

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 II OF II

TRANSCRIPT OF PRELIMINARY INJUNCTION HEARING
BEFORE THE HONORABLE ROBERT J. CONRAD, JR
UNITED STATES CHIEF DISTRICT COURT JUDGE
AUGUST 22, 2011

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

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1 by anyone else?

2 A. Just prior to US Airways, I spent two years at Federal
3 Express in Memphis.

4 Q. And prior to that?

5 A. Prior to that I was a Beach 18 Airmail Pilot out of
6 Akron, Ohio for about a year.

7 Q. What positions have you held at US Airways?

8 A. Started as a first officer. Upgraded to captain in
9 1985. Moved into the Training Department as a Check Airmen
10 in -- around 1988 or '89. I was a line Check Airmen, a Check
11 Airmen, a Senior Instructor, an FAA Aircrew Program Designee.
12 And I spent sometime as Assistant Chief Pilot in Pittsburgh
13 under Captain Tom Johnson.

14 Q. What is a Check Airmen or a Check Pilot?

15 A. A Check Airmen generally trains, checks, oversees other
16 pilots to make sure they're doing their job correctly,
17 following the company policies and procedures, making sure
18 they're up to date with their manuals. He performs his
19 duties in both the aircraft and the simulator.

20 Q. Can you describe for the court how you were selected to
21 be a Check Airmen?

22 A. It was an interview process that I went through. And we
23 were chosen based on our qualifications, our work records,
24 our lack of violations or FAA infractions. Generally, it was
25 my understanding, that they chose the cream of the crop, more

1 or less, to be Check Airmen.

2 Q. And how long were you a Check Airmen?

3 A. I was a Check Airmen -- I was in the department twice
4 from 1988 to 2005, I believe, probably a total of somewhere
5 around 16 -- 16 to 17 years.

6 Q. Are you still a Check Airmen?

7 A. I am not.

8 Q. And why not?

9 A. They've decided to move the simulators to Charlotte, I
10 believe in 2005. I was living in Ohio at the time and about
11 an hour's drive from the simulator buildings, and I had no
12 interest in commuting to Charlotte, and I left the department
13 at that time.

14 Q. And what is your position with the company since
15 2005/2006?

16 A. I'm a Line Captain. For the first year back on the line
17 I was an A-320 Captain. And I believe in '06 I became an
18 A-330 Captain.

19 Q. And are you still an A-330 Captain?

20 A. I'm an A-330 Captain based in Charlotte, that's correct.

21 Q. Are you a member of USAPA?

22 A. I am.

23 Q. Do you have any positions with USAPA?

24 A. I'm a member of the Accident Investigation Committee and
25 Chairman of the Safety Committee.

1 Q. How long have you been a member of the Accident
2 Investigation Committee?

3 A. For approximately two years.

4 Q. And for how long have you been Chairman of the Safety
5 Committee?

6 A. Since USAPA's inception in April of 2008.

7 Q. Would you describe for the court the responsibilities of
8 the Safety Committee of USAPA?

9 A. The Safety Committee is -- generally assures the safe
10 transportation of the traveling public. We communicate and
11 advocate with our pilots with regard to safety issues. And
12 we, from time to time, interact with industry, management and
13 other airline personnel with regard to safety issues.

14 Q. What if anything does the FAA have to do with the Safety
15 Committee?

16 A. Obviously the FAA oversees, generally speaking, anything
17 that a pilot does. And of course we're all pilots, so they
18 would have oversight over us with regard to that. They also
19 are an integral part of the Aviation Safety Action Program,
20 which we are a part of.

21 Q. Would you describe to the court what that is?

22 A. The ASAP program is basically a self-disclosure program,
23 where pilots who see either safety issues or have made
24 mistakes and think that it's cause for safety concern, fill
25 out a self-disclosure form electronically, and submit it to

1 the company. Where at which point the company, a member of
2 union, members of my Safety Committee, as well as the FAA
3 look over and decide whether action needs to be taken on that
4 particular safety issue.

5 Q. Is there another area where the Safety Committee
6 interacts regularly with the FAA?

7 A. Not with the FAA, with the company. We are involved
8 with FOQA, the Flight Operations Quality Assurance Program
9 where two members of our Safety Committee validate --
10 actually three members of our Safety Committee now validate
11 flights and data that occurs -- that comes from aircraft to
12 help identify trends, to identify dangerous trends and
13 perhaps stop a problem before it develops.

14 Q. As part of your duties as Safety Committee Chairman, do
15 you receive communications on a regular basis from pilots?

16 A. Frequently, yes.

17 Q. Okay. And how does that manifest itself?

18 A. Generally through e-mails or phone calls. Substantial
19 numbers of e-mails and phone calls.

20 Q. Do you ever receive any communications in regard to
21 noxious fumes in the aircraft?

22 A. Yes.

23 Q. Okay. When was the last time that occurred?

24 A. Early on Saturday, this past Saturday -- I'm sorry.

25 Early on this past Friday morning, about 1:00 in the morning

1 concerning a flight that was coming from La Guardia airport
2 here to Charlotte.

3 Q. Can you tell the court what that was about?

4 A. Apparently on descent, an A-320 aircraft had fumes in
5 both the cabin and cockpit. They declared an emergency and
6 landed here in Charlotte. I believe the captain said that
7 two or three of the flight attendants went to the hospital to
8 get checked.

9 Q. Okay. Will you tell the court what the significance of
10 fumes in the aircraft is?

11 A. Fumes in an aircraft can be a very dangerous situation.
12 It can be something that could cause bodily harm. Generally
13 speaking, 30 percent of the air events at US Airways are
14 caused by either engine oil or hydraulic fluid. When engine
15 oil or hydraulic fluid becomes heated and then dispersed into
16 the air system, it can emit a chemical called tricresyl
17 phosphate, or TCP which is a neurotoxin. A neurotoxin can be
18 extremely dangerous.

19 We have two pilots who have lost their physicals,
20 primarily to the effects of this neurotoxin. We've had two
21 other pilots who have lost work, one of whom is now back to
22 work. There's numerous flight attendants that are off, due
23 to the neurotoxic properties of that chemical.

24 Q. Has the company issued, to your knowledge, any guidance
25 in regard to neurotoxins in the aircraft?

1 A. To my knowledge they have issued no guidance with regard
2 to neurotoxins.

3 Q. Were you a US Airways pilot prior to 2005 merger with
4 America West?

5 A. I was.

6 Q. After the 2005 merger, which company upper management
7 took control of the new US?

8 A. Upper management was the America West management.

9 Q. What if any changes did you notice in the safety culture
10 of the company, post merger?

11 A. I noticed that America West put a heavy emphasis on cost
12 that I had never seen before in my career. Not that every
13 airline doesn't do that, but I noticed that America West was
14 not like the previous airlines that had been part of US
15 Airways.

16 As a matter of fact, they changed their stock symbol
17 upon the merger to Low Cost Carrier, LCC, which I found quite
18 interesting.

19 But basically to answer your question, I saw an increase
20 in the focus on cost. And I think that directly, eventually
21 started degrading the safety culture. Everything became cost
22 oriented, in my opinion.

23 Q. From time to time as chair of the Safety Committee, did
24 you attend aviation industry conferences on behalf of USAPA?

25 A. That's part of the duties of the safety chairman and

1 members of our committee to attend as part of -- what we're
2 tasked to do in our union operating manual.

3 Q. Approximately how many conferences a year do you attend?

4 A. I would say anywhere from two to six per year.

5 Q. Who pays your expenses to those safety conferences?

6 A. The association.

7 Q. Did you attend a conference in the spring of 2010?

8 A. I did.

9 Q. And who was that sponsored by?

10 A. It was an FAA sponsored safety conference. Shared
11 Vision -- I believe it was called Shared Vision For Safety.

12 Q. Approximately how many people attended that conference?

13 A. I would say upwards of 500.

14 Q. And what type of people attended that conference?

15 A. There were industry representatives there. There were
16 pilots, line pilots there, there were union representatives
17 there. The FAA was highly represented there. And of course
18 the presenters that were putting on the different seminars
19 and instructional meetings.

20 Q. At that conference did you hear an address or a
21 presentation by Dr. von Thaden?

22 A. I did.

23 Q. Who else was present at Dr. von Thaden's presentation?

24 A. I think in that room there were probably between 50 and
25 100 people of -- and it ranged from industry representatives

1 to union representatives to line pilots.

2 Q. After Dr. von Thaden's presentation, what if anything
3 did you do at that point in time?

4 A. It occurred to me that her presentation fit what we were
5 seeing at US Airways with regard to safety culture. It
6 occurred to me that it might be a good idea to have a chat
7 with her and see if there was something that we could take
8 away from that to help us get our safety culture where it
9 needed to be.

10 Q. After speaking with Dr. von Thaden, what if any
11 discussions did you have with the company regarding her
12 survey, and the potential of commissioning same for US
13 Airways?

14 A. First after discussing with Dr. von Thaden, I presented
15 it to my committee. We had a conference call and discussed
16 the situation. And we determined as a committee that it
17 would be a good idea, perhaps, to commission Dr. von Thaden
18 in partnership with the company to conduct the survey. I
19 asked for a meeting between myself and the company. I
20 believe it was the summer of last year, about a year ago this
21 time.

22 Q. And did that meeting in fact take place?

23 A. It did, yes.

24 Q. And who was present at that meeting?

25 A. Myself, my co-chairman Captain John Sable and Captain

1 Lyle Hogg, Captain Bob Skinner for the company.

2 Q. At that meeting did you present your ideas for having a
3 safety culture survey?

4 A. We did. We attempted to explain to the company that we
5 needed to measure our safety culture, find out where it was.
6 We thought that Dr. von Thaden and her company would be a
7 great person to conduct the survey. We gave them a brief
8 presentation on what it is that her company did. And we
9 asked them to partner with us in the safety culture survey.

10 Q. Did the company in fact partner with you in that survey?

11 A. At the meeting, they were non-committal at the meeting.
12 Captain Hogg told me he would get back to me in a week or two
13 with an answer and he did.

14 Q. And what was that answer?

15 A. Basically that they felt that they didn't need a safety
16 culture survey. That they had processes in place that could
17 measure the safety culture adequately.

18 Q. Were you present when Captain Hogg testified here on
19 Friday?

20 A. I was.

21 Q. Did you hear him discuss the reasons that they denied
22 you the participation in the safety culture survey?

23 A. Yes, I did.

24 Q. What was that reason?

25 A. As I recall, he stated that they didn't want to partner

1 with us because we had corrupted a special operational audit
2 of a few years ago.

3 Q. When was the first time you heard that was the reason
4 that they denied their participation in the safety culture
5 survey?

6 A. I think it was yesterday -- or -- I'm sorry, Friday.

7 Q. Was that ever part of his discussion with you prior to
8 that?

9 A. It was not.

10 Q. After the company refused to partner with the union in
11 addressing the safety culture, what if anything did you do?

12 A. I reconvened a meeting of our Safety Committee. I
13 discussed with them Captain Hogg's reasoning for not
14 partnering with us. His reasoning basically was that the
15 FOQA program, the ASAP program, the SMS program that they had
16 in place or were working to get in place, was enough to
17 measure the safety culture.

18 And between myself and my committee members, we
19 determined that that wasn't enough to measure the safety
20 culture. And we thought that it might be a good idea to do
21 the safety culture survey to find out where we stood on our
22 own.

23 Q. By the way, would you tell the court what the safety
24 culture is, safety culture survey?

25 A. In a nutshell, I would say safety culture is the shared

1 value of an organization or an airline with regards to
2 safety. Safety culture has a direct impact on the way the
3 organization performs their tasks.

4 Q. And what is the safety culture survey then?

5 A. Safety culture survey is basically a series of questions
6 designed, scientifically designed to measure the safety
7 culture of a particular unit of an organization or in some
8 cases the entire organization, if the survey goes to each and
9 every employee.

10 Q. After going to the Safety Committee and receiving their
11 approval, what if anything did you do?

12 A. The Safety Committee, all of us unanimously decided it
13 would be a good idea to ask the pilot board of
14 representatives if they would basically foot the bill and pay
15 for the survey and allow us to conduct the -- excuse me,
16 allow Illumia to conduct the survey.

17 So shortly after our conference call with the committee,
18 I presented to the Board of Pilot Representatives, our
19 thoughts and ideas on conducting a survey.

20 Q. What is the Illumia Corporation?

21 A. Illumia Corporation is the corporation formed by Dr. von
22 Thaden, and I think one or two partners, whose specific
23 purpose it is to administer safety culture surveys to
24 organizations around the world. Not limited to airlines by
25 the way, other highly specialized industries that have safety

1 as their primary function. For example, the nuclear
2 industry.

3 Q. Could the tell the court exactly how the survey came
4 about and the methodology?

5 A. Well, the survey is -- once the BPR gave approval, which
6 by the way was unanimous. All of our crew base members
7 approved of the survey. We went back to Dr. von Thaden, we
8 said we've got the ability to do this. We would like for you
9 to do this for us. She was reluctant at first because
10 management chose not to participate. She never had that
11 happen before.

12 But we told her that we thought we needed to measure our
13 safety culture and we thought it was important, and we
14 prevailed upon her to do the survey.

15 At that point in time the process involved setting up
16 some focus groups at different crew bases, so that she could
17 get a feel for the vernacular, and perhaps glean some
18 information about what's going on at the airline to help her
19 formulate maybe somewhere around four to five of her
20 questions in the 200 questions of the survey.

21 The Safety Committee facilitated the putting together of
22 those meetings. They occurred in Philadelphia, in Charlotte,
23 and in Phoenix.

24 Once those focus group meetings were completed, she then
25 got the survey together. She put the survey out on the

1 internet, took about a month and a half to complete.

2 Q. After the survey was completed, what if anything did you
3 do?

4 A. Well once we got the results of the survey, we took a
5 look at them, the committee each got a copy. We, once again
6 had a meeting and determined that it was appropriate that we
7 get in touch with the company. Present the results of the
8 survey to the company, and get to work solving some of the
9 issues that were presented in the survey, the results of the
10 survey.

11 Q. Did there come a time when you met with the company
12 regarding the results of the survey?

13 A. We met with the company in January of this past year,
14 yes.

15 Q. And who was present at that meeting?

16 A. At that meeting it was myself and Captain John Sable, my
17 co-chairman. Mike Cleary and Randy Mowrey. From the
18 company, Captain Morell, Captain Hogg, and a fella's who name
19 I don't remember. He was the Vice President of Corporate
20 Communications.

21 Q. By the way, had any Corporate Communications person ever
22 been involved in a Safety Committee issue before?

23 A. Not during my tenure. It was -- I was -- no, not during
24 my tenure.

25 Q. And what was discussed at that meeting?

1 A. Dr. von Thaden presented, basically, a broad overview of
2 the results of the survey via power point presentation.
3 We -- she also gave to the company a 23-page abridged version
4 of the results of the survey. I think the meeting lasted
5 roughly an hour or so. As she was going through the survey,
6 I believe Captain Hogg and Captain Morell may have asked a
7 question or two.

8 At the end of the presentation we asked the company to
9 accept a full -- the full 225-page report. In order to do
10 so, however, they would have had to sign a non-disclosure
11 form required by Dr. von Thaden, because the questions in the
12 survey are proprietary.

13 They would not sign that form, they would not accept
14 that survey. We said, well, we need to get to work to solve
15 the serious issues that are showing up in the data. They
16 stated they would get back to us in a week or two with a time
17 to set up the meeting.

18 Q. There was a 23-page executive summary of the report as
19 well, is that not correct?

20 A. Yeah. A 23-page executive summary of the report went to
21 the company, that's correct.

22 Q. Did the company sign the non-disclosure statement?

23 A. They did not.

24 Q. After your meeting with the company and their public
25 relations person, what if anything was the company's

1 reaction?

2 A. We heard nothing from the company until -- I believe
3 they said they would get back to us in a week.

4 In a week I got a phone call from Paul Morell stating
5 that he would be sending a letter within the next few days
6 with a response.

7 And within the next few days, Captain Sable and I both
8 got a letter from Captain Morell, a 9-page letter telling us
9 that they were not going to take the survey -- they were not
10 going to accept the survey. That the survey was wrong. That
11 it was merely a political ploy, and that anything that was in
12 the survey was just not true, basically.

13 Q. Was it a political ploy?

14 A. Absolutely not.

15 Q. From that time on until the present, had the company
16 come back to you or any member of the Safety Committee and
17 asked or suggested in any way, a survey that could be used
18 that would meet the company's objections?

