont, and PSA,

1 and Air Wisconsin and Mesa and Republic. So to me they're
2 all fairly easy identifiable.

3 Q. So numbers above a certain level are East flights and
4 numbers below that are West flights?

5 A. Correct, yeah.

6 Q. Or vice versa?

7 A. That's correct, yeah.

8 Q. And throughout your analysis you talked in different
9 situations about East pilots and West pilots. How are you
10 making that particular distinction?

11 A. Well, again, it's the -- the pilots that are flying the
12 flights above or below the 699 flight number, are the East or
13 the West.

14 Q. So you're doing it, again, by flight number rather than
15 by individual pilot?

16 A. Well, on the operation side that's correct. On things,
17 for example, on write-ups, for example, the company would
18 provide me with a separate East and West poll.

19 Q. So let me ask you a few other things about the way the
20 airline runs and how pilots operate and are paid and so
21 forth. What's a block hour.

22 A. A block hour? A block hour is essentially measures -- a
23 block hour is the time -- so if a flight is going from, for
24 example, I fly quite frequently Boston to Washington, DC.
25 The block time is the time from when the flight leaves the

1 gate, or essentially when the parking brake is released,
2 until the time it arrives at its destination or the parking
3 brake is reengaged. And so it includes both the in-flight
4 time and the taxi time and is the basis under which pilots
5 are paid, one of the basis.

6 Q. Pilots are paid a certain amount based on the number of
7 block hours that they fly?

8 A. Yeah. Subject to the -- the key ingredient is subject
9 to various other formulas of the CBA.

10 Q. And then contracts, pilot contracts often also refer to
11 something called duty time. What's duty time?

12 A. So as I sit here, I mean, there's different contractual
13 provisions. And as I sit here right now, I'm not
14 100 percent -- I can't recall the -- all of the various rates
15 and regs and duty rates and so forth. But one of the
16 contractual provisions in the CBA that measures a different
17 span of time. And as I sit here right now, I don't recall
18 exactly which one it is.

19 Q. So you're not familiar with that. And do you know, is
20 there any particular connection between duty time and block
21 hours for a pilot during a month, if you know?

22 A. Is there any particular connection --

23 Q. Is there a ratio, for example, between duty time and
24 block hours?

25 A. There may be. As I sit here right now, I'm not exactly

1 sure what the relationship is.

2 Q. Okay. And in different parts of your analysis you
3 use -- we can just take an example here. I'm gonna ask you
4 questions based on your supplemental declaration, which is
5 number 84.

6 A. Yeah. I have it in front of me.

7 Q. Do you have it in front of you?

8 A. Yeah.

9 Q. Which is, you testified, includes everything from your
10 previous declaration --

11 A. Correct.

12 Q. -- so forth. So I'm just going to concentrate on
13 supplemental one.

14 And footnote 22 on page 13, where you're talking about
15 maintenance write-ups and you talk about it as the number of
16 flight decks, maintains write-ups as a proportion of daily
17 scheduled flights.

18 And when you talk about daily scheduled flights, you
19 mean for flights, you mean the flight number, or do you mean
20 segments or pairings or?

21 A. No. I mean -- I mean the number of departures by the
22 unit that I'm looking at. So, for example, on the East
23 Mainline side, there is approximately, you know, 835 daily
24 Mainline departures.

25 Q. So a particular flight that has one number, for example,

1 that might fly from -- might fly from Philadelphia to
2 Washington, DC to Charlotte, that would be two flights?

3 A. That would be two flights --

4 Q. -- two departures?

5 A. -- to departures, correct.

6 Q. Appreciate that. And now, is there an emphasis, if you
7 know, at US Airways on, on time performance?

8 A. I think -- I think every carrier is concerned with on
9 time performance, including US Airways.

10 Q. Now, reading your report, I want to ask you some
11 questions about the report in particular.

12 In particular, the middle section and where you go
13 through one, two, three, four, five -- five different
14 factors, maintenance write-ups, pilot induced delays, fatigue
15 calls, prolonged taxi times and flight delays. Those are the
16 metrics, whatever we want to call them, those are the five
17 things you looked at?

18 A. Correct.

19 Q. And then the later part of your report goes into the
20 effect of those delays and so forth. But these are the
21 basics on which that second part or third part of your report
22 is based; is that correct?

23 A. I think that's correct, yeah.

24 Q. So let's look at the maintenance write-up section, which
25 is -- starts at page 12, I think. Yes. At the bottom of

1 page 12 and goes on for a couple of pages.

2 Does your analysis account for, or take into account
3 anything with respect to increased number of flights or
4 flight segments, departures -- let me rephrase.

5 Does your analysis take into account any increase that
6 there might have been in departures during the period that
7 you examined?

8 A. Well, as discussed in the report, it's expressed as a
9 rate, right. So it's -- the answer I think is, yes. Because
10 everything is Expressed as a rate. So the write-ups per
11 number of flights.

12 Q. So page 18, Exhibit 5, I think is a chart that you
13 already referred to?

14 A. Correct.

15 Q. First of all, I notice that in the similar period on the
16 dotted line for 2010, there was some sort of increase during
17 the same period. I know it's not the same. I'm not arguing
18 that it is the same. But do you have any idea why, for
19 example, that occurred in 2010?

20 A. So are you referring to what time -- what part of --

21 Q. May -- 22 May, through 21 June period, and the dotted
22 line which is 2010 figure?

23 A. Oh, so you're referring to within the shaded box?

24 Q. Yes.

25 A. Well, you know, as you can see from looking at the

1 entire 2010 series, you know, maintenance issues are largely,
2 quote unquote, random events. And there are a lot of --
3 there's a variation in the data. And so you would expect --
4 you would not expect to see a flat line or every day the same
5 number of maintenance issues come up.

6 So what you see is some variation all within standard
7 statistical, you know, expected statistical norms of
8 something which is inherently variable.

9 Q. So this is just the number. It doesn't explain at all
10 why that number is there. In other words, for 2010 for
11 example, that particular time period that shows an increase
12 in the number of write-ups, you don't know why that occurred,
13 why there were more write-ups during that period than there
14 was before or after?

15 A. I've made no attempt to try to explain why on any
16 particular day or any particular -- at least for a seven day
17 period, the rate is what it is.

18 Okay. What I have done is looked at the statistical
19 distribution of rates. And I can form a confidence threshold
20 under which or above which, if you observed it going above
21 that rate it would be statistically anomalous.

22 Q. And Exhibit 7 on page 20 is again -- it shows increases
23 during the shaded period from May 7 or May 22 through July 6
24 or wherever, during 2010, the same period that there were --
25 that you were talking about in 2011. You don't know why

1 those increases occurred either, not anymore than before?

2 A. Well one thing I should -- I should maybe make clear, is
3 that this is the 99 percent confidence threshold. And so
4 over the course of a year, okay, one would expect that the
5 rate will go above the 99 percent confidence threshold, what,
6 approximately three times a year. So approximately 1 percent
7 of the days, you would expect because of random
8 statistically, that it will go above.

9 So it's not surprising to see on occasion, okay, in the
10 control period, okay, that the rate going above the
11 99 percent confidence threshold. Because you would expect on
12 approximately 1 percent of the observation of that to occur.

13 But what we have here is a situation where in 2011,
14 since May 1st, it has consistently been above that threshold.
15 And that is what the statistical anomaly is.

16 Q. So there's nothing to be understood or known from the
17 fact that, I mean, for example, looking at Exhibit 7, that
18 the rates go up, go down, whatever, but they're relatively
19 close to the average, up until the beginning of the shaded
20 period. And that both rates, although obviously not to the
21 same extent, seem to reach highs during that particular
22 period. We just don't know why that happens?

23 A. Well, I, you know, I would point you towards there's a
24 peak in 2010, again in mid September, then one again later in
25 September.

1 The key is that data like this is inherently variable.
2 Okay. What that variation allows one to do by looking at it,
3 is to form a statistical distribution of where you would
4 expect it to be across any seven day period. Okay.

5 And so you fully expect there to be variation in data.
6 That's actually, you know, good for performing statistical
7 tests. Okay. Because it allows you to generate these
8 confidence thresholds. It's actually good that there's
9 variation of the data, because that allows you to form the
10 statistical distribution to allow you to perform the test.

11 Okay. So I think what you're pointing to saying that
12 it's variable, I fully acknowledge that it's variable. It's
13 actually what allows me to form this 99 percent confidence
14 interval. And what it allows me to do is to say, in 2011
15 since May 1st, we have a situation where the write-ups rates
16 are consistently above the 99 percent confidence level. And
17 that, as I say, that is with regard to Exhibit 6, it was like
18 a 1 in 800,000 chance in that happening.

19 Q. So this is, as you've acknowledged, a statistical
20 measure. You, again, haven't gone and looked at any of the
21 individual maintenance write-ups and to try to figure out
22 whether they're valid, invalid or not?

23 A. No, I have not. No.

24 Q. Let's go to the next section. Let's talk about pilot
25 induced delays. Just two pages, page 21 and page 22.

1 This is basically a graph of a delay code; is that
2 right?

3 A. Sir, what graph are you looking at?

4 Q. Exhibit 9.

5 A. Oh, correct. That's correct.

6 Q. That delay code is FP0?

7 A. That's correct.

8 Q. Do you know who that delay code is assigned by? Who
9 determines for a particular flight what the delay code is
10 that goes in when they record the delay?

11 A. I believe it -- when you say who it varies, station by
12 station. But at the main hubs, so for example at Charlotte,
13 there is a person assigned to -- the title of that person.
14 I'm not sure what it's called. Someone like the operation
15 performance, something. I apologize I don't know the exact
16 name of the person responsible.

17 But there is a person that's responsible for assigning
18 the delay code, based on, you know, conversations that they
19 had with the ramp agents, et cetera.

20 And that there is also a procedure by which the various
21 departments go in and re-audit the codes to make sure they
22 haven't been incorrectly attributed. Various departments can
23 challenge whether or not they thought that belonged or
24 maintenance thought it belonged.

25 So there's a pretty -- a system in place that ensures

1 that the code is, you know, assigned to the right cause.

2 Q. Do you know whether pilots are included in that process?

3 A. I believe in the auditing, that the chief pilot is
4 involved in that, yes.

5 Q. The chief pilot's a management official, correct?

6 A. I believe that's correct.

7 Q. It's not the pilot -- it's not the pilot who flew the
8 flight?

9 A. Well, the pilot who flew the flight, certainly can be in
10 communication with the chief pilot if he felt that he was --
11 the code was being assigned to him improperly.

12 Q. Do you know that the assignment of the code is provided
13 to the pilot who flew the flight?

14 A. That I do not know off hand. I believe the chief pilot
15 certainly knows, and certainly can communicate with that
16 pilot if there was an issue.

17 Q. Let's talk a bit about pilot fatigue calls, with the
18 heading at the bottom of page 22. But this is principally on
19 page 23 in exhibit 10.

20 In paragraph 19, your last two sentences are,
21 "Historically only 17.5 percent of all days have had an east
22 pilot fatigue call. However" -- the next sentence says,
23 "However, the frequency of pilot fatigue calls has increased
24 sharply, and there has been at least one East pilot fatigue
25 call on 42 percent of days since May 1st, 2011."

1 And I'm wondering why that statistic is at all
2 meaningful. And this is the reason why, supposing during a
3 month you had seven pilots called in fatigued, but they all
4 called in on the same day. Your percentage of days on which
5 an East pilot or a pilot called in fatigued, would be one day
6 out of whatever it was 30, 28, 31, whatever it was.

7 But if you had the seven pilots call in on separate
8 days, you would have seven days, and there wouldn't be any
9 additional number of pilots who called in fatigued. But that
10 statistic would be significantly different.

11 So why is this 17 and a half percent versus 42 percent
12 at all meaningful?

13 A. Well, I take your point, which is precisely why I -- the
14 exhibit that I prepared on fatigue calls does not look at it
15 along those metrics, but looks on it on the actual count of
16 fatigue calls.

17 The fatigue calls are a fairly rare event. So what you
18 are describing, while hypothetically possible, is really not
19 what happened. When you look at the fatigue data, you know,
20 these are things which are fairly rare events. And typically
21 there is one, sometimes, you know, two fatigue calls on a
22 given day.

23 I agree with your hypothetical that it's certainly
24 possible that all of the calls could happen on the same day.
25 And cognizant of that, you know, the exhibit that I created,

1 actually addresses that issue and looks at the gross number
2 of aggregate fatigue calls as opposed to the daily measure.

3 Q. So it would better for us, more reliable for us to look
4 at paragraph 20 in your chart, than to look at paragraph 19?

5 A. Well, I'm not sure I'd put it that way. I think that
6 the two complement each other quite nicely. It's just two
7 different ways of looking at it.

8 Q. So let's look at the next section, Prolonged Taxi Times.
9 That's pages 24 to 31. And you had two ways here to look at
10 these. One is the comparison to Express and the other one is
11 the regression analysis that you spoke of; is that right?

12 A. Correct.

13 Q. And so you say here at the bottom of paragraph 21, US
14 Airways closely monitors the taxi out and taxi in time for
15 each of its flights. How is that done?

16 A. Well, US Airways, and for that matter all airlines,
17 measure various discrete events for every flight. So they
18 measure what's known as a taxi-out time. The time from
19 which, essentially, the parking brake is released until
20 wheels up. And it measures in-flight time. And it measures
21 the taxi-in time, which is the touch down to parking brake
22 engaged. Some carriers may use door opening or reaching the
23 gate or different measures.

24 But those are generally three different types of --
25 three different times of the flight of the total block time

1 that are looked at. And so there's recording devices on the
2 aircraft that provide that information.

3 Q. This is what's known as the ACAR system?

4 A. I believe that's correct, yeah.

5 Q. And so there's some sort of electronic component in the
6 aircraft that records when the wheels touch down. And
7 another one that records when the brake is set if that's the
8 appropriate time or whatever other time it's programmed to
9 report?

10 A. That's correct.

11 Q. When these times are reported, how are they reported?
12 Are they reported in hours and minutes or are they recorded
13 in hours, minutes and seconds?

14 A. Seconds, I believe.

15 Q. Your understanding is that they are recorded in seconds?

16 A. Yeah. That the -- I believe that there's a time, and
17 that time is, I believe it's to the second.

18 Q. Or tens of seconds?

19 A. Yeah.

20 Q. In some way, but includes more than just the minutes?

21 A. I believe that to be the case.

22 Q. Who would know for sure?

23 A. Someone -- who would know for sure.

24 Q. Mr. Hemenway, Mr. Hogg?

25 A. I'm fairly confident Mr. Hogg would know the answer to

1 that question.

2 Q. Now you have a comparison of the historical difference
3 between Express operations and Mainline operations. You say
4 the difference is 2,400 of a second -- of a minute -- I'm
5 sorry, .24 minutes; is that right?

6 A. Can you direct me to what paragraph you're referring to.
7 I think you're referring to Exhibit 11.

8 Q. Paragraph 24.

9 A. Yes. Well, the historical control period, which again
10 is this three-year -- three and little bit longer time
11 period, that historically on average that the Mainline taxi
12 times are about .24 minutes. These are .24 minutes, okay,
13 longer than the Express taxi times.

14 Q. So if I do my math right, that's a little bit short of
15 15 seconds?

16 A. Correct.

17 Q. And did you -- when you did your control period, your
18 three and a half -- your control period, did you look at any
19 subset of that, the last 12 months, the last six months, did
20 you look at other shorter control periods?

21 A. Well, I think that in general, the control period I used
22 was the full control period, January 2008 through, you know,
23 pre-May 2011.

24 Q. Through April?

25 A. Correct. And this chart through April 30 -- if I can

1 remember how many days.

2 Q. Thirty days in April?

3 A. Precisely. That's correct.

4 Q. And so you don't know that if you took, for example, the
5 last six-month period, whether or not the difference would be
6 more or less?

7 A. Not offhand. But just as a general matter, control
8 period -- generally, the longer, you know, the longer the
9 better. Because it gets rid of any anomalous or random
10 differences you know that may occur over a short period of
11 time. That's why it's called the control period.

12 Q. So, but correct me if I'm wrong. If there was some
13 underlying factor that we hadn't been able to identify or
14 didn't think of, that was in existence from say January 1st
15 of 2011 to the present, your control period might, pretty
16 much -- since it only takes in four months in this particular
17 year -- your control period would pretty much submerge that
18 in the figures that you had for the previous three years?

19 A. Well, I'm not exactly sure what you mean. But the
20 control period, as you correctly mention is three -- call it
21 three and a quarter years.

22 From a statistical point of view, that is a more
23 reliable control period than a longer control period unless,
24 you know, there was something specific that happened.

25 But, again, you know, with regards to the taxi time, I

1 will emphasize that I conducted both this analysis and then
2 the more sophisticated regression analysis, that actually has
3 additional controls like this year dummy variable which would
4 capture anything that you're talking about.

5 Q. We'll talk about the regression analysis, but I just
6 want to talk about this comparison between Mainline and
7 Express.

8 But let's take an example. Let's suppose that in
9 January of a particular year, the terminal for Express gets
10 moved from one location in an airport to another as result of
11 construction. And as a result, the Express terminal happens
12 to be closer to one end of the principal runway.

13 One would suppose in that situation that that would
14 reduce the average taxi time for Express operations. And if
15 all other things were the same, that particular four month or
16 six month period as part of a three and a half year
17 controlled period, that difference would be submerged in the
18 data, very much washed out by the three years that didn't
19 happen?

20 A. Well, again, I'm not sure what you mean by submerged.
21 What I will emphasize again, is that we expect there to be
22 variability in these types of comparisons. And it's
23 precisely variability in the control period, that allows one
24 to test statistically the hypothesis as to whether or not a
25 change in a certain period is statistically significant.

1 So, for example, if there was a case where the one that
2 you're mentioning, if this happened on May 1st. Okay, if all
3 of a sudden the Express terminal at Charlotte moved to the
4 end of the runway on May 1st of this year, then yes, I would
5 agree that would -- I would need to factor that into my
6 consideration.

7 But you're talking about things that are going on in the
8 control period. And the control period -- what you want in
9 the control period is variability in the data. Because that
10 variability allows you to form these confidence intervals,
11 confidence thresholds and allow one to test for statistical
12 irregularity.

13 Q. But the assumption about the control period and the
14 variability and so forth, is that what's happening during the
15 control period is characterized by any number of different
16 factors, none of which is necessarily new during that period,
17 or persistent from one portion of the period to the end. The
18 idea is, the control period is a hodgepodge of everything
19 that statistically evens out; isn't that right?

20 A. I think, well -- hodgepodge is not a term I typically
21 use.

22 Q. Amalgam?

23 A. Yeah. The control period -- there's this variation in
24 the control period, I agree with you there.

25 Q. And I'm just saying that if there was some underlying

1 factor that appeared during a short end portion of the
2 control period and persisted after the control period into
3 the period that you're measuring, it might throw the analysis
4 off?

5 A. Well, again, cognizant to any potential other factors
6 that cannot be, quote unquote controlled for, using what is
7 admittedly a more -- a basic approach from the taxi time.
8 Understanding that taxi times are influenced by a range of
9 factors, I conducted a regression analysis, precisely to
10 control for those other factors, and they lead to the exact
11 same conclusion.

12 Q. So, I mean, for example again, we don't know exactly why
13 there was this 15 second difference. We just know that there
14 was, statistically, this difference?

15 A. Well, we know that on average, over a long period of
16 time, okay, prior to May 1st of this year, that Mainline taxi
17 times exceed on the East, exceed Express taxi times, again,
18 on average, by about 15 seconds.

19 Q. We don't know why, but we know it is true?

20 A. Well, I believe that the operational people at US
21 Airways probably, you know, can give you a whole litany of
22 reasons why.

23 Q. But for this purpose, this doesn't say why. It just
24 says that that's what it is?

25 A. It's not important the reason. It's again, we are --

1 we're comparing a pre and post May 1st, versus, you know,
2 we're looking at what's happened since May 1st versus a
3 control period. And whether or not there's a relation -- you
4 know, what the relationship is pre-May 1st, whether or not
5 it's greater by 15 seconds or less than 15 seconds it doesn't
6 really matter. What we're measuring is the change that
7 occurred from the status quo from this control period
8 starting on May 1st.

9 Q. If you'd look for a minute at Exhibit 11 which is the
10 chart that compares East Mainline and Express taxi-in times.
11 These are -- this is East Mainline. And I understand you
12 said East Mainline are flights with a certain number; is that
13 right? That's how you identify the East Mainline?

14 A. That's correct.

15 Q. And when you talk about Express, are you talking about
16 Express in certain hubs or domiciles or airports, or just
17 Express total across the country?

18 A. No. I believe there's a footnote that says when I'm
19 comparing things to East Express, it's the Express operations
20 excluding of those flights to and from Phoenix and Las Vegas.

21 Q. That's at footnote 31 on page 25?

22 A. I --

23 Q. You can look --

24 A. I agree with you. That's probably -- yeah.

25 Q. So you've excluded those from --

1 A. Correct.

2 Q. I'll ask you, again, the sort of similar question
3 that -- to what I asked you previously about some of the
4 other graphs and ask you this about Exhibit 11.

5 There for 2010, the dotted line from 7 May through 6
6 June, there is another increase in taxi times and those
7 are -- well, I take it that -- yeah, 2010. That's an
8 increase in -- not an increase in taxi time, it's an increase
9 in the delta?

10 A. That's correct.

11 Q. The difference between the two. But there's -- there is
12 an increase there during that period. We don't know why that
13 happened. The statistics simply say it did happen during
14 that particular period?

15 A. Correct. There's an increase then followed by a decline
16 and followed by an increase and a decline, yeah.

17 Q. So in your report, with respect to the analysis that's
18 the comparison between Mainline and Express, what was your
19 conclusion about the increase in taxi-in time?

20 A. Oh, well with regards to this chart, my conclusion was
21 starting approximately around May 1st, the increase in the
22 difference between Mainline and Express taxi times, increased
23 to a level well beyond the 99 percent confidence threshold.
24 And was fairly persistent -- persistently above since that
25 time.

1 Q. During this period, the shaded period, what was the, if
2 you know, what was the increase in -- and I know you're
3 talking about the ratio, I'm just talking about what was the
4 increase in taxi time during this period for Express, if you
5 know?

6 A. For Express?

7 Q. In 2011 during the shaded period for Express?

8 A. Off the top of my head, I don't know. This is really
9 just the delta that I'm plotting here.

10 Q. Okay. And during that period of time, what was the
11 average delta between Express and Mainline?

12 A. Well, I could, I mean, just kind of eyeballing it. I
13 mean, I think this last point which is noted, which is a
14 minute, 1.12 minutes, seems to be around, might be probably a
15 little over a minute, I would suggest.

16 Q. Paragraph 25, the page before on 26 -- page 26 down at
17 the bottom you say, "Put differently, the probability" so on,
18 so on, but the difference -- you say the difference is 1.12
19 minutes?

20 A. That's for the week ending.

21 Q. Right.

22 A. So I said that, as I think, I said that that last point
23 looks like it's around the -- around the average of that
24 shaded area for the black lines. You know, I'll -- seems
25 like around a minute 12.

1 Q. And do you have a similar statement here for the
2 taxi-out times?

3 A. You would have to check my report.

4 Q. I didn't see it, so...

5 A. I don't think there's a similar statement in the report
6 but, you know, just kind of eyeballing it again here, it
7 looks to be somewhere over three minutes.

8 Q. Now your second -- let's turn to the second report which
9 is this regression analysis of the taxi-in and taxi-out
10 times. Let's look at Exhibit 13 on page 32. Which is, I
11 think an exhibit that you were asked questions about on
12 direct. And let me see -- maybe not?

13 A. I don't think I was, actually.

14 Q. At any rate -- I think that's -- let's look at 14 on
15 page 35, since I know I've got marks on my page. So I know
16 you were asked about that. And let's look at that.

17 What you've got down here in the left hand column are
18 variables for which you controlled. And let me just put this
19 in unavoidably mathematical terms, but very simply.

20 I mean, what you've got here is, you've got the
21 independent variable out here on one side of the equal sign.
22 And you've got dependent variables on this other side of the
23 equal sign.

24 A. I'm sorry. It's actually the other way around.

25 Q. All right. Well, depending on the way I'm looking at it

1 and you're -- I'm trying to do it the way you were looking --

2 A. Well, no. There's one dependent variable and several
3 independent variables.

4 Q. All right. So one dependent variable out here, which
5 frankly is something you know, it's in this situation the
6 taxi-in time or the taxi-out time.

7 A. Sir, were we at -- I thought you said Exhibit 14?

8 Q. Yeah, 14. That's arrival delay. That's arrival -- I
9 skipped over two parts because I wanted to do the regression
10 analysis about taxi-in and taxi-out. So that is --

11 A. Exhibit 13?

12 Q. Exhibit 13.

13 A. Okay. Yeah.

14 Q. Not one we have discussed on direct.

15 A. That's correct.

16 Q. So let's do that.

17 So anyway, you've got the dependent variable on one side
18 of the equal sign and you got the independent variables on
19 the other side of the equal sign. And essentially one of the
20 independent variables is the pilot's responsibility. The
21 others are these other things that you're correcting for,
22 de-icing, US Airways scheduled arrival, rainfall, snow,
23 average daily wind, so on, so forth. One of them is the
24 pilot, and the other one is the dependent, which in this time
25 might be taxi time out -- taxi-out minutes. And you know the

1 taxi-out minutes. You don't know the pilot variable,
2 coefficient for the pilot variable. And these others somehow
3 are fixed, and then you solve for the pilot -- the
4 coefficient for the pilot variable. That's essentially what
5 a regression formula is.

6 A. That's not quite the way I learned regression analysis.

7 Q. Okay.

8 A. So all of these variables are measured simultaneously.
9 I'm not actually sure what the question was, but I disagree
10 with your characterization of what the regression analysis
11 is. I'm happy to explain it again.

