

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

08:26:50

\_\_\_\_\_  
 )  
 )  
 ) CV-13-00471-PHX-ROS  
 Don Addington, on behalf of )  
 himself and all similarly situated )  
 former America West Pilots, et al., )  
 ) Phoenix, Arizona  
 Plaintiffs, ) October 23, 2013  
 ) 8:47 a.m  
 and )  
 )  
 US Airline Pilots Association, an )  
 unincorporated association, et al., )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

08:26:50

08:26:50

BEFORE: THE HONORABLE ROSLYN O. SILVER, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BENCH TRIAL - Day 2

(Pages 266-434)

08:26:50

Official Court Reporter:  
**Elaine Cropper, RDR, CRR, CCP**  
 Sandra Day O'Connor U.S. Courthouse  
 401 West Washington Street, SPC 35  
 Phoenix, Arizona 85003-2150  
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08:26:50

Proceedings Reported by Stenographic Court Reporter  
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CV-13-00471-PHX-ROS, October 23, 2013

I N D E X**TESTIMONY**

<b>WITNESS</b>	<b>Direct</b>	<b>Cross</b>	<b>Redirect</b>	<b>Recross</b>
DEAN COLELLO	269	295	312	
JOHN OWENS	319	339	352	
WILLIAM G. PAULEY, JR	361	384	405	409
ROBERT E. DAVISON	412	416		

E X H I B I T S

Number	Ident	Rec'd
96 1-27-12 NAC Update	328	
100 John Owens DOH List	337	
123 1-23-13 email from Jamie Juvurek	347	
324 UAL/Continental Seniority Integration Arbitration Award and List (USAPA003941-USAPA004209)	368	

MISCELLANEOUS NOTATIONS

Item	Page
Defendants rest	427

RECESSES

	Page	Line
(Recess at 10:03; resumed at 10:32.)	315	10
(Recess at 11:59; resumed at 1:22.)	355	23
(Recess at 3:07; resumed at 3:38.)	405	4

APPEARANCES

08:26:50

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08:26:50

CV-13-00471-PHX-ROS, October 23, 2013

P R O C E E D I N G S

08:17:55

(Court was called to order by the courtroom deputy.)

(Proceedings begin at 8:47.)

THE COURT: Please be seated.

Are we ready to proceed?

08:47:15

DEAN COLELLO,

called as a witness herein by the Defendants, having been previously duly sworn or affirmed to testify to the truth, was further examined and testified as follows:

**DIRECT EXAMINATION** (Continued)

08:47:21

BY MR. SZYMANSKI:

Q. So, Mr. Colello, when we left yesterday, you were in Dallas?

A. Yes.

Q. And you were in collective bargaining negotiations with American, US Airways, the Allied Pilots Association, and you were there with other representatives representing the US Airline Pilots Association.

08:47:36

Let me ask you a couple of questions about seniority. Was seniority something that customarily the Negotiating Advisory Committee handled?

08:47:59

A. No. All of the time that I spent with the J and C process, the East/West merge and all of time that I worked on the committee with USAPA, generally, anything dealing with seniority is left to the Merger Committee and they would bring

08:48:22

United States District Court

DEAN COLELLO - Direct

1 that to the Negotiating Committee and the Negotiating Committee 08:48:24  
2 would essentially put that in the agreement.

3 As an example, when we presented our Section 22,  
4 which is the seniority section of the contract, and when USAPA  
5 presented that back in October 2008, the Merger Committee did 08:48:38  
6 it, the Negotiating Committee. It's generally a hands-off deal  
7 for the Negotiating Committee in seniority.

8 Q. Can you, in the course of these negotiations, tell us what  
9 a pass is?

10 A. It refers to a document that passed between the two sides 08:48:59  
11 of the table. Generally, management and the associations and  
12 you make a proposal and you say, "Okay. This is what we would  
13 like to see in this section of the contract or in this  
14 paragraph."

15 And the other side will look at it and say, "Okay. 08:49:15  
16 Yes, we accept that," or, "No, we have these changes." So  
17 every time a document goes back and forth with some changes in  
18 there it's considered a pass.

19 Q. And this is a comprehensive document of the entire  
20 Memorandum of Understanding or a draft of the entire Memorandum 08:49:31  
21 of Understanding?

22 A. Occasionally we just kind of parse it down and certain  
23 paragraphs. For the most part, we would pass complete  
24 documents back and forth.