19 A. Absolutely not.

20 Q. Captain Kubik, does the company have a publication for
21 its pilots in relation to safety?

22 A. Yes, they do.

23 Q. What's the name of that publication?

24 A. It's called the *Safety Vector*. It comes out quarterly.
25 It's a very good publication, by the way.

1 Q. Did you -- have you seen an article mentioning Dr. Von
2 Thaden in that *Vector*?

3 A. Yes. In the spring of 2010 they -- Captain Lubrivich
4 who is the Director of Safety and Regulatory Compliance,
5 published an article on safety culture. And in that article
6 he referenced Dr. von Thaden.

7 Q. With approval or disapproval?

8 A. Approval.

9 Q. After it became apparent to your committee that the
10 company would not join in or accept the results of the survey
11 or suggest any other measures on safety culture, what if
12 anything did you and your committee do?

13 A. Once again we convened a meeting, and we were a bit
14 perplexed why they wouldn't want to at least see the results
15 of the survey.

16 We decided as a committee that there were some serious
17 issues brought up in the data from the survey that needed
18 some attention. We decided we would pick the four or five
19 lowest scoring items on the survey, provide guidance or
20 advice to our pilot group, to help them navigate their way
21 through those problem areas.

22 It was decided unanimously in the committee that we
23 should produce a series of videos and print the guidance to
24 address those serious issues.

25 Q. When did the committee begin releasing those educational

1 videos?

2 A. I would have to look back at the records for certain,
3 but I believe it was the end of March of this year.

4 Q. By the way, to be clear, were those education or
5 instructions to the pilots?

6 A. I would say they were a bit of both; educating them on
7 what the survey said, and then perhaps giving them advice and
8 guidance on how to react or navigate to the problem that was
9 shown in the data.

10 Q. What would be the consequences to the pilot if they
11 disregarded your advice?

12 A. Well, the pilot in command has the ultimate authority
13 for the aircraft. He can choose to ignore any advice we give
14 him, or any guidance we give him. And of course there would
15 be -- we would have no way to penalize him, nor would we want
16 to penalize him. It is his decision and his decision alone.

17 Q. How many safety videos did you publish?

18 A. Six.

19 Q. You read the company's application for a preliminary
20 injunction. Did they name all the safety videos in that
21 preliminary injunction?

22 A. They did not.

23 Q. How many did they leave out?

24 A. I believe they left out two videos. One on toxic fumes,
25 and one on chief pilot intimidation.

1 Q. We discussed the toxic fumes prior, but is this a one
2 time issue or an ongoing problem?

3 A. This is an ongoing problem. We field -- my committee
4 and I field anywhere from a minimum of one, and sometimes as
5 many as four, either phone calls or e-mails a week with
6 regard to a fume event.

7 Q. The first video you issued was -- regarded on time
8 pressures; is that correct?

9 A. That is correct.

10 Q. Why did you issue that guidance?

11 A. The on time pressure distractions was an extremely low
12 scoring item on the safety culture survey. We felt it was
13 necessary to provide some advice or guidance for our pilots
14 to help them become less distracted.

15 In other words, set up a barrier with threatened air
16 management model that we are taught and trained to use. We
17 thought a barrier would be appropriate to help them avoid
18 distractions.

19 Q. And when you say set up a barrier, what do you mean?

20 A. Well, generally barriers are sort of like safety gates,
21 to prevent you from moving to another stage towards a
22 dangerous incident or accident. It can be something like a
23 checklist or flow, or something of that nature, to help -- to
24 help us -- to help keep us in the green of the Volant model.
25 Which is green being safe, yellow approaching danger, and red

1 being in the danger.

2 Q. Okay. Would you explain to the Court the Volant model?

3 A. The Volant model is basically a simplistic version of
4 how to stay safe. And they use red, green and yellow colors,
5 obviously, because of the dangers associated with them.

6 And as pilots, we're taught to stay into the green, as
7 well as recognize when we're approaching yellow or
8 approaching red.

9 And generally speaking, when a pilot becomes distracted,
10 or when his workload increases substantially, due to many
11 factors, whether it's weather or maintenance issues or an
12 emergency, we're taught to always try to stay away from the
13 red and work our way back to the green.

14 Q. Now what advice did the Safety Committee give to the
15 pilots in regard to the first video?

16 A. With regard to distraction, the advice was to close the
17 cockpit door during pre-flight duties. In other words, the
18 checklists, the flows, the setting up of the flight
19 management computer, which is the navigation portion of what
20 we do among other things, in addition to performance.

21 So that outside distractions from outside the cockpit,
22 don't interrupt our processes while we're in that realm, in
23 the pre-flight realm.

24 Q. Explain to the Court, if you would please, the
25 importance of performing accurately, your pre-flight

1 checkups?

2 A. The pre-flight checkups are important, simply because
3 the airplane needs to be set up properly to fly the plane.
4 The switches need to be in the right place. The correct fuel
5 load has to be ascertained. The correct routing has to be
6 programmed in the navigation computer. The correct numbers
7 for performance need to be programmed into the navigation
8 computer.

9 Anytime you have a distraction, you generally stop where
10 you are, deal with the distraction and then go back.

11 However, most pilots, I shouldn't say most pilots, a lot
12 of pilots, including myself, start over if there's a
13 distraction.

14 And so it just seemed intuitive to my committee, that
15 closing the cockpit door would prevent the distractions, and
16 allow the pilots unfettered access to the cockpit to get it
17 ready to go. Any accumulated issues on the other side of the
18 cockpit door can be dealt with after we're done with our
19 pre-flight checks and flows.

20 Q. What if anything does closing the cockpit door have to
21 do with on time performance or on time taking off?

22 A. Nothing.

23 Q. On the other hand, what if anything is the result of not
24 doing an accurate pre-flight checkup?

25 A. Well, any number of things. Certainly if you program

1 the wrong routing into the navigation computer, you could
2 take off and head towards another airplane without realizing
3 it. Or you could end up heading on the wrong route, which
4 could potentially involve a traffic conflict. Certainly it
5 would involve a pilot violation. If you miss a switch, it
6 could involve a system problem developing at a time you don't
7 need the system problem developing on down the road.

8 Q. In that video did you mention anything about the ground
9 crews and the safety regarding ground crews?

10 A. We did. We did. We mentioned that another very low
11 scoring item on the survey were ground crews approaching
12 operating engines.

13 It's a very dangerous situation when ground crews
14 approach operating engines. The chances of someone being
15 ingested into an engine is real, it's happened.

16 So since it was a low-scoring item, my committee thought
17 it would be a good idea to institute or give advice or
18 guidance to the pilots on how to preclude that from
19 happening.

20 Q. What was the company's position prior to the -- or
21 company's procedure prior to your issuing that video?

22 A. The company procedure would be to taxi into the gate on
23 one engine, with the APU, the auxillary power unit shut down.
24 Upon gate arrival you would leave that engine running, until
25 such time as the ground electric and ground air were plugged

1 into the aircraft. Because if it weren't plugged in and you
2 shut the engine down, the airplane would go black, which of
3 course you don't want.

4 So the pilots -- the standard operating procedure was to
5 taxi into the gate with that engine running, leave the engine
6 running until ground air and electric were plugged in, then
7 shut the engine down. The problem with that, if I can move
8 on.

9 Q. Sure.

10 A. Is that, from time to time, it takes a while for the
11 ground crews to plug in the ground air and electric. And
12 during that time which, you know, I've seen as high as two or
13 three minutes, that engine's running. And with the on time
14 pressures that the company puts on its employees, people are
15 opening cargo doors, people are milling about the engines,
16 and it was a very low scoring item on the survey. The data
17 showed that it needed to be addressed, and so we gave some
18 advice and some guidance to our pilots to address it.

19 Q. After that video was released, what if anything did the
20 company do in regard to its procedures?

21 A. At some point -- at some point, I can't tell you exactly
22 when, the company basically changed the procedure to what we
23 had advocated for in our video.

24 Q. You issued another video on pilot fatigue, is that not
25 correct?

1 A. We did.

2 Q. Can you tell the Court what was the reason for that?

3 A. Once again, the data showed from the safety culture
4 survey that fatigue was an extremely important item. That
5 pilots were very fatigued when they were flying. That a lot
6 of it was due to substandard hotels that they were staying
7 in.

8 And reserve pilots, especially, being called during
9 their protected times. And as one of our pilots testified on
10 Friday, being called when he should be resting, and then
11 being expected to fly when he was fatigued.

12 Q. There were mentions about substandard hotels in your --
13 in the Safety Committee's video, is there not?

14 A. That's correct.

15 Q. Can you tell the Court why that was there and what that
16 had to do in terms of the safety culture?

17 A. Substandard hotels -- a good night's sleep is necessary
18 for pilots to be at the top of their game. If you're in a
19 hotel that's noisy or dirty, or not up to a restful night
20 sleep, it affects the way you sleep or even if you sleep. So
21 if you're put in a substandard hotel and you get up in the
22 morning and you're fatigued, it's a safety issue.

23 It showed that -- the data in our survey showed that our
24 pilots were not happy with some of the hotels around our
25 system.

1 Our guidance was merely to let our pilots know that the
2 data shows that some of these hotels are problems, and that
3 if you feel fatigued after a night in some of these hotels,
4 it is your responsibility, as spelled out in the Flight
5 Operations Manual, not to fly the airplane.

6 Q. Did that have anything to do with the collective
7 bargaining process?

8 A. Absolutely not.

9 Q. What did it have to do with?

10 A. It had to do with safety, flight and fatigue, and it was
11 based on data from a safety culture survey.

12 Q. Now you also issued a video on minimum equipment list;
13 is that correct?

14 A. That is correct.

15 Q. Explain to the Court what a minimum equipment list is?

16 A. A minimum equipment list is a tool that is used by the
17 airline to defer maintenance items to keep the aircraft
18 operating on schedule, so that passengers are not
19 inconvenienced, so that the airplane can be moved to an area
20 and a time when that particular problem can be fixed. It's
21 an FAA approved -- an FAA approved procedure.

22 Q. And why did you issue the guidance?

23 A. Because many of our pilots, according to the data in the
24 safety culture survey, showed that the MEL was being used as
25 an on time tool, rather than what it was designed for, which

1 was to move an airplane for a period of time until it can get
2 to a place where it can be fixed.

3 Q. Are the pilots allowed to refuse MELs they believe to be
4 unsafe?

5 A. They have that power under the FARs and under their
6 Flight Operations Manual, yes.

7 Q. Can you give the Court a couple of examples of where you
8 would use your discretion, where you have used your
9 discretion in terms of MELs, either to fly or to not fly the
10 aircraft?

11 A. Yes, I can. Personal examples, if you would like.

12 Q. Yes, personal examples.

13 A. I had an airplane here in Charlotte one night that I was
14 going to fly to Frankfurt that had an inoperative auxillary
15 power unit. The auxillary power unit is needed for both air
16 and electric under extended-range operations. It can be
17 MEL'd because there are other electrical and pneumatic power
18 sources, both engines, and then a RAM air turbine which is
19 used as a last resort.

20 The APU that -- the aircraft that I had that night the
21 APU generator was in-op. I looked at the weather from
22 Charlotte to Frankfurt. I looked at my in-route alternates.
23 Which are alternates that we go to if we have problems out
24 over the ocean, sometimes they're in Canada or Newfoundland,
25 Greenland, Iceland in the Azores, Ireland, different areas.

1 The in-route alternate weather was right at minimums.
2 The weather at Frankfurt was right at minimums. The flight
3 crew that I was flying with that night had a relatively
4 experienced first officer, and a brand new relief pilot. So
5 basically I was not with a normally -- normal highly
6 experienced crew like I'm with.

7 I took it upon myself to refuse the airplane until such
8 time as they repaired the APU, or until such time as an
9 airplane came with a new APU. The dispatcher stated, that's
10 fine. I'll get back to you.

11 A while later my cell phone rang, it was one of the
12 chief pilots. He wanted to know what was going on. I
13 said -- I explained the situation to him. His response to me
14 was, are you refusing a legal airplane?

15 I stated that I was refusing an airplane that I felt was
16 unsafe and under authority granted to me by the FARs, as well
17 as your Flight Operations Manual. I don't think the
18 operation can be completed safely, so I need to have this
19 airplane fixed.

20 His next question was, are you refusing a legal
21 airplane?

22 My answer was the same. I said, and we can go about
23 this all night and talk about it if you want, but I would
24 like either a new airplane or this one fixed.

25 He then asked me the question, did the other two crew

1 members feel the same as you do?

2 I said, as a matter of fact, with regard to the cockpit
3 resource management that I've been trained in, and utilizing
4 the training that you've given me, we've discussed the
5 situation, we've all agreed that it is best not to fly this
6 airplane across the Atlantic ocean this night.

7 He said, thank you very much. He hung up the phone.

8 About 10 minutes later I got a call from the dispatcher, they
9 were sending a new airplane down from Philadelphia.

10 We left Charlotte approximately four hours late, maybe
11 four and a half hours late and then flew to Frankfurt.

12 Q. Was there another time where you exercised your
13 authority to fly the airplane?

14 A. Yes. I think the end of last month, I believe, I was in
15 London. I went out to the airplane. The airplane had an MEL
16 on it. This MEL was the left bleed valve.

17 The left bleed valve is a valve on the airplane that
18 provides air to the air conditioning packs, which in turn
19 provides conditioned air into the cabin, for pressurization
20 and environmental use.

21 This left bleed valve had been on MEL for four days. I
22 called the dispatcher and I asked why the aircraft wasn't
23 repaired before it came over.

24 He said he would look into it and he would get back to
25 me. He said, are you going to accept the aircraft?

1 I said I'm not certain that I'm going to accept the
2 aircraft, I'm going to discuss it with my crew members and
3 I'm going to look at the weather very closely.

4 I got in a discussion with my two other pilots, both of
5 whom were highly experienced. Both of whom had been on the
6 airplane longer than I had.

7 I looked at the in-route weather. On this particular
8 day the in-route alternates were in the Azores, in
9 Newfoundland -- I'm sorry -- in Greenland and in -- I'm
10 sorry -- in Iceland and in Canada. The weather was extremely
11 good at all the in-route alternates. The weather at the
12 destination in Charlotte was very good. There were no
13 thunderstorms between the airport in London, the landfall in
14 the United States and in Charlotte.

15 I looked at the MEL and determined what it was we needed
16 to do. Basically if we lost the other bleed valve, we had to
17 descend to 22,000 feet and proceed to an in-route alternate.

18 So I weighed the chances of that happening, which are
19 not high, but they certainly are there. I also weighed the
20 chances of that bleed valve failing and having to go
21 unpressurized at 10,000 feet to an in-route alternate, which
22 would be about two hours away, basically, from where the
23 failure occurred.

24 I determined that if we put more fuel on the airplane,
25 we would have enough fuel to proceed to any of the alternates

1 in any situation.

2 I knew, based on the history of US Airways that they
3 weren't going to fix that airplane in London. That they
4 likely would end up trying to find another crew to fly it
5 over to Charlotte.

6 And so I determined with the help of the other two crew
7 members, that we would accept that aircraft, and we flew it
8 back, uneventfully I might add, to Charlotte. And we had an
9 on time departure and an on time arrival.

10 Q. Your use of discretion in terms of when you would accept
11 an airplane or not accept an airplane in regards to the MELs,
12 is that company procedure or policy?

13 A. It's authority granted to us by the Federal Aviation
14 Regulations, yes.

15 Q. And is that what you -- was that the subject of your
16 video?

17 A. Yes, it was. It was basically to tell our pilots that
18 on the safety culture survey, the data showed that a lot of
19 our pilots were taking airplanes with multiple MELs. MELs
20 that they felt could have been fixed or should have been
21 fixed.

22 The video was meant to remind them that they have the
23 ultimate authority to determine whether or not that airplane
24 goes. And that in order to keep themselves in the green in a
25 flight safety culture, they had the responsibility to

1 determine whether or not they were going to fly an airplane.
2 They needed to stay in the green.

3 Q. What is the pilot's authority to keep the airplane safe?

4 A. He's the final determiner of the safety of the airplane.
5 He has the ability to refuse the airplane anytime he deems
6 that the operation cannot be completed safely.

7 Q. Now you issued another video on two-engine taxi; is that
8 correct?

9 A. That is correct.

10 Q. What is -- what is the -- what was the guidance about
11 two-engine taxi?

12 A. Once again, one of the lowest scoring items on the
13 survey was distractions being caused during taxi out and
14 having to start other engines.

15 Single-engine taxi is done for one reason and one reason
16 only, that's an economic reason. It's not necessarily an
17 unsafe procedure. But it's not necessarily a safe procedure.
18 One could say that it's neutral from time to time.

19 However, there are times when two-engine taxi becomes a
20 necessity, when there are wet runways, when you need to
21 maneuver around tightly spaced airplanes and gate areas.