12 Q. What does the formula look like?

13 A. What does the formula look like?

14 Q. Right.

15 A. As you said, there's a dependent variable, okay, on
16 what's known as the left-hand side, there's right-hand side
17 variables, okay, and then there's what's known as the error
18 term. Okay.

19 And, I mean, depending on how technical you would like
20 to get, I can kind of explain what regression does, but I'm
21 not sure that will benefit the court in this proceeding. But
22 if there's a question, I'll be happy to answer it.

23 Q. But essentially what you're doing is, you're trying to
24 find out what the pilot responsibility is based on your
25 regression analysis?

1 A. What I'm trying to determine, okay, is whether or not
2 the increase since May 1st in, for example, taxi times, okay,
3 controlling for other factors, okay, is statistically
4 significant. And if I've controlled for the other factors
5 that are likely to influence taxi time, it's my opinion that
6 the post May 1 dummy variable captures the incremental
7 increase in the taxi times attributable to pilot actions.

8 Q. So what you have on the left side is a number that's
9 determined from information that's provided you by the
10 company, which is the taxi-out time or taxi-in time increase
11 or decrease?

12 A. No. What's on the left-hand side is the taxi time
13 amount.

14 Q. Okay.

15 A. So there's no deltas happening on the left-hand side
16 variable.

17 Q. All right. And then one of the factors that you have on
18 the other side is the pilot factor.

19 A. It's the post May 1 dummy variable, correct.

20 Q. Okay. And then the other -- how do you determine the
21 coefficients for the other factors that you're correcting
22 for?

23 In other words, how do you determine how much weight
24 you're gonna put in for de-icing fluid shortages? How do you
25 decide how much you're going to put in for US Airways

1 schedule arriving?

2 A. I don't determine actually anything. The way regression
3 analysis works is, uses a technique called ordinary least
4 squares, which essentially fits a line. Now, of course,
5 we're in multi-dimensional space, that minimizes the sum of
6 squared errors. Okay.

7 So let me be perfectly clear, it's not me assigning
8 weights to anything. Okay. I'm applying the regression
9 technique, which is the standard technique that is used by
10 economists and statisticians, et cetera, to model these type
11 of things.

12 The regression model, okay, provides the best fit, okay,
13 of this line through all of the data and all of the
14 variables. Okay. And so I -- what I'm reporting here are
15 the results of running the regression model.

16 So I am not in any way, shape or form, assigning any
17 weights to different causes. This is the result of the
18 regression model. And it shows that since May 1st,
19 controlling for all of the other factors below, East Mainline
20 taxi times have increased by approximately .9 minutes, above
21 what they would otherwise have been.

22 Q. So let's go down a column and tell me whether or not any
23 of these numbers have any real life meaning with respect to
24 other exhibits. You've testified that the first number at
25 least does. I mean, for example, this first column, the

1 first line. D(post) May 1st .9 is .9 minutes, which is
2 attributable to the pilot?

3 A. Correct. Correct.

4 Q. All right. Computer outages. What does the minus 0.175
5 does that mean point minus 175 minutes?

6 A. Well, in this case, computer outage is not statistically
7 significant. There's no asteric next to it. Which means
8 that essentially there was no effect of the computer outage
9 on the actual taxi times.

10 I think that makes sense, right. The computer outage
11 had to do with being able to actually, you know, dispatch the
12 aircraft and so forth.

13 So the taxi times itself, you wouldn't expect those to
14 be impacted by the computer outage.

15 But, for example, rainfall. Okay. When there's heavy
16 rainfall and you have treacherous conditions, you do expect
17 that to slowdown taxi times, and that is statistically
18 significant. And likewise snowfall. Okay. When there's
19 snowfall, that is statistically significant.

20 So, you know, essentially it's the weather factors and
21 the change since May 1st controlling for the weather that are
22 driving the, you know, the taxi times here.

23 Q. What is the constant?

24 A. The constant in a regression? Okay. So the constant in
25 a regression is the -- holding all of the other variables at

1 their meaning. Okay. At their -- meaning what the average
2 value would be.

3 So if that's 10.23, means that you start with a baseline
4 of like 10 and a half minutes for a taxi-out time, and then
5 everything else either increases it or decreases it from that
6 constant.

7 Q. So is that a factor or is that just a measure?

8 A. Well, this is not a -- so in a regression, you know, you
9 include a constant. It's not trying to control specifically
10 for a factor, as you say. It's the baseline above which the
11 other variables are measured against.

12 Q. This is gonna be a gross misrepresentation or over
13 generalization. But in some sense the constant is in an
14 ideal world what the taxi would be?

15 A. Well, no. I'm not -- I'm not quite sure I would
16 characterize it like that. It's the constant is what it
17 would be if everything else was at the mean.

18 Q. Okay. You use wind speed, average daily wind or wind
19 squared. That's a relatively .245, again, 15 seconds kind of
20 thing; is that right?

21 A. Per mile, per hour, correct.

22 Q. Per mile, per hour, whatever it is. But that's a
23 magnitude. It's not vector. It's not directional. It's not
24 a directional quantity. In other words, you didn't measure
25 is the wind blowing from the east, or is the wind blowing

1 from the west. You just measured this variable only includes
2 the fact that the wind was blowing at a particular speed,
3 whatever direction it was blowing in?

4 A. That's correct. But since the wind is affecting both
5 the Mainline and the Express carriers in the same way, in
6 terms of the direction, it doesn't really matter.

7 Q. Okay. The last thing you took into account or that
8 you -- well, let me ask you this, and it's a little more
9 detailed question. And you did respond to some of these in
10 your supplemental affidavit, but -- for example, the
11 construction at a particular airport of a runway or the
12 resurfacing of a runway, closing of a runway, is that
13 something that you took into account or that would show up in
14 your analysis?

15 A. Well, as I think I've explained in my supplemental in
16 Section 7, this is something that is controlled for through
17 the robustness testing of comparing the Mainline and the
18 Express operations.

19 So to the extent that we would expect any runway
20 resurfacing or taxiway construction to have an impact, okay,
21 that should -- that impact should apply equally to the
22 Express operations and to the Mainline operations.

23 And because as you can see in Exhibit 13, there is no
24 statistical significance on the May 1st variable for the
25 Express operations, it's unlikely that that is the cause of

1 the increase for the Mainline operation. They use the same
2 runways and taxiways after all.

3 MR. SZYMANSKI: I don't have any further questions
4 for Mr. Lee.

5 THE COURT: Redirect?

6 MR. ROBERTSON: No, Your Honor.

7 THE COURT: You may step down.

8 Call your next witness.

9 MR. ROBERTSON: US Airways calls Kerry Hester.

10 THE COURT: I want to apologize to the out of state
11 lawyers who are not used to this North Carolina custom of
12 sitting down while you're questioning a witness. I know it
13 can't be natural.

14 MR. SZYMANSKI: I keep telling myself, stay seated.
15 Stay seated. Thank you, Your Honor.

16 THEREUPON, KERRY HESTER, being first duly sworn, testified as
17 follows during DIRECT EXAMINATION BY MR. ROBERTSON:

18 MR. ROBERTSON: Ready, Your Honor?

19 THE COURT: When you are.

20 Q. Ms. Hester, can you state your full name for the record,
21 please?

22 A. Kerry Frank Hester.

23 Q. Are you currently employed at US Airways?

24 A. I currently serve as senior vice president of
25 Operations, Planning and Support at US Airways. And I've

1 held that position since September of 2010.

2 Q. Can you briefly describe for the court, your duties in
3 that position?

4 A. I have a responsibility for a variety of our customer
5 service functions. Including all of our call centers,
6 reservations, customer relations, central baggage recovery
7 office. I oversee a lot of the strategy and planning
8 functions for our airports, the airport policies and
9 procedures and training, our airport clubs, process design
10 and performance measurement for the airport, airport
11 technology and ancillary revenue programs. And then I also
12 have responsibility for crew resources, planning and
13 operations performance -- operations, engineering and
14 analysis.

15 Q. Ms. Hester, did you submit any declarations in this
16 matter?

17 A. I submitted two.

18 Q. And let me direct your attention to Exhibit 85 and 86 in
19 Plaintiff's binder, and just have you confirm those are the
20 two declarations you submitted?

21 A. Yes, they are.

22 Q. And do your declarations address the impact to US
23 Airways when there's a significant increase in the number of
24 flight delays and cancellations?

25 A. Yes, they do.

1 Q. And without going through the declarations in detail,
2 could you just describe in general terms to the Court, what
3 is the impact to US Airways when there's a significant spike
4 or increase in the number of flight delays and cancellations?

5 A. Irregular operations directly impact the cost of the
6 airline. So when we have a number of flight delays and
7 cancellations, it drives costs in terms of re-accommodating
8 our customers, rebooking them on other airlines, paying for
9 hotel rooms. In many cases we compensate customers for
10 delays within our control.

11 It also causes us to pay overtime to employees in groups
12 across the company, and causes a direct increase in the cost
13 that we pay to deliver bags to customers. And in fact, in
14 the last couple of months, the cost of delivering bags has
15 gone up over 40 percent, versus what would be a typical and
16 regular level.

17 Irregular operations are also very disruptive to our
18 customers. Many of our customers are taking trips that are
19 time sensitive in nature. And when they're delayed or
20 misconnected, they oftentimes might miss an important
21 business meeting or a family event, like a wedding or even a
22 funeral.

23 Delays drive a lot of dissatisfaction for customers.
24 And we typically see a significant rise in our customer
25 complaints when we have a lot of flight disruptions.

1 In the past couple of months in May and June we've seen
2 rises in our customer complaints to our customer relations
3 department in the neighborhood of 30 percent in total. But
4 complaints specific to flight delays and cancels have been up
5 almost 100 percent, year over year during those months. And
6 complaints about delayed baggage have been up about
7 25 percent.

8 Customers also frequently will tell friends, relatives,
9 neighbors, co-workers when they're dissatisfied, the
10 experience that they've had with US Airways. And in this day
11 and age, they often more broadly share their opinions and
12 experiences through social media channels and electronic
13 media. We've seen a lot of this recently as well.

14 The Department of Transportation also publishes rankings
15 of air carrier performance each month in a report that's
16 called The Air Travel Consumer Report. And they rank
17 airlines in on time performance, baggage handling performance
18 and customer complaints. In the last couple of months we've
19 seen deterioration in our performance in these metrics as
20 well.

21 During 2009, 2010 and the first few months of 2011, in
22 each month, US Airways ranked number 1 and number 2 in on
23 time performance. In May we saw our ranking slide to number
24 4 of the five major network carriers. And in June we ranked
25 dead last.

1 For the month of June we also ranked last in customer
2 complaints, as far as having the most customer complaints to
3 the Department of Transportation, and we hadn't ranked last
4 in that metric since February of 2009.

5 So clearly all of these factors together, the impact to
6 the DOT report which is highly publicized, as well as the
7 experience that our customers have been having and sharing
8 directly with us and with others, is very damaging to the
9 airline in terms of our reputation and our brand.

10 Customers who have a negative experience with us, or
11 customers who are potential customers who hear the negative
12 experiences of others, are much less likely to book with us
13 for future trips.

14 Q. Ms. Hester, does this impact of ranking have any impact
15 on US Airways employees?

16 A. It does. We have an employee bonus program that we call
17 our Triple Play Program. And it pays a \$50 bonus to each
18 employee for each month that we rank number 1 in any of the
19 three key Department of Transportation metrics, on time
20 performance, baggage handling and customer complaints. And
21 the month of June, employees did not earn that triple play
22 bonus.

23 And it also impacts our employees because it has a
24 direct impact on their work environment. As far as being
25 much busier, particularly in the airports, reservations and

1 with maintenance. And also having to have a much less
2 pleasant interaction with customers who have been disrupted,
3 creates a lot of stress for employees. And also uncertainty
4 in their day, because we been requiring mandatory overtime of
5 employees in many groups across the company, in order to deal
6 with the extra work associated with irregular operations.

7 MR. ROBERTSON: Thank you, Ms. Hester.

8 No further questions, Your Honor.

9 THE COURT: Any Cross?

10 MR. O'DWYER: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. O'DWYER:

13 Q. Ms. Hester, are there other measures of customer
14 satisfactions, for example, J.D. Power, or Conde Nast?

15 A. We get customer feedback from a number of sources. So I
16 already mentioned the internal contacts we get from customer,
17 as well as the DOT rankings.

18 There are also a number of customer satisfaction surveys
19 that are widely publicized, J.D. Powers and Conde Nast are
20 two.

21 Q. Okay. I see from your background that you were with
22 Northwest Airlines. Is that before the merger with Delta?

23 A. Correct.

24 Q. During the time you were at Northwest Airlines, isn't it
25 true that Northwest Airlines was at the bottom of the

1 rankings for customer satisfaction?

2 A. You know, I'm not actually certain how we ranked in
3 terms of -- and it depends which report you're looking at,
4 too?

5 Q. But, regularly, Northwest Airlines was at the bottom of
6 the rankings, is that not correct?

7 A. Which rankings are you referring to?

8 Q. Customer satisfaction or anything?

9 A. As published by who?

10 Q. Conde Nast or J.D. Power?

11 A. I'm not actually very familiar with the Conde Nast
12 survey. I believe Northwest was one of the lower ranked
13 carriers in J.D. Powers.

14 Q. And that had nothing to do with any labor unrest at
15 Northwest did it?

16 A. The J.D. Powers survey, and I'll speak to that one
17 because like I said, I'm really not familiar with what Conde
18 Nast surveys.

19 But J.D. Powers surveys customers on a number of
20 metrics. It's heavily weighted toward customer perception
21 about costs and fees. Twenty-nine percent of the survey is
22 based on that. And then other factors include in-flight
23 service and kind of softer product attributes.

24 Q. Well, that also includes what you cited herein terms of
25 the DOT surveys and the -- your own internal surveys in that

1 it's not only on-flight performance; is that correct?

2 A. And again you're speaking to J.D. Powers?

3 Q. No. I'm speaking now of US Airways, what you've
4 included here in your deposition?

5 A. In talking about the impact to the company of irregular
6 operations?

7 Q. Well, yeah. Let me back up for a second.

8 In your deposition you say in paragraph 11, late and
9 canceled flights and misconnections of either luggage or
10 passengers, translate directly into unhappy customers and
11 lost customer goodwill?

12 A. Right.

13 Q. There are other factors that translate directly into
14 unhappy customers and lost customer goodwill; isn't that
15 correct?

16 A. Certainly different factors impact -- or I would say,
17 different customers put importance on different factors. But
18 we have found what really drives customers purchase decision
19 and drives their intent to come back to the airline, is that
20 first of all we have a pricing schedule that meets their
21 needs. And also that they have confidence in the reliability
22 and convenience and appearance that we offer.

23 Customers' primary goal is to get to their destination
24 safely, on time, and with their bags.

25 Q. For example, you have most of your planes have been

1 running at close to capacity in the last couple of months; is
2 that correct?

3 A. That is. Our load factors have been high.

4 Q. Which means that many people are in the middle seats on
5 the six-seat-across airlines?

6 A. Sure. One out of three.

7 Q. And you would concede that that's less comfortable than
8 being in either the other two seats?

9 A. I think passengers would prefer different seating
10 arrangements, depending on their special need.

11 Q. And that would indeed lead to customer dissatisfaction?

12 A. I wouldn't say that sitting in a middle seat directly
13 leads to dissatisfaction. Someone may choose a middle seat
14 for a variety of reasons.

15 Q. And many people are given the middle seats because
16 there's nothing left?

17 A. Sure.

18 Q. Okay. And that could lead to customer dissatisfaction?

19 A. It could.

20 Q. Similarly, paying baggage fees could lead to customer
21 dissatisfaction; isn't that correct?

22 A. Sure.

23 Q. And you have -- US Airways has, as opposed to some other
24 airways, has baggage fees for handling checked baggage; is
25 that correct?

1 A. Did you say as opposed to some other?

2 Q. Some other airways?

3 A. All major carriers are charging baggage fees with a
4 notable exception of Southwest Airlines.

5 Q. Certainly if there were toilets overflowing on an
6 airline flight, and the feces were coming into the main area,
7 that would lead to customer dissatisfaction, would that not
8 be so?

9 A. I would assume that it would.

10 Q. Certainly if there were rude gate agents, that would
11 lead to customer dissatisfaction, would that not be so?

12 A. I think it could. Passengers often in this day and age
13 don't have a need to interact with gate agents. If they
14 check-in using a self-service method, either at home or --

15 Q. Well, how about at the gate? If somebody is rude to
16 them -- if they encounter somebody that's rude to them that's
17 a US Airways employee, they would be dissatisfied, wouldn't
18 they?

19 A. I would agree that consumers generally don't prefer rude
20 service.

21 Q. Nor do they prefer filthy planes, do they?

22 A. Correct.

23 Q. If a consumer got on a plane and it was filthy, that
24 would lead to customer dissatisfaction as well?

25 A. That is at times a source of complaint.

1 MR. O'DWYER: I have no further questions.

2 THE COURT: Any Redirect?

3 MR. ROBERTSON: No, Your Honor.

4 THE COURT: You may step down.

5 Call your next witness.

6 MR. SIEGEL: US Airways calls Captain Lyle Hogg.

7 THEREUPON, LYLE HOGG, being first duly sworn, testified as
8 follows during DIRECT EXAMINATION BY MR. SIEGEL:

9 Q. Captain Hogg, could you just state your full name for
10 the record, please.

11 A. Lyle Hogg.

12 Q. And can you generally describe for the court your
13 educational and professional background?

14 A. Yes. I graduated from Lehigh University with a Bachelor
15 of science and finance. I have been employed in the airline
16 industry, particularly with US Airways, since 1984. I just
17 started my 28th year at US Airways. My current position is
18 vice president of Flight Operations. I manage the pilot
19 group through our four crew domiciles. I also manage our
20 Flight Training Department and our Flight Technical
21 Department.

22 Q. And how long have you served as the vice president at US
23 Airways for Flight Operations?

24 A. I believe since 2008.

25 Q. Have you prepared a curriculum vitae for the court and

1 for evidence in this case? Let me direct your attention to
2 Exhibit 87, please.

3 A. Yes. It wasn't prepared for this case, but it is my
4 resume.

5 Q. And does this accurately reflect your employment
6 history, prior to your current position at US Airways?

7 A. Yes, it does.

8 Q. And can you just generally describe in a bit more
9 detail, your responsibilities as a vice president of Flight
10 Operations at US Airways, with regard to the flight operation
11 and also the safety operations?

12 A. Well, again, I'm in responsible for the day-to-day
13 operation from a flight perspective, managing our pilots, our
14 5,000 pilots through our four crew domiciles. The chief
15 pilots in the respective crew domiciles report to a senior
16 director of Flight Operations who reports to me. Managing
17 director of Flight Training, Bob Skinner reports to me. So
18 therefore I'm responsible for the training of our pilots, and
19 our training programs.

20 And through that oversight of the day-to-day operation,
21 I am also responsible, from a pilot perspective, of the
22 safety of those pilots.

23 Q. And you are a pilot, Captain Hogg?

24 A. Yes, I am.

25 Q. And you have submitted two declarations for this

1 proceeding; is that correct?

2 A. Yes.

3 Q. And just directing your attention to Exhibit 30 and also
4 Exhibit 55, are those the two declarations that you have
5 submitted for the court?

6 A. Yes. That's correct.

7 Q. Also let me direct your attention to Exhibit 61, is that
8 a supplemental declaration that you have submitted for the
9 court?

10 A. Yes, that is.

11 Q. Captain Hogg, I don't want to repeat the testimony from
12 your declaration, but I have a few questions that go beyond
13 the declarations.

14 First of all, with regards to -- I'm gonna ask you some
15 questions about some testimony offered by Thomas Kubik in his
16 declaration opposing a motion for preliminary injunction.

17 I don't believe that document's up on the witness stand,
18 but I'll just refer to what I'm going to ask you about.

19 In paragraph -- paragraph 14 of Captain Kubik's
20 declaration, he makes the following assertion: "America West
21 management, which is now US Airways management, has a long
22 history of safety violations dating back to the 1990s, when
23 the airline had so many safety violations that the FAA
24 threatened to ground the fleet."

25 I'd like to ask you with regard to his assertion that it

1 is America West management which now is US Airways
2 management, do you view that as a accurate or inaccurate
3 assertion?

4 A. Our senior leadership, CEO, the president of the
5 company, are former America West employees. However, the
6 Flight Department, Ed Bular is the Senior Vice President of
7 Flight and In Flight. Myself as the Vice President of Flight
8 Operations, Paul Morell as the Vice President of Safety, and
9 our current Managing Director of Flight Training, Bob
10 Skinner, are all former US Airways employees, and have been
11 in our positions, or in our respective departments for quite
12 sometime.

13 Q. And when you refer to yourself and Ed Bular and Paul
14 Morell and Bob Skinner, are those the senior officials in
15 charge of Flight Operations and Flight Safety?

16 A. Yes, they are.

17 Q. Now in paragraph 22 of Captain Kubik's declaration, it
18 refers to a late summer 2010 meeting between yourself and
19 Captain Kubik and others, regarding to what they refer to as
20 their safety survey. Did you in fact decline to participate
21 in that survey with USAPA?

22 A. Yes, I did.

23 Q. And can you tell the court why did you decide to decline
24 to participate with the USAPA in that survey?

25 A. Sure. This issue goes back to 2008. After the

1 integration of the two airlines, America West Airlines and US
2 Airways, it took a period of time in order to standardize the
3 procedures across the new airline.

4 We used the best practice approach, and we adopted some
5 procedures from our former East or US Airways operation, and
6 we adopted some procedures from our former West or America
7 West operation.

8 We trained those procedures on a quarter by quarter
9 basis over a year's time. That has now become the standard
10 for other airlines to merge their carriers, Delta used the
11 same scenario, as well as United/Continental are talking
12 about using the same type of integration technique.

13 When we finished that training after a year plus period
14 of time, we wanted to go back and see how we did. We wanted
15 to conduct a survey of our pilots, and we wanted to look at
16 operational issues. We wanted to see if the training was
17 effective. We wanted to see if our airline was standardized
18 across East and West. We wanted to find out what we could
19 have done better.

20 So an internal audit was planned called a SOA, or a
21 Special Operational Audit. And that was conducted in the
22 late fall of 2008. The results of that audit were
23 disappointing, because the response we got from pilots was
24 less than professional.

25 Part of the audit included a feedback form in which we

1 wanted to hear from pilots what they thought of the
2 integration training. What they thought of the way we're
3 operating our aircraft.

4 However, the Union had taken that feedback form,
5 encouraged all pilots to fill out that form, and in my
6 opinion, encouraged pilots to quote, tell management how you
7 feel.

8 The responses we got from those feedback forms were less
9 than professional, and in some cases they were profane. We
10 did not achieve the desired effect from those feedback forms.

11 As a matter of fact, partway through the process, the
12 feedback form actually had the address changed. And instead
13 of sending these feedback forms directly to the company, the
14 address on the bottom of the form was changed to the Union's
15 address. We then got a large amount of these forms sent to
16 us all at once from the Union, and they were all extremely
17 negative.

18 We thought the value of the audit was compromised. We
19 had worked through our Flight Operations Standards Board to
20 design this audit. We worked with the FAA to design this
21 audit. We showed the responses to the FAA, and we all agreed
22 that the feedback portion of this audit was not valid. So we
23 didn't consider their results.

24 So with that in our recent history, when it came time to
25 partner with the Union, or at least we were requested to

1 partner with the Union on a subsequent audit, and not having
2 a good experience in the previous audit, we declined to
3 participate.

4 Q. When you say you consulted with the FAA regarding the
5 input or results of this SOA survey, how did that
6 consultation with FAA occur?

7 A. Well, first off, we share everything we do with the FAA.
8 We're interested in the same goals. We're interested in
9 safety. We're interested in being compliant from a
10 regulatory standpoint. We go so far as to invite the FAA to
11 be a participant in our Flight Operations Standards Board.
12 So we had nothing to hide from the FAA.

13 We not only share our results of projects such as this
14 audit, but we also share with the FAA, the discussions that
15 we're having about possible procedural changes going forward.

16 So in advance we seek their input to see if we're on the
17 right path from a regulatory perspective or perhaps even a
18 safety prospective.

19 Q. Was the SOA survey designed by the company to obtain
20 operational information, or what kind of information was it
21 designed to obtain?

22 A. Yes. Purely operational, it was -- thus the name, a
23 Operational Audit.

24 We were looking at how we had performed in our merger
25 integration. It was a new technique that we used to merge

1 the airlines, to train VFAs in flight.

2 For example, in the first quarter of this training, we
3 trained pilots from the point in time in which they reported
4 to the aircraft, to perhaps a taxi-out period. Then the
5 second quarter we trained from the taxi-out to the takeoff.
6 Third quarter it would be en route. And lastly, the fourth
7 quarter of the year we trained the arrival procedures and the
8 taxi-in.

9 So it was a new technique and we wanted to see if it in
10 fact was effective.

11 Q. And with regard to the cards that were returned to you
12 by the Union on behalf of the pilots, did it contain
13 operational responses or something different?

14 A. No. In many cases it contained complaints about lack of
15 progress and negotiations.

16 There were quite a few that had grievance information on
17 the form, specific grievance numbers. Not something a line
18 pilot would typically have knowledge of or access to. So
19 very different response from what we are hoping to get.