22 If you have items on the aircraft that aren't working, a
23 single-engine taxi would cause other problems.

24 But the bottom line to our guidance was, that in the
25 flight safety culture that we exist in, two-engine taxi is

1 one less thing you have to worry about. You don't have to
2 worry about starting that other engine.

3 Studies have shown, NASA-sponsored studies have shown
4 that checklists should be completed as far away from the
5 active runway as possible. By taxiing out on one engine,
6 you've set yourself up for running your final checklist after
7 you get closer to the runway. I believe the guidance is five
8 minutes prior to take off.

9 So the guidance we issued, was simply for another
10 barrier that we thought was necessary to put in place to keep
11 our pilots in the green. And that's why the guidance was
12 issued.

13 Q. Does the two-engine taxi have anything to do with on
14 time performance or taxiing speeds?

15 A. No.

16 Q. In regard to the Airbus, what was your guidance in
17 regard to the Airbus and two-engine taxi?

18 A. The Airbus fleet -- the Airbus fleet, actually, when
19 you're taxiing on one engine, it will come up with an
20 abnormal, because it sees you taxiing on one engine.

21 So it is counter intuitive -- the Airbus is a dark
22 cockpit concept. In other words, the lights in that -- the
23 warning lights should be out in that cockpit at all times if
24 everything is normal.

25 During single-engine taxi, a warning light stays

1 illuminated during single-engine taxi, which is counter
2 intuitive to the training that we receive on the airplane.

3 Q. By the way, you were quoted in the company's papers as
4 having said something at a Charlotte meeting in terms of
5 taking back the airline. Do you recall that -- reading that?

6 A. I do.

7 Q. Was that an accurate quote?

8 A. It was not.

9 Q. Okay. First of all, how did that meeting come about?

10 A. I was invited to the Charlotte-based meeting by the
11 Charlotte reps, to give an overview of the results from the
12 safety culture survey.

13 Q. And did you in fact do that?

14 A. I did.

15 Q. And what did you say in regard to carte blanche about
16 that?

17 A. I was responding -- as I recall, I was responding to a
18 question from one of the pilots asking what the data meant,
19 and what the data was saying to us from the survey. And my
20 response was that the data gives us a carte blanche to take
21 back the safety of the airline.

22 Q. And what was the reason for you saying that?

23 A. It goes to the intimidation factor of the chief pilot's
24 office. Because we had just been discussing that, prior to
25 that question.

1 The pilots are reluctant to make difficult decisions
2 with regard to delaying a flight, or perhaps turning down an
3 MEL, or calling in fatigued, because in all likelihood they
4 will be sitting in front of a chief pilot having to explain
5 themselves.

6 The data from the survey helps us explain to chief
7 pilots why we do what we do. The purpose of my statement was
8 to reiterate that in so many words, because that had been
9 discussed just prior to my making that statement.

10 Q. By the way, do you have anything to do as a Safety
11 Committee, or as a Safety Committee chair with the
12 negotiations of the collective bargaining agreement?

13 A. I can recall one meeting we had a while back with regard
14 to the A-330, 200 rest area. Where I met with the company,
15 myself and my co-chairman at the time, Larry McKarroll
16 (phonetic spelling) met with the company in Phoenix with
17 regard to the crew rest area on that aircraft.

18 But that was not contractual. We were there as safety
19 advisers to the negotiating committee.

20 Q. You said you have been with the company for quite
21 sometime. What is your number in terms of seniority?

22 A. I'm roughly number 60 out of 4-, 5,000.

23 Q. Okay. And what is the consequence of that?

24 A. I would say that my working conditions and my pay are
25 substantially better than the vast majority of pilots at the

1 airline.

2 Q. Because?

3 A. Because of my seniority, my ability to bid better
4 schedules, my ability to fly widebody aircraft, and my
5 ability to fly relatively lucrative routes across the North
6 Atlantic.

7 Q. Have there been some discussion about a seniority
8 dispute between the old America West pilots and the US Air
9 pilots. Does that have anything to do with you?

10 A. On a personal level it does not. My seniority is
11 unaffected by any award that is out there right now.

12 Q. Getting back to your position as -- in the Safety
13 Committee. Did you receive any correspondence from any pilot
14 in regard to clogged fuel filters?

15 A. You're referring to an incident that occurred a few
16 months ago, I believe in Fort Meyers, Florida?

17 Q. That's correct.

18 A. Yes.

19 Q. Tell the Court about that.

20 A. The pilot in question was making a descent into Fort
21 Meyers, and he had a fuel filter clog light on. Not a major
22 malfunction, but certainly something that will get your
23 attention. He then ACAR'd or electronically notified the
24 company, that this light was illuminated, this warning light
25 was illuminated. And he then received a message from his

1 dispatcher.

2 Q. And that message said?

3 A. I don't have that message in front of me, but I believe
4 it said, are you going to write up the fuel filter clog
5 light? If you do, the aircraft is done in Fort Meyers.

6 Q. What does "done in Fort Meyers" mean?

7 A. Means the aircraft cannot fly until that situation is
8 repaired.

9 Q. And what is the pilot's responsibility of writing up
10 equipment malfunctions?

11 A. The pilot needs to put in the flight deck maintenance
12 log, any equipment malfunction.

13 In fact, I believe we got a directive from our director
14 of -- our Director of Safety, Tom Lubrivich, I'm not sure
15 exactly when it was. But he iterated in that message to all
16 pilots, that we were to write up any problem we had. The FAA
17 was concerned that we weren't writing things into the flight
18 deck maintenance log. He put a message out to all pilots to
19 make sure we did so.

20 Q. What if anything was the significance of the
21 communication to the pilot about whether he was going to
22 write this up?

23 A. Well, his concern that he expressed to me was that the
24 dispatcher was attempting to let him know that if he wrote
25 the fuel filter clog light up, he would down the airplane,

1 and he didn't think he wanted to down the airplane.

2 Q. Okay. By the way, Captain Kubik, in your experience as
3 a line pilot, have you ever witnessed the slogan, "Safety
4 First" presented by the company?

5 A. I've seen it on the Charlotte terminal and different
6 gates around the system. Hmm-hmm.

7 Q. After you and members of your committee issued a -- this
8 safety -- series of safety guidance committee -- I'm sorry,
9 safety guidance videos, did you receive a response from the
10 company?

11 A. I received a letter from an attorney Steven Johnson, on
12 the first of July, with regard to the guidance that my
13 committee was providing. He characterized it as me
14 personally providing guidance to the pilots.

15 Q. And what was his instruction to you, Attorney Johnson?

16 A. I don't have the letter in front of me, but a rather
17 long letter stating that if I continued to issue guidance
18 that differed from SOPs, I was subject to termination.

19 Q. Did you respond to that letter?

20 A. I did respond to that letter, yes.

21 MR. O'DWYER: May I approach, Your Honor?

22 THE COURT: You may.

23 Q. Going to show you a letter of July 27. Is that the
24 letter you wrote Attorney Johnson?

25 A. Yes, sir it is. Hmm-hmm.

1 THE COURT: Can you refer to that by exhibit
2 number?

3 THE WITNESS: Says Exhibit E on here.

4 THE COURT: Exhibit what?

5 THE WITNESS: Exhibit E, ECHO.

6 MR. O'DWYER: I'll get it to you later on.

7 THE COURT: For record purposes, let's make sure we
8 have it identified.

9 Q. (By Mr. O'Dwyer) Is this your response to the company?

10 A. This is my response to Mr. Johnson, yes.

11 Q. Would you read for Your Honor just the last paragraph of
12 that letter?

13 A. The last paragraph?

14 Q. Yeah.

15 A. The last paragraph states:

16 "As I have discussed in prior correspondence, US Airways
17 refused to participate in the Illumia Corporation SCISMS
18 safety audit, perhaps the most prestigious independent
19 auditor of airline operations. That audit found that US
20 Airways safety culture was in need of intervention. More
21 specifically, the audit found that pilots felt frustrated in
22 their efforts to bring safety issues to the Company's
23 attention. It appears that US Airways will not be satisfied
24 with pilots being frustrated and that perhaps they need to be
25 intimidated into following practices that they know to be

1 unsafe.

2 "Safety is my only concern. US Airways intimidation of
3 its pilots must stop before an unthinkable price is paid.
4 Sincerely."

5 MR. O'DWYER: I'm sorry. I didn't get the last
6 sentence.

7 THE COURT: I heard it.

8 MR. O'DWYER: All right.

9 No further questions, Your Honor.

10 THE COURT: Any Cross?

11 MR. SIEGEL: Yes, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. SIEGEL:

14 Q. Good morning, Captain Kubik. You said that you -- I
15 want to make sure I understand this -- that when you asked
16 Captain Hogg whether the company would participate in the
17 culture survey, that you don't recall Captain Hogg discussing
18 with you the prior Special Operational Audit from 2008, and
19 his dissatisfaction with that experience. You have no recall
20 that he raised that issue to you in that meeting?

21 A. Good morning. In that meeting, I do not recall him
22 talking about the Special Operational Audit. He has
23 discussed the SOA with me prior to that, yes.

24 Q. And from discussions you've had with him, you're aware
25 that at least from Captain Hogg's perspective, he was

1 dissatisfied with the way in which the interaction with you
2 and USAPA occurred on the 2008 safety audit. You're aware of
3 his perception on that, are you not?

4 A. I'm aware that he's dissatisfied with USAPA's position
5 on it. I don't think he ever characterized it personally to
6 me.

7 Q. Fair enough. You were the chairman of the Safety
8 Committee at the time of the 2008 audit, correct?

9 A. I was, but that was handled under the Training Committee
10 and not the Safety Committee.

11 Q. Thank you for the clarification.

12 A. That's all right.

13 Q. And you're aware that one of Captain Hogg's
14 dissatisfactions, at least as expressed to you, was his view
15 that the survey had been less focused on operational data and
16 more focused on what people sometimes call political or labor
17 issues; is that correct?

18 A. That is correct.

19 Q. And in fact you're aware that Captain Hogg, at some
20 point raised to you the fact that the return address for the
21 survey cards had somehow been changed from the company
22 address to the USAPA address. You're aware of that part of
23 Captain Hogg's complaint?

24 A. He made that statement to me, yes.

25 Q. And you're also aware that he indicated to you that he

1 then received the survey responses in that audit, in a
2 collection from USAPA, as opposed to from the individual
3 pilots, you know that, right?

4 A. He did make that statement, yes.

5 Q. And are you also aware that one of the complaints that
6 Captain Hogg had was that the responses on the survey cards
7 he received from USAPA included profanity?

8 A. Yes.

9 Q. And included discussion of labor contract grievances as
10 opposed to operational data?

11 A. He's made that statement, yes.

12 Q. And in fact, you had a discussion with him about that
13 2008 audit in which you asked him to publish the results of
14 that audit, notwithstanding his concerns about the contents
15 of the survey cards, correct?

16 A. Quite a few months prior to our meeting with regard to
17 the safety culture survey, yes.

18 Q. And it was your position that he should -- even though
19 he was not happy with the results or the procedure -- he
20 should publish the results of the 2008 audit; that was your
21 position, correct?

22 A. I always think the truth is a good thing to put out
23 there.

24 Q. Are you aware that he then discussed that issue with the
25 FAA, and received guidance from the FAA as to what to do with

1 the results of that 2008 audit?

2 A. I am not aware of that, no.

3 Q. So you're not aware that the FAA advised him that the
4 audit results were not useful regarding operational or safety
5 matters?

6 A. I am not aware that the FAA made that statement, no,
7 sir.

8 Q. But when you came to him, and Captain Hogg more
9 recently, with regard to the culture survey that you're now
10 discussing --

11 A. Hmm-hmm.

12 Q. -- you were aware at least that he had a negative
13 impression about the prior audit that he had partnered with
14 USAPA on in 2008, correct?

15 A. Yes.

16 Q. Let me ask you a couple questions, I think I understand
17 this, but in terms of your background, Captain Kubik. I take
18 it the principal service that you had with regard to safety
19 is your role as a Chief Pilot for many years at US Airways;
20 is that correct?

21 A. Check Airmen, mostly.

22 Q. Check Airmen. I'm sorry.

23 A. That's correct.

24 Q. You never worked, for example, at the FAA, I take it?

25 A. I have not.

1 Q. You have never managed a Flight Operations Department
2 for a major airline, have you?

3 A. I have not.

4 Q. You have never managed a Safety Department for a major
5 airline, have you?

6 A. I have not.

7 Q. By the way, how many Check Airmen are employed at US
8 Airways at any given time, if you know?

9 A. I would say in the 200 range, somewhere in that range.

10 Q. And do they tend to serve long tenures once appointed as
11 Check Airmen?

12 A. I would say generally speaking they probably do, yes.

13 Q. Now I want to direct your attention to this -- to this
14 report, the Illumia report?

15 A. Sure.

16 Q. What you called the culture survey. I think it's
17 attached as Exhibit C to your declaration. I don't know if
18 you have your declaration at the witness stand?

19 A. I do not.

20 MR. SIEGEL: Your Honor, may we provide?

21 THE COURT: You may.

22 Q. Captain Kubik, I think the way your declaration is
23 established, there's an Exhibit C, and that signals the
24 attachment that --

25 A. That is the survey.

1 Q. -- the survey. Yes.

2 A. Hmm-hmm.

3 Q. Pardon me, Your Honor.

4 I recognize there's a part one and a part two.

5 A. Yes.

6 Q. And it's the Exhibit C that I'd like to direct your
7 attention to.

8 A. Sure.

9 Q. And let me ask a couple questions, because I know you've
10 sponsored this report into the record this morning. And a
11 couple of times during your direct testimony you mentioned
12 the data.

13 A. Hmm-hmm.

14 Q. And so I want to, just in terms of our terms we're
15 using, I think you -- it's fair enough to state that this
16 report does not actually report operational data regarding
17 the airline itself, does it?

18 A. Operational data in what sense; on time performance?

19 Q. Or anything that say you've seen as measures of actual
20 safety performance maintained by the safety department or
21 through the FAA; does it have --

22 A. No. That is not what a safety culture is.

23 Q. I'm asking you, when you use the word data, you're not
24 referring to data that reports on safe landing, safe
25 departures or safe --

1 A. That's correct.

2 Q. -- incursions --

3 A. You are correct.

4 Q. -- things like that?

5 A. You are correct.

6 Q. And what you're referring to, if I understand it
7 correctly is, perceptions of some pilots who answered survey
8 cards in the course of this review by Dr. von Thaden?

9 A. Answered survey questions on the internet, not cards,
10 yes. That's correct.

11 Q. Thanks for the correction.

12 A. Yes.

13 Q. Just to clarify, when I said it does -- there's
14 something that some folks in the Safety and the Flight Ops
15 Department think of as an actual objective metrics regarding
16 the flight operation. That's not what this survey is about,
17 correct?

18 A. This survey measures the safety culture of an airline,
19 not the safety data of an airline.

20 Q. That's what I wanted to clarify because you used the
21 word data.

22 A. Yes.

23 Q. It doesn't ask questions about ground damage rates, for
24 example?

25 A. I would have to go through it, but not that I'm aware

1 of.

2 Q. It doesn't have data about runway incursions, does it?

3 A. I don't think so.

4 Q. It doesn't have data about unstable approaches, does it?

5 A. No.

6 Q. Nor does it have data about navigation errors, does it?

7 A. No.

8 Q. Clearance deviations?

9 A. No.

10 Q. Altitude deviations?

11 A. No.

12 Q. OSHA violations?

13 A. No.

14 Q. So what it does measure is pilots essential responses or
15 perceptions as reflected on responses on -- as you said -- on
16 the -- through the web process or the internet process?

17 A. It measures the safety culture of an airline.

18 Q. And the way it measures the culture is to send out
19 inquiries to -- questions to the pilots and to get answers
20 back to those questions, correct?

21 A. That is how you measure the safety culture of an
22 airline, yes.

23 Q. Thank you, Captain Kubik.

24 If -- and I don't intend to be at all argumentative
25 about it, but just to understand the process.

1 For example, for any reason if pilots wanted to answer
2 questions in a negative way to injure the company's
3 reputation, there would be no way to account or check for
4 that in the survey process that you're describing, would
5 there?

6 A. I suppose there wouldn't be.

7 Q. And if a pilot -- and again, I'm not suggesting it, I'm
8 asking the possibilities. If a pilot wanted to answer
9 questions in a way that was designed to put pressure on the
10 company to make changes regarding items involved in labor
11 contract negotiations, there would be no way to account or
12 check for that occurring either; is that correct, Captain
13 Kubik?

14 A. That would be correct.

15 Q. So in essence, to rely on the survey, the survey has to
16 assume that the answers are honest answers in order for us to
17 look at it and rely on it; is that correct?