20 Q. When you say grievance, are you referring to collective
21 bargaining grievances?

22 A. Yes. Yes.

23 Q. Captain Hogg, USAPA became a Union in approximately
24 May of 2008?

25 A. Yes. May or April of 2008.

1 Q. And prior to USAPA, what union represented the pilots at
2 US Airways and America West?

3 A. ALPA.

4 Q. And you described the working relationship -- first of
5 all, did ALPA have a Safety Committee?

6 A. Yes, they did.

7 Q. Can you describe the working professional relationship
8 you had with the Safety Committee at ALPA prior to USAPA?

9 A. We had a very good relationship over quite a few years.
10 Worked very closely with the chairman of the Safety
11 Committees, from John Cox to Terry McGinnes, to Steve Scopian
12 (phonetic spelling). Really held safety separate from any
13 political issues that would crop up between the company and
14 the association. And really had the joint goal of being as
15 safe as we possibly could.

16 Q. When you say political issues, are you referring to
17 labor negotiations issues?

18 A. Yes. Negotiations or grievance type issues.

19 Q. When USAPA replaced ALPA in 2008, did your professional
20 working relationship with the Union Safety Committee change?

21 A. It began to change.

22 Q. Can you describe for the court how it changed?

23 A. Well, right off the bat it started to change with the
24 SOA. The new safety chairman wanted us to publish the
25 results of this SOA. Which really, the results really didn't

1 reflect our goal in conducting this audit.

2 And the new safety chairman wanted us to publish the
3 more political aspects of the responses that we had gotten
4 from this audit.

5 Q. Is that the issue that you eventually took to the FAA
6 for advice?

7 A. Shared it with them, yes.

8 Q. When you say the new safety chairman for USAPA, are you
9 referring to Captain Kubik?

10 A. Yes.

11 Q. In paragraph 16 of Captain Kubik's declaration for
12 USAPA, he complains that USAPA was not given a seat on the
13 FOSB, which is the Flight Operations Safety Board. Can you
14 describe what that board is and what the circumstances are
15 for membership?

16 A. Yes. FOSB, F-O-S-B, is the Flight Operations Standards
17 Board. And the Flight Operations Standards Board is chaired
18 by myself. Participants in that board are a managing
19 director of Flight Training. Each Fleet Captain, that would
20 be a 737 -- the Boeing Fleet Captain, the Airbus Fleet
21 Captain, and the Embraer Fleet Captain. The Senior Director
22 of Flight Operations. We have representatives from two of
23 our largest domiciles from Phoenix and from Philadelphia. We
24 have two members of our Safety Department, Paul Morell, as
25 well as Tom Lubrivich (phonetic spelling), the Director of

1 Flight Safety. We have our managing director of Flight
2 Technical, Ron Thomas. And we also have the FAA
3 representing -- an individual representing the FAA on that
4 board. Often times it's Mark Mulley (phonetic spelling) our
5 principle Operating Inspector, or at times there are other
6 people who attend in his absence.

7 Q. What are the responsibilities of that board?

8 A. We discuss -- well, first off, typically at each meeting
9 we review the safety data for that particular month. And we
10 review if we have any data that would lead us to be alarmed
11 about the safety of our operation, and perhaps discuss any
12 remedies that we need to put in place to correct any safety
13 concerns we might have.

14 And then we discuss policies and procedures. We get
15 recommendations from line pilots, we get recommendations from
16 Check Airmen, as to perhaps a better way to operate the
17 airline. And we have frank, robust discussions about those
18 recommendations.

19 One of the key issues with our FOSB group is that
20 there's not one person at this airline who is able to make a
21 decision on safety issues or procedural issues. It is a
22 group decision pulling in all of the expertise from all the
23 pilots or even the FAA on that board.

24 Q. Prior to 2008, would the prior union, ALPA, from time to
25 time come to make presentations to that board?

1 A. Yes. We've had presentations from, whether it be safety
2 representatives, people that are on our Safety Committee. We
3 encourage those types of input, those types of presentations.

4 For that matter, from Check Airmen, we have Check Airmen
5 come and make presentations and recommendations on how we can
6 improve. And actually we even encourage a line pilot to come
7 make a presentation from time to time.

8 Q. Since 2008 when USAPA replaced ALPA, has USAPA ever
9 elected to come to the board to make any presentations in the
10 manner the prior union did?

11 A. Not to the board, but keep in mind that the Union,
12 whether it be ALPA or USAPA has a seat on another group which
13 is called a Flight Data Analysis Group, and that group is
14 responsible for gathering data.

15 We have so many data sources from -- that we accumulate
16 on a daily or weekly basis, that we have a separate group
17 that actually analyzes that data and they make
18 recommendations to the Flight Operations Standards Board.
19 And the Union has always had a person on that committee or
20 that group.

21 Q. Now I wanted to direct your attention into the exhibit
22 notebook, I believe it's Exhibit 88. There should be a, what
23 looks -- I think we clipped it into the exhibit book, Captain
24 Hogg. Can you just describe, first of all for the court,
25 what you understand this is?

1 A. Yes. We -- this is a card that on one side says, "I am
2 on board, safety first" in yellow. And on the backside it
3 says in red -- black and red, "I've had enough. I am ready
4 to strike."

5 It appears that it's got a small hole in it. So it
6 appears that it's designed -- and I actually received a
7 report --

8 MR. O'DWYER: Object to that, Your Honor. The
9 appearance to the witness to what it --

10 THE COURT: I'll sustain the objection.

11 Q. (By Mr. Siegel) Captain Hogg, can you describe for the
12 court when you first saw this and how you obtained it?

13 A. I first saw it when I arrived in Charlotte yesterday
14 afternoon. One of our assistant chief pilots showed me this
15 card and a box that it had arrived in.

16 I was informed that the chief pilot office had received
17 a box via the mail yesterday, and the box included numerous
18 orange lanyards, these cards and another type of card.

19 Q. Did you determine from what source the box containing
20 these cards had come from?

21 A. Yes. The Chief Pilot office did.

22 MR. O'DWYER: Objection, Your Honor.

23 THE COURT: Overruled.

24 THE WITNESS: The Chief Pilot office asked the post
25 office if they could identify where the box came from.

1 Q. (By Mr. Siegel) Let me direct your attention to Exhibit
2 89.

3 A. Yes, I see.

4 Q. Can you identify what Exhibit 89 is?

5 A. It is a document from the United States Postal Service
6 that I was given along with this box yesterday when I arrived
7 in Charlotte.

8 Q. You were given that by the assistant chief pilot who
9 works with you?

10 A. Yes.

11 Q. And directing your attention to the customer name in the
12 middle of the chart, US Airline Pilots Association. Is that
13 the full name of USAPA, the Union that represents the pilots,
14 the defendants in this case?

15 A. Yes. About halfway down the page an area called meter
16 location address. Customer name. US Airline Pilots
17 Association. 200 East Woodlawn Road, Suite 250.

18 Q. And directing your attention to the upper right hand
19 corner where it says serial number 6928419. Where -- to your
20 knowledge, do you know where that serial number -- whether or
21 not that serial number appeared on the box that contained
22 these cards?

23 A. There's a postal sticker on the box that matches that
24 serial number.

25 Q. Okay.

1 MR. O'DWYER: Your Honor, I'm going to object to
2 that and ask it be stricken without the box being here, it's
3 incompetent evidence.

4 THE COURT: I'll overrule the objection. I'm going
5 to allow the response and I'll allow you to cross on it.

6 MR. SIEGEL: Your Honor, I'll represent to the
7 Court that we do have the box -- the single box here in the
8 courtroom. And if either the Court or counsel wants to see
9 the box, we have it.

10 THE COURT: Well, if you have the box here, why
11 don't -- seems like that would resolve an objection. You
12 might want to show it to the witness.

13 MR. SIEGEL: Your Honor, I only have one copy of
14 the box, but...

15 THE COURT: Why don't you show it to counsel and
16 then approach the witness.

17 MR. SIEGEL: Thank you, Your Honor.

18 MR. GRESHAM: Your Honor, we're all nearsighted, so
19 we'll know in a moment what the serial number is.

20 THE COURT: Mr. Siegel, why don't you show the box
21 to the witness and make sure we're talking about the same
22 box.

23 MR. SIEGEL: May I approach, Your Honor?

24 THE COURT: You may.

25 MR. SIEGEL: (Handing box to witness.)

1 THE COURT: Let's go ahead for record purposes and
2 mark it for identification.

3 Madam Clerk, is there an unused number, what's the
4 next?

5 COURT CLERK: 92.

6 THE COURT: Mark it for identification purposes as
7 Exhibit 92.

8 Q. Captain Hogg, can you identify and confirm that this is
9 the box you were just testifying?

10 A. Yes. It's got the post office box of the Chief Pilot
11 Office.

12 Q. And does it bear the address of the Chief Pilot's
13 Office?

14 A. It says US Airways Pilots Post Office Box 19004.

15 Q. And is that the post office box of the Chief Pilot?

16 A. That's my understanding.

17 MR. SIEGEL: Your Honor, I have no further
18 questions for Captain Hogg.

19 THE COURT: Thank you.

20 Any Cross?

21 MR. O'DWYER: Yes, indeed, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. O'DWYER:

24 Q. Captain Hogg, you indicated that the chief -- that the
25 senior management of America West are now the senior

1 management of US Airways; is that correct?

2 A. The CEO and the president. That is correct.

3 Q. And the board of directors as well?

4 A. I can't speak to the make-up of the board, prior to the
5 merger.

6 Q. And the responsibility of the CEO is to set policy for
7 the entire airline; is that not correct?

8 A. Among other things, yes.

9 Q. Okay. One of the things that the airline policy is, is
10 that to keep the airline running on time; is that not
11 correct?

12 A. That's a policy of all airlines.

13 Q. Okay. And in order to encourage people to run on time,
14 bonuses are paid to management as well as to line pilots; is
15 that correct?

16 A. That's correct.

17 Q. And as part of your compensation, isn't it correct that
18 you receive a bonus in regard to the amount -- to the
19 maintenance of the standard of keeping the airline running on
20 time?

21 A. That is one criteria.

22 Q. Okay. Not in terms of money, but in terms of
23 percentage, what is your percentage bonus that comes in --
24 that encourages you to keep the airline running on time?

25 A. As a percentage of --

1 Q. Your base pay?

2 A. Twenty-five percent of the make-up of the bonus is
3 reflective of on time performance.

4 Q. And the total bonus percentage?

5 A. It differs depending on the performance of the airline
6 in many metrics.

7 Q. Assuming you met all metrics, what would the percentage
8 of your salary be in terms of bonuses?

9 A. I would have to look that up.

10 Q. But a quarter of that bonus comes directly from -- well,
11 is it more than 100 percent?

12 A. I don't have it in front of me. It's a complicated
13 formula.

14 Q. Can you double your salary by keeping to a metrics?

15 A. Probably not quite.

16 Q. But almost?

17 A. Not quite.

18 Q. So by keeping on time, 25 percent of your salary would
19 be a more or less the percentage that you would receive by
20 retaining on time performance in the course of the year?

21 A. No, that's not correct. Twenty-five percent of the
22 bonus formula.

23 Q. Yeah. But if the bonus is 100 percent, then 25 percent
24 of that would be 25 percent?

25 A. That's not quite --

1 Q. I know I don't have Dr. Lee's qualifications, but it's
2 good enough for Catholic school.

3 A. I said it's not quite 100 percent.

4 Q. Okay. So it's not quite 25 percent that you get but
5 more than 20 percent?

6 A. Again, I'm not looking at the formula.

7 Q. Would that be in the ballpark?

8 A. Probably.

9 Q. Okay. Now you had mentioned that you're a pilot as
10 well, and that you still fly airplanes?

11 A. Yes.

12 Q. How often do you fly?

13 A. Our goal for all of our management pilots is to fly once
14 a month. However, with my workload as of late, I have not
15 flown once a month.

16 Q. When was the last time you flew?

17 A. It's been several months.

18 Q. Okay. And who flew with you?

19 A. A check airmen.

20 Q. And what is the responsibility of a check airmen?

21 A. A check airmen trains pilots.

22 Q. And is there to supervise pilots, as well, as they're
23 flying?

24 A. From a training perspective, I wouldn't call it a
25 supervisory perspective. We have other management pilots who

1 do that. But from a training perspective, yes.

2 Q. And the time before you flew that, when was the time
3 before after you flew an airline, a plane?

4 A. I don't have that. More often than not I fly in the
5 simulator, due to my work schedule.

6 Q. The last time you flew an airplane, before that, did you
7 have a check airmen with you at that time?

8 A. Yes.

9 Q. Okay. So it be fair to say that in regard to being a
10 line pilot, you've had little experience flying a plane in
11 the last year?

12 A. As far as in relationship to a line pilot; that's
13 correct.

14 Q. Okay. Now, I want to refer you to the questions that
15 you had just discussed with counsel. You said that in 2008
16 there was a deterioration in the relationship between the
17 Safety Committee of US Airways and USAPA and the previous
18 ALPA Safety Committee?

19 A. That's correct.

20 Q. I think -- have you read Captain Kubik's declaration?

21 A. Yes, I have.

22 Q. Would you characterize it by saying he is fully in
23 agreement with you that that relationship deteriorated?

24 A. That's what he stated.

25 Q. Was one of the reasons that it deteriorated was that in

1 2008 there was an additional requirement for less fuel on the
2 airplanes than had been previously required by US Airways?

3 A. That's not correct.

4 Q. Did there come a time when USAPA had to take an ad in
5 USA Today for the first time around 2008, protesting the
6 safety policies of US Airways?

7 A. They did take an ad out, yes.

8 Q. And was the reason for that, that they felt that there
9 was inadequate fuel on board?

10 A. I can't speak to what they felt, but --

11 Q. Well, was that what was stated in the ad?

12 A. I'm not looking at the ad --

13 Q. Is it your remembrance that that's what the issue was?

14 A. No --

15 MR. SIEGEL: Your Honor, could the witness finish
16 his answer before counsel interrupts him?

17 THE COURT: To the extent that's an objection, I'll
18 overrule the objection. Ask you to rephrase the question.

19 Q. (By Mr. Siegel) Is that remembrance of the issue?

20 A. Not exactly.

21 Q. What is your remembrance of the issue?

22 A. We collect data on our operation, as well as on pilots.
23 And we knew that we had six or seven pilots who were adding
24 fuel, a high percentage of the time, up to 66 percent of
25 their flights, they are adding fuel.

1 It's a very small amount of our pilot group, 4,000
2 active pilots, 5,000 total pilots, we had six or seven is my
3 recollection, of pilots who continually added fuel, to the
4 tune of 66 or so percent.

5 Q. And they --

6 A. Can I finish?

7 Q. Sure.

8 A. So, we wanted to understand why this small group of
9 pilots, six or seven pilots didn't feel comfortable with the
10 way the airline planned fuel loads.

11 So the vast majority of our pilots were comfortable with
12 our methodology, these six or seven pilots were not. We
13 wanted to find out why.

14 Number one, we wanted to give them some tools to make
15 them more comfortable, like the rest of their peers. And we
16 invited them into a training environment where they would sit
17 in a simulator with a check airmen and discuss fuel issues.

18 They were not in a jeopardy situation. They were not
19 flying the simulator. They were to be given some tools to
20 feel more comfortable with how we plan our operation from a
21 fuel perspective.

22 The Union told those pilots to not report for that
23 training. And we told those pilots that they must report.
24 And they did. And we had a check airmen who walked through
25 our procedures to try to make them feel more comfortable.

1 That is the genesis for the ad in the USA Today.

2 We did not discipline pilots for fuel. We do not say a
3 pilot can absolutely never add fuel. But we had six or seven
4 pilots who added fuel, a very high percentage of their
5 flights.

6 Q. Those pilots after completing the training still felt
7 uncomfortable; isn't that correct?

8 A. I don't know from pilot to pilot. But in some cases
9 they add fuel, yes.

10 Q. And that --

11 A. -- we pilots add fuel --

12 Q. -- that was the genesis of the ad in USA Today, that
13 they felt uncomfortable with US Air's policies in regard to
14 fuel?

15 A. I don't know why the ad was placed in the USA Today.

16 Q. Let's go back to that. That's what the ad basically
17 said?

18 A. Again, I'm not looking at the ad, so I don't know what
19 it said. I know the general theme of the ad. But I'm not
20 looking at the ad.

21 Q. And the general theme was what?

22 A. That US Airways' fuel policies are too restrictive.

23 Q. Too restrictive meaning that there was less -- well, let
24 me back up for a second.

25 The less fuel on board of the flight, the more

1 efficiently it runs; is that correct? Less weight?

2 A. That's one issue.

3 Q. And by putting less fuel on board a flight, you save
4 money, correct?

5 A. By putting less fuel on board you burn less fuel, but
6 you also are able to carry more passengers.

7 Q. Which produces revenue for the company?

8 A. Yes, it does.

9 Q. And the discussion at that time in 2008 was that the
10 company was compromising safety in order to produce more
11 revenue. That certainly was the position of USAPA at that
12 time?

13 A. I assume that was their position.

14 Q. Well, wasn't that expressed to you?

15 A. Our position is that we typically land with ample fuel.
16 In many cases, almost two hours of fuel upon landing.
17 Domestically, on our domestic flights, we land with more than
18 an hour and a half minutes of fuel.

19 Q. Well, rather than --

20 A. Almost twice what the FAA requirements are. And our
21 pilots, vast majority of our pilots are fine with our fuel
22 loads. But we had six pilots, six pilots out of 4,000 active
23 pilots who were not comfortable on a regular basis.

24 Q. And the position -- rather than assume the position,
25 that was the position that was expressed to you. That they

1 were not comfortable with the amount of fuel being put on
2 board, and that the amount -- that revenue was taking
3 precedence over passenger safety?

4 A. Those six pilots were not comfortable with the amount of
5 fuel on board.

6 Q. Okay. Let me go over the FOSB. And I know you had
7 talked to counsel about the FOSB. Would you go over again,
8 just for a minute, what the responsibilities of the FOSB are?

9 A. Right. Our Flight Operations Standards Board monitors
10 number one, the safety of the airline. It reviews the data
11 that we collect. It reviews any issues from that data that
12 might cause us to look at our procedures or change a
13 procedure. It deals with regulatory issues. If there are
14 regulatory changes that come our way from the FAA, we have to
15 not only make sure that we are compliant, but we have to plan
16 a means of compliance. We're able to coordinate that through
17 our various fleet types, and our various chief pilot offices
18 as from the directions of our Flight Operations Standards
19 Board. Basically it's to maintain a high standards of
20 operations for our airline and our pilot group.

21 Q. And a high standard of safety?

22 A. Absolutely.

23 Q. And you would agree that's an important board operating
24 within US Airways?

25 A. Absolutely.

1 Q. And yet, well, let me back up a second.

2 Did USAPA by its safety chairman, ever ask to be a
3 member of that board?

4 A. I believe he did.

5 Q. Okay. And you turned him down?

6 A. Yes, we did.

7 Q. Okay. Let me now refer you to your declaration in
8 support of plaintiff's motion.

9 A. I'm sorry, what page?

10 Q. Paragraph six. Let me go back.

11 Did there come a time in 2010 when Captain Kubik came to
12 you with members of USAPA and said, or requested the company
13 to engage in a safety culture study?

14 A. Yes.

15 Q. And did Captain Kubik also indicate that they wanted
16 Professor von Thaden to do the study?

17 A. Yes.

18 Q. Did he also say to you that he had heard Professor von
19 Thaden at an FAA sponsored seminar?

20 A. I don't remember the type of the seminar. But he had
21 heard her speak at a industry gathering. I don't know the
22 type of seminar it was.

23 Q. Were you aware it was sponsored by the FAA, either at
24 that time or otherwise?

25 A. I was not aware of that. Or at least I don't recall

1 that at this time.

2 Q. Were you aware that the company in previous iterations
3 as America West, had used Professor von Thaden to do a
4 similar survey?

5 A. I was made aware of that a period of time later.

6 Q. Okay. Is there a publication that you put out for your
7 pilots in regard to safety?

8 A. There's a publication that our safety department puts
9 out.

10 Q. Okay. That's what I meant.

11 A. Called *Safety Vector*.

12 Q. *Safety Vector*. And what is the purpose of *Safety*
13 *Vector*?

14 A. It is to disseminate information to our pilot group,
15 talk about past events, use them as a learning experience.
16 Inform pilots of some of the data that we collect through our
17 various safety programs.

18 But generally speaking, to be sure that our pilots keep
19 safety in mind. And that they learn about some of the issues
20 that could affect safety.

21 Q. Were you aware that not less than a year to the request
22 by Captain Kubik, that Professor von Thaden's studies had
23 been cited by approval in your own publications?

24 A. I was aware of that.

25 Q. And you still declined to participate in that survey?

1 A. We declined from our previous experience with --

2 Q. The question was, did you decline did you not?

3 MR. SIEGEL: Your Honor, I object to the
4 interruption of the witness' answers by counsel.

5 THE COURT: Well, hang on a second. I sustain the
6 objection. And I'll ask the attorney not to interrupt. I'll
7 ask the witness as well to be responsive to the question.

8 Put the question to the witness again.

9 Q. (By Mr. O'Dwyer) Isn't it true that you declined knowing
10 full well of Professor von Thaden's reputation in the company
11 to engage in that survey?

12 A. At the time I declined I did not know about the survey
13 that Professor von Thaden had conducted at America West
14 Airlines prior to my time -- prior to the merger.

15 And at that particular meeting on that day, I don't know
16 that I knew about, or remembered that she was mentioned in
17 the *Safety Vector* article. I was made aware of that
18 certainly afterwards.

19 Q. Okay. And you continued to decline, even after you were
20 made aware of that?

21 A. Yes.

22 Q. Now, after Professor -- after USAPA after you did --
23 strike that for a second.

24 After USAPA heard the news that you declined to
25 cooperate in the safety culture survey, is it your

1 understanding that they went out and commissioned the survey
2 on their own expense?

3 A. That's my understanding.

4 Q. Okay. And did there come a time when you went -- when a
5 meeting was sought with Professor von Thaden and members of
6 the Union to meet with you to discuss the results of her
7 survey?

8 A. Yes.

9 Q. And did you in fact have a meeting to discuss the
10 results of those survey?

11 A. Yes.

12 Q. Okay. Who was there for US Air, for the company?

13 A. Myself, Paul Morell and I believe a person from
14 corporate communications who is no longer with the company.

15 Q. Somebody from Corporate Communications; is that correct?

16 A. Actually, that is my recollection, but it was a while
17 ago.

18 Q. Did you invite Corporate Communications to a safety
19 meeting?

20 A. I didn't invite anybody. I was asked to attend and I
21 attended.

22 Q. Who invited Corporate Communications to a safety
23 meeting?

24 A. I don't know.

25 Q. As a result of that safety meeting, did you take any

1 action in regard to Professor von Thaden's findings?

2 A. No.

3 Q. I understand that a letter was written basically taking
4 issue with Professor von Thaden's findings to Captain Kubik?

5 A. I don't believe that letter came from me.

6 Q. Okay. After that meeting did you or anyone in the
7 company make any suggestions to USAPA that a safety culture
8 survey or a new safety culture survey in cooperation with the
9 Union could be taken to address any concerns they had with
10 the Professor von Thaden's survey?

11 A. I don't believe so.

12 Q. After the company refused to do anything after Professor
13 von Thaden's survey, and after the company failed to make any
14 further suggestions on safety culture, is it your
15 understanding that Captain Kubik then made a series of
16 recordings, television recordings and statements in regard to
17 safety?

18 A. I've seen some of those, yes.

19 Q. Now some of those, although not all of those, are
20 referred to in your declaration; is that correct?

21 A. Yes.

22 Q. In the first communication from Captain Kubik, isn't it
23 correct that what he basically was saying was that there are
24 many distractions in the cockpit before taking off and that
25 the pilots should close the cockpit door while performing

1 their checks?

2 A. That's what he wrote.

3 Q. Would you explain to the court the importance of the
4 pre-flight checks?

5 A. Pre-flight checks are very important.

6 Q. How is that?

7 A. It's important to ascertain that the aircraft is in good
8 working order. It's important that our flight release is
9 programmed properly. That is why we have very specific times
10 in which pilots report to the aircraft in order to complete
11 their duties. We have very specific flows and checklists
12 that make sure if followed properly, that the aircraft will
13 be -- and various systems will be checked properly before
14 departure. All of our procedures outline very specific times
15 and procedures in order to complete those tasks.

16 Q. Would you agree that it's important that a pilot not be
17 distracted while he's performing those checks?

18 A. We have procedures that if you are distracted, then you
19 stop what you're doing, handle the distraction, and then you
20 resume the checklist from that point.

21 Q. Okay. Have pilots who have been distracted, for
22 example, have airplanes taken off with flaps up causing
23 crashes?

24 A. Not at US Airways but in the industry, yes.

25 Q. And that is a result --

1 A. You don't extend the flaps at the gate.

2 Q. Hmm?

3 A. You don't extend the flaps at the gate.

4 Q. Okay. You would agree with me that it's vital for
5 safety that the pilot not be distracted during -- during the
6 pre-flight checks?

7 A. That has always been the case. We have operated
8 following our procedures for many years. And we have not had
9 an issue with distractions that have caused us to change our
10 procedures.

11 Q. The -- you had said that if a pilot is distracted, he
12 would go back to stop what he's doing, go back to work, and
13 then either restart or start over his flight checklists; is
14 that correct?

15 A. If they're distracted in the middle of the checklist.

16 Q. Wouldn't the function of closing the door and having the
17 pilot perform his checklists without distraction, make the
18 plane get off faster? Because without distractions, he would
19 have had done his pre-flight check and therefore increased --
20 decreased the time at the gate, rather than increase the time
21 at the gate?

22 A. Not necessarily. I mean, there are not distractions on
23 every single flight. And there are not distractions every
24 single moment that a crew member is going through their
25 procedures.

1 This only became an issue as of late. It was not an
2 issue in 2010. It was not an issue in 2009. It was only an
3 issue as of late.

4 Q. And that issue was the result of the findings of
5 Professor von Thaden in the safety culture study? That's
6 when it became an issue?

7 A. Perhaps. I didn't -- I'm not well versed in the safety
8 culture survey, per se. I've seen parts of it, but not the
9 entire survey.

10 Q. Okay. But the first pilot -- the first -- the first
11 communication from Captain Kubik came somewhat after the
12 results of the safety survey were published?

13 A. Quite a ways after, yes.

14 Q. I want to refer you to Captain Kubik's second
15 discussion.

16 A. What page?

17 Q. By the way, did you --

18 A. What page?

19 Q. This is page three, paragraph seven of your declaration.

20 A. I'm not sure what -- in this book, I'm not sure what
21 page that's in.

22 MR. O'DWYER: We'll get it for you in a second. I
23 think it's number 55.

24 THE COURT: Might be 30. Is it 55 or 30?

25 MR. O'DWYER: I'm sorry.

1 THE COURT: There are two different declarations by
2 this witness, one 30 and one 55. At least two. I think
3 there's a third one.

4 MR. O'DWYER: It's July 29th, so it's 30?

5 THE COURT: Page three, paragraph seven?

6 MR. O'DWYER: That's correct, Your Honor.

7 Q. You seem to take issue with Captain Kubik's suggestion
8 or lesson to the pilot that they write up deferrable or
9 minimum equipment list items; is that correct?

10 A. Write-ups are typically mechanical issues with the
11 aircraft. And they can be deferred via the minimum equipment
12 list, which is a document that is approved by the
13 manufacturer, the FAA and the company.

14 Q. It's also the pilot's discretion, however -- let me back
15 up.

16 Isn't it a requirement that the captain at all times
17 note wherein there's a malfunction of any equipment and put
18 it in the logbook?

19 A. Yes, that's correct.

20 Q. It is also at all times the captain's discretion not to
21 fly the airplane even if that piece of equipment is on the
22 minimum equipment list, if he thinks there are situations
23 that would make it unsafe to fly the airplane with that piece
24 of equipment malfunctioning?

25 A. The captain does have that option. However, we did see

1 a very different change in behavior around May 1st.

2 THE COURT: I'm gonna strike -- I'm gonna stop you
3 there. Listen to the question and respond. There was no
4 part of that question that dealt with the change in behavior
5 around May 1st.

6 So I would ask you to listen carefully to the
7 question and respond to it.

8 Ask your next question.

9 MR. O'DWYER: Thank you, Your Honor.

10 Q. For example, if a aircraft is going across the North
11 Atlantic and a piece of equipment like an auxillary power
12 unit or something like that is out, that would be a different
13 situation than a plane that was flying transcontinental when
14 you could find a suitable airport if something went wrong?

15 A. That's not correct.

16 Q. It's never a different situation in terms of safety when
17 flying over the North Atlantic and at least two hours from an
18 airport, then flying transcontinental within minutes of an
19 airport?

20 A. The type of aircraft that we fly transatlantic flights
21 on, have four electrical systems, two engine-driven
22 electrical systems. They have an auxillary power unit for
23 electrical systems. They also have another emergency source,
24 called a RAM air turbine to provide electrical -- a fourth
25 electrical system. So four systems for that type of

1 aircraft.

2 Q. Well, for example, Captain Kubik recently has refused to
3 fly an aircraft over the North Atlantic based on MELs. Has
4 he been disciplined for that?

5 A. No, he has not.

6 Q. Okay. And the second instruction or lesson from Captain
7 Kubik's second communication to the pilots was exactly that.
8 That if you find minimum equipment that when it's
9 malfunctioning in certain circumstances makes it unsafe to
10 fly the plane, you are encouraged as a pilot to keep the
11 safety of your passengers and yourself in the foremost and
12 not fly that airplane; is that correct?

13 A. That has always been the case.

14 Q. Okay. That's what Captain Kubik said to his other
15 pilots?

16 A. Most recently.

17 Q. Okay. I'm going to refer you to what you had discussed
18 with counsel before, Captain Kubik's communications,
19 learnings with his pilots in regard to pilot fatigue.

20 Would you agree with me that pilot fatigue is an
21 important safety issue that pilots should not fly an aircraft
22 while fatigued?

23 A. Yes, I would agree.

24 Q. Would you also agree with me that Congress has mandated
25 FAA to come out with new standards in regard to pilot

1 fatigue; is that your understanding?

2 A. That's correct.

3 Q. Okay. Would you also agree that one of the reasons
4 they've done that is because of pilot fatigue, which was
5 designated as a reason for the Colgan air crash in Buffalo,
6 where many people lost their lives?

7 A. That was a contributing factor in that accident.

8 Q. Would you agree then that pilots who are fatigued, who
9 do not feel at the top of their form, should not fly an
10 aircraft?

11 A. Yes.

12 Q. Isn't that exactly what Captain Kubik said, pilots who
13 are fatigued should not fly an aircraft?

14 A. In so many words, that's what he said.

15 Q. Okay. Captain Kubik also issued -- taught his -- the
16 members of USAPA about the two-engine taxi issue; isn't that
17 correct? You refer to that?

18 A. Yes.

19 Q. The two-engine taxi issue is that in Captain Kubik's
20 opinion, it is safer to operate an aircraft while taxiing
21 with two engines going rather than one?

22 A. That's his opinion.

23 Q. Yeah. Okay. That has nothing to do with taxiing times
24 on the ground?

25 A. No, it does not.

1 Q. Okay. In fact, it stands to reason that two-engine taxi
2 times are gonna be less than one-engine taxi times?

3 A. I don't believe that's correct.

4 Q. Okay. Surely by going to two-engine taxis rather than
5 one, you're not increasing the amount of time that you're
6 taxiing?

7 A. No. The speed would be the same.

8 Q. Okay. Was it Captain Kubik's opinion that the
9 two-engine taxi time made taxiing safer because it made the
10 plane more maneuverable?

11 A. Actually, I don't remember that being in the statement.

12 Q. Pursuit to the FAA -- FAR, are pilots allowed to use
13 their discretion to whether they taxi with one engine or two?

14 A. They can use their discretion for safety purposes.

15 Q. Okay. And that's what Captain Kubik was urging people,
16 for safety purposes, to use two-engines taxis?

17 A. Yes. But I disagree with that assertion.

18 Q. Fine. Now, one of the communications from Captain Kubik
19 that you mentioned was -- I'm sorry -- forgot to mention in
20 any of your declarations, was his advice to pilots on noxious
21 gases in the cockpit and in the main cabin. Are you aware of
22 that communication?

23 A. I believe I have seen that, yes.

24 Q. Is it not true that two pilots have been taken out of
25 service because of their exposure to those gases?

1 A. I believe it's undetermined on why they are still
2 remaining or not back on duty.

3 Q. Is it not true that as recently as last night in the
4 Charlotte airport there was an issue involving noxious gases?

5 A. I believe there's a cabin odor issue. I don't know it's
6 been determined the type of odor as of yet.

7 Q. Is it not true that at least two flight attendants had
8 to go to the hospital because of their exposure?

9 A. I believe two flight attendants did go to the hospital,
10 yes.

11 Q. Has the company put out any -- let me back up for a
12 second.

13 Is it your understanding that there is a possibility in
14 any aircraft, that hydraulic fuel or other fuel could leak or
15 somehow get on a hot part and atomize, and that would cause a
16 significant problem with noxious gases in the aircraft?

17 A. That is one component of cabin odors. But there are
18 many components of cabin odors, not just hydraulic fluids or
19 engine oils.

20 Q. If it is those engine fluids atomized in that way, that
21 can be a very dangerous situation, can't it?

22 A. Our studies have shown that a pilot or flight attendant
23 could be affected at that moment, but they are not -- our
24 experts have told us they are not long-lasting effects from
25 those odors -- those types of odors.

1 Q. And yet two of your pilots are still out of work having
2 been composed to those issues?

3 A. It is undetermined what is the reason for them still to
4 be out of work.

5 Q. Let me ask a question. Captain Kubik has suggested in
6 his communications that the pilots put on oxygen masks if
7 they feel they're being -- if they feel they're being
8 subjected to those type of toxic fumes. As a pilot yourself,
9 do you take issue with that advice?

10 A. No. Actually that is our procedure developed by the
11 manufacturer. That anytime there is either smoke or fumes,
12 often times it's difficult to determine the origin of those
13 smoke or fumes immediately, is that you do follow our smoke
14 and fume procedures.

15 Q. Mr. Hogg, after your -- after you learned about the
16 incident involving the two pilots, and at least the
17 possibility that those pilots may have been severely damaged
18 by breathing noxious fumes, did you put out any advisory to
19 your pilots as to how to handle the situation?

20 A. No. We had internal discussions to determine if our
21 current procedures covered those -- that eventuality. And
22 our current procedures do cover that.

23 Q. So the only advice -- new advice given to the pilots in
24 response to what was at least a possibility of severe injury
25 to the two pilots, was Captain Kubik's communication?

1 A. I believe so.

2 Q. Captain Hogg, are you in disagreement with the Union's
3 slogan, "Safety First"?

4 A. No. As a matter of fact, in our FOM, safety is first
5 and foremost.

6 Q. Isn't it also a fact that on many of your gates on the
7 neon signs outside the gate you post as a company, the words
8 "Safety First"?

9 A. I've seen some of those signs, yes. But mostly directed
10 for ground personnel to be aware of operating safely.

11 Q. Certainly pilots can see them as they're coming into the
12 gates?

13 A. Yes.

14 Q. And that's an officially sanctioned company slogan?

15 A. I can't say that. I've not put out those -- those signs
16 before.

17 Q. Have you ever disagreed with the fact the company has
18 put up "Safety First" on their -- on their neon sign?

19 A. I've seen those signs.

20 Q. Have you taken any effort to remove those?

21 A. No.

22 Q. In fact, you would agree it's a good idea to remind
23 people that they should be safety first?

24 A. It's always -- safety is always foremost in our
25 operating procedures.

1 Q. The "Safety First" slogan sometimes is accompanied with
2 the words, "I'm On Board". That means I'm in agreement with
3 it; isn't that correct?

4 A. Not from the company, no.

5 Q. Okay. You're not in agreement with "Safety First"?

6 A. I'm in agreement that safety is a top priority for our
7 company. But we do not -- we, the company, do not use the,
8 "I'm On Board" part of that sentence.

9 Q. "I'm On Board" means basically that you're in agreement,
10 that the person who's wearing that is in agreement with the
11 slogan, "Safety First"?

12 A. Possibly.

13 Q. Okay. And yet you prohibited your pilots from wearing
14 lanyards that emphasized their agreement with "Safety First"?

15 A. We have a recent policy -- or we are enforcing a policy
16 recently to remove not only non-company lanyards, but also
17 I.D. badge backers that reference which pilot group you are
18 from; that reference whether you're a good union pilot or
19 not; that reference how much money you've contributed to a
20 campaign amongst our West pilots. We've eliminated pins that
21 are not sanctioned by the company. Throughout the company
22 we've eliminated all non-standard lanyards and backers that
23 indicate or that are divisive and indicate which part of the
24 company you came from.

25 Q. How long have people been wearing -- my understanding

1 that the company for the first time has issued company
2 lanyards; is that correct?

3 A. That's correct.

4 Q. Since the merger, has the company issued company
5 standard lanyards to its pilots or other personnel?

6 A. Not to pilots. I can't speak to other personnel.

7 Q. So the first time the company issued or came up with a
8 policy that prohibited "Safety First" -- I'm sorry,
9 non-standard lanyards, was shortly after April of this year,
10 when "Safety First/I'm On Board" appeared on the lanyards of
11 the US -- USAPA pilots?

12 A. We've been discussing this issue for quite --

13 MR. O'DWYER: Your Honor, that's not my question.

14 THE COURT: Your question is, "So the first time
15 the company issued or came up with a policy that prohibited
16 "Safety First" -- I'm sorry, non-standard lanyards, was
17 shortly after April of this year, when "Safety First"/"I'm On
18 Board" appeared on the lanyards of the US -- USAPA pilots?"

19 Your answer to that is.

20 A. Well, the policy has been in place for a long time per
21 our FOM. The first time that we enforced that policy, due to
22 the divisive nature of what we've been seeing, has been
23 relatively recently.

24 Q. And that was in response, at least in part to the
25 slogan, "Safety First/I'm On Board"?

1 A. And the captain's badge backers and the captain's pins.

2 Q. I didn't ask that. I said, at least in part it was in
3 regard to the "Safety First"?

4 A. At least in part.

5 Q. Mr. Hogg, you reference to your -- in your affidavit on
6 page 12, that's paragraph 33 in your declaration a -- do you
7 have that?

8 A. Yes, I do.

9 Q. Thank you. A "Block by 16" of decals placed on the
10 aircraft and clipboards at US Airways. Do you have a time
11 when that appeared?

12 A. We've seen these stickers repeatedly for quite sometime.

13 Q. Do you know whether -- can you tell me the first time
14 you saw that?

15 A. Not specifically.

16 Q. Okay. Was it in the month of March, the month of April?

17 A. Not specifically.

18 Q. So it could have been March?

19 A. I don't recall when I first saw it.

20 Q. It could have been February?

21 A. I don't believe it was that early. I think it was more
22 recent than that.

23 Q. Okay. So when those clipboards or slogans appeared,
24 were you aware whether this was either promulgated or
25 sanctioned by USAPA?

1 A. No.

2 Q. At anytime are you aware whether US Airways asked USAPA
3 to condemn or to disassociate itself from those slogans?

4 A. I know that there were several letters sent after some
5 of these events from Allen Hemenway, but not from me.

6 Q. So you're not aware of any specific instances where any
7 of these -- where US Airways asked USAPA to disown these
8 particular publications?

9 A. Not this -- not this particular one.

10 Q. Okay. Are you aware of how many people saw these
11 particular publications?

12 A. Being on the clipboard of the aircraft, each pilot who
13 flew the aircraft would see them.

14 Q. They are on each aircraft?

15 A. Not every aircraft.

16 Q. Okay. It's your understanding then that something of a
17 slogan that appeared in March or so of 2011 caused the
18 slowdown of the pilots in -- beginning in May of 2011?

19 A. First off, I don't know that this appeared in March. I
20 don't know the exact time that this appeared.

21 Q. Okay.

22 A. But this is one encouragement to the "Plus 16" means
23 arrive beyond the 14 minute criteria by the DOT for the
24 flight to be considered on time. So it's an encouragement to
25 affect our on time performance by arriving "Plus 16".

1 Q. Again, you're unaware of USAPA to ask anyone to condemn
2 this?

3 A. I did not send a letter specifically to stop this --
4 these actions.

5 Q. Okay. I'm gonna get -- if I could now refer you to
6 paragraph 35. That's another video of Captain Kubik. In
7 that video, is it your understanding that Captain Kubik tells
8 the pilots that if they are unhappy or feel that the -- let
9 me strike that.

10 Feel that the plane is unsafe to fly that they should
11 not fly that plane?

12 A. If they feel that it is unsafe, that is correct. Not
13 unhappy, but feel that it's not safe, that is correct.

14 Q. I stand corrected. Would it be fair to say that the
15 company's position is that safety, security and compliance
16 are the cornerstone of US Airways operations?

17 A. That's correct.

18 Q. Would it also be fair to say that an uncompromising
19 commitment to safety, security and compliance is the
20 responsibility of each and every employee?

21 A. That's correct.

22 Q. Pilots are an employee, are they not?

23 A. Yes.

24 Q. And therefore an uncompromising commitment to safety,
25 security and compliance is the responsibility of each pilot?

1 A. All employees.

2 Q. And specifically each pilot?

3 A. In this case pilots, but all employees.

4 Q. Okay. So Captain Kubik was not incorrect in advising
5 pilots that if they felt that there was a safety issue, they
6 should not fly the plane?

7 A. No. That has always been the case, not just from
8 Captain Kubik, but from the company --

9 Q. Could I --

10 THE COURT: Don't interrupt him.

11 MR. O'DWYER: I'm sorry.

12 THE COURT: He's answering your question. Let him
13 finish his answer.

14 THE WITNESS: That has always been the case, not
15 just from Captain Kubik. But that is the company's
16 philosophy and has been that for as long as I've been here.

17 Q. (By Mr. O'Dwyer) So you take no issue with Captain Kubik
18 having said that?

19 A. No issue reminding pilots of that focus.

20 Q. On -- let me refer you down to paragraph 38 of your
21 declaration. You refer to an e-mail of
22 thecaptain.safetyfirst@hotmail.com. Do you see that?

23 A. Yes, I do.

24 Q. Okay. How many pilots are employed by US Airways?

25 A. Approximately 5,200.

1 Q. And how many employees are employed by US Airways?

2 A. Approximately 32,000.

3 Q. Would it be fair to say that many, if not most of them
4 have access to computers?

5 A. I would assume so.

6 Q. Were you able to discern who "thecaptain.safetyfirst"
7 is?

8 A. No.

9 Q. Could be a pilot?

10 A. Could be.

11 Q. It could be another employee?

12 A. Could be.

13 Q. It could be anybody.

14 A. I'm sorry. Is that a question?

15 Q. Yeah.

16 A. I can't verify that this came from a pilot. But the
17 detail in this e-mail and some others indicate that it would
18 be somebody familiar with our situations.

19 Q. This particular pilot indicates that they know that
20 there's a labor dispute going on at US Airways; is that
21 correct?

22 A. Yeah. You said pilot, this particular person.

23 Q. This particular person.

24 A. Right.

25 Q. Okay. That particular person could have read that in

1 the *Charlotte Observer*, could they not?

2 A. Possibly.

3 Q. So it really could be anybody that wrote this?

4 A. Could be.

5 Q. Okay. On May 11, now I'm referring to page -- to
6 paragraph 39. USAPA issued a publication calling AP usage
7 and FOM compliance.

8 Maybe you could tell the judge a little bit about what
9 happens when a plane is on the ground and how the air
10 conditioning system works?

11 A. Well, on the ground we have what is called auxillary
12 power units that can be used to provide air conditioning to
13 the aircraft. However, on a vast majority of our gates, we
14 are provided with conditioned air that also provides air
15 conditioning for our aircraft while they are parked at the
16 gate.

17 Q. I know that you're located in Tempe, Captain Hogg. But
18 I assume you're aware that this has been an unusually hot
19 summer in the Charlotte area?

20 A. Yes. I've spent a lot of time in Charlotte. I'm not
21 actually in Tempe, but I'm in Phoenix.

22 Q. Okay. And that temperatures in Charlotte have gone way
23 above the time zone -- or above 100-degrees?

24 A. Yes.

25 Q. Are there times because of that, that air conditioning

1 on an airplane is simply not adequate and the airplane is
2 very hot?

3 A. There are times when either of the ground provided air
4 conditioning or perhaps sometimes an APU has a difficult time
5 cooling the aircraft.

6 Q. Okay. Which means that the passengers are -- can be
7 quite uncomfortable in the back of the airplane?

8 A. Yes.

9 Q. USAPA in this publication, which you cite, "Ask the
10 pilot to make sure that the passenger public is comfortable
11 and safe when they're going on a hot airplane"; is that not
12 correct?

13 A. That's correct.

14 Q. Do you take issue with that?

15 A. No. I take -- our policy, just to be clear, is that the
16 captain has the discretion to run the APU if it helps to cool
17 the cabin for passenger comfort.

18 However, our policy's also that when in a location or if
19 you're at Charlotte and the temperature is not so hot, that
20 you do not run the APU, you utilize the ground air system in
21 order to cool the aircraft.

22 There are times, when due to the extreme temperature
23 that you have to run the APU. Even then sometimes it remains
24 pretty hot in the aircraft.

25 Q. You cite in your declaration that USAPA has said the

1 following: "If your passengers are boarded into a hot
2 aircraft prior to your arrival, it may be prudent to stop the
3 boarding and have the flight attendant survey those already
4 on board for signs of those symptoms. If they are observed,
5 use your judgment to the need to remove all passengers from
6 the aircraft and have the paramedics called to evaluate the
7 health of those that appear to be afflicted."

8 Do you take issue with that statement?

9 A. That has always been the case for our pilot group.

10 Q. Okay. So you think there was nothing wrong with USAPA
11 saying to its pilots, that when there are passengers that are
12 sick they should be removed from the airport -- airplane?

13 A. In concert with why we're here today, several of these
14 statements I take issue with the timing of the statements.
15 But generally speaking, that is our airline's policy.

16 Q. Well, to be -- the statement came out in May, did it
17 not?

18 A. I don't have the exact date.

19 Q. Well, it's in your declaration, I'm sorry, paragraph 39.

20 A. Yes. It says May 11.

21 Q. Yeah. I assume USAPA would not have to talk about hot
22 aircraft in December in Charlotte; is that correct?

23 A. That's correct.

24 Q. So the timing was just before the summer?

25 A. It was after May 1st.

1 Q. Given -- referring to your paragraph 41, you cite to
2 somebody in cyber space by the name of bus321pilot@gmail.com.

3 Do you know who that person is?

4 A. I don't.

5 Q. Again, it could be anybody?

6 A. It says bus321pilot, but it could be --

7 Q. I mean, I could be bus321pilot, couldn't I?

8 A. You could, yeah.

9 Q. Could be anybody?

10 A. If you knew about the terms "On Board".

11 Q. Yeah. Again, somebody who could read the *Charlotte*
12 *Observer*?

13 A. I'm not sure "On Board" was in the *Charlotte Observer*.

14 Q. Certainly everyone in your communications department
15 would know that?

16 A. Not following you with that.

17 Q. Well, certainly any of the company people could have
18 written this as well?

19 A. Possibly.

20 Q. Yeah. If they wanted to manufacturer a case they could,
21 couldn't they?

22 A. I don't understand why they would want to do that.

23 Q. That's why you're here, aren't you?

24 Again, you cite to angrypilots@gmail.com on paragraph

25 43. Do you know who angrypilots is or are?

1 A. This document was sent to our chief pilot in
2 Philadelphia. I don't know who angrypilots is.

3 Q. Okay. It was sent to the chief pilot?

4 A. In Philadelphia.

5 Q. Who is a member of management?

6 A. Yes.

7 Q. So this was someone who wanted the company to know that
8 they are engaged in a surreptitious action?

9 A. I don't know. We get a lot of these.

10 Q. You get a lot of those?

11 A. Yes.

12 Q. Okay. All anonymous?

13 A. Yes.

14 Q. So these are one of many that you get regular --
15 anonymous, a lot of these?

16 A. We get e-mails, we get stickers. We get lots of -- lots
17 of documents.

18 Q. Okay. Be fair to say that there are pilots who are
19 unhappy with the company?

20 A. Yes.

21 Q. On July 22nd as referred to your paragraph 44, there was
22 a e-mail from b6 -- 767pilotdriver@gmail.com. Do you know
23 who that is?

24 A. These are all aircraft that we fly, but I don't know
25 specifically who sent this e-mail.

1 MR. O'DWYER: Okay.

2 Your Honor, may I have a minute, please?

3 THE COURT: You may.

4 MR. O'DWYER: Thank you, Your Honor. I have
5 nothing further.

6 THE COURT: Redirect?

7 MR. SIEGEL: No Redirect.

8 THE COURT: You may step down.

9 We've been going at it a while. I think we need a
10 break, probably need a lunch break, even though it's 2:00. I
11 didn't anticipate that cross being as long as it was.

12 MR. GRESHAM: We would like to get a copy of that?

13 THE COURT: Copy of what?

14 MR. GRESHAM: Of the box for a bit of investigation
15 during the lunch period.

16 THE COURT: Sure. We can provide that to you.

17 MR. GRESHAM: Thank you.

18 THE COURT: So, as I was saying, we'll take a lunch
19 break and come back at 3:00.

20 (Lunch recess.)

21 COURT RESUMED AT 3:00 P.M.

22 MR. GRESHAM: Your Honor, with all of these pilots,
23 can we have a bench conference to sort of find out what
24 you're planning for schedule.

25 THE COURT: Sure.

1 MR. GRESHAM: We have folks going in many different
2 directions.

3 THE COURT: Yeah. I was hoping we would move a
4 little faster than we have. And I'm trying to get this all
5 in today. We'll go to at least 6:00 today, and see where
6 we're at that point. And if necessary, hopefully we can get
7 it finished today, but if we can't, we'll come back on
8 Monday.

9 MR. GRESHAM: I would anticipate that two of our
10 witnesses will be long enough, the other three probably
11 direct, 15 to 20 minutes. The other two will be, I
12 think substantial, so I just throw that in for the Court's --

13 THE COURT: Yeah. And if -- so if we don't finish
14 today, we'll come back Monday.

15 Mr. Siegel, are you ready with your next witness?

16 MR. SIEGEL: Yes, Your Honor. US Airways calls
17 Allen Hemenway.

18 THEREUPON, ALLEN HEMENWAY, being first duly sworn, testified

19 as follows during DIRECT EXAMINATION BY MR. SIEGEL:

20 Q. Mr. Hemenway, could you state your full name for the
21 record?

22 A. Evert Allen Hemenway.

23 Q. And what is your current position with US Airways?

24 A. Vice President, US Airways Labor Relations.

25 Q. How long have you held that position?

1 A. I've been vice president at the merged carrier since the
2 merger. And I held the same position at the old US Airways
3 since -- have held it since 2004.

4 Q. And as Vice President of Labor Relations what are
5 general responsibilities, Mr. Hemenway?

6 A. Overall strategy and negotiation of the -- all of the
7 collectively bargained groups, including pilots, flight
8 attendants, mechanics, fleet service and reservations.
9 Interpretation of labor agreement, assistance with grievances
10 and arbitration in concert with the legal department. And
11 assisting the Ops group in terms of interpretation and also
12 personnel matters.

13 Q. And Mr. Hemenway, just for the record, you have
14 submitted two declarations in this proceeding, Exhibit
15 number 1 is your first declaration, and Exhibit 22 is your
16 supplemental declaration; is that correct?