18 A. Absolutely.

19 Q. Okay. By the way, in terms of objectives -- third party
20 measurements on safety of US Airways operations, I would like
21 to check a couple things with you. I don't know as chair of
22 the Safety Committee whether they're in your purview or not,
23 Captain, but I just wanted to know.

24 Are you familiar with the IOSA audit that the company
25 recently passed?

1 A. I am.

2 Q. And do you know what the IOSA audit measures?

3 A. I don't know the parameters.

4 Q. Do you know the general subject of the audit?

5 A. The safety of the airline, yes.

6 Q. And do you know how the safety of the airline is
7 measured through the IOSA audit?

8 A. I believe they measure quantitative data of the type
9 that you just mentioned, prior to what we were just
10 discussing, right.

11 Q. Are you aware, are you not, that the company passed the
12 IOSA audit recently, correct?

13 A. I am aware of that, yes.

14 Q. You're aware that -- you know what the Flight Safety
15 Index is?

16 A. The Flight Safety Index of our airline?

17 Q. Yes.

18 A. I don't know what that answer is, no.

19 Q. So you don't know whether or not the Flight Safety Index
20 for US Airways is at the best level in company history or
21 not; you wouldn't know that?

22 A. I would say it probably is. I would say that's due to
23 the dedication of the fine pilots that work for this airline.

24 Q. And do you know what a Safety Management System is at US
25 Airways?

- 1 A. I'm familiar with the Safety Management System.
- 2 Q. It's called the SMS sometimes?
- 3 A. That's correct.
- 4 Q. And you're aware that US Airways has one?
- 5 A. They do have one.
- 6 Q. And you're also aware that US Airways is one of only two
- 7 carriers who actually implement an SMS program?
- 8 A. I'm very well aware of that.
- 9 Q. You're also aware that the FAA has specifically cited
- 10 the Airways SMS program as a model for other airlines to
- 11 fellow?
- 12 A. I am aware of that.
- 13 Q. And I take it you then you are also aware that US
- 14 Airways is the first domestic carrier to have its SMS program
- 15 validated to the ICAO (sic.) standards?
- 16 A. Yes.
- 17 Q. Are you aware of recent operational safety data at US
- 18 Airways in your role as safety chairman?
- 19 A. The data that was presented here last week?
- 20 Q. That data and any other data that may have been made
- 21 available, I don't know --
- 22 A. Yeah.
- 23 Q. Do you regularly have access to that?
- 24 A. I have a general idea, hmm-hmm.
- 25 Q. Are you aware that US Airways has ground damage rates

1 that are 50 percent lower than the industry?

2 A. I am aware of that, yes. Something to be proud of.

3 Q. Are you aware that the runway incursions at US Airways
4 are down 35 percent?

5 A. From when?

6 Q. Year over year.

7 A. From 2011/2010; yes.

8 Q. Are you aware that unstable approaches are down
9 29 percent at US Airways year over year?

10 A. I believe I am.

11 Q. And are you aware that navigation errors are down
12 14 percent at US Airways year over year?

13 A. Yes.

14 Q. And are you aware that clearance deviations are down
15 14 percent at US Airways year over year?

16 A. I don't believe I'm aware of that one.

17 Q. We talked about the idea that the survey that you're
18 sponsoring today is based on pilot perceptions. I take it
19 you're aware it did not include any responses from, or
20 perceptions from management employees; is that correct?

21 A. I am aware of that.

22 Q. And you're also aware, I take it, that when we say it
23 measured pilot perceptions, that not all segments of the
24 pilot group participated at the same rate in the survey?

25 A. I'm aware that 38 percent of our pilots responded, yes.

1 Q. Okay. And are you aware that 86 percent of the
2 responses were from the East pilot segment of the pilot
3 group?

4 A. I think that number's about right, yes.

5 Q. And at the same time, these pilots constitute only
6 66 percent of the pilot work force, correct?

7 A. I would -- I'll believe you. I'm sure you figured that
8 out.

9 Q. You're aware that 50 percent of the survey responses
10 were from Charlotte-based pilots, correct?

11 A. Yes, I am aware of that -- 46 percent, in that range,
12 yes. Hmm-hmm.

13 Q. And only in Charlotte, pilots account for only
14 29 percent of the entire pilot work force, correct?

15 A. I believe that's the largest crew base, yes.

16 Q. And then you must be aware that only 14 percent of the
17 surveyed responses came from the West pilot group?

18 A. I am aware of that, yes.

19 Q. Do you have any background in statistics, Captain Kubik?

20 A. I have no background in statistics.

21 Q. Do you have any way to measure the impact on the
22 reliability of the survey, based -- because of the skewing of
23 statistics that you and I just discussed about pilot
24 response?

25 A. Repeat that. I'm not quite certain I understand.

1 Q. I'm sorry. I didn't say that very well, Captain.

2 Are you -- do you have any ability to measure the impact
3 on the reliability of the survey because of the lesser
4 participation by the West pilots compared to the East pilots?

5 A. To measure it, I did discuss it with Dr. von Thaden.

6 And she was quite satisfied that it was a valid
7 scientifically done survey, with the non-participation or the
8 little participation of the West group, yes.

9 Q. So it's not your personal statistical --

10 A. I do not have the statistical expertise to make that
11 determination, no.

12 Q. Now you're aware, are you not, that some of the
13 questions in the survey were at least somewhat related to the
14 East/West pilot tensions that we're familiar with at US
15 Airways?

16 A. I believe there were four or five of those questions,
17 yes.

18 Q. And those questions involve, for example, whether the
19 company shows favoritism to certain groups of pilots?

20 A. I believe that was one of the questions, yes.

21 Q. And whether East and West pilots can fly together?

22 A. Yes.

23 Q. And I don't want to drag you into the details, Captain
24 Kubik, but you're aware, generally, of the long-running
25 litigation between the West pilots and the union, regarding

1 seniority integration issues, are you not?

2 A. I'm aware -- vaguely aware of the litigation, but not
3 part of my job description, yes.

4 Q. And you're also aware that the survey asked about
5 layover hotels, correct?

6 A. Yes.

7 Q. And you're aware that the subject of layover hotels is
8 the subject of collective bargaining between USAPA and the
9 Company?

10 A. Certainly. It's also a safety issue, yes.

11 Q. Right. But it's a subject of collective bargaining and
12 set out in the Collective Bargaining Agreement which hotels,
13 correct?

14 A. Certainly.

15 Q. Now I would like to clarify a couple of points from your
16 declaration, if I might.

17 First of all, if I understand it correctly, you believe
18 that safety -- the safety subject is essentially a term and
19 condition of employment; is that correct, Captain Kubik?

20 MR. O'DWYER: I would object to that, Your Honor.

21 THE COURT: Basis?

22 MR. O'DWYER: That's a question, term of condition
23 of employment, calls for expert testimony.

24 THE COURT: I'll overrule the objection. He's
25 entitled to an answer in his opinion.

1 Do you need the question read back?

2 THE WITNESS: Yes.

3 THE COURT: "You believe that safety -- the safety
4 subject is essentially a term and condition of employment; is
5 that correct, Captain Kubik?"

6 Is that the question, Mr. Siegel?

7 MR. SIEGEL: Yes, Your Honor.

8 THE WITNESS: Are you asking if a pilot is unsafe
9 he would be terminated?

10 Q. (By Mr. Siegel) No. Maybe I'll speed this up.

11 Let me direct your attention to paragraph 18 of
12 your declaration.

13 A. Beginning with, "It is and has been since April"?

14 Q. Correct.

15 A. Okay.

16 Q. And what I was trying to determine here, it says the
17 position of USAPA, that safety is a term and condition of
18 employment. That USAPA i.e. the Safety Committee, has the
19 right to seek improvement in and assert its opinion upon.

20 So that's the basis for my question, just confirming --

21 A. Yeah. I would say that's a correct statement, hmm-hmm.

22 Q. Okay. Thank you.

23 Now, and also if I understand your declaration
24 testimony, your view, Captain Kubik, is that if US Airways --
25 if Captain Hogg had been, and others, Captain Morell, had

1 been willing to partner with USAPA on the survey that you've
2 discussed, then you wouldn't have had to issue the videos and
3 the guidances that you've been testifying about this morning;
4 is that correct?

5 A. I would say that certainly had they partnered with us,
6 we could have been working on this at the very beginning of
7 the results of the survey.

8 To the extent that they would have accepted the results
9 of the survey, after the survey results came out, we would
10 have been working on these issues as we should be.

11 And my committee and I definitely feel strongly that we
12 would be able to get through these issues as a team.

13 Q. You wouldn't have undertaken sending out the operational
14 guidances, if Captain Hogg and Captain Morell had been
15 willing to partner with you on the survey that you sponsored,
16 correct?

17 A. That's correct.

18 Q. I direct your attention to paragraph 33 of your
19 declaration where you say, that none of the actions described
20 below would have been undertaken or would have been
21 necessary, had the company partnered with USAPA on the safety
22 culture survey. That's just an excerpt --

23 A. Yes. That's correct.

24 Q. I take it you agree with your testimony in that
25 declaration?

1 A. Certainly.

2 Q. Let me direct your attention to exhibit -- you can put
3 the declaration aside.

4 A. Okay.

5 Q. You have an exhibit notebook, I believe, up there
6 Captain, and it has tabs. And if I could direct your
7 attention to Plaintiff's Exhibit 46.

8 A. On time performance distractions?

9 Q. Yes. I'll represent, Captain, that these are the, I
10 believe, the operational guidance --

11 A. Yes. This is basically the verbiage from the videos.

12 Q. And just to clarify, I believe if I understand this
13 correctly, you did two things. One, on each of the subject
14 matters, if you will, you sent out a operational guidance to
15 pilot homes?

16 A. Hmm-hmm.

17 Q. Which is a written document?

18 A. Right.

19 Q. And then you also sent out a corresponding video that
20 covered the same subject to the pilots as well?

21 A. Well, my committee did. I just happened to be the
22 conduit, yes. Correct.

23 Q. And I understand that.

24 A. Okay. Very good.

25 Q. You as Chairman of the Safety Committee?

1 A. That's correct.

2 Q. So Exhibit 46 is the -- are the -- what we call the
3 operational guidances. And these are what you sent to the --
4 I believe to the pilots' homes; is that correct?

5 A. That is correct.

6 Q. And when you sent them, did you send them in a form that
7 was -- had the holes punched on the left-hand margin so the
8 pilots could put them in their manuals from the company that
9 they carry with them?

10 A. I believe that's the way the Communications Committee
11 sent them out, yes.

12 Q. Okay. Now, let me direct your attention to the first
13 one here on Exhibit 46. It's part one, "On time pressure
14 distractions and ground crew approaching operating engines."

15 Let me go back for a moment. In your testimony, I
16 believe counsel asked you if these guidances were information
17 or if they were instructions. And I believe you answered
18 they were certainly at least partly instructions. And I take
19 it you still stand by that testimony; is that correct?

20 A. I believe I said advice and guidance.

21 Q. Advice and guidance. So you don't think they were
22 instructions to the pilots. You don't -- is that your
23 testimony now?

24 A. I believe I said advice and guidance when I was
25 speaking.

1 Q. I apologize. I wrote down instructions when he asked
2 you the question, and I thought you said, yes, to that. But
3 if you didn't, that's fine.

4 A. Hmm-hmm.

5 Q. Captain Kubik, I'm looking at the second paragraph where
6 it says, "The data in the Safety Culture Survey shows that
7 this push for on time performance affects safety."

8 Again, I just want to confirm that when you're referring
9 to "data" there, you're referring to the responses received
10 from the pilots who chose to respond to the survey questions;
11 is that correct?

12 A. I referred to it as data, because Dr. von Thaden refers
13 to it as data, yes.

14 Q. Right. But since you're using the word now, it's yours
15 too, and that's what you mean?

16 A. Sure. Hmm-hmm.

17 Q. Now your next part says, "guidance to help you combat
18 this on time pressure."

19 I don't want to -- I have no intent to argue with you
20 about this, but looking at what you wrote, these sentences
21 were, at least to my read, directing pilots to do things a
22 certain way.

23 It says, "in order to make that happen, you need to
24 close the flight deck door. Make absolutely certain that the
25 closed door is your signal to the flight attendants."

1 A. Hmm-hmm.

2 Q. "Once that is complete, open the door."

3 Would you agree with me, Captain Kubik, again, I don't
4 want to be argumentative, but at least some pilots might
5 interpret that as a direction from the union as to how to
6 exercise their discretion, correct?

7 A. That would be safe to say, yes.

8 Q. And some pilots would in fact treat that as a direction
9 for them to change the current way in which they are handling
10 the departure process; is that correct?

11 A. In accordance with the authority granted to them by the
12 FARs, yes.

13 Q. Let me direct your attention to the next page where you
14 talk about the approach to the gate. And you instruct the
15 pilots, if I'm reading this right, to use their discretion in
16 a particular manner, which is "to shut down the APU if it is
17 no longer needed for air or electric." And then you say,
18 "this differs from SOP."

19 So if I understand that, there's a company's -- SOP
20 stands for standard operating procedure; is that correct?

21 A. That's correct.

22 Q. And that's issued by the company's Flight Operations
23 Department and Safety Department?

24 A. That's correct.

25 Q. And that's approved by the FAA; is that correct?

1 A. Certainly.

2 Q. And your -- if I understand it, you're directing the
3 pilots to exercise their discretion to deviate from the SOP
4 on this subject matter that you're writing about; is that
5 correct?

6 A. That's correct.

7 Q. Are you familiar with the procedure used at US Airways
8 to develop or change SOPs?

9 A. I'm aware that we're not included in that process.

10 Q. Are you aware, for example, there's a more than one
11 person who is involved in determining whether to change SOPs
12 at US Airways?

13 A. Certainly. Just as there is more than one person
14 involved in the guidance we issue.

15 Q. Okay. Let me direct your attention, if I might, to part
16 two of your guidance. "Hotel and Scheduling Guidance Related
17 to Fatigue."

18 A. Hmm-hmm.

19 Q. I would like to just direct your attention to the second
20 paragraph where you say, "it becomes your responsibility to
21 either delay the ensuing flight until you feel rested, or
22 inform the Company that they will need to find another
23 pilot."

24 Again, it's fair to say that at least some pilots would
25 read your words as a directive from the Safety Committee to

1 exercise their discretion in a manner different than they had
2 been previously, correct?

3 A. I believe that's correct, they have that authority.

4 Q. And then going down in the paragraph you say, "If you
5 determine you are fatigued, you are done flying."

6 A. That's what it states in our -- basically that's
7 paraphrasing --

8 Q. I haven't asked my question.

9 A. I'm sorry. I misunderstood. I thought that was a
10 question.

11 Q. That's correct. I wanted to lay out a little bit more
12 here. It says, "When enough of our pilots fully understand
13 this requirement, and more importantly act upon this
14 requirement, then our substandard hotel situation will
15 disappear with the speed you likely thought was not possible.
16 We can not overemphasize this."

17 So I take it that you would agree with me that at least
18 some pilots would interpret this as a direction from the
19 Safety Committee, to change their approach toward the hotel
20 situation from what currently existed, correct?

21 A. Basically our committee determined that if a pilot is
22 fatigued, he should call fatigued.

23 Q. Could you please answer my question.

24 A. Can -- I'm sorry. Repeat the question.

25 Q. It would be fair to say that at least some pilots would

1 read this as a directive from the Safety Committee to change
2 their procedures regarding calling in fatigued after sleeping
3 in a hotel of the type you are describing?

4 A. That's a fair statement, yes.

5 Q. In some situations, that would be a directive for them
6 to change what they had previously been doing with regard to
7 that subject, correct?

8 A. Yes, if they were fatigued.

9 Q. By the way, I know you're not on the negotiating
10 committee, Captain Kubik, you mentioned that. But you're
11 aware that the entire selection of hotel selection is a
12 subject for collective bargaining between USAPA and the
13 company; you are aware of that, are you not?

14 A. I am aware of that, yes.

15 Q. Thank you. The next page in this document up in the end
16 of the top paragraph. And this has to do, I believe, with
17 the same issue. But now at the end of the paragraph you say,
18 "we make up for their -- "in other words, we make up for" --
19 I think you mean, management's "lack of respect and
20 compassion with our professionalism by accepting and flying
21 trips that we should not be flying. We must stop this if we
22 expect the situation to improve. We can not do the same
23 thing over and over again expecting different results. It
24 will not stop until we stop it."

25 So again, I take it, Captain Kubik, you would agree with

1 me that at least some pilots would interpret this as a
2 direction from the Safety Committee to change their behavior
3 with regard to the calling in of fatigue to the airline; is
4 that correct?

5 A. The safety culture survey showed fatigue to be a major
6 issue, and yes --

7 Q. Answer my question, please, sir.

8 A. Yes. If they are fatigued, this may change their
9 actions.

10 Q. And you would agree that many of them would read this as
11 a directive from the Safety Committee to change their
12 actions, correct?