17 A. Yes, that's correct.

18 MR. SIEGEL: Your Honor, we'll submit the Direct
19 Exam on the declarations. We have no further questions.

20 THE COURT: Very well.

21 Any Cross?

22 MR. SZYMANSKI: Yes, Your Honor. If I can find the
23 right exhibits.

24

25

CROSS-EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. SZYMANSKI:

Q. Mr. Hemenway, you have the binder with the exhibits in front of you?

A. I do.

Q. And if you would look at tab 14.

A. I have that.

Q. Which is at -- in your declaration, your opening declaration, you describe that as a text message. Let me see if I can find the right paragraph.

Actually paragraph 30 in your original declaration where it's referred to as Exhibit 16. But in the book itself, as I understand it, it's Exhibit 14, which is "The First Winner" text message, July 24, 2011.

And in your declaration at paragraph 30 you say it's an anonymous text message which was sent to East pilots. So it's anonymous. You don't know who authored it?

A. I do not.

Q. And when you say it was sent to East pilots, how do you know that it was sent to East pilots?

A. I don't know the actual distribution list.

Q. Okay. All right. And then the next tab in the book at 15 which is referred to as, "Congratulations You're a Winner", mailbox card. That's 31, paragraph 31 in your declaration, you say a card was placed in a pilot's mailbox.

1 How did you know that?

2 A. That information was passed to me from the Flight Ops
3 group.

4 Q. And I didn't see any indication on the exhibit itself,
5 do you know who authored it or who placed it in the mailbox?

6 A. I do not.

7 Q. Tab 16 in the book, "Meaning of Being On Board" e-mail
8 July 16, 2011, is sent by -- on the face of it, someone named
9 Randy Johnson.

10 Before I do that, can I ask you this -- this exhibit
11 looks like it's only part of the page. Do you know how the
12 exhibit was prepared and what the original of that document
13 looked like?

14 A. I don't. I think questions along those lines would be
15 actually better directed to Lyle Hogg. This is information
16 that largely I obtained through Flight Ops.

17 Q. Okay. So although it's in your declaration, you don't
18 have personal knowledge of it?

19 A. I have personal knowledge to the extent that I've spoken
20 with the Flight Ops group about it.

21 Q. Do you know who Randy Johnson is?

22 A. I do not.

23 Q. And since you don't know, you don't know that he's got
24 any position with the association?

25 A. I don't.

1 Q. And 17 in your book, angrypilots@gmail.com, did you hear
2 Captain Hogg's testimony about this when he was
3 cross-examined by Mr. O'Dwyer?

4 A. I believe so.

5 Q. Do you have any reason to disagree with the testimony
6 that he gave about this document?

7 A. No.

8 Q. Did this document come from Hogg to you or is this
9 something that you originated?

10 A. No. I would not be on any of the distribution lists,
11 and -- nor would Ops people likely send this to me directly.

12 Q. And 18, Kevin Smith, do you know who Kevin Smith is?

13 A. I do not.

14 Q. Do you know if Kevin Smith has any position with the
15 Association?

16 A. I do not.

17 Q. And how did this document come to you?

18 A. The same, the same route, through Flight Ops.

19 Q. The next Exhibit 19, redacted. Did -- how did this
20 document come to you?

21 A. Same method.

22 Q. And did it come to you with the actual name of the
23 person authoring the document?

24 A. It did not.

25 Q. So it came to you this way redacted and --

1 A. Yes.

2 Q. Okay. So you don't know who it's from?

3 A. I don't.

4 Q. And then the next one 20, again this document 20 came to
5 you the way it's in the binder?

6 A. Correct.

7 Q. And you don't know who it's from?

8 A. I do not.

9 Q. And 21, same question which is, you don't know who it's
10 from?

11 A. Correct.

12 Q. And it came to you that way?

13 A. Correct.

14 MR. SZYMANSKI: I don't have any further questions,
15 Your Honor.

16 THE COURT: Redirect?

17 MR. SIEGEL: No Redirect.

18 THE COURT: You may step down.

19 Call your next witness.

20 MR. McGUINNESS: US Airways calls Captain Paul
21 Morell, Your Honor.

22 THEREUPON, PAUL MORELL, being first duly sworn, testified as
23 follows during DIRECT EXAMINATION BY MR. McGUINNESS:

24 MR. McGUINNESS: May I proceed, Your Honor?

25 THE COURT: You may.

1 Q. Captain Morell, could you please state your full name
2 for the record?

3 A. Paul Leroy Morell.

4 Q. And what do you do for a living, sir?

5 A. I'm the Vice President of Safety and Regulatory
6 Compliance at US Airways.

7 Q. What are your duties in that position?

8 A. I'm responsible for the Safety and the Regulatory
9 Compliance at US Airways, including security, with respect to
10 the TSA.

11 Q. Thank you. Now, did you prepare a declaration in this
12 case Captain Morell?

13 A. Yes, I did.

14 Q. Could you please turn to Exhibit 65 in the binder in
15 front of you. Is that the declaration that you prepared?

16 A. Yes, it is.

17 Q. If you would, Captain Morell, would you now turn to
18 Exhibit 90.

19 Once you've had a chance to review that, can you let me
20 know if that's a document you prepared?

21 A. Yes, it is.

22 Q. Is that your resume?

23 A. Yes, it is.

24 Q. I see that you spent sometime serving your country in
25 the U.S. Navy; is that accurate?

1 A. Yes. That's accurate. I severed eight years in active
2 duty, and 17 years in the reserves. And during that eight
3 years of active duty, I did two deployments on the USS
4 Enterprise as a Navy fighter pilot flying F4 fighters to
5 Vietnam.

6 Q. How long did you fly the F4 fighter?

7 A. I flew the F4 for approximately five years then, and
8 then I transitioned to the F-14. And then I was in the
9 reserve squadrons after that, and I did another about eight
10 years in the F4 and another five years I would say in the
11 F-14.

12 Q. Did you have any responsibility for training and safety
13 in the Navy?

14 A. Yes. After my tour to Vietnam, I came back and was the
15 introduction of the F-14 into the Navy. And I was selected
16 to be in the cadre squadron of training pilots for the F-14.
17 And in that position I was in charge of -- or I did
18 instruction in all tactical phases of utilization of the F-14
19 on flight, in simulator and also in ground school. And as a
20 collateral duty, and also really the primary duty, I was the
21 aviation safety officer for the squadron.

22 Q. How long did you perform as a trainer and safety
23 officer?

24 A. Three years.

25 Q. Now, did you have any training in the U.S. Navy in

1 flight safety?

2 A. Yes. I attended the Naval Safety Officer Course in
3 Monterey, California, which lasted -- it was about a four --
4 I can't remember exactly. But it was probably about a six to
5 eight-week course.

6 Q. Turning back to your position now at US Airways, Captain
7 Morell, as the Vice President of Safety and Regulatory
8 Compliance, do you have regular interaction with the FAA?

9 A. Yes, I do. I'm pretty much in constant contact with the
10 FAA. I'm probably on the phone with them every, about two or
11 three times a week.

12 Q. And does the FAA sit on any of the internal committees
13 that the safety department has at US Airways?

14 A. Yes. We have a program, a Safety Management System
15 Program, which we are one of only two airlines in the United
16 States that has this program. It's a voluntary program.
17 It's a pilot program that the FAA started.

18 And what we have done, not many other airlines have done
19 is, we have had the FAA sit on -- there are two kind of
20 levels, we have a data analysis group that Lyle Hogg had
21 talked about. And we have this Operations Standards Boards.
22 We don't have those just in the Flight Operations area. We
23 have them in the maintenance area, we have them in airport
24 customer service area, we have them in security area, we have
25 it in-flight area and also dispatch. And on every one of

1 those data analysis groups, we have FAA representation. And
2 every one of those standards boards the FAA participates.

3 Q. What's the point of having the FAA sit on these
4 committees?

5 A. The point is, is that the way our philosophy at US
6 Airways is that safety is first. Safety is utmost importance
7 to US Airways. And it just so happens that safety and
8 regulatory compliance is exactly the most important thing
9 with the FAA. That's what they're chartered to do.

10 So we work hand-in-hand with the FAA to ensure that our
11 policies and our procedures and everything that we're doing
12 are safe and comply with the regulations. And having the FAA
13 there assisting us and working with us is, we feel is the
14 best way to operate.

15 Q. Now, has the FAA asked you personally to serve on any of
16 their committees?

17 A. Yes, they have.

18 Q. Why don't you tell us about that?

19 A. The first one that they asked me to participate in as a
20 co-chairman, is the 129 ARC. It's basically part 129 of the
21 Federal Aviation Regulations, which deals with -- and ARC, I
22 should explain, is the Aviation Rulemaking Committee.

23 And our charter was to rewrite this regulation, which is
24 about 40 years old with a lot of amendments. And also to
25 incorporate into it, the operations specifications that are

1 applied to foreign aircraft, or foreign operators that fly
2 into and out of the United States. And it also applies to
3 United States certified airplanes that operate outside the
4 United States exclusively.

5 Q. What was subject matter that that committee was looking
6 at?

7 A. It was the operations specs. It was the rules and
8 regulations that basically determine -- it covered
9 everything, really. It covered everything from how airplanes
10 are outfitted, to how airplanes and the rules of flying
11 airplanes, how they're maintain, and so that the foreign
12 operators and the airplanes had to be maintained and operated
13 to these regulations.

14 Q. How long did you serve on that committee?

15 A. Two years.

16 Q. Can you give us an approximate time?

17 A. That was probably from 2007 through 2009.

18 Q. And then subsequent to that committee, did you serve on
19 another FAA committee?

20 A. Yes. In fact, I'm currently serving on this committee.
21 This committee was commissioned by Congress on the Airline
22 Safety and FAA Extension Act of 2010. And actually paragraph
23 204 of that act, tasks the FAA with establishing task force
24 of experts to make recommendations for legislative or
25 regulatory action with respect to best practices on pilot

1 training and safety -- air carrier safety.

2 Q. And did that committee submit its report?

3 A. We've submitted our original report to the FAA, which I
4 think now has been submitted to Congress, I'm not quite sure
5 yet. It contained 25 recommendations on best practices that
6 had to deal with anything from training, to professional
7 standards, to information sharing amongst carriers, to
8 operational procedures, a lot, as you can tell, 25 different
9 subjects.

10 Q. Okay. Captain Morell, on your resume you talk about the
11 Aviation Safety Information Analysis and Sharing Executive
12 Board. Is that a board you're member of?

13 A. Yes. I was just appointed to that board as co-chairman
14 with Peggy Gilligan who is the associate and administrator of
15 Aviation Safety for the FAA.

16 This group ASIAS is what it's basically called. What
17 we've done is, we've talked about different types of
18 programs, voluntary programs that the airlines have.

19 We have what we call ASAP, Aviation Safety Activation
20 Program, where pilots, mechanics, dispatchers, flight
21 attendants submit voluntary reports of incidents or things
22 that they have done or errors that they have made. This data
23 comes into one, each US Airline that's participating in the
24 programs.

25 And also we have FOQA, Flight Operations Quality

1 Assurance. And this is a program where you're taking the --
2 an airplane. And you have sensors on that airplane and
3 you're taking data from that airplane, you're downloading it,
4 and it gets to be identified. And you can now observe, or
5 you can put that data together to determine how airplanes are
6 being flown on the line to see if there are any problems or
7 any things that are cropping up.

8 All this data we keep at US Airways and use in our
9 safety programs, while all the other airlines do the same
10 thing.

11 And what we're doing in ASIAS is, we're taking all that
12 data and we're putting it all together in one place. And by
13 putting it all together in one place, now a small problem in
14 one airline, could be a small problem in another airline and
15 another one. And when you put it together and you can say
16 there is a systemic problem within the industry.

17 So that's what the ASIAS is all about. My role in that
18 as being on the executive board, is that our job is to set
19 the policies and procedures for how that function works in
20 ASIAS.

21 We also now, we have requests for these analyses, and
22 it's our job to prioritize those requests. Once a report
23 is -- our analysis is completed and it's ready to go to the
24 end user, we on the executive board are the ones that review
25 that report and determine when it's ready to go or send it

1 back for more work.

2 Q. And you're the co-chair of that board?

3 A. I'm co-chair of that.

4 Q. And Captain Morell, there's been some talk and testimony
5 this morning and this afternoon about standard operating
6 procedures.

7 As the vice president of safety, do you have some
8 responsibility for standard operating procedures as they
9 apply to pilots?

10 A. Yes, I do. And my department does, yes.

11 Q. And do you as the vice president of safety have
12 authority unilaterally yourself to make changes to SOPs?

13 A. No. I cannot make a change to the SOP.

14 Q. What's the company process for making changes to
15 standard operating procedures with respect to pilots?

16 A. Sure. With respect to pilots, and actually it applies
17 throughout the company. It's not something that one person
18 can do anywhere in the company.

19 First off what we do is, we're looking for input -- or a
20 couple things that we do. Number one is, we have a, what we
21 call a safety management system. That's where we're talking
22 about these data analysis groups and we're talking about
23 these standards boards that are throughout the company.

24 These data analysis groups and standards boards, they're
25 looking at inputs, they're looking at data. And the data is

1 coming -- in the pilot's case, it's coming from the ASAP
2 program I talked about. It's coming from the FOQA program.
3 It's coming from the event reports that are submitted. It's
4 coming from what we call an AQP program, which is our
5 Advanced Qualification Program.

6 And the Advanced Qualification Program is a training
7 program where we train the pilots. But when we trained
8 pilots, we're actually getting data back of what's going on
9 in the training, how effective it is, what people don't know,
10 what they do know, what's going on in the line. There's all
11 kinds of data coming in.

12 So if we see a trend or we see something that's driving
13 us that says, you know what, this operating procedure isn't
14 working correctly or if we're having a problem with it, we
15 use that data now to go through the data analysis group which
16 goes to the standards boards.

17 And then what we do is, we do a risk assessment. And we
18 say, okay, this is telling us there's something wrong. We
19 have a process, a very complex process to go through risk
20 assessment.

21 What we do in risk assessment is, we say, okay, we need
22 to mitigate the risk and fix the problem and come up with a
23 mitigation strategies. Once the mitigation strategy is
24 established, then we change the SOP, but we don't stop there.

25 What we do now is we measure through all these data

1 points that I was talking about, how effective that change in
2 that mitigation strategy was. If it didn't work, we come
3 back again and we refix it and we constantly monitor it. So
4 that is the first way.

5 The second way is if we get an input from an outside
6 source, be it from USAPA, be it from a pilot, be it from
7 anywhere else. Or there's a change in a regulation or a
8 change in something else, we will now put it again, into this
9 process that I just talked about, and it will get analyzed,
10 it will get the risk mitigations, then we'll go and we'll
11 measure it and we'll check with the data. And that's how
12 changes are made at US Airways.

13 Q. What are the various departments that are involved in
14 making changes to pilot SOPs?

15 A. The ones that are involved are the Safety Department,
16 the Training Department, Flight Operations, Flight Technical
17 Publications and also the FAA.

18 Q. Now does your department have metrics or collect data
19 which it analyzes to keep track of safety performance at US
20 Airways?

21 A. Yes, we do. We use a lot of the ones we were just
22 talking about. We use FOQA, which is again coming from the
23 airplane, data coming from an airplane.

24 Q. What is FOQA?

25 A. Flight Operations Quality Assurance.

1 Q. That data comes from the actual aircraft computers?

2 A. Yes, it does.

3 Q. What other data do you use?

4 A. We have ASAP, which is the Aviation Safety Activation
5 Program. These are reports submitted by pilots of things
6 that they see or mistakes that they've made flying the line.

7 We have event reports, which again are submitted by
8 pilots that are, again, they don't fall into the realm of
9 ASAP, there could be a different kind of report. And then
10 they comment on what they observed happened on the line.

11 And we have AQP data, which is like I said, Advanced
12 Qualification Program Data that is coming from the training
13 department and what they're seeing in their training, which
14 is a very structured program there.

15 Q. If you would turn to Exhibit 91 --

16 A. Sure.

17 Q. -- Captain Morell please. Do you recognize those
18 slides?

19 A. Yes, I do.

20 Q. Do those -- did you have a hand in preparing these
21 slides?

22 A. Yes. My flight Safety Department tracks these metrics
23 constantly, and once a month we print these slides up. We
24 collate the information and we put this information out.

25 Q. Okay. Now, are these metrics taken from the types of

1 information that you just described?

2 A. Yes.

3 Q. Okay. Looking at the first page of Exhibit 91, it
4 refers to something as FSI. Can you explain to us what's
5 being shown there?

6 A. Yes. This is a general metric that we use to kind of
7 get a pulse on the safety of -- safety status of the airline.

8 It's made up of 21, as you can see here it says,
9 moderate to high risk safety factors. And we're talking
10 about things that are significant. And I'll give you a
11 couple of examples.

12 One would be engine failures or engine shutdowns in
13 flight. Another one could be an engine fire or another one
14 could be a flight control malfunction, a severe turbulence.
15 Let's see, what else. A rapid depressurization. Those types
16 of events are tracked and we come up with a Flight Safety
17 Index.

18 Q. What's shown about the Flight Safety Index?

19 A. It's been constant improvement since 2008. And if you
20 look there from 2009 to 2010, we had a 24 percent improvement
21 in our Flight Safety Index.

22 Q. Okay. The next bar graph refers to altitude deviations?

23 A. Yes.

24 Q. Give us a quick understanding of what you're referring
25 to there?

1 A. An altitude deviation is a deviation by a pilot, for
2 whatever reason, of greater than 500 feet, for an altitude
3 that he's suppose to be at. Be it a descent and there's a
4 crossing restriction and he may have missed that crossing
5 restriction; to a missed altitude that they were cleared to,
6 and instead of going to 300 they ended up 310, for whatever
7 reason. And those basically are altitude deviations.

8 Q. All right. And the graph as I read it is showing
9 improvement in that area also?

10 A. Yes. From 2008 to 2009 there's been a gradual
11 improvement. And from 2009 -- well, 10 percent improvement
12 since 2008 and a slight improvement between 2009 and 2010.

13 Q. All right. Turning to the next page, Captain Morell,
14 the top of the page talks about navigation errors?

15 A. Yes.

16 Q. If you could give us a quick description of what you're
17 referring to there?

18 A. A navigation error is basically saying that there has
19 been an error where the pilot has deviated off course for one
20 reason or another, or gone on a different course than what he
21 was cleared to go on.

22 And as you can see what we're talking about here is,
23 most of these errors happen when -- during the pre-flight
24 area where you're entering the route into the flight
25 management computer. And we've had, as you can see, a

1 significant improvement on navigation errors.

2 Q. All right. Then we move down to runway incursions?

3 A. Yes.

4 Q. What are those?

5 A. Runway incursions are where an airplane usually taxiing
6 on an airport surface, inadvertently goes onto an active
7 runway, crosses or violates an active runway. This is one of
8 the very high emphasis and very high risk items, as far as
9 the industry is concerned and the FAA is concerned and the
10 NTSB.

11 Q. How have you performed in that category?

12 A. As you can see, since 2007, all the way through 2010,
13 that has been absolute, very, very good improvement and it's
14 been 35 percent improvement between 2009 and 2010. And if
15 you look at it from 2007 it's 65 percent.

16 Q. Okay. If you look at the next page of the exhibit it
17 talks about clearance deviations.

18 A. Clearance deviations are covering everything from
19 taxiing, getting clearance to taxi through, we'll say taxiway
20 alpha to bravo to something else. And for whatever reason
21 the pilot's make a wrong turn or they take a different route,
22 that would be one kind of clearance deviation.

23 Another kind of clearance deviation would be passing
24 10,000 feet you're suppose to slow to 250 knots and the pilot
25 doesn't or there's a crossing restriction with a speed

1 deviation. In other words, you are deviated from a clearance
2 that was given to you.

3 Q. As I read the bars here, you're improving in that
4 category?

5 A. Yes. From 2007 to 2010 there is a 52 percent
6 improvement. And from 2009 to 2010, there was a 14 percent.

7 Q. Okay. And then the last entry on the page refers to an
8 unstable approach. What's an unstable approach?

9 A. An unstable approach is, we are, through our FOQA
10 program, that's Flight Operational Quality Assurance Program,
11 we are monitoring the airplanes and we take a snapshot of the
12 airplane on approach at 500 feet above the airport.

13 What we're looking for at 500 feet above the airport are
14 a couple things. Number one, that the airplane isn't too low
15 or isn't too high. It's on the glide scope of where it
16 should be.

17 The airplane is fully configured. When I say that I
18 mean that it has the gear down and it has the flaps down, and
19 in other words, it's in the landing configuration.

20 And the third thing we're looking at is if the airplane
21 isn't too fast. And we're looking at here is over 15 knots
22 of excess air speed.

23 The reason we're looking at these things is because if
24 it is unstable, you have the chance of the airplane landing
25 long and going off the end of the runway. You have a chance

1 from either being high or fast. You have a chance of hard
2 landing, since it's not a stabilized approach.

3 And so this is another high emphasis item at US Airways.

4 Q. And can you tell us how well you've done in that
5 category?

6 A. Basically we've done a 29 percent improvement from 2009
7 to 2010. If you look at 2008, it's an 84 percent
8 improvement.

9 Q. Okay. Then looking at the final two pages of the
10 exhibit, Captain Morell, it refers to something called an
11 MEL. Now we've had some testimony about MELs, but can you
12 just quickly refresh our recollection about what an MEL is?

13 A. Sure. An MEL is a minimum equipment list. And every
14 airplane is designed with redundant systems, or systems at
15 all times do not need to be functional in order to keep the
16 airplane flying.

17 So on these redundant systems, a system could be out
18 of -- not working and the airplane can be MEL. What the MEL
19 will do is, it will set conditions and restrictions. And
20 I'll give you an example.

21 You could have a navigational light that's not working.
22 You can't fly that airplane at night, but you can fly it
23 during the day. That would be an MEL item with a restriction
24 on it.

25 And so -- also the MEL is designed, and if you read the

1 preamble of the MEL, it's designed in order to ensure that
2 airplanes continue to fly, and to ensure that passengers and
3 the traveling public has -- is not interrupted in their
4 travels. And that's why the airplanes and the MEL is
5 designed in order to keep airplanes flying.

6 Q. Does every airplane have the same MEL?

7 A. Well, the MEL is for -- when you say every airplane, you
8 mean every airplane type?

9 Q. Well, for example -- yes.

10 A. All the A-320s, depending upon when it was manufactured
11 and the different configurations, all the airplanes have an
12 MEL. A 737 MEL is going to be slightly different -- will be
13 different than the A-320. And then within the A-320 there
14 could be variations which will be pointed out, depending on
15 the block number and the way the airplane is configured. But
16 yes, all airplanes have MELs.

17 Q. What does the first -- what does page five of the
18 exhibit show?

19 A. What we do is, at the beginning of the day, this says at
20 700 in the morning on all our fleets, we take a snapshot of
21 how many MELs we have on the airplane to start the day out.

22 And so if you look at this chart in 2008, January 2008,
23 we're averaging 200 MELs at the start of the day. And what
24 you have to do is look at that and say, well, how many
25 airplanes do we have. We have approximately, operating, 320

1 or 330 airplanes. So that would be out of every three
2 airplanes, two airplanes would have an MEL on.

3 Now, if you take that and look at where we are today,
4 which is -- when I say today, I'm talking about in this chart
5 in April of 2011, we're down to 100. So we've cut it down by
6 50 percent, and now we're talking about at the start of the
7 day, one out of every three airplanes has an MEL on it.

8 Q. If you look at the last page of the exhibit. And just
9 explain to us what's reflected there.

10 A. The other thing that we look at is, we don't want MELs
11 sitting on an airplane any longer than we have to. And so
12 what we try to do is work these off -- excuse me -- oh, bless
13 you.

14 As it works with our schedule and availability of the
15 airplane and availability of parts and all these other
16 factors, we're trying -- we're repairing these airplanes or
17 getting the MELs off the airplane.

18 So if you look here, back in January of '08, we were
19 averaging about -- an MEL being on an airplane for
20 approximately four days before it came off. Now, look at
21 it -- we're looking at 2.6 days. So we're looking at a -- I
22 forget what the percentage is, but it's a significant
23 improvement over -- and it's been a constant change and
24 constant significant improvement.

25 MR. MCGUINNESS: Thank you, Captain Morell.

1 I have nothing further, Your Honor.

2 THE COURT: Any Cross?

3 MR. GRESHAM: Yes.

4 CROSS-EXAMINATION

5 BY MR. GRESHAM:

6 Q. Captain Morell, good afternoon.

7 A. Good afternoon.

8 Q. You indicated that you were on a number of FAA, two FAA
9 committees and then one other group. This FAA task force,
10 how large is that?

11 A. The FAA task force, which one?

12 Q. Commissioned by?

13 A. The one that was commissioned by Congress?

14 Q. Yeah.

15 A. Yeah. The Congress called it a task force. But the
16 FAA, in order to meet that obligation that they owed to the
17 Congress, they formulated an ARC, which is an Aviation
18 Rulemaking Committee. The number of people on the Aviation
19 Rulemaking Committee -- let me think.

20 Q. Would it be 12?

21 A. That would probably be close. I couldn't tell you the
22 exact number.

23 Q. In fact, you're not the only person who is with US
24 Airways who is on that committee, are you?

25 A. Absolutely not. John Sable is also on it.

1 Q. In fact, John Sable was the co-chairman of the Pilots
2 Association Safety Committee until sometime this year, and
3 indeed is still on the Safety Committee. You were aware of
4 that were you not?