13 A. Some may, yes.

14 Q. And I direct your attention to part three, please, "MEL
15 issues."

16 And I think on the second page, to speed this up we can
17 go to the top of the page where you refer to the fact that a
18 chief pilot may ask a pilot, "Are you refusing a legal
19 aircraft?" And you instruct, or your committee instructs the
20 pilots that, "The one word answer to that question is, yes."

21 And I take it that's also a direction to pilots to --
22 how they should handle their conversations with chief pilots;
23 is that correct?

24 A. Yes.

25 Q. Okay. Back into the next paragraph, you say at the end

1 of the second paragraph that, "Our 'get it done' attitude
2 plays perfectly into a flawed management reliance on the
3 MEL."

4 So I take it that at least some pilots would interpret
5 that, that they need to and are getting direction from the
6 Safety Committee to change their attitude regarding the MEL
7 process; is that correct?

8 A. Yes.

9 Q. Okay. Now just a couple more questions, Captain Kubik,
10 and I will be done.

11 I take it that -- again, without at all being
12 argumentative about intent, I'm just asking you toward the
13 actual effect.

14 You understood when you sent the guidance out, that if
15 the pilots exercise their discretion in the changed manner
16 that you were directing them to do, that the change would
17 result in some situations, in slowing down the company's
18 operations; you understood that, didn't you?

19 A. Absolutely not.

20 Q. Well, you understood that if you were telling them to
21 engage in slower departure procedures, it would have a
22 potential effect on company operations, did you not?

23 A. Where did I say engage in slower departure procedures?

24 Q. We'll let the document speak for itself.

25 A. That's what I'm getting at. Can you refer me to the

1 document where it states that? That's what I'm getting at.

2 Q. When you directed them to change the method and the way
3 and the occur -- and the procedure they used for pilot
4 fatigue calls, you understood that would potentially have
5 effect of delaying or disrupting the company's operations,
6 did you not?

7 A. Perhaps.

8 Q. And when you instructed them to change their behavior
9 regarding non-deferred MEL, maintenance, you understood that
10 that might have a potential impact on company operations, did
11 you not?

12 A. I would say I never -- I never gave that much thought,
13 to be honest with you.

14 Q. Okay. Did you ever say at a Charlotte domicile meeting,
15 peer pressure is important. Pilots need to be good union
16 pilots. Did you ever say that?

17 A. I did not.

18 Q. So when you saw those words in a Charlotte domicile
19 update, did you ever take efforts to tell the Charlotte
20 domicile that they're misquoting you?

21 A. I did.

22 MR. SIEGEL: No further questions, Your Honor.

23 THE COURT: Any Redirect.

24 MR. O'DWYER: A couple, yes.

25

REDIRECT EXAMINATION

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BY MR. O'DWYER:

Q. Captain Kubik, after you were turned down by the company in regard to the safety survey -- we've seen that safety culture survey -- has there been any discussion at all, since that time with you, on how a safety survey could be accomplished?

A. There has not.

Q. Captain Kubik, I think you touched about this lightly. But is there a procedure in the manuals or that indicates -- or the FAA, that indicates that the crew must discuss the condition of the aircraft between themselves?

A. Not sure there's a requirement in the FARs regarding that. It's part of our policy and procedure to work with our fellow pilots utilizing crew resource management, a technique we've been trained in, to discuss the air worthiness of the airplane, or our physical conditions.

Q. Explain to the Court what crew resource management is, please.

A. In a nutshell, crew resource management is using your fellow crew members, your fellow employees, everything available to you as a pilot, to help you make sound safety decisions.

Q. And does that involve the discussion between the cockpit crew?

1 A. Certainly. It's the main thrust of crew resource
2 management.

3 Q. Would it be a fair question on a safety survey to see if
4 one section of the pilots is not talking to the other pilots
5 as regards to safety?

6 A. Absolutely. Yes.

7 Q. Explain to the Court about that.

8 A. Animosity in the cockpit is a dangerous, dangerous
9 situation. And when it occurs from time to time, we take
10 every effort to, you know, solve it if we can. But if not,
11 then we tend to replace the pilot we're having a problem
12 with, or he tends to get off the flight himself. But
13 animosity has no place in the cockpit.

14 Q. Okay. In any of the statements or advice that you the
15 Safety Committee has put out, was there any thought or
16 suggestion of indicating what would happen if the pilots
17 disregard your advice?

18 A. Certainly not, no.

19 Q. What's the pilot's authority in regard to your advice,
20 as well as the company's advice?

21 A. Well, the pilot can heed our advice or disregard our
22 advice. Our job is to provide advice from time to time when
23 we see issues that affect safety, without regard, I might
24 add, to whether or not we're going to delay a flight, or
25 cancel a flight. Because our primary and only concern is the

1 safety of the flight.

2 All the factors that come into consideration and the
3 decisions we make, are basically part of the safety culture
4 we exist in.

5 And the data from the safety culture survey shows,
6 clearly, that we have a safety culture in need of
7 intervention. We are not being partnered with by the company
8 for that intervention. My committee and I determined that
9 it's our job to provide intervention in areas where we think
10 it's needed.

11 SOPs are very valid and very appropriate and should be
12 used at all times during normal operations.

13 Every time we go to work, it's not a normal operation at
14 this airline. And if anyone thinks it is, they need to read
15 the safety culture survey.

16 Q. Captain Kubik, referring to your question on Cross.

17 Would you go to 46 and go to part three, "MEL issues"?

18 A. Yes.

19 Q. The question that counsel asked you about is the answer
20 to, are you refusing a legal aircraft? Is that -- do you see
21 that there?

22 A. Yes, I do. Hmm-hmm.

23 Q. Is that the same question that was asked Captain Wells
24 when she refused to --

25 MR. SIEGEL: Objection.

1 THE COURT: Sustained.

2 Q. (By Mr. O'Dwyer) Is that a question that's normally
3 asked by the chief pilot to pilots who refuse to take an
4 aircraft?

5 A. The e-mails and phone calls that I get with regard to
6 chief pilot issues, that question -- when a pilot turns down
7 an airplane, that question is always asked.

8 Q. Okay. Is that question asked of you when you turned
9 down the airplane?

10 A. It was.

11 Q. And Captain Wells, when she turned down the airplane?

12 MR. SIEGEL: Objection.

13 THE COURT: Sustained.

14 Q. (By Mr. O'Dwyer) Would you then read for the Court,
15 counsel referred you to the first question which is, are you
16 refusing a legal aircraft? The one word answer to that
17 question is yes?

18 A. Hmm-hmm.

19 Q. What did you -- what did your committee say after that?

20 A. It says, "The longer version is -- the longer version to
21 that answer is, I am refusing an aircraft that I do not
22 consider safe under the authority granted to me in both the
23 FOM and the FARs."

24 MR. O'DWYER: No further questions.

25 THE COURT: You may step down.

1 Call your next witness.

2 MR. GRESHAM: Your Honor, could we take a brief
3 moment. We had filed some additional documents so that I can
4 provide them to the clerk. I have provided them to opposing
5 counsel.

6 THE COURT: Sure. It's 11:30. And we've been at
7 it for a couple hours so we'll take a morning break for 15
8 minutes.

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

10 (A brief recess was taken in the proceedings.)

11 THE COURT: Mr. Gresham, ready to go?

12 MR. GRESHAM: Yes, sir. And we provided them to
13 the clerk. I filed them as I was hustling between 9:00 --
14 8:30 and 10:00, new additional exhibits. You and your clerk
15 have a copy of those and opposing counsel also.

16 THE COURT: All right. Well, let's call your next
17 witness.

18 MR. SZYMANSKI: Your Honor, we call Courtney
19 Borman.

20 THEREUPON, COURTNEY BORMAN, being first duly sworn, testified
21 as follows during DIRECT EXAMINATION BY MR. SZYMANSKI:

22 Q. State your name for the record.

23 A. Courtney Borman.

24 Q. And are you employed by US Airways?

25 A. Yes. I'm employed by US Airways.

1 Q. How long have you been employed by US Airways?

2 A. I was first hired in June of 1999. I was furloughed
3 after 911 in 2002 and was recalled in 2007.

4 Q. And what do you do for US Airways?

5 A. I'm a first officer reserve pilot on the Airbus here in
6 Charlotte.

7 Q. And do you currently perform any functions for the US
8 Airline Pilots Association?

9 A. Yes. I am currently Chairman of the Membership Services
10 Committee and Furlough Committee. I also am a member of the
11 Communications Committee and Accident Investigation
12 Committee.

13 Q. And during the course of this litigation, have we asked
14 you to collect various documents?

15 A. Yes.

16 MR. SZYMANSKI: Your Honor, can I approach the
17 witness?

18 THE COURT: You may.

19 MR. SZYMANSKI: I'll wait until I get back to my
20 microphone.

21 I've given you a package of materials which are
22 Defendant's Additional Exhibit List for Preliminary
23 Injunction Hearing with several exhibits attached.

24 These are documents, Your Honor, that Mr. Gresham's
25 indicated to the Court about earlier.

1 So I ask you first, Mr. Borman, whether you'd
2 identify the first one, Exhibit K?

3 A. Yes. I've got Exhibit K here.

4 Q. You have Exhibit K. What is Exhibit K?

5 A. It is a filing by the company with the SEC, the 8-K.

6 Q. Where did you get that?

7 A. This is off of the internet. It's available -- public
8 document available to anyone.

9 Q. Is this the full document or only part of it?

10 A. Part of it.

11 MR. SZYMANSKI: Your Honor, we didn't collect this
12 through Mr. Borman, but there was reference to a message
13 during Captain Kubik's testimony about a clogged fuel filter.
14 This is in fact the document, Exhibit L.

15 THE COURT: Any objection?

16 MR. SIEGEL: Your Honor, could I have just a
17 moment?

18 THE COURT: Sure.

19 MR. SIEGEL: We haven't seen this.

20 No objection, Your Honor.

21 THE COURT: All right. I'll receive it.

22 Q. (By Mr. Szymanski) Exhibit M. Can you tell me what
23 Exhibit M is Mr. Borman?

24 A. Exhibit M is the Mainline versus Express cancellation
25 data for the year 2011, with December of 2010 in there. It's

1 the end of the month data, based on the US daily updates from
2 the company.

3 Q. And the second page of that exhibit is?

4 A. Just the data, just the numbers that make up the graph.

5 Q. And where did this information come from?

6 A. US daily updates from the company.

7 MR. SZYMANSKI: Exhibit N, can you tell me -- well,
8 Your Honor, actually Exhibit N is a draft of something and
9 I'm not going to offer it, I withdraw it.

10 THE COURT: Very well.

11 Q. (By Mr. Szymanski) And O. Exhibit O. Can you tell me
12 what Exhibit O is.

13 A. Exhibit O is the Mainline versus Express A-14 data,
14 again, from the US daily published by the company. This
15 current graph has the data for the end of each month, from
16 December 2010 through July of 2011, with data through -- for
17 August through the eleventh.

18 Q. And on the original of the exhibit, the lines have
19 colors. But on the copies they're in gray scale. So the
20 upper line indicates what?

21 A. The upper line would be US Airways arrival time.

22 Q. And the lower line?

23 A. Express.

24 Q. And the second page indicates what?

25 A. Just, again, the data in the number form, if you didn't

1 want it in the graph.

2 MR. SZYMANSKI: Actually, Your Honor, we've decided
3 at this point not to offer P, and I withdraw it.

4 So we go on to Q.

5 Q. Can you take a look at Q, which is a one-page document
6 with a title, US Airways at the top. And tell me what that
7 is.

8 A. This is an update from Captain Hogg.

9 Q. And where did you get that?

10 A. One of the -- I believe this is from a CBS message or
11 update from Captain Hogg to all pilots.

12 Q. And Exhibit R, what is Exhibit R?

13 A. Exhibit R was some of the staffing -- as part of the
14 Membership Service Committee, I conduct new hire training
15 classes. This discusses the openings and classes that have
16 been hired since the first of the year.

17 Q. Where did you get the information for this?

18 A. The open positions left, was off of the permanent based
19 bid provided by US Airways. The class data was sent to me as
20 I instructed or made a presentation to the new hires from the
21 time USAPA's allowed to speak with them when they first start
22 class.

23 MR. SZYMANSKI: No further questions, Your Honor.
24 I would offer those exhibits.

25 THE COURT: Any Cross?

1 MR. SIEGEL: No questions.

2 THE COURT: You may step down.

3 MR. SZYMANSKI: Your Honor, at this time I call
4 Michael Cleary to the stand.

5 THEREUPON, MICHAEL CLEARY, being first duly sworn, testified
6 as follows during DIRECT EXAMINATION BY MR. SZYMANSKI:

7 Q. State your name for the record, please.

8 A. Michael Cleary.

9 Q. And you're employed by US Airways?

10 A. Yes, I am.

11 Q. How long have you been so employed?

12 A. Since February 3rd, 1986.

13 Q. And what do you do for US Airways?

14 A. I'm a captain on the Airbus 320.

15 Q. And have you been flying before that?

16 A. Yes. Started flying in 1979.

17 Q. And you're president of the US Airline Pilots
18 Association, right?

19 A. Yes, I am.

20 Q. And you're familiar with the pilots that you represent?

21 A. I am.

22 Q. How many pilots does the association represent?

23 A. We represent 5,200 pilots.

24 Q. And how much experience does the average US Airways
25 pilot have?

1 A. You know we -- we're actually, demographically, one of
2 the most experienced and elderly pilot group in the country
3 right now, though we do have some new hires, venture to say
4 somewhere in the vicinity of 20 years with a minimum
5 experience -- or an average experience.

6 Q. I asked Mr. Lee when he testified last week some
7 questions about the relationship between duty hours and block
8 hours. But let me ask you what -- when is a pilot considered
9 to be on duty?

10 A. Contractually we have duty regs that control our pay.
11 And they begin when we report for a trip, and they end days
12 later when we get back home to our domicile from the trip.

13 Q. And pilots get their assignments according to a bid
14 system; is that right?

15 A. Yes, it is.

16 Q. And can you briefly describe the bid system?

17 A. Sure. There are two types, two general categories of
18 bids that the pilots participate in.

19 On the one hand there are block holders, we call them
20 line holders. They bid on a sequence of established flight
21 numbers on specific days throughout a period, usually defined
22 as a calendar month.

23 And separately there are reserve pilots that bid on a
24 series of on-duty days and off days. And during those
25 on-duty days those pilots would be on call.

1 Q. Is it unusual for a pilot to live someplace other than
2 his or her assigned base or domicile?

3 A. It is not.

4 Q. And in terms of block hours, a line pilot's bid would
5 have how many block hours in it?

6 A. The normal maximum is 85. But the company does have
7 some flexibility within the Collective Bargaining Agreement
8 to increase those numbers up to 95.

9 Q. And for reserve pilots, what would be the expected
10 number of block hours?

11 A. Reserve pilots have minimums that they are compensated
12 for, for staying on duty of 72 or 76. But the maximum for a
13 reserve is a rolling cap of 287 pay hours over any
14 three-month period.

15 Q. So for a line pilot, in a month, how many days would a
16 line pilot work?

17 A. Anywhere from 18 to 20.

18 Q. And a reserve?

19 A. Reserve pilots are guaranteed a minimum number of days
20 off. They're usually working anywhere from a small handful
21 to more than 20.

22 Q. Let me ask you some questions about the union. When was
23 the union formed?

24 A. We were certified as the collective bargaining agent for
25 the US Airways pilot on April 18 of 2008.

1 Q. And at that point did you have any office with the
2 union?

3 A. I was vice president on that day.

4 Q. And at what point did you become president?

5 A. Became president on April 18 of 2009, one year later.

6 Q. And how did you become president?

7 A. Became president by the very first national election to
8 elect officers that this pilot group has experienced.

9 Q. And what's your term of office?

10 A. Expires in July of 2012.

11 Q. How many officers and what officers other than the
12 president does the association have?

13 A. There are four national officers. And the construct of
14 the union also includes a Board of Pilot Representatives that
15 contains 11 members.

16 Q. And the Board of Pilot Representatives contain pilot
17 representatives from each of the bases?

18 A. They do. They're elected from each of their respected
19 domiciles.

20 Q. What are the bases?

21 A. They are Philadelphia, Washington, Charlotte and
22 Phoenix.

23 Q. And your pilots are assigned to those bases, I take it?

24 A. They are. They are bid and are awarded bids and/or are
25 assigned to those bases.

1 Q. What's the principal method of communication for the
2 association?

3 A. We made a business model decision early on, that we're
4 going to communicate electronically with our pilots. And so
5 primarily we communicate via e-mail. We also have a robust
6 web site that we use to communicate with our pilots that they
7 enjoy.