5 A. Absolutely. He left the co-chair in, I think, I believe
6 February of this year.

7 Q. Right. And he was a former Check Airmen?

8 A. Absolutely.

9 Q. And you know him to be a good pilot and someone
10 concerned about safety?

11 A. I know John is a good pilot, yes. And he has a concern
12 about safety.

13 Q. Now, is there any other airlines with that 12-member
14 committee where there's both a representative from the
15 company and a union safety representative picked by the FAA
16 to be on that committee?

17 A. No.

18 Q. When a US Airways pilot is flying or has landed and has
19 a question, each US Air pilot has someone who is known as a
20 dispatcher; is that correct?

21 A. That's correct.

22 Q. And a dispatcher, I believe, for a number of your
23 various airplanes are located in Pittsburgh?

24 A. Well, yes. I want to correct one thing. The pilot
25 doesn't have a dispatcher. The crew has access to a

1 dispatcher that is responsible for that flight.

2 Q. And typically a dispatcher would have how many flights
3 under his or her control at any time?

4 A. I don't know the answer to that question.

5 Q. Now in addition to the dispatcher, US Airways maintains
6 a portion of its organization called Maintenance Control,
7 does it not?

8 A. MOC, Maintenance Operational Control, yes.

9 Q. And the person in Maintenance Operational and Control,
10 are divided by desks of people who specialize in knowing the
11 requirements for the various airplanes flown by US Air;
12 that's correct too, isn't it?

13 A. Yes, it is.

14 Q. Now, if a pilot was alerted to a potential problem on
15 his or her airplane while it was on the ground, it would be
16 appropriate for them to call their dispatcher to inquire if
17 they needed to go further, wouldn't it?

18 A. That's exactly who we want them to call, yes.

19 Q. And then from there if the dispatcher thought it was a
20 issue that needed maintenance control, the dispatcher can
21 connect the pilot with maintenance control, can't they?

22 A. That's correct. That's what they will do.

23 Q. And then maintenance control is there to provide
24 guidance with regard to the issue which the pilot is
25 concerned about, correct?

1 A. That is correct.

2 Q. Now, turn your attention if you would, to deposition
3 Exhibit 30. That's the -- I mean, declaration. And take a
4 look at the paragraphs beginning with paragraph number 8.

5 A. I just want to make sure I'm on the same page. Is this
6 Lyle Hogg?

7 Q. Yes, it is.

8 A. And we're going to page eight?

9 Q. We are.

10 A. Okay.

11 Q. Now did you become aware, in say between November 28 and
12 December 1st of 2010, that at least some issue had arisen
13 regarding the inspection holes on certain aircraft operated
14 by US Air?

15 A. I'm not sure when I became aware of it, but I know this
16 issue started to arise at this time as documented here, yes.

17 Q. Now, when the issue began to arise for a pilot, a pilot
18 calls the dispatcher, the dispatcher calls maintenance
19 control, and maintenance control sends out a maintenance
20 individual to correct the issue. That's an indication that
21 indeed the issue requires some attention, isn't it?

22 A. Yes. Hmm-hmm.

23 Q. And you would expect your maintenance control folks in
24 Pittsburgh to know when something -- the level of importance
25 in making that correction, whether it needed to be done then,

1 or whether it could be delayed, or at what was the
2 appropriate time for dealing with the issue. That's what
3 maintenance control is about, isn't it?

4 A. You use the word importance. I think what you were
5 really stating was the timing of when a repair needs to be
6 made. Yes, they do know the timing they -- they should know
7 the timing of when a repair should be made, yes.

8 Q. And if the evidence shows that when pilots with regard
9 to these inspection holes in the airport -- airplane --
10 aircraft, call their dispatcher, were referred to aircraft
11 maintenance, aircraft maintenance then dispatched a mechanic
12 who told the pilot, put the flaps up I am fixing it now.
13 That's at least an indication, is it not, that maintenance
14 control thought that's an issue needed attention at that
15 time?

16 A. I would say it is.

17 Q. Do you know -- did you ever discuss this issue with
18 Mr. Hogg between November 28 and December 1st of 2010?

19 A. I have no idea.

20 Q. Think for a moment. Do you recall any such discussion?

21 A. With Captain Hogg?

22 Q. Yes.

23 A. No. Not -- no, I don't.

24 Q. Did you discuss it with anyone at the Pilot's
25 Association?

1 A. No.

2 Q. Now take a moment if you would, and read the paragraphs
3 in Mr. Hogg's declaration beginning at paragraph seven,
4 "Refusals to Fly Aircraft-s with Legal Minimum Equipment List
5 and Maintenance Write-ups." Do you see that section?

6 A. Yes, I do.

7 Q. If you would, take a moment and read in that through
8 paragraph 15.

9 Have you had that opportunity?

10 A. Yes, I have.

11 Q. Do you see over in paragraph 13, the discussion of the
12 alert that the company had obtained? "Has obtained relief to
13 allow up to 100 hours of operation without the inspection
14 ports being covered."

15 A. Yes.

16 Q. Do you know if anytime before December 1, maintenance
17 control had been advised that this particular problem did not
18 require a immediate fix?

19 A. The interesting thing about this, you asked me, had I
20 talked to --

21 Q. Would you answer my question first.

22 A. Sure. Would you repeat the question again.

23 Q. My question was, do you know if maintenance control had
24 received any advice about the time that could be delayed for
25 this fix, prior to US Air obtaining this December 1st

1 document from Boeing?

2 A. It wouldn't be from Boeing.

3 Q. Okay. Document from which airline? Airbus.

4 A. The problem is, we did not get relief from Airbus. We
5 got a -- they're confusing things here. We did not get a
6 relief from Airbus. What we had is, we put a self-imposed
7 limit of 100 hours. There's a difference.

8 Q. Now, I'm reading -- read along with me in paragraph 13.
9 It states, "The company has obtained relief to allow up to
10 100 hours of operation without the inspection ports being
11 covered." Is Mr. Hogg using incorrect language there?

12 MR. MCGUINNESS: Objection, Your Honor.

13 THE COURT: Sustained.

14 Q. (By Mr. Gresham) Do you see the use of the term
15 "relief"?

16 A. Yes, I see what you're talking about now.

17 MR. MCGUINNESS: Objection, Your Honor; being
18 mischaracterized. This is a response to the company's
19 message. USAPA released an update --

20 THE COURT: I'll let you Redirect on that.

21 THE WITNESS: I guess, my confusion here is, I'm
22 not sure whose words these are in the quotes. I think
23 they're words that USAPA wrote. And I think you're telling
24 me that they're words that Lyle Hogg work.

25 MR. MCGUINNESS: The declaration is plain, Your

1 Honor.

2 THE COURT: Wait --

3 THE WITNESS: I'm confused.

4 THE COURT: Ask your next question, Mr. Gresham.

5 MR. GRESHAM: I will ask the next question.

6 Q. (By Mr. Gresham) Do you understand it to be correct that
7 the company, at some point, received a technical document,
8 for lack of a better word, from Airbus that said it could --
9 this fix could be delayed for up to 100 hours?

10 A. No, we did not.

11 Q. You did not obtain that?

12 A. No. We -- Airbus did not tell us that you can only do
13 this for 100 hours. US Airways on its own said, we are going
14 to use 100 hours as our own. What Airbus said, is that you
15 can operate these airplanes at the next -- I'm trying to
16 remember. I have to look at the reference here. In fact, if
17 you like to, we can do that. We can go into the exhibit.

18 But basically what the exhibit says is that, we -- the
19 airplane -- to have that tape put on it, it would be at the
20 next check or the next this or the next thing. It didn't say
21 100 hours, it didn't say anything. It could be forever. I
22 don't know without looking at this it could be the next B
23 check.

24 In other words, what Airbus said is, this is not an air
25 worthiness item, and it does not have to be immediately

1 repaired. This is not something Airbus came up with all of a
2 sudden, this was in existence.

3 Q. If it was in existence, do you know why your maintenance
4 control was unaware of it?

5 A. Oh, I'm sure that, you know, again, that's one of the
6 reasons we as pilots do threaten air management. People do
7 make mistakes and they may not have all the information
8 available to them at the time. I do not know why they did
9 not know that.

10 So, to further answer your question is, one of the
11 things we try to do is to be, we are, as you can see with 100
12 hours, we are more conservative.

13 Q. But the pilots, initially, when those -- that item was
14 getting repaired immediately, had reason to know that at
15 least maintenance control believed that to be appropriate,
16 didn't they?

17 A. That's correct.

18 Q. So their alert would have only come after they had
19 had -- assuming this is what the evidence shows -- contact
20 with maintenance control?

21 A. Oh absolutely. No, I agree with that.

22 Q. And it was at that point that the Pilots Association
23 issued their alert, isn't it?

24 A. It's at that point they issued their alert without any
25 consultation with the company.

1 Q. Well, maintenance control is a management function of
2 the company, isn't it?

3 A. No. I don't think it's a management control. You might
4 talk to the term of managing the maintenance of the airplane
5 at the time, but it's not upper management.

6 In other words, something like this, before US Air would
7 put it out, it has to go to our engineering department to
8 look at it. It goes to a lot of different places within the
9 company before we would put something out to the pilot group
10 to tell them to do something.

11 Q. Yes. But when USAPA goes to the maintenance control,
12 they're going to the people that they have been told are the
13 appropriate people from which to obtain guidance regarding
14 the maintenance of their aircraft?

15 A. Not USAPA. As a pilot, yes. But not USAPA.

16 Q. Well, pilots in USAPA?

17 A. A pilot.

18 Q. Any pilot?

19 A. A pilot, yes.

20 Q. Okay. Now the pilot, it is true, is taxed with the
21 ultimate responsibility for the safe operation of the
22 aircraft that he is put in command of, correct?

23 A. Yes, that is correct.

24 Q. And these figures that you have provided were what
25 occurred when these US Air pilots were operating these US Air

1 aircraft?

2 A. That is correct.

3 Q. That includes these pilots that are sitting right here
4 too, doesn't it?

5 A. Absolutely.

6 Q. Now, were you contacted by Mr. Hogg or anyone regarding
7 whether or not US Airways would participate in Dr. von
8 Thaden's safety culture survey?

9 A. I was contacted by Tom Kubik. I received an e-mail.

10 Q. And did you know who Dr. von Thaden was?

11 A. I did not know who she was when I was contacted. But
12 the information that was provided for me in the e-mail,
13 explained the safety culture survey, and gave background, and
14 from that information is how I learned who she was.

15 Q. And she is indeed a recognized expert in that area,
16 isn't she?

17 A. I am not an authority to know that, so I can't answer
18 that question.

19 Q. Did you determine from anyone if she had actually
20 conducted studies for Air West?

21 A. Actually, what I did, once I learned that, I did not
22 know that at the time. I actually was able to locate that
23 study and take a look at that study. And what I discovered
24 was, she participated in the survey. She was not in charge
25 of that survey, but she was a participant.

1 Q. She was one of the folks working on that survey?

2 A. She was one of the folks working on that survey, she was
3 not the lead.

4 Q. But did you do a thumbs up or a thumbs down or was that
5 left to Mr. Hogg?

6 A. That wasn't Mr. Hogg's decision. It was Mr. Hogg, it
7 was my decision, it was not one person as I said before, made
8 the -- we talked about what the situation was, and we made a
9 decision based upon a bunch of different factors that we were
10 not gonna participate.

11 Q. Okay. You said a number of folks, it was you, Mr. Hogg
12 and who else? Corporate Communications?

13 A. No, Corporate Communications was not involved in the
14 decision.

15 Q. Higher up in management?

16 A. Probably, yeah.

17 Q. Who were they?

18 A. Who are what?

19 Q. Who are the other people beside you and Mr. Hogg who
20 were making this decision for US Airways?

21 A. I would say that on our recommendation, in other words,
22 I, Captain Hogg, myself recommendation to Robert Iceholm
23 (phonetic spelling) was that we recommended that we do not
24 participate.

25 Q. And who is Mr. Iceholm?

1 A. He is our chief operating officer.

2 Q. Where is he located?

3 A. He's located in Phoenix.

4 Q. And was he legacy US Air or legacy Air West?

5 A. Well, he actually, years ago, was with America West and
6 then he left. He was with Northwest he had some other jobs
7 in there. And then after the merger, I'm trying to remember,
8 I think it's been three or four years, he was rehired back
9 into US Airways.

10 Q. But he had never been a manager at what was at that time
11 US Air, before that Piedmont?

12 A. No.

13 Q. Now, US Airways has a number of performance measures
14 with regard to bonuses for its management employees, correct?

15 A. Yes, they do.

16 Q. Now, do you receive a bonus in addition to your salary?

17 A. Yes, I do. Well, when we meet the criteria, yes.

18 Q. Right. And do you understand as a person who has been
19 involved in safety, that there at times can be a tension
20 between safety and those factors the airline is looking for,
21 on time performance, particularly?

22 A. I would not agree with that statement.

23 Q. You never believed that those might be a tension when it
24 is a part of a bonus system?

25 A. Oh no, none whatsoever.

1 MR. GRESHAM: Okay. Thank you.

2 THE COURT: Any Redirect?

3 MR. McGUINNESS: No Redirect, Your Honor.

4 THE COURT: I'm sorry. When you said, thank you, I
5 thought you were done.

6 MR. GRESHAM: I am.

7 THE COURT: You may step down.

8 THE WITNESS: Thank you.

9 THE COURT: Is that the showing for the Plaintiff?

10 MR. SIEGEL: Yes, it is. Thank you, Your Honor.

11 THE COURT: You all prepared to call witnesses at
12 this time?

13 MR. O'DWYER: Yeah.

14 THE COURT: Call your first witness.

15 MR. GRESHAM: Your Honor, could we make our opening
16 that we deferred?

17 THE COURT: Yes. Absolutely.

18 MR. O'DWYER: May it please the Court.

19 THE COURT: You stand for this part.

20 MR. O'DWYER: Your Honor, I have a difficulty
21 understanding the protocol, but I certainly do want to stand
22 for this.

23 May it please the Court, on June 16, 2011, US
24 Airways Captain Valerie Wells, with 30 years of experience,
25 stopped her flight from departing. Something was wrong with

1 the airline -- with the airplane. The airline, the airplane
2 mechanics -- the airplane electronics went blank. She
3 decided at that point in time that she was not going to take
4 her plane across the transatlantic and she wanted it taken
5 out of service.

6 Despite her valid concerns, US Airways pressured
7 her to fly that plane. And when she refused to jeopardize
8 the safety of her passengers, and herself in an unprecedented
9 and humiliating action, US Airways took her, called security,
10 and escorted her off the premises. This is just one example
11 of what is happening at US Airways in regard to safety.

12 Last night in this very airport, two flight
13 attendants were taken to the hospital because of an unsafe
14 condition on US Airways flights. Noxious fumes were found in
15 the flight, and the flight was -- landed at Charlotte. The
16 flight attendants were taken to the hospital. And the pilots
17 were required to go off their regular flight procedures and
18 put on oxygen masks to assure themselves that they were not
19 going to be overcome by those noxious fumes. And yet today,
20 even today, the company has produced no written policy in
21 regard to noxious fumes.

22 In response to USAPA's concerns about the safety of
23 its pilots and passenger public, as we've already seen, US
24 Air has been completely unresponsive. Has refused to allow
25 the mere participation of US Air, in a valid flight safety

1 survey, which they in fact had approved in a previous
2 publication, has refused to cooperate with USAPA in trying to
3 maintain an optimally safe airline.

4 In response to that, recently US Air -- I'm sorry,
5 USAPA took out an ad in the *USA Today*, bringing to the
6 public's attention that US Airways unwritten policies was
7 revenues first, safety second. The response to that, Your
8 Honor, is this lawsuit.

9 We're here today not because of what the pilots
10 did, but because of what the pilots said.

11 Over the course of the last few years there is --
12 has been numerous violations of the Railway Labor Act by the
13 company, including threats, harassments and failure to
14 bargain in good faith.

15 The pilots are justifiably concerned and indeed
16 angry at the policy of US Airways to flaunt their obligations
17 under the Railway Labor Act.

18 But they have done, the responsible thing. They
19 have sought redress in the U.S. District Court for the
20 Eastern District of New York. And they are -- that action,
21 as Your Honor is well aware, is presently pending.

22 They have sought redress there, and not as the
23 company contends, by an illegal job action.

24 The evidence will show on the contrary. That each
25 time any of these so called e-mails or threats or whatever

1 were addressed to USAPA, they were addressed by the
2 organization, and the organization instructed their pilots
3 that they are to obey the Railway Labor Act.

4 In particular, there are two instances where
5 whatever the company has been alleging, have been in fact
6 violated or have been in fact addressed in a spirit of
7 cooperation.

8 The whole question of distance learning, which of
9 course is now moot, showed that perhaps some pilots in
10 response to being upset by the company's repeated failures to
11 obey the Railway Labor Act, had urged their fellow pilots
12 to -- not to do distance learning.

13 Immediately upon hearing this, the USAPA president
14 wrote a letter to his pilots and specifically stated that it
15 was not the policy of USAPA to have the pilots disobey the
16 Railway Labor Act and to urge them to complete their distance
17 learning.

18 He also asked at the same time, for the cooperation
19 of the company, in terms of giving him specific information
20 or specific evidence that he could use to further redress
21 whatever problems there was in distant learning. The company
22 remained silent.

23 Just last week, the president of the union wrote a
24 letter to its pilots, having read some of these anonymous
25 e-mails to which no credence at all should be given. But

1 having read them, in an essence of caution, once again urged
2 the pilots to where there was time to take extra flights, to
3 tell them to do that.

4 But in the end, this union is willing, ready and
5 able to cooperate in any way, shape or form to assure the
6 cooperation of this -- of the company, in an efficient
7 operation of the airline.

8 What this union is not ready, willing and able to
9 do, is to compromise the safety of its members and the
10 passenger public in this unrelenting press for revenue
11 enhancement.

12 You will hear from Captain Kubik, Captain Sable,
13 Captain Wells, Captain Cleary. You will hear from them that
14 in each and every instance, their concerns are both valid and
15 well intentioned.

16 As licensed professional pilots, given the
17 authority over that plane by the FAA, it is their
18 responsibility to the passenger public and indeed to
19 themselves and their families, to assure the safe operation
20 of those planes.

21 And in the absence of a safety culture promoted by
22 this company, it is their duty to maintain a safe airline.
23 And that's all this case is about. It's about the safety of
24 the passenger public, the safety of the pilots, and the fact
25 that this union has brought some egregious situations to the

1 attention of the passenger public.

2 This case is not about what the pilots have done,
3 but has everything to do with what the pilots have said.

4 THE COURT: Call your first witness.

5 MR. GRESHAM: We would called Captain Valerie
6 Wells.

7 THEREUPON, VALERIE WELLS, being first duly sworn, testified
8 as follows during DIRECT EXAMINATION BY MR. GRESHAM:

9 Q. Would you state your name please?

10 A. My name is Valerie Anne wells.

11 Q. How are you employed?

12 A. I'm an international captain in Philadelphia with US
13 Airways.

14 Q. Captain, how long have you flown for either US Airways,
15 US Air or one of the earlier versions of this airline?

16 A. Over 32 years.

17 Q. And are you a member of the US Airline Pilots
18 Association?

19 A. Yes, I am a member.

20 Q. Do you serve on any committees for USAPA?

21 A. I serve on two committees.

22 Q. And what are they?

23 A. I serve on the Uniform Committee as a committee member.
24 And I also serve on the Critical Incident Response Committee
25 as a chair.

1 Q. And what is the responsibility of the Critical Incident
2 Response Committee?

3 A. We address individual pilots after an accident or
4 incident in terms of stress and its effects physically,
5 emotionally, psychological and behaviorally.

6 Q. To help them be able to get back on the job and fly as
7 pilots?

8 A. To process the stress from the traumatic event, correct.

9 Q. Now I want to turn your attention to Tuesday June 16 of
10 2011. Were you flying on that day?

11 A. I was assigned to fly on that day, yes.

12 Q. And to what flight were you assigned?

13 A. Flight 718.

14 Q. And what was the destination of Flight 718?

15 A. Rome, Italy.

16 Q. What time was Flight 718 initially scheduled to take
17 off?

18 A. 6:15 p.m. local time.

19 Q. And that would have been eastern daylight time at that
20 point?

21 A. Yes, sir.

22 Q. Now was there an initial delay to the flight taking off?

23 A. Yes.

24 Q. And what occasioned the initial delay?

25 A. One of our flight crew members, a flight attendant, had

1 a death in the family from an accident.

2 Q. Now -- and was that crew member replaced on your crew?

3 A. Yes. That crew member was replaced after a delay.

4 Q. Now, there are flight attendants on such a flight. How
5 many crew members are there? How many pilots are there on
6 this Airbus 330 flight?

7 A. For this flight, an international flight, we were
8 scheduled with three.

9 Q. And you served as the captain?

10 A. I was the captain on that flight.

11 Q. Who were the other two pilots and what designation did
12 they go?

13 A. There was a first officer and also an international
14 relief officer.

15 Q. And is it required when you're making an international
16 flight of this length, that you have a third pilot on the
17 plane?

18 A. Yes, it is required.

19 Q. Now, once you are, what kind of day was it in
20 Philadelphia on June 16? What was the weather like?

21 A. It was a very hot summer day.

22 Q. Now, when you have a full crew and getting ready to get
23 this airplane ready to fly, what do you do as a crew?

24 A. When the replacement crew member came we briefed her,
25 both myself from the flight deck and also the lead flight

1 attendant.

2 Q. Now, do any of the pilots make a check of the plane
3 prior to its departure?

4 A. Yes. As part of our standard operating procedures my
5 IRO, International Relief Officer, does what we call a walk
6 around.

7 Q. And after the walk around, do the pilots have any sort
8 of communication together to prepare to go on this flight?

9 A. Yes, we did.

10 Q. What do you call that?

11 A. Well, a crew briefing.

12 Q. Okay. Now at some point when the crew was in the
13 cockpit, did there occur a malfunction?

14 A. Yes.

15 Q. And what was the initial malfunction or what occurred
16 in -- on the flight deck that alerted you to the fact that
17 there was a malfunction?

18 A. Okay. We had several malfunctions prior to our
19 pushback, which were addressed by maintenance. But at
20 pushback time is that where we want to talk about?

21 Q. Okay.

22 A. At pushback when we had briefed the crew and the cabin
23 was ready, we were about ready to put call for pushback
24 clearance when the APU auto failed.

25 Q. And what is the APU?

1 A. The APU is the auxillary power unit.

2 Q. And when that occurred, did anything else occur in the
3 cockpit?

4 A. Yes, sir. Unexpectedly, our screens -- we have what we
5 call a glass cockpit. All our screens went black. All the
6 lights, our emergency lights went out and -- yes. Yes,
7 that's what happened.

8 Q. Now, did you try at that point to alert the mechanics or
9 ground crew as to what had occurred?

10 A. Well, our first attempt was to re-establish the power
11 through our auxillary power unit. And that attempt was
12 unsuccessful. And so after that attempt, I went to try to
13 use our number one radio. Which is the radio that should be
14 available in the configuration in which the batteries are
15 only supplying power to the aircraft, the main batteries.
16 And I was unable to use the number one radio.

17 Q. So how were you able to contact the ground crew or the
18 mechanics?

19 A. Since we had no radios, we opened our sliding windows,
20 the side windows. And because maintenance personnel and ramp
21 personnel were down for the pushback, they were nearby and we
22 yelled for help.

23 In -- specifically to re-establish the power. And
24 secondly, to get maintenance up to the aircraft.

25 Q. Now, you had flown this aircraft on a number of

1 occasions before this flight?

2 A. I have over 5,000 hours in the A-330.

3 Q. To you and to your crew, did it appear that the only
4 issue at this point was that the auxillary power unit had
5 failed?

6 A. That was immediately recognizable that it was a much
7 larger failure than the auxillary power unit.

8 Q. Now at the time that you had this failure, did you have
9 any discussion with your crew about any conversations they
10 had had regarding this particular aircraft prior to the
11 cockpit going dark?

12 A. During my IRO's walk around, when he returned, he told
13 us, the cockpit crew, that the ground crew, the ramp
14 personnel, had told him or asked him an unusual question. Be
15 sure -- something about, is the APU on, or to be sure it was
16 on, because they had had electrical problems with that
17 airplane all day.

18 Q. And when the person who makes the inspection obtains
19 information like that, is that a part of the information that
20 is then shared in the crew briefing?

21 A. Yes it is. Whenever they do a walk around, they share
22 what they find, correct.

23 Q. So after you had opened the window and called down, what
24 occurred next?

25 A. The ground personnel, ramp personnel, re-established

1 ground power from the ground, and they returned the jetway to
2 the aircraft and maintenance came on board.

3 Q. And what did maintenance do once they had come on board?

4 A. When maintenance came on board, they came in, they
5 listened to what we said had happened. That the APU auto
6 failed, that the cockpit had gone black, that we did not have
7 our radios, that we had not had the expected overhead light.
8 And that they listened.

9 And one mechanic sat down in the first officer's seat
10 and attempted a restart of the APU.

11 And the second mechanic that was in the cockpit ran what
12 we call a bite test for the systems on the airplane. And he
13 said that the bite check had not shown an auto fail of the
14 APU or any other electrical failures. And -- go ahead -- you
15 look --

16 Q. Are you finished?

17 A. Well -- and I was gonna say that the first mechanic that
18 attempted the restart, was able to restart the APU.

19 Q. Did either of them refer to what they call this type of
20 thing with regard to the Airbus?

21 A. In discussing the black cockpit, the mechanic that was
22 running the bite check called it a "spurious Airbus thing".

23 Q. Now, is there another auxillary power in the aircraft
24 beyond the APU?

25 A. Okay. On auxillary power?

1 Q. Yes.

2 A. In flight we would have the RAM air turbine as discussed
3 earlier.

4 Secondly, but that's not on the ground. On the ground
5 then, our backup power then would have been the batteries,
6 the main batteries.