8 Q. Do you have any idea how often a pilot would go to your
9 web site?

10 A. I know that we know what the answer is. I don't know
11 what the answer is. I know that our web people track who is
12 there and what they're looking at. But I don't have the
13 statistics available.

14 Q. And do you receive e-mail messages from people in the
15 union?

16 A. I do. I do. E-mail is the bane of my existence,
17 actually.

18 Q. How many do you receive in an average day?

19 A. Anywhere from 200 to 350, 400 e-mail messages a day.

20 Q. Do you answer them yourself?

21 A. I try very hard to answer them, yes I do.

22 Q. Your Board of Pilot Representatives, how often does the
23 board meet?

24 A. The board, by constitution and bylaws requirement, meets
25 twice a year at least. In addition, we use special meetings

1 to meet. And in addition we meet telephonically
2 periodically. So maybe once every month or two we are
3 together in some form.

4 Q. And do you communicate with your board members other
5 than in an actual meeting?

6 A. Yes. We're in near constant contact with the board.

7 Q. And most of the time you do that communication, how?

8 A. Electronically, telephonically and e-mail.

9 Q. And the union has several committees?

10 A. It does.

11 Q. How many committees does it have?

12 A. Somewhere in the vicinity of 18, 20.

13 Q. And who staffs each of the committees?

14 A. By constitution and bylaws, the president appoints and
15 the board approves, we have approximately 253 committee
16 members.

17 Q. And they're pilots, I take it?

18 A. They have to be pilots, yes.

19 Q. Do you hold a regular update call for the committees?

20 A. I do. We -- we've tried very hard to run a disciplined
21 organization, and we hold committee chair conference calls
22 periodically.

23 Q. About how often do you hold them?

24 A. Well we try for monthly, but probably ends up being a
25 lot more like every 60 days or so.

1 Q. Who is on the call when you hold them?

2 A. We invite the committee chairman, so they're -- at least
3 they're and one of the representatives. They're allowed to
4 bring other people if they like. But primarily it's for the
5 committee chairman to interact with the officers.

6 Q. And what's the agenda for the call?

7 A. The agenda for the call is so that we can again be
8 somewhat disciplined in the work that we're doing. I use the
9 calls so that the committee chairmen can update each other on
10 the important projects that they're working on, in order to
11 prevent duplication of work, and also to see if there are
12 areas that we can work together on projects.

13 Q. Do the committees communicate directly with the pilots?

14 A. They do.

15 Q. And are those communications reviewed and approved by
16 you before they go out?

17 A. They are not.

18 Q. Is there anything special about the Safety Committee?

19 A. There are a number of things that are special about the
20 Safety Committee. First of all, it's one of our largest,
21 most important committees. It's got a very significant
22 budget.

23 But the other thing that I would say that's very
24 important about the Safety Committee and quite unique is that
25 it's-- it stays away from the politics of the union from the

1 industrial issues, if you will.

2 Q. What do you mean by industrial issues?

3 A. I mean, the politics, the collective bargaining and the
4 other political features and things, methods that we have to
5 accomplish our goals. That committee has very determinedly
6 stayed away from the politics of the union.

7 Q. And the members of your Safety Committee, are they
8 experienced?

9 A. I think they are. I find them highly experienced and
10 uniquely qualified to serve.

11 Q. I think we've had testimony about, at least a couple of
12 the members, Captain Sable -- and from a couple of the
13 members, Captain Sable and Captain Kubik. They're Check
14 Airmen or have been?

15 A. They are. A number of them are former Check Airmen. In
16 addition to that, certain of our Safety Committee members
17 receive training. For example, one of the subcommittees of
18 the training committees is our Accident Investigation
19 Committee. That committee is a very large committee. We
20 have members distributed throughout the country,
21 purposefully, so that they can respond quickly to accidents.
22 And those members have all received training at either the
23 NTSB or outside sources of training for accident
24 investigation.

25 Q. So generally the Safety Committee members would be

1 recognized by their peers as leaders?

2 A. Absolutely.

3 Q. Now we've seen a few e-mail messages that indicate a
4 level of disagreement among the pilots; is that accurate?

5 A. Yes, I would say that's accurate.

6 Q. Pilots hold independent views?

7 A. Yes. Pilots are trained to be decision makers and to
8 be -- to be leaders. And I think -- I know that they take
9 those responsibilities very seriously. They're a very
10 opinionated lot. And they're not -- they're not shy in any
11 way about communicating those opinions to us.

12 Q. Can the witness have -- can the witness have the exhibit
13 book in front of him, please?

14 A. Is it this one?

15 Q. No, the other one.

16 A. Thank you, sir.

17 Q. I want to show you two or three exhibits that are in the
18 book. If you would turn and look first at Exhibit 19.

19 A. Okay.

20 Q. Would that be one of the independent opinions that you
21 were referring to?

22 A. Yes.

23 Q. And the same question with respect to Exhibit 20 and 21.

24 A. Yes.

25 MR. SZYMANSKI: There is -- Your Honor, can I

1 approach?

2 THE COURT: You may.

3 MR. SZYMANSKI: The package of additional -- let me
4 wait until I get back.

5 From the additional exhibits we submitted this
6 morning, I'm showing you Exhibit T. Can you tell me what
7 that is?

8 A. It's a web board post, appears to be from a public web
9 board where pilots can go and participate.

10 Q. And any pilot for any airline can get on that board?

11 A. It's my understanding.

12 Q. And that blog post is by what -- identifies itself as
13 what?

14 A. The -- looking at the Cactiboss?

15 Q. Yes.

16 A. -- moniker there? Yes.

17 MR. SZYMANSKI: And Your Honor, I'm not going to
18 have the witness read it, since I assume we all can read
19 that.

20 THE COURT: Very well.

21 Q. Now, Exhibit 19, 20, 21 and T, did any of those come
22 from the association or were authorized by the association?

23 A. No, they did not.

24 Q. We had a postal box presented by the company last week.
25 Let me ask you a few questions. The association has an

1 office, obviously?

2 A. Yes, we do.

3 Q. And where is the office?

4 A. The office is located in Charlotte on Woodlawn Road.

5 Q. And how big is the office?

6 A. I think it's approximately 9,000 square feet, something
7 like that.

8 Q. And do you have security in the office?

9 A. Well, I mean the doors are locked at night. But the
10 office, you know, is open during the day. It's -- it's a lot
11 of activity in the office.

12 Q. Who's allowed to come into the office?

13 A. Well, the office is a union hall. And so the people
14 that use it are the 5,200 pilots. I mean, we have employees,
15 staff and just a number of people that work for the union
16 itself number approximately 300. Although they are not all
17 there, of course, at the same time. And the 5,200 pilots
18 have access to it.

19 So there are people coming and going on a regular basis.
20 We provide a lot of services in the office for pilots. They
21 come in frequently to use it. There are open work spaces for
22 them, there are work spaces for the committees, and for the
23 staff.

24 Q. And this would include both pilots that before the
25 merger were employed by US Airways and pilots that before the

1 merger were employed by America West?

2 A. Yes.

3 Q. Do you have a postage meter?

4 A. We do not.

5 Q. And have you been able to find out how that particular
6 box came to have a piece of postage on it that is apparently
7 done with a serial number that identifies it as coming from
8 the association?

9 A. I have not. We haven't had the time to do any research
10 on it but, you know, we have a workroom where, you know, we
11 have some mail equipment. If postage came from the office,
12 it was certainly any number of people that had access to it.

13 Q. And when the box was presented, the carrier indicated
14 that bag tags such as Exhibit 88 of the large book there,
15 were included in the box. When's the first time you saw
16 those bag tags?

17 A. The first time I saw this bag tag was when Mr. Hogg
18 raised it in his hand in court on Friday.

19 Q. Were they produced by the association?

20 A. No.

21 Q. Do you have any knowledge how they were produced?

22 A. I do not.

23 Q. So did you send the box?

24 A. No.

25 Q. And do you know if anybody at the association sent that

1 box to the carrier?

2 A. Certainly not to my knowledge. And frankly, I could see
3 no intent to sending the box.

4 Q. Would there be any reason for the association to send
5 that to the carrier?

6 A. No.

7 Q. Let's talk about something that we've all been spending
8 time talking about, which is safety. When did safety become
9 an issue for the association?

10 A. Safety became at the forefront of the concerns of the
11 association since its inception on April of 2008.

12 Q. Why was it an issue?

13 A. It's an issue because safety is the critical feature of
14 airline pilots, properly and competently accomplishing their
15 work. Absent an appropriate level of safety and safety
16 culture, bad things happen.

17 Q. And after you became president -- or let me back -- at
18 some point was there an issue with the company about fuel
19 loads?

20 A. Yes, there was.

21 Q. When did that arise?

22 A. Happened in the summer of 2008, shortly after we became
23 the collective bargaining agent.

24 Q. And how did that issue arise?

25 A. It arose because the company had changed their policies

1 and decided to carry less fuel per aircraft. They had
2 incentive to do so, of course, because it's cheaper. It
3 costs money to haul fuel around. Clearly we need
4 appropriately fueled aircraft so that we can get to our
5 destination and have appropriate reserves.

6 Q. So the company's idea to carry less fuel by itself is
7 not an unsafe practice?

8 A. No.

9 Q. What was the problem that arose with the policy?

10 A. The problem with the policy as it was a change, first of
11 all I'll say. And it made a lot of pilots uncomfortable.
12 Many pilots began asking for increased fuel loads.

13 Q. And were any pilots disciplined or called in as a result
14 of their decision?

15 A. Yes. Although there were many pilots that were
16 affected, and many pilots that responded by exercising their
17 judgment to appropriately increase fuel loads, six or seven
18 were chosen by the company for a retraining episode.

19 Q. And those particular pilots, how much extra fuel were
20 they asking for?

21 A. You know, the pilots in question were predominantly
22 international pilots, so they were flying across the
23 Atlantic. And the amount of fuel that they were asking for
24 in addition was a mere minutes amount of fuel.

25 Q. So these pilots were called in for retraining. What

1 does that entail?

2 A. Well, anytime that a pilot undergoes training, all of us
3 understand that there's jeopardy attached. When you enter a
4 training environment, there's always a chance that you don't
5 come out with your certificate. So it was an important
6 escalation and we objected to it.

7 Q. How did the union deal with the issue?

8 A. The union dealt with the issue in many ways. The first
9 thing we tried to do was talk to the company and ask them
10 what was happening.

11 We made repeated efforts at various levels of the
12 organization to find some compromise, find some path out that
13 didn't involve placing the pilots' licenses in jeopardy.

14 Q. And did you eventually talk to the president at US
15 Airways about the situation?

16 A. I did.

17 Q. And what did he say and what did you say?

18 A. On an evening that I remember clearly, I called
19 President Scott Kirby. We spoke for approximately a half
20 hour about the matter. It was a candid give and take.

21 At the end of the -- near the end of the conversation I
22 said to Mr. Kirby that I appreciated the conversation, and
23 that I was confident that we had each explained our view
24 points to each other.

25 I said, Scott, before we go further I'd like to ask you

1 a question, and this is the question: Please do not send
2 these pilots to fuel school, as we were calling it then.

3 Mr. Kirby responded to me that the company had made up
4 their mind and that they were going forward with it.

5 Q. Was that the end of the conversation?

6 A. I think there may have been a good-bye or two. But yes,
7 essentially.

8 Q. So the pilots did go to retraining?

9 A. They did.

10 Q. And did anything happen as a result of that?

11 A. Yes. At that point it was clear to us that all of our
12 efforts to interact with the company at the various levels of
13 the Training Committee to the Safety Committee through the
14 officers, had failed to protect our pilots. And so we felt
15 compelled to shine some sunlight on to the issue into the
16 public. And so we placed an ad in the *USA Today* newspaper to
17 cause that sunlight to happen.

18 Q. The supplemental exhibits, the small package that I
19 asked you about, Exhibit T, do you have those still up there?
20 It may be buried under one of those binders.

21 A. What's it called again, please?

22 Q. Yeah. With the clip on it. Sorry.

23 A. Okay.

24 Q. If you'd look at Exhibit S and tell me, is that the *USA*
25 *Today* ad that was placed?

1 A. Appears to be, yes.

2 Q. Did the call sign for US Airways aircraft change after
3 the ad was placed in the newspaper?

4 A. Yes, it did.

5 Q. How did it change?

6 A. It changed from US Air to Cactus.

7 Q. Did you have an opinion about that?

8 A. I did. We -- the FAA recommends that radio call signs
9 used by airliners, comport with the visual identity of the
10 outside of the aircraft. And that the Cactus call sign had
11 little to do with our livery, thereby causing a lack of
12 situational awareness for the other pilots who are operating
13 in our vicinity and hearing our call signs. Common clearance
14 is, "Follow Cactus to the runway".

15 Q. So when I'm sitting in an airplane and I'm listening to
16 channel 9 on the audio program, and I'm listening to
17 communications between the pilot and the air traffic
18 controllers and I hear United 697, I know that's United --
19 that's a United plane. But when it's a US Airways aircraft,
20 how is it going to be referred to as?

21 A. Cactus 697.

22 Q. At one point did the association request to have a
23 representative on the Flight Operations Safety Board?

24 A. Yes.

25 Q. And what did the carrier say about that?

1 A. They had refused.

2 Q. We've had some testimony about the Special Operations
3 Audit that was performed by the company. Now was that
4 primarily a safety audit?

5 A. Yes.

6 Q. And there's testimony about someone changing the address
7 on the response cards. Do you know anything about that?

8 A. I have a little bit of knowledge that the Safety
9 Committee was the primary driver in this effort. But I know
10 that there was some concern among the pilots who were
11 responding, that they wanted to be sure that USAPA also had
12 the results so that we could advocate for them.

13 So I think what happened was that there were duplicates
14 sent to both the company and to the union, to which we
15 collected dutifully and delivered to the company at the end
16 of the audit period.

17 Q. Did the association direct pilots to make any particular
18 response to the survey?

19 A. Other than to be honest; no.

20 Q. Now, you were here when Captain Kubik testified about
21 the safety culture survey?

22 A. Yes, I was.

23 Q. And to your recollection was his testimony about that
24 accurate?

25 A. Yes.

1 Q. Why did the association decide to do the survey?

2 A. We did it because we saw it as an opportunity. We saw
3 it as an opportunity to partner with the company and to find
4 common ground on these important issues that clearly should
5 be in everyone's best interest.

6 So Tom was very enthusiastic about this new resource
7 that he had found. He convinced me and we convinced the
8 board. And so all of us saw it as a fantastic opportunity.

9 Q. And we know that the company refused to partner with you
10 on it. At some point did someone from the company tell you
11 why the company refused?

12 A. Yes, they did.

13 Q. Who was that?

14 A. It was the CEO of the company, Doug Parker.

15 Q. And in what context did he tell you?

16 A. This took place in November of 2009. The board of
17 directors of US Airways has as a committee, the Labor
18 Committee. That committee's composed of three members of the
19 US Airways board of directors, including Mr. Parker, and all
20 of the presidents of the unions that represent employees at
21 US Airways.

22 And at that meeting I had asked Mr. Parker why the
23 company had refused to participate and partner with us in the
24 safety culture survey.

25 Mr. Parker responded that they had seen the questions,

1 and that after they had seen them, that they had decided that
2 the questions were political in nature and that's why they
3 refused to sign it.

4 I said, Mr. Parker, that couldn't possibly be the truth,
5 because you refused to participate before you saw the
6 questions.

7 Q. Now you said that happened in November of 2009?

8 A. Ten.

9 Q. 2010. Are you familiar with the status quo requirement
10 of the Railway Labor Act?

11 A. I am.

12 Q. What do you understand that the status quo requires?

13 A. I should qualify my remarks by saying I'm not an
14 attorney, by the way.

15 I understand our obligations to be that we're not
16 allowed to take any action with respect to how we perform
17 under the Collective Bargaining Agreement, just because we're
18 in negotiations.

19 Q. Now, was the safety survey -- safety culture survey and
20 the resulting safety issues, were they designed as a way to
21 get around the status quo requirements?

22 A. Absolutely not.

23 Q. And did you take care of your messages to the pilots to
24 draw a line between the status quo and safety?

25 A. We tried very hard.

1 Q. Now, the company cited a number of e-mails and other
2 communications suggesting that either the association was
3 responsible for those, instigated them, or failed to respond
4 to them. And I want to go through them with you.

5 Your Honor, in order to shorten the testimony on
6 this particular point, I'd like to say that I asked Captain
7 Cleary to go over these carefully and read them so he didn't
8 have to do that as we went through each one while we're here.

9 Captain Cleary, have you done that?

10 THE WITNESS: Yes, I have.

11 Q. So you're familiar with these. And they're in that big
12 binder that you have in front of you. And it starts with
13 Exhibit 14. And with respect to each of them, I'd like to
14 you tell me when the first time was that you saw it. And so
15 it's Exhibit 14.

16 A. The first time I saw it was in connection with the
17 documentation of this complaint.

18 Q. And Exhibit 15?

19 A. Same answer.

20 Q. 16.

21 A. Same answer.

22 Q. 17.

23 A. Same answer.

24 Q. 18.

25 A. Same answer.

- 1 Q. 36.
- 2 A. Same answer.
- 3 Q. 43.
- 4 A. Same answer.
- 5 Q. 44.
- 6 A. Same.
- 7 Q. 51. And Your Honor, I'll note that 51 is actually the
8 same as 16. So I assume they're the same answer.
- 9 A. Yes.
- 10 Q. 52.
- 11 A. Same answer.
- 12 Q. 53, which is the same as 17.
- 13 A. Same.
- 14 Q. 54 which is the same as 18.
- 15 A. Same.
- 16 Q. 56.
- 17 A. Same answer.
- 18 Q. 57.
- 19 A. Same answer.
- 20 Q. 58.
- 21 A. Same answer.
- 22 Q. 62.
- 23 A. Same answer.
- 24 Q. 63.
- 25 A. Same answer.

1 Q. And 88, which you've already testified to, but I'll ask
2 you once more.

3 A. Same answer.

4 Q. Any of these exhibits that we have just gone over, were
5 any of them issued by you?

6 A. No, they were not.

7 Q. Were they authorized by you or by the association?

8 A. Absolutely not.

9 Q. I have a separate question about one of the exhibits
10 which I'd ask you to turn to, which is Exhibit 58.

11 This is an e-mail message about pilots flying extra
12 hours. And in his supplemental declaration, Captain Hogg --
13 and that's Exhibit 61 is his supplemental declaration, at
14 paragraph four says that the information contained in the
15 e-mail about the hours flown by these individual pilots was
16 restricted to a group of company management officials, and a
17 certain group of US Airline Pilots Association
18 representatives. And suggesting that the association somehow
19 participated in giving this information out.

20 Do you have any knowledge whatsoever about the
21 association giving information to anybody who might have
22 authored this e-mail?

23 A. I do not. I never saw it until I got here.

24 Q. All right. Has there been any circumstance in the past
25 in which similarly restricted information was released to

1 people who weren't authorized to have it?

2 A. Well, I can think of at least one very stark example,
3 yes.

4 Q. When did that happen?

5 A. In September of 2009.

6 Q. And what kind of information was involved?

7 A. The information that was involved was a seniority list
8 of all East pilots that included their names, addresses and
9 social security numbers.

10 Q. And how did you learn that it had been released?

11 A. We -- all East pilots received a mass mailing from a
12 group that had organized certain of the former America West
13 pilots, relative to the seniority dispute. And all East
14 pilots received a mailer from those -- from that
15 organization. We were all concerned about how they had
16 gotten our e-mail addresses. And so we tried to work with
17 the company to figure it out.

18 And the company did admit that one of their
19 representatives had transmitted the list of names, addresses
20 and social security numbers to the Leonidas Group.

21 Q. And what was the Leonidas Group involved in at the time?

22 A. The Leonidas Group is a group of certain former America
23 West pilots who were advocating for a certain seniority
24 integration proposal.

25 Q. Did they have litigation pending against the

1 association?

2 A. Yes.

3 Q. And what happened to the official, the management person
4 who was identified as having released the information to
5 them?

6 A. To my knowledge, very little. There were three pilots
7 who were involved. The management official was an assistant
8 chief pilot from Phoenix who delivered the information to
9 Leonidas. And it's my understanding that those pilots are on
10 paid administrative leave at this point, and have been for
11 some many months now.

12 Q. Would you turn to, in that large volume, Exhibit 11,
13 please.

14 THE WITNESS: Your Honor, would it be possible to
15 get a glass of water, please?

16 Q. Captain Cleary, the carrier cited in his opening
17 statement, this particular communication, referring in
18 particular to the third paragraph. Can you read that for
19 yourself for a moment. Do you have that in front of you?

20 A. Yes, I do. The May 3rd, Exhibit 11. Yes. 11, yeah.

21 Q. Did you review this communication before it went out?

22 A. No, I did not.

23 Q. And so you saw it after it went out?

24 A. I did.

25 Q. And what was your reaction when you saw it?

1 A. You know, I was disappointed to read it. Because as
2 I've said earlier, we've tried very hard to run a disciplined
3 organization. We tried to be clear with our members,
4 committee members about what their duties and
5 responsibilities are. They're outlined in a union operating
6 manual that we have that's coming up on 100 pages long now.

7 And we tried to implore people that even though it may
8 be interesting to see someone failing, or not doing exactly
9 what you would like on the other side of the field, to please
10 remain disciplined and do your own work. So when I saw this
11 come out, I was disappointed to see it published.

12 But I do know that each of these committee chairs are
13 keenly aware of what the other members important projects
14 are. And I have fostered some of that through the committee
15 chair conference calls.

16 Q. So you didn't ask the Strike Prep Committee co-chairs to
17 include this in their message to the pilots?

18 A. I did not.

19 Q. Do you know if anyone else from the association did ask
20 them to include it?

21 A. I don't know. But it couldn't have happened because
22 their structure wouldn't have allowed it.

23 Q. Okay. There are a number of communications from US
24 Airways to the association concerning what the carrier viewed
25 as violations of the status quo. And I would like to go

1 through them.

2 It jumps around a little bit, Your Honor, but I've tried
3 to keep these in chronological order.

4 Captain Cleary, would you -- and again, I asked Captain
5 Cleary before his testimony to be familiar with these so he
6 doesn't have to read them while he's there on the stand. But
7 would you look for a moment in that large Volume at Exhibits
8 6 and 9.

9 A. Okay.

10 Q. Can I ask you whether Exhibit 7, a January 28, 2011
11 letter, from you to US Airways, is your response to those
12 first two exhibits?

13 A. Yes, it is.

14 Q. Now, generally, one of the issues in this concerns
15 furloughs and extra flying, and when did that issue first
16 arise?

17 A. Well, it's interesting, the communication that's
18 referenced in Mr. Hemenway's December 23rd, 2010 letter,
19 first arose in April of 2010.

20 Q. And what was the issue that arose back in April of 2010?

21 A. The circumstances were different in April then they were
22 in December or are now. Back in April of 2010 we had pilots
23 that were on furlough.

24 Q. And what -- at that particular time back in April of
25 2010 -- did the association communicate to its pilots?

1 A. Association communicated to its pilots that we have
2 members on furlough. And we had asked our pilots not to line
3 their own pockets at the expense of those who were on
4 furlough.

5 Q. And that concerned their acceptance of extra flying?

6 A. Yes.

7 Q. And how does the acceptance -- it's probably obvious,
8 but I'm going to ask the question anyway, Your Honor.

9 How does the acceptance of extra flying affect pilots
10 who are on furlough?

11 A. Well, I mean, you know, they were -- they were -- pilots
12 have an obligation to complete a certain amount of flying,
13 which they were doing. But the extra flying, potentially,
14 was keeping pilots on furlough for a longer period of time
15 than otherwise might have been necessary.

16 Q. And how is that situation any different now?

17 A. Well, because we don't have pilots -- although we do
18 have pilots on furlough, I should be clear, all of them have
19 had an opportunity to come back. And so that's the
20 distinction between then and now.

21 Q. When did that change?

22 A. When did the pilots --

23 Q. When did it come about that all of the pilots who were
24 on furlough had been offered return duty?

25 A. I'm not sure I know the answer to the question.

1 Q. Okay. Again, the set of supplemental exhibits, do you
2 still have that sitting up there someplace?

3 A. Are these the ones that are lettered?

4 Q. Yes, lettered. If you would look at Exhibit P, as in
5 Peter.

6 A. Okay.

7 Q. Is there anything in that, that indicates when the
8 return from furlough had been offered?

9 A. I'm just not sure, Mr. Szymanski --

10 Q. I don't have the right exhibit?

11 A. Pardon me?

12 Q. I don't have the right exhibit, right?

13 A. I'm looking at Crew Management Bulletin 1103 Exhibit
14 Papa.

15 THE COURT: You actually withdrew that.

16 MR. SZYMANSKI: That's one I withdrew. You
17 shouldn't be looking at it anyway.

18 THE COURT: If it would refresh his memory, so you
19 could look at it for that purpose.

20 MR. SZYMANSKI: Can I look at what he has, Your
21 Honor? I'm sorry.

22 THE COURT: Sure. Even withdrawn, if it refreshes
23 his recollection, I don't have any problem.

24 MR. GRESHAM: Here's a set Mr. Szymanski, if you
25 want to give the witness a set.

1 MR. SZYMANSKI: Your Honor, I should be minding my
2 Ps and Qs. I really meant to point him to Q.

3 THE COURT: Okay.

4 Q. So Captain Cleary, if you would read Q for a minute and
5 see if that says when the pilots have been offered return
6 from furlough.

7 A. Okay. I'm seeing here that it was -- I mean, I did have
8 a vague recollection that it was somewhere in the summertime
9 where everyone had come back. And this does refresh my
10 recollection that it was sometime in that time period.

11 Q. All right. Okay. Thank you.

12 Then if you would look at Exhibit 37 in the large
13 volume, which is a Crew Broadcast, a CBS message from Captain
14 Hogg to the pilots concerning distance learning, and
15 following exhibit, which is Exhibit 38, a May 24 letter,
16 2011, from you to the carrier.

17 A. Okay.

18 Q. The subject of the Crew Broadcast System message was
19 what?

20 A. The completion of distance learning.

21 Q. And in Exhibit 38 you advised Mr. Hemenway that -- what
22 the union's position was, and what action you had taken.
23 What action had you taken?

24 A. The letter was -- just by way of correction -- not to
25 Mr. Hemenway, it was to Mr. Hogg.

1 Q. Yes, correct.

2 A. And it was that we had to informed him that we were
3 happy to partner with them and inform the pilots of their
4 obligations and we did so, by posting a message on our web
5 site.

6 MR. SZYMANSKI: All right. And the May 10th
7 letter, Your Honor, is Exhibit 12.

8 Q. So Captain Cleary, if you would take a look at Exhibit
9 17 if you would please. I'm sorry, Exhibit 29, dated
10 August 17th. Second to the last page, second to the last
11 paragraph. Read that for us please.

12 A. "To be crystal clear, you must not intentionally cause
13 any delay where the purpose is to alter the status quo. Nor
14 should you encourage others to do so. You are charged by law
15 with the safety of the passengers in your care, and your
16 union's concern for the safety of its members and the
17 passenger public remains unabated. However, any intentional
18 delay or failure to accept additional flying hours for the
19 purpose of altering the status quo, weakens the stated safety
20 concerns of USAPA."

21 Q. And this is a message that you sent to all of the
22 pilots?

23 A. Yes. This message was delivered electronically to all
24 of our pilots. And I think there were additional people on
25 the e-mail distribution list as well.

1 Q. So, Captain Cleary, how is your -- the safety program
2 that's being conducted by the association related to contract
3 negotiations?

4 A. It's not connected in any way.

5 MR. SZYMANSKI: Your Honor, I don't have any
6 further questions for Captain Cleary.

7 THE COURT: Any Cross?

8 MR. SIEGEL: Yes, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. SIEGEL:

11 Q. Good morning, Captain Cleary.

12 A. Good afternoon.

13 Q. Good afternoon I guess is correct.

14 On Exhibit 11 -- let me ask you, first of all, who
15 formed the Strike Prep Committee?

16 A. I think the Strike Prep Committee was formed by prior
17 President Bradford.

18 Q. And "prep" stands for preparation?

19 A. Yes.

20 Q. And the -- and I take it when it says strike
21 preparation, that means after and if and when the union is
22 released to legally strike by the National Mediation Board,
23 this committee is making preparations for that? Is that the
24 role of the committee?

25 A. That is the role of the committee.

1 Q. And it was created by your predecessor. Does it report
2 to you since you're chair of the union?

3 A. Yes.

4 Q. And who is the chair of the Strike Prep Committee?

5 A. Captain Rick Odatto.

6 Q. He was appointed to that position by you?

7 A. He was appointed by President Bradford. And it was a
8 requirement that the new president reaffirm all committee
9 appointments. So upon my election in April of 2009,
10 committee chairman reaffirmed.

11 Q. And when the Strike Prep Committee sent out this update
12 on May 3rd, 2011, do you know how it was transmitted to
13 pilots?

14 A. It was transmitted electronically.

15 Q. They received it upon their personal e-mail addresses?

16 A. I -- they received it on the e-mail addresses that they
17 have on record. Whether they're personal or not, I don't
18 know.

19 Q. I mean, they don't have company e-mail addresses, so the
20 addresses are those that they create themselves?

21 A. I have no knowledge to answer your question.

22 Q. How did you receive it?

23 A. I received it to the e-mail address that I have on
24 record with USAPA.

25 Q. So you received it on or about May 3rd, 2011?

1 A. I presume so.

2 Q. And you're aware that that is about the time that the
3 company has alleged that the work slowdown started. I
4 recognize you don't agree with the allegation, but you're
5 aware that that's about the time the company has alleged the
6 work slowdown has started?

7 A. It's my understanding, yes.

8 Q. And you testified on Direct that you were disappointed
9 when you saw this bulletin; is that correct?

10 A. Yes.

11 Q. Were you disappointed on May 3rd when you received it?

12 A. When I read it, yes.

13 Q. You read it sometime on or about May 3rd?

14 A. Correct.

15 Q. I take it that one of the things you were disappointed
16 about is when you saw that your Strike Prep Committee had
17 said to the pilots, "What should you do? There are many
18 things that we must focus on as we move forward. First and
19 foremost is the safety culture."

20 And ending up with, "We must meet or exceed the safety
21 standards that the FOM and FARs in every single decision that
22 we make."

23 Is that part of what you were disappointed in, Captain
24 Cleary?

25 A. No. I was disappointed, as I've stated earlier, that we

1 tried hard to run a disciplined organization. And I don't
2 want the grievance committee sending out bereavement notices.
3 And I don't want the Strike Prep Committee talking about the
4 safety issues.

5 Q. So what I just read to you is the Strike Committee
6 talking about the safety culture. So that's part of what you
7 were disappointed in, correct?

8 A. I was disappointed that he didn't stick to his own
9 subject matter.

10 Q. So just answer my question. What I read to you was part
11 of what you were disappointed about, correct, Captain Cleary?

12 A. I think I have answered your question, Mr. Siegel.

13 Q. And did you, on or about May 3rd, send out an electronic
14 notice to all pilots, asking them to disregard the words that
15 the strike committee had sent to the pilots on May 3rd
16 regarding the safety culture? Did you do anything like that,
17 Captain Cleary?

18 A. No, I did not.

19 Q. Now, on Direct Exam counsel directed your attention to a
20 number of e-mails and placards that have come from anonymous
21 sources, according to the prior witnesses. He mentioned
22 Exhibit 14, 15, 16, 17, 18 and so on. And I think your
23 testimony was that you never saw those until the lawsuit was
24 filed; is that correct?

25 A. Yes.

1 Q. So the lawsuit was filed on July 29, 2011, correct?

2 A. I don't know.

3 Q. Did you receive a copy of the court papers shortly after
4 the lawsuit was filed, someone send them to you, serve them
5 on you?

6 A. I did.

7 Q. Did you read the court papers when you received them?

8 A. I did.

9 Q. And at that time did you see the exhibits that counsel
10 asked you about for the first time?

11 A. I saw them in connection with the case, Mr. Siegel. And
12 I'm not sure exactly when I read them. I mean, they were
13 voluminous.

14 Q. Since -- and I can just represent to you that the case
15 was filed on July 29th, Captain Cleary.

16 Since you received a copy of these exhibits, have you
17 sent out any message from the president of the union, telling
18 the pilots that you disavow the e-mails that threatened them
19 with retaliation, or threatened them with exposure if they
20 don't participate in the union's current, call it safety
21 campaign or slowdown campaign, whatever.

22 Have you ever sent anything out since you saw these
23 exhibits to the pilots to tell them that you disavowed the
24 retaliation and the harassment indicated in those exhibits?

25 A. Yes, we have.

1 Q. And is that the document that you were referring to a
2 moment ago that you sent out after the Court denied the
3 union's motion to dismiss the company's case?

4 A. Yeah. We've repeatedly talked to our pilots over time
5 about their status quo obligations. I can tell you that this
6 pilot group is -- is not new. They understand what their
7 obligations are. But out of an abundance of caution we have
8 reminded them yet again.