7 Q. Do you have a name for them for these particular planes
8 as the battery bus?

9 A. Yes. It is called the battery bus.

10 Q. Now, to your knowledge, have there ever been aircraft in
11 flight which at some point were down to the battery bus as
12 the only means of powering the aircraft?

13 A. Yes. There's been a few in the last few years.

14 Q. Do you know if any of them had been the result of an
15 international night flight over water?

16 A. No.

17 Q. Other than referring to this as the "spurious Airbus
18 matter" or problem, did either the mechanics appear to
19 understand the situation with regard to the fact that the
20 battery bus may not be properly operating?

21 A. They did not seem to understand.

22 Q. So what happened after the mechanics had at least
23 initially gotten the APU restarted?

24 A. The mechanic asked if that APU failure had been recorded
25 in the aircraft maintenance logbook.

- 1 Q. And what was the response?
- 2 A. That we had not.
- 3 Q. Did you at that point?
- 4 A. And then he asked if we were planning to do that.
- 5 Q. And what was your response?
- 6 A. Yes.
- 7 Q. And did you at that point?
- 8 A. Yes, I did.
- 9 Q. And what was the mechanic's response when you said, yes,
10 and went ahead and recorded that?
- 11 A. He seemed to me to be frustrated. And he said that that
12 APU had had multiple failures, and that now they would need
13 to put it on MEL.
- 14 Q. What is an MEL?
- 15 A. A minimum equipment list.
- 16 Q. Now, did the mechanics then make any notation in the
17 logbook after you had made your entry?
- 18 A. At that point in time they took the logbook away to add
19 their -- their entry to the logbook.
- 20 Q. Is that usually what occurs, that you put something in
21 the logbook and mechanics come in and they take the logbook
22 away?
- 23 A. Well, what made this unusual was that they took it away
24 like before we had finished addressing all the issues.
- 25 Q. And what other issue were you expecting or needing for

1 them to correct?

2 A. The fact that we did not have what we expected the
3 battery power to power our primary, our most essential
4 equipment in the case of battery power only operation, to the
5 extent that we did not even have a radio to communicate.

6 Q. So take us on through this evening. They've now taken
7 your logbook out. Now did the other two members of the crew
8 agree with your assessment as you were there in the cockpit
9 that there was more going on here than just the APU going on
10 and off?

11 A. Yes. After the maintenance left we had a discussion and
12 troubleshoot what might have, could have happened. Because
13 none of us had ever seen a failure like that on an A-330.

14 And we -- I came to the decision that when we did get
15 the logbook back, that we would add specifically what else
16 had happened. Because in our logbooks we only write one
17 failure on each logbook page.

18 Q. And the mechanics had taken your logbook away before you
19 had the opportunity to put the second item on the list?

20 A. Yes.

21 Q. Take us on through this evening now. You have your
22 crew, you have this concern, you're waiting for your logbook,
23 what occurs then?

24 A. There were -- there were two things that occurred. One,
25 I got some messages to call my chief pilot. A message from

1 the customer service agent.

2 Q. So the customer service agent came on the plane to tell
3 you that?

4 A. Well, actually I was standing in the jetway. But they
5 handed me a piece of paper with a telephone number on it that
6 was not the chief pilot's office's number, but a number to
7 call my international chief pilot.

8 Q. And did you call?

9 A. Yes, I did.

10 Q. And what happened in that conversation?

11 A. Well, I went out to the podium to use a phone. And in
12 that conversation our international chief pilot asked me,
13 what was the MEL on the airplane. And he -- I told him that
14 the MEL was the in-op APU.

15 And his next question was, are you refusing to fly. And
16 I responded, I want to fly. I want an airplane that's fixed.
17 I want this airplane fixed, or I would like -- we knew there
18 was an airplane in the hangar -- or I would like the airplane
19 in the hangar.

20 Q. So there was another airplane available to make this
21 flight?

22 A. At the time we spoke it was still in maintenance as
23 well, but it had an expected return to service within two
24 hours.

25 And he asked me that question five times, with me giving

1 him the same answer.

2 Q. Did you make some attempt in there as he was saying,
3 will you fly, will you fly, that there were perhaps other
4 problems? Were you able to get that across to the chief
5 pilot in that conversation?

6 A. I was not able to do that.

7 Q. Did he appear to have any interest in this matter other
8 than to determine if you were refusing to fly?

9 A. His only interest, in fact, his only question was, are
10 you refusing to fly.

11 Q. So what occurred after your conversation with the chief
12 pilot?

13 A. I returned to the aircraft, and on my way back I met
14 with -- I met up with my first officer. And in the jetway
15 were two mechanic supervisors. They introduced themselves as
16 such.

17 Q. Okay. Tell us about that, you, your first officer and
18 the two supervisors from mechanics?

19 A. Yes. They wanted to explain to me what they called the
20 legal APU MEL. And the operational procedures associated
21 with that MEL.

22 Q. What was their tone or their demeanor as they were
23 addressing you as the captain of this aircraft?

24 A. The man that was explaining the MEL was, seemed to me to
25 be quite angry. He leaned forward into me, pointed his

1 finger and was so angry he was spitting. I stepped back
2 once, and he stepped forward. And I stepped back again, and
3 he stepped forward again.

4 Q. Ultimately was there some interaction to get between you
5 and the fella who was stepping towards you?

6 A. Yes, there was. His -- the second supervisor that was
7 there, after he had explained the MEL twice, the second
8 supervisor reached across the other man's body with his left
9 arm and said, I think we're done here. It's time for us to
10 leave.

11 Q. Now, other than calling the problem with the blackout in
12 the cockpit a "spurious Airbus issue", had anybody at that
13 point evidenced any desire in getting that examined and taken
14 care of?

15 A. No.

16 Q. After your interactions with the two aircraft
17 maintenance supervisors, what did you do?

18 A. I returned to the cockpit.

19 Q. Now, where is the -- where are the passengers at this
20 point?

21 A. The passengers are still on board the aircraft.

22 Q. And how was the aircraft being cooled at that point?

23 A. About that time maintenance had come on board the
24 aircraft and turned off the APU. And so at that point in
25 time, our air conditioning was being supplied by the

1 auxillary power unit. And so when they turned it off, we had
2 no air conditioning on the airplane.

3 Q. Is there a way that as a captain you can get some relief
4 when you're in that situation where the aircraft is now
5 providing power?

6 A. Our lead air, or in this case the air conditioning.

7 Yes, there is. There is a ground air that's available.

8 However, because the airplane, when we had arrived that
9 day had been parked in the wrong spot, the ground air hoses
10 did not reach the outlets or the intakes for the aircraft.

11 Q. So how did you deal with that?

12 A. The ramp people looked for extensions to the ground air
13 hoses. And my first officer at least twice went to tell the
14 customer service that the aircraft was indeed becoming too
15 hot for our passengers.

16 Q. What was the initial response from the gate crew?

17 A. Well, they -- they were relying on the hopes that the
18 extensions for the ground air would in fact cool the aircraft
19 off. And of course the second time we said they're not
20 cooling them off.

21 And at one point I went to say the airplane is too hot
22 we have to give our passengers an option. And they said they
23 needed some time.

24 Q. They're standing out in the cool of the gate and you're
25 asking them to get your passengers off of that airplane?

1 A. Yes. They were at the gate, the podium area when I went
2 to speak with them the first time.

3 Q. Did at some point after the gate crew had not taken any
4 action, did you take some action yourself with regard to your
5 passengers?

6 A. There came a point where my flight attendants, using
7 very good CRM said our passengers are requiring ice and
8 water, they're showing visible signs of heat stress. We need
9 to cool -- we need cooling air.

10 And when they told me that, I went to the gate agent,
11 and they referred me then to the supervisor, and she was on
12 her phone. And did I say it's been 20 minutes now.

13 So I said, we have to allow these passengers to deplane
14 because some of them are way -- are showing -- for the safety
15 of their health, is the way I phrased it, we have to let them
16 know they may deplane. And she said we need five more
17 minutes.

18 And I said we're -- the passengers are -- their health
19 is at stake. The safety of their health. And I -- she never
20 got off her phone.

21 And so I went to the passenger address system in the
22 cabin and I made an announcement that we were still trying to
23 figure out what -- how we would proceed with this aircraft
24 repair. And that I understood it was very hot on the
25 aircraft. And that the door -- the front door was open if

1 they would like to deplane into the boarding area that they
2 might do so, but to remain in the boarding area because
3 decisions were still being made.

4 Q. Now, at some point during this event, did another US Air
5 pilot appear there at the aircraft?

6 A. Yes. About the time, maybe slightly before or after
7 that, the maintenance removed or turned off the APU, a first
8 officer, a reserve first officer came down and said that he
9 was our replacement first officer. He came down to the
10 cockpit which is where we were.

11 Q. Well, had your first officer shown any signs of distress
12 that -- was it a gentleman that was your first officer that
13 night?

14 A. My first officer's, yes, a gentleman.

15 Q. So had he shown any signs of distress that he needed
16 replacing?

17 A. No, we were --

18 Q. Did --

19 A. We were surprised that we -- that the first officer was
20 replaced. And the replacement first officer said that the
21 entire crew in the cockpit had been replaced.

22 Q. But at that point he was the only one there?

23 A. He was the only one there.

24 Q. Did you have a discussion with this gentleman? Do you
25 recall what his name was?

1 A. His name is Jim Dyson.

2 Q. Did your crew explain to First Officer Dyson what had
3 occurred earlier with regard to the cockpit, the loss of APU,
4 then the total blackout in the cockpit?

5 A. Yes. That was the discussion.

6 Q. Now you had your passengers out, those who felt like
7 they needed relief. You're still there at the plane. Once
8 the passengers got out, what occurred?

9 A. After I made that PA, I went back to the cockpit and my
10 first officer and I were there as well, and at some point
11 maintenance came to the cockpit and they said that they would
12 like the crew off the airplane as well, and they wanted us to
13 deplane now.

14 So my crew, the flight attendants and the pilots, we all
15 got off the aircraft and waited in the secure area that
16 Customs uses, that's between the jetway and the boarding
17 area.

18 Q. Now at that point had any US Air management person, the
19 chief pilot, the assistant chief pilot, has anyone contacted
20 you to tell you that your crew was going to be replaced?

21 A. No one contacted us.

22 Q. So you're out now, out of the aircraft per the request
23 of the maintenance folks?

24 A. Yes, sir.

25 Q. Take us on through this night.

1 A. Well, because things had now, you know, our passengers
2 were safe and we were off the airplane and maintenance was
3 working on it, I thought now is the good time to resolve the
4 issue about the replacement crew and what's going on with us.

5 So I went to the podium to use the phone at the podium.
6 And the gate agents were very busy with passengers. And so I
7 walked to the far end -- it's a very long podium -- to use
8 the phone at the other end. But I wasn't able to get the
9 phone to get me an outside line, and so after a few minutes I
10 was frustrated and I thought I'd go back and get someone
11 else's cell phone to use.

12 Q. Who were you trying to call at this point?

13 A. Scheduling.

14 Q. What does scheduling do for US Air?

15 A. Well, they crew the flights.

16 Q. So they're the folks who assigned a crew to a particular
17 flight?

18 A. Yes, sir.

19 Q. Were you ever able to get in touch with them?

20 A. No, I wasn't.

21 Q. So now everyone is out of the plane except the mechanics
22 who apparently are still on the plane?

23 A. Yes, sir.

24 Q. You haven't been able to get scheduling. What then
25 occurs?

1 A. I walk back. It was less than five minutes. I realized
2 I wasn't going to have much luck and the agents didn't have
3 time to help. So I walked back to my crew, and it turns out
4 my first officer had been able to get a hold of crew
5 scheduling and he informed me that we had been released.

6 Q. Now what does release mean in that situation?

7 A. We were no longer on duty or responsible for that
8 flight.

9 Q. Were you and your crew though, still responsible until
10 another crew arrives since you have all these passengers in
11 the area?

12 A. Well, once we -- well, because the passengers were all
13 in the boarding area, they were now then more or less the
14 responsibility of the gate agents. And we were -- my flight
15 attendants had not been released, because they were to stay
16 to reboard the passengers when -- to be ready for the next
17 crew when they arrived.

18 Q. So there you are released, your flight attendants are
19 still there, your passengers are there, what occurred then?

20 A. Well, I felt that I should stay because our flight
21 attendants had such a tough day and we are a crew, and I
22 thought that I would stay with them until they were released
23 as well.

24 Q. Now did you have any -- make any announcements once the
25 passengers were out of the airplane regarding what -- first

1 of all, how much time has elapsed by now?

2 A. At this point in time it's 11:10 p.m., so that
3 approximately five hours.

4 Q. So did you make any announcement to the passengers to at
5 least give them some information about what was occurring?

6 A. No. Not -- my last announcement was the one on board
7 the aircraft about the heat.

8 Q. Now at some point did the other crew arrive?

9 A. Not while I was there.

10 Q. So you're there --

11 A. Well, I'm sorry, with the exception of the first
12 officer.

13 Q. Right.

14 A. Who happened to be --

15 Q. Officer Dyson is there but the other two pilots are not?

16 A. No, they're not.

17 Q. So you're there with -- your other two pilots stay with
18 you at that point?

19 A. Yes. They elected to stay as well.

20 Q. At that point were you approached by someone else who
21 was employed by US Air?

22 A. Two US Air employees came into the secure area in which
23 we were waiting and asked to speak to the captain. They
24 identified themselves to me as corporate security. And they
25 asked me to go down the jetway with them. And my first

1 officer and my IRO started to come with us, and the two men
2 told them that if they came -- say it right -- told them they
3 had to leave or they would call the police.

4 Q. So what did the two folks who identified themselves as
5 the US Air security folk do with you?

6 A. Well, my first officer and my IRO, we kind of negotiated
7 that they would stand at the end of the jetway and I was
8 maybe only 6 feet in -- within the jetway. And the two men
9 began to tell me that they had been instructed by the ramp
10 tower to have me removed from the gate area. And I asked
11 who -- I asked first, why.

12 Q. And did you get a response to why?

13 A. They said they did not know why, but they have been
14 instructed by the ramp tower.

15 Q. Okay. Other than saying we've got our orders from
16 above, is that all that they told you as far as an
17 explanation?

18 A. I asked who had ordered -- told the ramp tower to have
19 me removed? And one man said Yarco (phonetic spelling),
20 which is the name we use for -- we call our international
21 chief pilot Yarco. And the other man spoke over him and
22 said, we do not know who. We just know that we have been
23 instructed to have you removed from the gate area.

24 And so I basically repeated that back to him to be sure
25 that I understood what they had said. Because it was very --

1 in all my years I have never seen or heard anything like
2 this. So I repeated it, and they agreed that I had
3 understood what they said.

4 So then I walked out the jetway to my bags and my crew
5 and told them that corporate security had asked me to leave.
6 And I was sorry that I could not stay. And I got my bags and
7 my first IRO, International Relief Officer, walked with me.
8 And these two men followed us, like 10 feet behind, not just
9 to the edge of the gate area, but all the way out till we
10 exited security.

11 Which at this particular place is probably as far as you
12 can be from exiting to baggage claim. So it's about a
13 quarter of a mile.

14 Q. So they followed you until you went out of the secure
15 area of the airport?

16 A. The TSA secured area.

17 Q. Now, did you learn at what time the flight actually
18 departed?

19 A. The flight actually departed at 5:17 a.m.

20 Q. What time had they escorted you out?

21 A. This would be about 11:30 p.m.

22 Q. And have you learned what happened between 11:30 and 5
23 plus a.m. with regard to the plane and it's electrical
24 problems?

25 A. There were a couple of things. I know that at about

1 12:20, the IRO called me to say that the airplane did exactly
2 what I said it was doing, because he tested the system.

3 And about 1:40 the man who had been assigned as captain
4 called me to say that it had done exactly what I said it had
5 done.

6 And subsequently, I have seen, you know, the logbook.

7 Q. What does the logbook show?

8 A. Well, for my write-up about the lack of the H1 and no
9 battery bus, it says in part, "standby power checks" okay.

10 Q. Now does this particular aircraft have such standby
11 power?

12 A. No, sir it does not.

13 Q. So someone had written in the logbook about the standby
14 power, which is not a system on this airplane; is that
15 correct?

16 A. Yes, sir. That's a Boeing term.

17 Q. Now following you being escorted from the secure area of
18 the airport, was there a period of time in which you were
19 placed out of service as a pilot?

20 A. Yes, sir. When I woke up the next morning and went on
21 to what we call Cat Crew, I saw that I had been removed from
22 flying status as of the day before actually, on the
23 sixteenth. And later that morning I received a phone call
24 from the chief pilot's office informing me that I had been
25 removed from flying status, pending a Section 19 disciplinary

1 investigation hearing.

2 Q. Now, were at some point you returned to flying status?

3 A. Yes. I was returned to flying status over 20 days later
4 on July 6th.

5 Q. Anytime in between did you receive any write-up, any
6 official documentation, anything at all to show that you had
7 acted less than properly on the night of this flight?

8 A. No.

9 Q. Now, you indicated that you were aware of several
10 aircraft that it had to operate at some point only on a
11 battery bus, in other words --

12 A. Battery.

13 Q. -- for whatever reason, the other systems that applied
14 electricity had failed. What happens if you get down to just
15 power from the battery bus?

16 A. When you get down to the battery bus, the aircraft
17 powers only the most essential equipment to run navigation
18 and flight instruments. And down to just one radio. And
19 down to the minimum amount of lighting.

20 Q. What would happen if the other systems failed and the
21 battery bus wasn't operable?

22 A. Well, we would have blank screens. We would have no
23 lights. And we would have no radio.

24 Q. And this was a flight that took you across the Atlantic?

25 A. Yes, sir.

1 Q. Now you indicated if just the battery bus was operating,
2 it would operate just the most essential functions of the
3 airplane?

4 A. That's correct.

5 Q. What happens to the passengers back there. What happens
6 to the air conditioning, the lights, the toilets at that
7 point?

8 A. They have their -- if -- if it's powered, they would
9 have their emergency exit lighting to show them the way to
10 the exits.

11 Q. Other than that, would they have any power back there?

12 A. Not that I'm aware of.

13 Q. Did you understand that you were carrying out the
14 appropriate functions as the captain of this aircraft when
15 you took the actions which you took on the night of June 16?

16 A. I was exercising my authority as captain to operate the
17 aircraft safely.

18 Q. And did you believe that as long as there was an issue
19 where there was something beyond the APU was affecting this
20 aircraft, that it was your obligation to ensure that those
21 matters had been corrected before you took those passengers
22 across the Atlantic?

23 A. It was indeed my obligation. But I feel stronger about
24 it then it's my job. It's -- those are friends and family.
25 Those are people I know. That's the aircraft that the

1 company owns. It's their asset. I have a great
2 responsibility to my passengers, my crew, and the company for
3 their asset. And I felt especially that night, that that all
4 those things were -- were in danger.

5 MR. GRESHAM: Thank you, Captain Wells.

6 THE COURT: Any Cross?

7 MR. SIEGEL: We won't do Cross, Your Honor. We had
8 no advanced declaration. We'll reserve for rebuttal.

9 THE COURT: Very well. You may step down.

10 Call your next witness.

11 MR. GRESHAM: Your Honor, this was not the process
12 that we understood.

13 THE COURT: Mr. Gresham, do you have another
14 witness?

15 MR. GRESHAM: Yes, sir I do.

16 THE COURT: Call him. Call that witness.

17 MR. GRESHAM: I will call First Officer Munevar.

18 THEREUPON, ALEJANDRO MUNEVAR, being first duly sworn,

19 testified as follows during DIRECT EXAMINATION BY MR.

20 GRESHAM:

21 Q. Would you state your name, please?

22 A. Alejandro Munevar.

23 Q. And how are you currently employed?

24 A. I'm a First Officer on the Airbus 320 in Charlotte for
25 US Airways.

1 Q. How long have you been employed by US Airways?

2 A. Since 1999.

3 Q. Now, was there a period during your employment from 1999
4 to the present that you were on furlough?

5 A. I was on furlough after the terrorist attacks in 2001.

6 Q. And when did you return to -- from furlough?

7 A. In June of 2007.

8 Q. Now, had you had prior experience as an airline pilot
9 before joining US Airways?

10 A. Yes. At the time I was hired at US Airways I was flying
11 DC-9s for an airline in South America in Columbia.

12 Q. What was the name of that airline?

13 A. Aero Republica.

14 Q. Now, did you have another career before you became an
15 airline pilot?

16 A. Yes. I was an aeronautical engineer.

17 Q. And for whom did you work as an aeronautical engineer?

18 A. I worked for Boeing and I worked for GE Aircraft
19 Engines.

20 Q. What's your educational background?

21 A. I have a Bachelor of science degree in aeronautical
22 engineering.

23 Q. When did you actually become a pilot, rather than an
24 airline pilot?

25 A. Well, started flying in '79 when I was in college. I

1 began doing it professionally in '96.

2 Q. Now what is your current status at US Airways?

3 A. I'm what is called a reserve pilot on the Airbus 320.

4 Q. Now, as a reserve pilot, how does that system work?

5 What -- first of all, is there more than one status of
6 reserve pilots?

7 A. Yeah. There are two categories. One is called a
8 regular reserve. Basically they are advised of their
9 flights, nine hours before the flight. And then there is the
10 short call reserve, which is my category, and we are advised
11 at a moment's notice. It could be hours. It could be how
12 fast can you get to the airport.

13 Q. As a short haul reserve, do you actually bid from month
14 to month as has been some testimony other pilots do?

15 A. We bid our schedule. Since we don't have assigned
16 flights, we actually bid the days that we are on duty and the
17 days that we are off duty.

18 Q. How many days are you on duty within the month?

19 A. Nineteen.

20 Q. Now when you are flying, what are the requirements as
21 you understand them with regard to the time that you have to
22 rest or the time that you have between flights?

23 A. For our short call reserves, per FAA, the company has to
24 assign a predetermine set of nine hours which is called our
25 protected time. That is our rest time so you can plan

1 accordingly, and know when to sleep and know when you will be
2 on duty.

3 Q. Now, in addition to your protected time, is there
4 anytime when you are flying between flights that you may get
5 some additional time that is away from your duties as a
6 pilot?

7 A. You mean when you're in a trip?

8 Q. Yes.

9 A. Yeah. I mean, you could go on a two, three, four-day
10 trip and you will be away from home all that time.

11 Q. Now, with regard to your protected time, when does time
12 begin for you? You finish a flight, how do they determine
13 when protected time begins?

14 A. Well, the protected time is assigned a day prior to your
15 duty day. But after you have flown a flight and you come
16 back to your base, then you have 10 hours and 15 minutes of
17 rest time after you complete your flight.

18 Q. When does that 10 hours and 15 minutes of rest time
19 actually begin?

20 A. When you park at the gate.

21 Q. Now, have there been times in June, July and August that
22 you have notified US Airways that you are fatigued and will
23 not be able to fly?

24 A. Yes.

25 Q. First let me ask you, has anyone from USAPA suggested or

1 requested or in any way put pressure on you, to let US Air
2 know that you are not -- that you are fatigued and not in a
3 condition to fly?

4 A. Absolutely not.

5 Q. Let's go over those times when you have notified US Air
6 that you are fatigued and will not be able to fly. Do you
7 recall a trip that began on May 26 in which you were assigned
8 a flight to San Francisco and return?

9 A. Yes, I do.

10 Q. Tell the Court about that flight.

11 A. Well, it's what is called a redevye. That particular
12 flight had an early morning departure. So you get up early,
13 maybe 4, 4:30 to make a 7:30 departure. You arrive in San
14 Francisco about 1:30 or so in the afternoon. And then you
15 have maybe three hours or so to eat. And then if you want to
16 sleep eight hours, after three hours arriving at the hotel,
17 you need to be getting back in bed to be picked up by the
18 transportation from the hotel and then fly all night back to
19 Charlotte.

20 Q. Do you recall roughly what time that flight left San
21 Francisco that night?

22 A. I think it was past three in the morning it was
23 scheduled to depart.

24 Q. And now when you fly, do you keep your time in eastern
25 daylight time as opposed to the local time?

1 A. Yeah. Actually the company references everything to
2 Philadelphia time, which is eastern time.

3 Q. So you're leaving at roughly three or a little after
4 a.m. eastern and what time do you get into Charlotte?

5 A. Past 8:00 that particular day. We arrived at 8:19 in
6 the morning.

7 Q. Now, where do you live?

8 A. In Charlotte.

9 Q. How long does it take you normally to get from the --
10 off the plane, take care of your duties there out of the
11 airport and home?

12 A. Somewhere between an hour and an hour and a half,
13 depending on many variables.

14 Q. Now, what do you try to do after you have gotten up
15 early, flown to San Francisco, had what would be in their
16 time, afternoon in San Francisco. And then flown back home,
17 arriving back in Charlotte the next morning. What are you
18 trying to do when you get home?

19 A. When I get home I try to rest. At least make the best
20 effort.

21 Q. Now on this day after the San Francisco flight, did you
22 have any interruptions to your arrest?

23 A. Yes, I did.

24 Q. And what were they?

25 A. I was called six times by crew scheduling.

1 Q. And what was crew scheduling requesting that you then
2 do?

3 A. The crew scheduling they wanted to do what is called a
4 priority of trip assignment, which is a higher priority
5 request to make a trip to fly all night.

6 Q. And do you recall where these all night flights were
7 going to be?

8 A. I think they varied during the day. I recalled there
9 was an Atlanta allnighter. I'm pretty sure they also
10 mentioned a JFK.