9 Q. So the answer to my question is, you did send out a
10 written directive instructing the pilots that the union
11 disavows the threats of harassment and exposure of pilots if
12 they were not to comply with the union's current campaign?
13 You sent that out in writing, Captain Cleary?

14 A. We sent -- that's not exactly what I said, Mr. Siegel.
15 What I said was, that we have repeatedly informed the
16 pilots over time of their obligations under the Railway Labor
17 Act. I can tell you that I'm confident that the pilots
18 understand what their obligations are --

19 Q. I'm asking you a question, Captain Cleary. Did you send
20 out a writing indicating what I just asked you about, yes or
21 no?

22 A. We sent out a letter on August 17th, informing the
23 pilots of their obligations under the status quo. That's
24 what I understand that you're asking me about.

25 Q. Well on August 3rd you sent out a message to the pilots

1 regarding the lawsuit, correct?

2 MR. SZYMANSKI: Can the witness have a copy?

3 MR. SIEGEL: Sure.

4 Q. Direct your attention to Exhibit 59, Captain Cleary.

5 A. I see 59.

6 Q. So this is the first written message that you sent out
7 to the pilots regarding the lawsuit; is that correct, Captain
8 Cleary?

9 A. I don't -- I don't know the answer.

10 Q. Okay. Well, it's dated August 3rd, and it refers --
11 starts out by saying, "On Friday July 29th, US Airways filed
12 a 43-page complaint against USAPA." So it appears to be your
13 first communication regarding the lawsuit; is that correct?

14 A. I think I've already answered your question, Mr. Siegel.
15 I don't know. I think -- I don't know.

16 Q. You just don't know?

17 A. Correct.

18 Q. Okay. Well, at least we know that this is a
19 communication you sent out a few days after the lawsuit was
20 filed, correct?

21 A. Yes.

22 Q. Good. And I see on the top of page two, you said to the
23 pilots that, "The complaint asks the federal court to enjoin
24 USAPA from continuing its work in promoting safety for its
25 members, by alleging that the work of USAPA in promoting a

1 culture of safety is a subterfuge. And that the real reason
2 that USAPA has enlisted its members in the safety campaign is
3 to disrupt the operation of US Airways."

4 Those are your words, you wrote them, Captain Cleary?

5 A. I don't know that I wrote those words. But I think
6 they're accurate.

7 Q. Well, if you didn't write them, you approved them before
8 they went out?

9 A. I did see this before it went out, yes.

10 Q. And then the next paragraph, "Your union will vigorously
11 defend this case, defend your rights to a safe work
12 environment and defend the passenger public's right to safe
13 flight."

14 So I take it Captain Cleary, at least in this document
15 you did not communicate in writing to the pilots, that you or
16 the union disavowed and repudiated all the exhibits that your
17 counsel asked you about on Direct Exam, correct?

18 MR. SZYMANSKI: Your Honor, I think that
19 mischaracterizes the evidence about when those exhibits came
20 to Captain Cleary.

21 THE COURT: I'll sustain the objection as to form.

22 Q. (By Mr. Siegel) Let me just clarify then, Captain
23 Cleary. Maybe I misunderstood.

24 You saw the exhibits that counsel asked you about
25 when you received the court papers; is that correct?

1 A. No. It's not what I testified to. I said -- my
2 testimony was that I saw them in conjunction with this
3 complaint. And when I saw them all, I don't know when I saw
4 them all.

5 Q. Okay. But you when you say in conjunction with this
6 complaint, you are telling us that you knew that you saw them
7 as exhibits attached to the complaint or the motion for
8 preliminary injunction; is that correct?

9 A. Some of them I saw when I was here. And I just -- most
10 of these things, I mean, for example the card that Mr. Hogg
11 held up, first time I saw it was in here. There were a lot
12 of exhibits that were asked about, so...

13 Q. I'm not referring to the card that was held up by
14 Captain Hogg. We'll put that one aside.

15 I'm talking about the e-mails and the placards that were
16 attached to the motion for preliminary injunction. And
17 you -- can you tell us again then, when did you first review
18 those e-mails and those placards that were attached as
19 exhibits to the preliminary injunction motion?

20 A. I don't have a specific recollection. We've been on a
21 bit of a wind sprint for the last few weeks, and so I don't
22 know the answer to your question.

23 Q. You were served with those papers as an individual
24 defendant in this case, correct, Captain Cleary?

25 A. I'm not sure what you're -- what the word "served"

1 means. I'm not an attorney, Mr. Siegel.

2 Q. Did you -- did you receive a copy of the court documents
3 sometime after July 29?

4 A. Yes, I did.

5 Q. Let me ask the question again, because I may have
6 misread the *Iron Compass* of August 23rd. But is there
7 anything in Exhibit 59, where you directly address your
8 repudiation, or any repudiation of the e-mails and placards
9 that were attached to the court papers?

10 A. You know, Mr. Siegel, as we're thinking and talking
11 about this more my -- I don't think I saw the exhibits at
12 this point.

13 Q. Okay.

14 A. This -- this was written by our communications and legal
15 team. I did see it before it went out. And I do believe
16 that it accurately represents our view of the lawsuit.

17 Q. Okay. Let me direct your attention to Exhibit 24. This
18 is a legal update dated August 9, 2011. Is this -- I see it
19 says, it comes from USAPA Legal. Is this a document that you
20 saw before USAPA Legal sent it out?

21 A. I did see this before it was published, yes.

22 Q. And if I read this correctly, in the top paragraph,
23 USAPA is informing the pilots that "The latest filing by US
24 Airways is just another attempt to silence USAPA pilots in
25 our efforts to insure the safety of US Airways' passengers

1 and equipment."

2 So I take it, I think this is obvious, but I just -- to
3 make the point -- this document does not attempt to inform
4 the pilots that the union or you, repudiate the exhibits that
5 were -- and I mean the anonymous e-mails and the placards
6 that were attached to the motion for preliminary
7 injunction -- this document does not attempt to inform the
8 pilots of that -- of that fact or sentiment; is that correct,
9 Captain Cleary?

10 A. I think the document accurately describes our view of
11 the litigation and it does not.

12 Q. Thank you. Let me ask you to look at Exhibit 26,
13 Captain Cleary. And I have to say, I want to make sure we're
14 looking at the same document, because I have two exhibit
15 books at my desk, with unfortunately two different documents
16 at tab 26.

17 The one that should be there is one from USAPA that
18 says, "District Court Denies US Airways' Request for
19 Temporary Restraining Order." Is that Exhibit 26 that you
20 have?

21 A. Yes, it is.

22 MR. SIEGEL: I hope the Court as well?

23 THE COURT: It is.

24 Q. So this one is dated August 12th. It doesn't exactly
25 say USAPA Legal. But can I ask you, Captain Cleary, did you

1 see this document before USAPA sent it to the pilots?

2 A. Yes, I did.

3 Q. And I note that in this document, in the bottom
4 paragraph, USAPA told the pilots that, "We are confident that
5 the court will allow us to continue to advocate for our
6 safety initiatives, thereby assuring the safe operation of
7 the airline for the benefit and protection of the airline and
8 our passengers."

9 And I take it, again to say the obvious, this document
10 did not attempt to communicate to the pilots, any repudiation
11 by the union, of the exhibits that were attached to the
12 motion for preliminary injunction, correct?

13 A. That's correct. I can tell you that approximately at
14 this point in time we were drafting our -- what came to be
15 our August 17th letter.

16 Q. Like to ask you some questions about the declaration you
17 filed in opposition to the injunction.

18 Do you have your declaration available? If not, I think
19 we have a copy, I think, if may we approach?

20 THE WITNESS: This one, Your Honor?

21 THE COURT: I think so. I'm not sure.

22 MR. ROBERTSON: Can I approach, Your Honor?

23 THE COURT: You many.

24 That's Captain Kubik's.

25 THE WITNESS: Yes. Starts with Kubik.

1 MR. ROBERTSON: Here you go.

2 THE COURT: Mr. Siegel, how much longer do you
3 think your cross-examination will take?

4 MR. SIEGEL: I'd be willing to shorten it, Your
5 Honor, if that --

6 THE COURT: I'm just trying to decide whether we
7 break for lunch now or wait till the end of your Cross.

8 MR. SIEGEL: Well, we're about to do this new
9 subject with the declaration, so if the Court --

10 THE COURT: Why don't we take our lunch break at
11 this time.

12 We'll take our lunch break now, and come back at
13 2:00.

14 (Lunch recess.)

15 AUGUST 22, 2011, COURT RECONVENED at 2:03 P.M.:

16 THE COURT: Good afternoon everyone.

17 ALL COUNSEL: Good afternoon, Your Honor.

18 THE COURT: Mr. Cleary, if you would resume the
19 witness stand, please.

20 Mr. Siegel, whenever you're ready.

21 MR. SIEGEL: Thank you, Your Honor.

22 CONTINUED CROSS-EXAMINATION

23 BY MR. SIEGEL:

24 Q. And Captain Cleary, I just have a few more questions.

25 I wonder if I could direct your attention to the

1 declaration that you filed. Is that on the witness stand now
2 or not?

3 A. Yes, it is.

4 Q. I wanted to direct your attention to paragraph five of
5 the declaration. And I noted that you are testifying there
6 that before the merger with America West, the relationship
7 between US Airways management and the pilots union then ALPA,
8 with respect to safety, was collegial, harmonious and
9 productive. And you go on to say, management would
10 constantly communicate with the union regarding such things
11 as safety practices and SOPs and so forth.

12 Could you identify what management individuals at US
13 Airways pre-merger you're referring to in paragraph five?

14 A. Sure. I'd be happy to, Mr. Siegel.

15 At that point in time I was the chairman of the System
16 Board of Adjustment for ALPA. I held that position for
17 approximately seven years. And the office that I conducted
18 that business from was in the Pittsburgh, ALPA, master
19 executive council office. Right adjacent to me were the
20 Safety Committee peoples' office. So we interacted with them
21 frequently. And so we knew, I knew from my work through
22 those years about their contacts with people.

23 Who they specifically contacted, I don't remember. But
24 I do have specific recollection that essentially is
25 encapsulated in paragraph five.

1 Q. Okay. Then you have -- you know, during the -- before
2 the merger, who was the head of the Safety Department at US
3 Airways?

4 A. I don't know.

5 Q. So if I told you it was Captain Paul Morell, you're
6 telling us today that you don't know that Captain Morell was
7 the head of the Safety Department at US Airways prior to the
8 merger?

9 A. I still don't know, sorry.

10 Q. Okay. Who was the head of the Flight Operations
11 Department at US Airways prior to the merger, Captain Cleary?

12 A. What time are you talking about?

13 Q. In paragraph five of your declaration.

14 A. Who was the head of the Flight Department?

15 Q. Flight Operations Department.

16 A. I don't recall.

17 Q. So you don't know that it was Ed Bular who was the head
18 of the Flight Operations Department?

19 A. I don't know, sir, I'm sorry.

20 Q. You know that Captain Bular is currently the Senior Vice
21 President of Flight Operations at US Airways, correct?

22 A. Yes, I do.

23 Q. And do you know who was directly under Captain Bular at
24 US Airways as Vice President of Flight Operations, prior to
25 the merger, during the period you were referencing in

1 paragraph five?

2 A. Yeah. I think it was Mr. Hogg.

3 Q. Captain Hogg?

4 A. I can tell you that the --

5 Q. Thank you very much. I think you answered my question.
6 I'll go ahead with the next question.

7 The -- let me ask you this -- is -- I think there is
8 some testimony at paragraph 11 of your declaration about
9 USAPA's desire to have a seat on the Flight Operations Safety
10 Board at the -- in and around, I think it says May, 2008; is
11 that correct?

12 A. Are you asking me if that's what paragraph 11 says, is
13 that the question?

14 Q. I just -- I made a mark over the line, so I'm trying to
15 just confirm it says May 2008; is that correct?

16 A. Yes. Yes, it does say that.

17 Q. And let me ask if you know, Captain Cleary, prior to the
18 merger, when ALPA was the union for the pilots at US Airways,
19 can you tell us whether or not you know that ALPA had a seat
20 on the FOSB?

21 A. I don't know.

22 Q. Now you testified about the way in which you learned the
23 reasons why US Airways did not want to partner with USAPA on
24 Dr. von Thaden's survey. And I think you mentioned some
25 conversation with Doug Parker. Do you also recall seeing a

1 letter addressed to Captain Kubik and Captain Sable from
2 Captain Morell, describing the company's reasons for not
3 engaging on the survey?

4 A. I'm not sure I remember -- I know what you're talking
5 about, no.

6 Q. Let me just point you to Exhibit 67 in the exhibit
7 notebook.

8 A. Hmm-hmm.

9 Q. I recognize, Captain Cleary, this letter is not
10 addressed to you, and that's why I'm asking. It's dated
11 February 11, 2011 to Captain Kubik and Captain Sable,
12 regarding the subject of the survey. Can you just tell us
13 whether or not you saw copies of this letter sometime after
14 February 11, 2011?

15 A. This letter postdates my conversation with Mr. Parker by
16 two months. And I did see it after I had my conversation
17 with Mr. Parker.

18 MR. SIEGEL: Great. Thank you. That's all I have,
19 Your Honor.

20 THE COURT: Any Redirect?

21 MR. SZYMANSKI: Nothing, Your Honor.

22 THE COURT: All right. You may step down.

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: Call your next witness.

25 MR. SZYMANSKI: We rest, Your Honor.

1 THE COURT: Any Rebuttal evidence?

2 MR. SIEGEL: No further evidence.

3 THE COURT: Very well.

4 I've had the benefit of the briefings, the opening
5 statements -- which in some ways are opening arguments and
6 the evidence -- and I intend to take it under advisement at
7 this time.

8 I think I have enough to digest and work through.
9 I don't necessarily know that closing arguments would be
10 beneficial in any respect, because I'm pretty familiar with
11 your positions, but I'll hear from either one of you if you
12 think there's something I haven't been told that's different
13 as a result of the evidence coming in the way it has.

14 MR. SZYMANSKI: I have just one thing I'd like to
15 say, Your Honor.

16 THE COURT: I'll be glad to hear from you.

17 MR. SZYMANSKI: Thank goodness for my local
18 counsel.

19 THE COURT: Yeah. The shorthand is when you're
20 talking to the witness you're sitting, when you're talking to
21 me you're standing.

22 MR. SZYMANSKI: I got it, Your Honor. I got it.

23 The only thing I want to say to Your Honor, is that
24 we did include in our supplemental exhibits, the CV and
25 litigation experience of the individual that we've engaged as

1 an expert.

2 THE COURT: Garvett.

3 MR. SZYMANSKI: Mr. Garvett. And obviously the
4 testimony from Mr. Lee about the time he had to complete his
5 study, the assistance he had and the resources he had,
6 indicates that it's -- it just wasn't possible, even if
7 Mr. Garvett had the time immediately beginning when the
8 complaint was filed until now, with all of the data that
9 Mr. Lee looked at to complete anything like an expert's
10 report of his own.

11 And that was the issue when we talked with the
12 carrier about scheduling a hearing, to have a reasonable time
13 for our expert, who in addition to understanding statistics,
14 has considerable experience in the airline industry, as being
15 involved in operations and other positions.

16 And Your Honor, I just make the point which I'm
17 sure Your Honor's aware of, but I want to make the point that
18 this compressed schedule has made it impossible for us to
19 avail ourselves of Mr. Garvett's services.

20 Thank you, Your Honor.

21 THE COURT: You can make that point for the record,
22 but in my perspective I think both sides have had a
23 sufficient amount of time to make their case to me. I think
24 that both parties have been well represented by counsel. The
25 quality of the advocacy helps me a lot. I think I understand

1 the parties positions. I think the evidence from both sides
2 has come in, in a coherent way, and I will get out a decision
3 on this motion as soon as I can.

4 So we'll stand in recess at this time.

5 MR. SZYMANSKI: Thank you, Your Honor.

6 MR. GRESHAM: Your Honor, even though we adjourned,
7 I presume you've seen enough words from both of us that
8 you're not anticipating anymore would be helpful to you at
9 this point?

10 THE COURT: That's correct. Whether you're sitting
11 or standing.

12 MR. GRESHAM: Note I was standing.

13 (The matter concluded at 2:14 p.m.)

14 (End of Proceedings.)

15 * * * * *

16 UNITED STATES DISTRICT COURT
17 WESTERN DISTRICT OF NORTH CAROLINA
18 CERTIFICATE OF REPORTER

19 I, Laura Andersen, Official Court Reporter, certify
20 that the foregoing transcript is a true and correct
21 transcript of the proceedings taken and transcribed by me.

22 Dated this the 26th day of August, 2011.

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24

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S/Laura Andersen
Laura Andersen, RMR
Official Court Reporter