11 Q. How would you have been flying when you say an
12 allnighter? What would you have done?

13 A. Well the allnighter means it's a trip that you complete
14 at night in less than eight hours. You leave, in this case
15 say Atlanta. You arrive in Atlanta. You go for a few hours
16 at the hotel. Not normal sleep, but maybe four hours or so
17 if the flight is not late getting there. Then you have to
18 get up early enough to fly the airplane back and land in
19 Charlotte before the eight hours expired. So you're up
20 pretty much all night except for a few hours at the hotel.

21 Q. Now after your redeye to San Francisco, the six
22 interruptions of your time that day, did you feel that you
23 were capable of flying safely on one of these allnighters?

24 A. I did not.

25 Q. Did you so notify US Air?

1 A. I did. I called them and I told them I had received
2 their phone calls, but I was unable to comply with their
3 request.

4 Q. Did you have any motivation for doing that, other than
5 that you did not feel that you could safely fly that
6 airplane?

7 A. I did not. It was strictly for my own safety and that
8 of the passengers.

9 Q. Turn your attention to a flight during this period in
10 around the end of May to Los Angeles and return. Do you
11 recall that situation?

12 A. Yes, I do.

13 Q. What occurred then?

14 A. That was a even more difficult redeye, because it
15 required me to be up both nights. The first day was around
16 6:00 in the afternoon departure, to fly all night and arrive
17 in Los Angeles, about 1:30 in the morning. And this is
18 considered a long overnight. For those, the hotel is much
19 further away from the airport. So you be getting into bed
20 maybe around 2:30 or so in the morning. And of course you go
21 to sleep, eight hours if you can after that.

22 But you have a total of about 21 hours to sleep for the
23 night you just flew, and for the next night you are not going
24 to sleep. So you are compressed to try to sleep 16 hours in
25 21 hours and still have your meals.

1 Q. Now, have you found that to be a possibility as far as
2 your sleep rhythms and other things, that when you have the
3 flights, be able to get to LA and rest for 10, 12, 13 hours?

4 A. No, it's impossible. Anybody that's played with their
5 circadian rhythm would know that you can't just sleep because
6 this is the time that you have to sleep.

7 Q. Now, do you recall what time that particular redeye got
8 back into Charlotte?

9 A. I think that was -- yeah. Easy number for a pilot to
10 remember. We got into Charlotte at 7:07.

11 Q. On these types of flights, how many crew members do you
12 have on the plane? How many pilots?

13 A. Two pilots.

14 Q. When you're flying these back to back redeyes, what have
15 you observed about both yourself and the captain as you're
16 flying this plane back from LAX to Charlotte?

17 A. We both struggled to stay alert, and in some cases to
18 stay awake.

19 Q. Have there been occasions on these types of flights that
20 you have observed the other pilot not succeeding in that
21 effort?

22 A. Yes, I have.

23 Q. What do you do at that point?

24 A. Well, you are really worried because you are not very
25 far from having the same lack of success. And so maybe you

1 call the flight attendants to go use the laboratory or
2 whatever it takes to increase your alertness.

3 Q. Now on this particular flight to LAX and back, when you
4 got home that day, did you receive a call from scheduling
5 about what they wanted you to then do on your schedule?

6 A. Yes. During my rest time I received two phone calls.

7 Q. And what were they requesting that you do?

8 A. They wanted me to repeat exactly the same flight I had
9 just completed, which was again to fly to LA, land there at
10 1:30 in the morning, try to sleep for two days in 21 hours,
11 and then fly a redeye back to Charlotte.

12 Q. And again, was it your determination that on that
13 flight, either out to LA or coming back on the redeye for the
14 second time, that you would have been able to safely operate
15 the airplane?

16 A. It was my decision that I could not safely operate that
17 flight.

18 Q. Now, in this month in August, since this lawsuit was
19 filed, have you had another occasion where you've had a
20 situation where you believed that the scheduling made it
21 impossible for you to safely operate the airplane?

22 A. Yes. On August 6, August 7.

23 Q. What occurred on August 6 and August 7?

24 A. August 6 was my day off. And at 6:20 in the morning I
25 received a phone call requesting me to fly from a choice of

1 about four different flights during my day off. Because it
2 was my day off and so it was the night, the day before, I had
3 gone to bed late, so I was not in a position to comply with
4 her request to go fly. And I tried to go back to sleep, of
5 course my sleep by then had been interrupted.

6 Later on that day I received -- or before I say that, by
7 4 in the afternoon in this crew scheduling computer system,
8 our protected times are published. And so by 4 in the
9 afternoon I checked to see what my protected time would be
10 for my first day on duty. And I noticed that it was 3 in the
11 morning till 12. Which is not what I had been awarded for my
12 bid. I always try to bid 10 at night to 7 so I can get a
13 normal sleep. But this particular time it was from 3 in the
14 morning till noon.

15 Q. So the scheduling times, irrespective of what you had
16 bid, simply change your protected time?

17 A. Yeah. They change many times during the course of the
18 month, yes.

19 Q. So that leads to the issue that you can never really
20 plan as to how you're going to proceed to be rested and able
21 to fly?

22 A. It makes it more difficult. And that's why, as soon as
23 the numbers are published, you look to see what you need to
24 do. In this case what I needed to do was to stay late, stay
25 up late to synchronize my circadian rhythm with my rest time.

1 Q. And what were they asking you to fly, once you had
2 adjusted -- once they had changed your rest time?

3 A. Well, I went to bed as late as I could, but I was really
4 tired because I had been waking up early in the morning. I
5 went to bed around 11:00 or so. And by 11:55 still during my
6 day off, the phone rang, and they -- they wanted me to fly a
7 one day. I don't know what it was. But I'm really, really
8 tired. I've been waking up in the morning, now waking up at
9 night. So I continue to sleep. And then -- and I knew that
10 I would not go on duty until noon.

11 However, at 5:46 in the morning they called me again.
12 And this time it was for a Montego Bay that would leave
13 roughly two hours later. Which would be a flight within my
14 protected time, but because it's international, they say that
15 the protected time did not apply.

16 So it was okay for me to go fly, even though they woke
17 me up at 11:55 and they woke me up at 5:46. So it was less
18 than six hours between phone call and phone call. And I did
19 not go to sleep immediately after the first phone call. So I
20 don't know how many hours of sleep I actually got.

21 Q. Now, is it US Air's position that if they find a flight
22 that is outside the U.S. that they can simply ignore your
23 protected time?

24 A. They do it because they say it's international and
25 protected time, per the regulations that Congress wants to

1 change is legal and only for domestic flights.

2 Q. So you're protected as long as you're flying over the
3 U.S. But once you start flying over the Atlantic you don't
4 have any protected time?

5 A. That is correct.

6 Q. Did you notify them that you did not believe, given the
7 events that had occurred with this situation, that you could
8 get up at 5 whatever the morning, and by 7:00 be taking this
9 flight to San Juan?

10 A. Montego Bay.

11 Q. Montego Bay, sorry.

12 A. Actually, thankfully our contract does have a protection
13 for us in that in our protected time, and that is that I'm
14 not obligated to answer the phone. And so, and if I answer
15 the phone, it's again a priority of trip assignment. So
16 that's going to be pressure for me to accept the flight.

17 So the easiest solution, I know I'm physically unable to
18 do it, so I just do not answer the phone and try to sleep
19 instead of arguing with them.

20 Q. You understand that that is your right given the time in
21 which they called?

22 A. Yes.

23 Q. What happened with regard to this flight in terms of how
24 US Air treated you?

25 A. Well, I don't know what happened to the Montego Bay

1 flight. Eventually when I was obligated to answer the phone,
2 I was assigned to a redeye flight to Seattle. So I ended up
3 flying late at night when they had woken me up in my rest at
4 5:46 and then before that at 11:55 at night.

5 Q. Now, I want to turn your attention to a July 10th
6 conversation that you had with a scheduling supervisor. Do
7 you recall that day?

8 A. Yes, I do.

9 Q. What occurred on that day?

10 A. What happened that day, I had, again, a protected time
11 that would expire at 4 in the morning. So meaning that at 4
12 in the morning I would go on duty until 7:00 p.m.. Four in
13 the morning sharp I was called by crew scheduling. And of
14 course they woke me up. And they told me that they had an
15 assignment. That I would not be able to do if it were
16 domestic, but because it was international I could do it.
17 And I would be going to St. Thomas and landing back in
18 Charlotte at 8:30 p.m.

19 I argue that that would make my duty day 16 and a half
20 hours, because I would probably have to get up at 7 in the
21 morning to be able to be there on time for that flight. So I
22 was not going to go back to sleep. I would have to start
23 figuring out what time do I have to get up. What do I need
24 to pack and get ready for the flight. So it was gonna be a
25 16-hour day.

1 Fifteen is already very long for any -- any profession,
2 but one where you pay your mistakes with reduction in the
3 safety. Sixteen and a half is extremely long.

4 And I asked the scheduler if she had somebody that had a
5 protected time that would better match that particular
6 flight. She said that it didn't matter because it was a
7 one-day trip, and I was the one reserve pilot available for
8 one day. And we kept arguing back and forth. And then
9 she --

10 Q. How did your conversation end with her?

11 A. She -- she offered to remove me from the flight for
12 fatigue, and I accepted. I didn't ask to be removed, she
13 offered, I accepted. I didn't at any moment say I would not
14 be available for 15 hours of reserve. I just did not want to
15 be on duty for 16 and a half hours. And so that that was the
16 end of that.

17 But when I got up in the morning I found out that
18 another pilot that was available for four days, was assigned
19 for a one-day trip, which didn't make sense because I was the
20 one available for a one-day trip.

21 And when I looked at my status at Cat Crew they had
22 changed it from available to personal, meaning I was not
23 available to the company. I called the Union for help. The
24 Union rep spoke to the chief pilot, and unfortunately my pay
25 was going to be docked because I was not available for that

1 flight or for that day, even though I was.

2 Q. And it was in your mind a flight that would have taken
3 somewhere between 15 and a half and 16 and a half hours?

4 A. It -- even if there were no delays, the best case
5 scenario I would be landing back in Charlotte 16 and a half
6 hours after I started my day. Yeah. And this is actually
7 not the one time I talked to a supervisor. This was a
8 different one.

9 Q. Okay. Was there a time that you had a conversation with
10 a supervisor when you felt that you were getting some
11 pressure to fly a flight in a situation that appeared to you
12 not to properly serve the interest of the public?

13 A. There was a time I had to call a supervisor. I had been
14 on reserve, and again my protected time this time was what I
15 had bid and had been awarded, which was from 10 at night till
16 7.

17 And with that protected time I was called to a flight to
18 San Francisco, a redeye. And I went to San Francisco came
19 back. Again, you're tired as you always are. And I came
20 back fully expecting that I would have the same protected
21 time I had before the trip, which is 10:00 p.m. till 7 in the
22 morning. So I would only be on duty for maybe three hours or
23 so, which is not long enough to be assigned to anything. So
24 I thought I will be able to rest.

25 However, 4:00 in the afternoon I go into Cat Crew, and I

1 find out that my protected time has been changed, and it is
2 not 10:00 p.m. but is 9:00 a.m. till 6 in the afternoon.

3 And what that meant to me was that as soon as my rest
4 period expired from my redeye from San Francisco, I would go
5 on duty until 9 in the morning, which is all night.

6 And I thought that was very unsafe, because I'm
7 extremely tired. They could have kept the PT that I had,
8 instead of putting me in a position where I could be called
9 to fly all night.

10 I called a scheduling supervisor asking for help, and he
11 said it is contractually legal. I asked him, is it safe. He
12 kept repeating, it's contractually legal. So we went back
13 and forth between is it safe. I said it is not. Things like
14 that. But he always state, it's contractually legal.

15 And the way the conversation made a turn was when I
16 asked him, who are we trying to kill here.

17 Q. Now, are the conversations with the schedulers recorded?

18 A. All the conversations, all the messages they leave are
19 recorded, yes.

20 Q. And after you told the supervisor, who are we trying to
21 kill, what was the supervisor's response?

22 A. He immediately offered a solution that was mutually
23 acceptable.

24 MR. GRESHAM: Thank you, sir.

25 THE COURT: Any Cross?

1 MR. SIEGEL: No Cross.

2 THE COURT: You may step down. Call your next
3 witness.

4 MR. O'DWYER: Your Honor, may we have five minutes?

5 THE COURT: Yeah. Sure. Actually take a 10 minute
6 break.

7 (A brief recess was taken in the proceedings.)

8 MR. O'DWYER: Thank you, Your Honor.

9 THE COURT: All right. That was a good idea.

10 MR. GRESHAM: We're a little puzzled, seeking
11 guidance about this notion, we thought all of the witnesses
12 would be subject to Direct and Cross. We had let the company
13 know ahead of time that we, you know, we did our witness list
14 and all and this. We're not quite sure what this notion
15 means that.

16 THE COURT: Well, I mean, my guess is that lawyers
17 have strategy and there's some strategy by the plaintiff. I
18 don't know I have to inquire, and they have to disclose.
19 They're trying this case the way they want to try, they're
20 not crossing your witnesses.

21 MR. GRESHAM: But I took the view that they weren't
22 crossing them, that they were saving for rebuttal. These
23 folks are flying. We didn't understand that that meant they
24 were going to have to stay on that -- in other words, they're
25 now released as far as witnesses because the opportunity to

1 cross-examine is here. So I just want to make sure --

2 THE COURT: I don't know what the plaintiff's
3 rebuttal case is. They have the burden in this case. I will
4 let them put on a rebuttal case when that time comes and I
5 guess they will.

6 MR. GRESHAM: I guess I'm trying to understand if
7 they thought they were reserving some examination of those
8 two witnesses in their rebuttal case. Now, obviously I guess
9 they could call them back. But I thought this was the
10 opportunity for them to cross-examine.

11 THE COURT: Yeah. I think they waived their right
12 to cross-examine the witness.

13 MR. GRESHAM: Thank you.

14 THE COURT: But I'm not going to inquire.

15 MR. GRESHAM: That was the only thing that I was
16 puzzled by. I understood they had a chance to put on
17 rebuttal, so that's fine.

18 THE COURT: We don't have much time, do you have a
19 witness you can put up?

20 MR. GRESHAM: I have a reasonably short witness
21 that I think we may be able to finish.

22 THE COURT: Well, that would be good. I haven't
23 seen many reasonably short witnesses so far today.

24 MR. GRESHAM: Well, they're usually about 5'1".

25 THE COURT: I was going to make a comment about the

1 fatigue point.

2 MR. MCGUINNESS: Is Your Honor still flying that
3 desk pretty straight?

4 THE COURT: That's why I type notes.

5 Why don't we call that reasonably short witness.

6 MR. GRESHAM: We will call Mr. John Sable.

7 THEREUPON, JOHN SABLE, being first duly sworn, testified as
8 follows during DIRECT EXAMINATION BY MR. GRESHAM:

9 MR. GRESHAM: Your Honor, for the Court and for the
10 Plaintiff, Mr. Sable has a declaration filed and that is
11 Document number 55.

12 THE COURT: Thank you.

13 MR. GRESHAM: Your Honor, if I may approach the
14 witness and give him a copy of his --

15 THE COURT: You may. Fifty-five, did you say?

16 MR. GRESHAM: Yes, Your Honor.

17 Q. Would you state your name, please.

18 A. John Sable.

19 Q. And Mr. Sable, how are you employed?

20 A. I am an Airbus A-320 Captain based in Philadelphia with
21 US Airways.

22 Q. And Captain Sable, how long have you been employed by US
23 Airways or one of its prior entries?

24 A. Approximately 26 and a half years.

25 Q. Now take a look, if you would, at your declaration.

1 Paragraph one indicates that from 1994 to 2002 you were a
2 Check Airmen in the training department of US Air; do you see
3 that?

4 A. Yes, I do.

5 Q. What does a Check Airmen do for an airline?

6 A. A Check Airmen conducts training and evaluation events,
7 both in THE simulator and in the aircraft, pilots who are
8 transitioning FOR the first time for a new aircraft, also for
9 recurrent training.

10 Q. Do you know how you're selected to be a Check Airmen?

11 A. It's an application and interview process, a number of
12 factors that are spelled out, qualifications wise. Some of
13 which are prior training department experience is one
14 preferred qualification as I recall, absence of violations on
15 your record. It's essentially a work history type
16 requirement, but it is an interview process.

17 Q. Is it considered among airline pilots to be somewhat of
18 a recognition of your abilities and your performance as a
19 pilot to be selected as a Check Airmen?

20 A. Yes, I believe it is.

21 Q. Now your declaration also indicates that you are a
22 member of USAPA's Safety Committee?

23 A. Yes, that's correct.

24 Q. And serve for approximately year and a half as one of
25 the co-chairmen along with Captain Kubik?

1 A. Yes, that's correct.

2 Q. Now, do you recall in 2010, as set out in part in your
3 declaration, that there was a issue that came to your
4 attention regarding your particular aircraft with regard to
5 certain inspection or drainage holes within the wings of the
6 aircraft?

7 A. Yes.

8 Q. Now, your declaration says that on November the
9 twenty-eighth, you received an e-mail message that indicated
10 that his plane, once he had made an entry into FDML with
11 respect to missing covers, that his plane had been grounded
12 for maintenance until repairs has been made. Do you recall
13 that?

14 A. Yes, I do.

15 Q. Do you recall who that e-mail came from?

16 A. I do not.

17 Q. And what action did you take at that point?

18 A. I happened to be in between flights on a trip. And as
19 part of our normal pre-flight duties, we conduct an exterior
20 pre-flight inspection of the aircraft required on every
21 flight. So I did that and noted these inspection holes to
22 see what the condition was of them on my aircraft.

23 Q. As a long time pilot and a former Check Airmen, when you
24 find something that is similar to what another pilot has told
25 you required maintenance, what did you do at that point?

1 A. I noted that it looked like some of the holes had been
2 covered, some had not. So I decided it would require some
3 type of maintenance intervention. The first phone call I
4 placed was to our dispatcher to ask him to connect me with
5 maintenance control representatives to allow me to discuss
6 the issue with them to see what course of action we should
7 follow.

8 Q. Had there been times in the past where you had a
9 question about your particular aircraft, where you had gone
10 through that procedure and called the dispatcher, then have
11 them put you in with maintenance control?

12 A. Yes.

13 Q. Did you consider that the appropriate way for you to
14 deal with what you had observed now about your aircraft?

15 A. Yes, I would.

16 Q. And what occurred when you -- were you put through to
17 maintenance control?

18 A. Yes, I was.

19 Q. Now, what do you understand maintenance control does for
20 an airline, in this case for US Airways?

21 A. My understanding is that they are -- they're supervisory
22 maintenance personal who have ready access to aircraft
23 diagrams, maintenance manuals and the like, to make a
24 determination of how to resolve an issue that may arise.

25 Q. Are they sort of considered the top echelon of

1 maintenance as you go up through the maintenance at the guy
2 who fixes it, the maintenance supervisor, the maintenance
3 control, is sort of at the pinnacle of that?

4 A. Yes. I would consider them to be the highest level of
5 maintenance personnel that I would have direct access to
6 through the dispatch, yes.

7 Q. And according to your declaration, you gave them the
8 explanation of what you had observed about your aircraft.
9 Indicated it was a question you had. And within five minutes
10 you had a mechanic at your plane?

11 A. Yes. It was a relatively short conversation. They
12 seemed to be familiar with the fact that this whole
13 inspection hole cover issue had arisen already. And they
14 sent a mechanic to the aircraft relatively quickly. And he
15 was prepared to address the issue and repair it.

16 Q. Now, you said that he apparently got under the airplane
17 and you said he had a yellow highlighted -- some kind of
18 manual depicting where these holes were and what should
19 happen to them?

20 A. Yes, that's correct.

21 Q. Did you have any discussions with the mechanic who came
22 out?

23 A. It was a very brief discussion. He arrived on the
24 flight deck. And I had by then made the entry in the
25 maintenance log reflecting this discrepancy, or what we

1 thought was a discrepancy with the inspection holes. And he
2 indicated that we have to extend the flaps so that he could
3 access the underside of the flaps to make the necessary
4 repairs. And that the repairs would take some amount of
5 time, an hour to an hour and a half, I believe, he indicated
6 with paperwork, and he left and began the process.

7 Q. Now did you undertake the actions that you did, calling
8 the dispatcher, maintenance control, explaining the problem,
9 did you take this action for any reason to slowdown the
10 flights of US Airways?

11 A. No, certainly not.

12 Q. Now, if you look on down in your declaration, you will
13 see that apparently you had to deal with this same issue with
14 regard to the aircraft in paragraph nine again?

15 A. Yes.

16 Q. Now, at this point as I understand it, you were at a
17 different airport, you were back in Charlotte?

18 A. Yes. That was the following day in a different
19 aircraft.

20 Q. On either -- and according to your declaration, the
21 mechanic came out, essentially with the same yellow
22 highlighted document and did what he thought needed to be
23 done?

24 A. Yes, that's correct.

25 Q. Now, on either occasion, or when you were talking to the

1 maintenance folks in Pittsburgh, did anybody tell you, don't
2 worry about this Captain Sable, we got plenty of time to deal
3 with this, it's just -- it's just something very routine and
4 don't worry about it?

5 A. No. No discussion of anything of that nature at all.

6 Q. Now, did you have some discussion with anyone on the US
7 Air Pilots Safety Committee about what had occurred?

8 A. Yes, I did.

9 Q. And to whom did you speak?

10 A. I spoke with Captain Kubik regarding the issue.

11 Q. And this was now an issue that on two days when you had
12 reported that you had gotten immediate attention to get the
13 matter corrected?

14 A. Yes, that's correct.

15 Q. So what did you and Captain Kubik -- did you come to any
16 decision about how the Safety Committee should handle this?

17 A. That was the basis for our discussion, was to determine
18 if and whether and when we should issue some kind of a notice
19 to the pilot group, informing them that this may be an issue.

20 Because in my experience with these aircraft, they were
21 immediately repaired, there was no relief other than to
22 repair them.

23 And so since I was aware of it, I certainly had an
24 obligation to address that on all my subsequent flights. And
25 if I had that obligation, then our discussion centered around

1 do all our pilots had the same obligation. So we discussed
2 whether to craft some type of safety update to provide to our
3 pilots about this issue.

4 Q. What was sort of the pros and cons and doing that?

5 A. We were waiting initially to see what the company's
6 response would be, and then base our update on that, and then
7 we concluded at some point that absent any information of
8 some sort we had to put something out. And so we constructed
9 an update that was released, I believe on November 30th.

10 Q. Now, because you had -- from the first time this arrived
11 when you had determined that you would contact the
12 maintenance control folks, was it your anticipation that if
13 this -- now that these calls were coming in, that maintenance
14 control would make some report up the line. It's happening.
15 It's happening over and over. It's not a problem or
16 something.

17 Did you have any anticipation that maintenance control
18 also had the ability and probably the obligation to talk to
19 the US Airways folks who would be concerned about this?

20 A. It was certainly apparent to me that they were well
21 aware of it from the first time it happened on the
22 twenty-eighth. So I had no reason to think that whoever
23 needed to be aware of it would not be aware of it. So that
24 was my expectation that company personnel, specifically
25 maintenance personnel are aware of this. And this was the

1 way it was determined it needed to be addressed, was through
2 immediate corrective action.

3 Q. Now take a look at paragraph 17 of your declaration 17
4 and 18 and 19. You stand by those statements Captain Sable?

5 A. Yes, I do.

6 MR. GRESHAM: Thank you. That's all I have.

7 THE COURT: Any Cross?

8 CROSS-EXAMINATION

9 BY MR. SIEGEL:

10 Q. Captain Sable, do you know Captain Hogg?

11 A. I know him through my employment at US Airways, yes.

12 Q. You know him as the Vice President of Flight Operation
13 at US Airways?

14 A. Yes, I do.

15 Q. Do you know Captain Morell?

16 A. Yes, I do.

17 Q. As the Vice President of Safety at US Airways; is that
18 correct?

19 A. Yes. I've known Mr. Morell in some of his prior
20 positions as well.

21 Q. And from time to time as a member of the Safety
22 Committee, do you have any professional conversations or
23 interactions with either Captain Hogg or Captain Morell,
24 about any of the issues involving safety or air worthiness of
25 aircraft at US Airways?

1 A. I have had a few, yes.

2 Q. I take it, however -- and if I understood your testimony
3 you on November 30, 2010, participated with Captain Kubik in
4 the preparation of the US Airways -- excuse me -- the USAPA
5 Airbus Safety Alert to the pilots?

6 A. Yes.

7 Q. And before -- and you participated in the decision to
8 send that out to the pilots; is that correct?

9 A. Yes.

10 Q. And before you did that, did you at anytime pick up the
11 telephone and call Captain Hogg to ask him what he knew about
12 the situation?

13 A. No, I did not.

14 Q. Before you sent out that alert to all the pilots, did
15 you pick up the telephone and call Captain Morell and ask him
16 what he knew about the situation?

17 A. No, I did not.

18 MR. SIEGEL: I have no further questions.

19 THE COURT: Any Redirect?

20 MR. GRESHAM: No.

21 THE COURT: All right. You may step down, be
22 excused.

23 Next witness pretty long?

24 MR. GRESHAM: Yes, sir.

25 THE COURT: I think we'll call it a day, call it a

1 week.

2 We do have this courtroom on Monday. I'd like to
3 start a little earlier than we did today. Maybe start at
4 9:30. And so I'll see you all at 9:30 Monday morning.

5 (The court was in recess for the day at 5:53 p.m.)

6 * * * * *

7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF NORTH CAROLINA
9 CERTIFICATE OF REPORTER

10 I, Laura Andersen, Official Court Reporter, certify
11 that the foregoing transcript is a true and correct
12 transcript of the proceedings taken and transcribed by me.

13 Dated this the 25th day of August, 2011.

14 s/Laura Andersen
15 Laura Andersen, RMR
16 Official Court Reporter
17
18
19
20
21
22
23
24
25