25 Q. And would a pass be red-lined based on some prior version? 08:49:43

DEAN COLELLO - Direct

- 1 A. Yes. It would show the changes and it would either be 08:49:47  
2 annotated by being underlined or struck through or in color  
3 just so that everybody can see without having to compare word  
4 for word to see what the sentence is or what paragraphs were  
5 changed. 08:50:02
- 6 Q. And, basically, the two sides, the employer side, which  
7 would be American and US Airways, and union side would be APA  
8 and USAPA?
- 9 A. Yes.
- 10 Q. And did each side have somebody who coordinated the 08:50:16  
11 passes, who was responsible for keeping the documents?
- 12 A. Generally, in this process, since there were so many  
13 people involved, generally, Chris Hollinger on the company side  
14 kind of maintained the record of what was going on.
- 15 Q. Okay. 08:50:39
- 16 So in these passes, in the back and forth, is  
17 there -- and we've heard some talk here about quid pro quo for  
18 particular sections.
- 19 A. Yes.
- 20 Q. When you send a pass across, is there -- and you make a 08:50:54  
21 change in a particular section, is there some identification of  
22 what you're getting in return for that?
- 23 A. No. It's a dynamic process going back and forth. It's  
24 not saying, "Okay. We're putting this in and change for us  
25 putting that in, we want this." 08:51:13

United States District Court

DEAN COLELLO - Direct

1           And the company will say, "Okay. We'll give that you 08:51:15  
2 for this." That's not really how the process works. Every now  
3 and again you may get to that point; but for the most part, in  
4 this process, there was none of that. Each side would make  
5 their changes and make the justification for their changes. 08:51:28

6 Q.   And in your experience, that is generally the way  
7 collective bargaining works?

8 A.   Yes.

9 Q.   At some point in these passes was there a provision  
10 inserted about seniority? 08:51:44

11 A.   Yes.

12 Q.   And initially, if I understand correctly, it was the same  
13 as the provision that was in the first MOU?

14 A.   Pretty much. The MOU I served as the framework for MOU II  
15 so until such time as certain sections were -- had gone through 08:51:59  
16 the vetting process between the two sides, we kind of started  
17 with the framework of MOU I. So the initial pass was  
18 McCaskill-Bond language from I transferred over to II.

19 Q.   And at some point did a pass come across that had a change  
20 to that provision? 08:52:20

21 A.   Well, it was expanded. In the first document, it was  
22 pretty much a one paragraph dealing with the McCaskill-Bond  
23 process and then as the parties looked at it, they were  
24 modifying to it make it clearer and it was a separated out in  
25 subparagraphs. 08:52:43

United States District Court

DEAN COLELLO - Direct

- 1 Q. And do you know where those changes came from? 08:52:43
- 2 A. During one of the group meetings early on, it was decided  
3 that the entire McCaskill-Bond section of the MOU was  
4 basically, for lack of a better word, subcontracted to another  
5 group and this was a group that consists sort of lawyers from 08:53:03  
6 the association and from the company side and they had separate  
7 meetings where they had discussed this, what they were going to  
8 put in, and there was some back and forth in these meetings and  
9 they would come out with a product that we would review.
- 10 Q. So the changes came from the lawyers? 08:53:22
- 11 A. Pretty much from the lawyers, yes.
- 12 Q. At some point, and you've been here during the testimony  
13 yesterday, there was testimony about an initial version of what  
14 ultimately became paragraph 10H.
- 15 A. Yes. 08:53:42
- 16 Q. Do you know where that came from?
- 17 A. It came from this group, the lawyers group that was  
18 working on that section.
- 19 Q. And at that point, was there discussion among the members  
20 of the Negotiating Advisory Committee about that first version 08:53:52  
21 of 10H?
- 22 A. Yes.
- 23 Q. And who was involved and what was the discussion?
- 24 A. Basically, I was notified that Rocky and Ken, the two  
25 represent representatives on the committee, had some concerns 08:54:09

United States District Court



DEAN COLELLO - Direct

1 about that language and they brought to it my attention. I 08:54:13  
2 said, "Okay. What's the problem," and let's, you know, try to  
3 get it fixed.

4 There were some discussions that went on with that  
5 was passed to -- I'm not sure if it was through you or through 08:54:25  
6 Roland to this group. Most likely Roland since he was there in  
7 person was passed to this lawyers group to address this  
8 language.

9 Q. That would be Roland Wilder; right?

10 A. Yes. I'm sorry. 08:54:39

11 Q. That's okay. I think we understood that but I just wanted  
12 it to be clear.

13 And I was not there personally?

14 A. No, you were not there personally.

15 Q. I was there available by telephone? 08:54:47

16 A. Yes.

17 Q. Do you remember what the concern was that was expressed to  
18 you?

19 A. Offhand, I don't remember the specific concern but they  
20 did say that they didn't like the language. 08:55:00

21 Q. Okay. And what happened after that with respect to 10H?

22 A. When the next version that we got from this lawyers group  
23 had changed that 10H and so we looked at the revision. We  
24 discussed it as a committee, asked Ken and Rocky if they were  
25 satisfied with it, and from that point on, I didn't hear any 08:55:28

DEAN COLELLO - Direct

1 complaints, anything that, "No, this still isn't good. We need 08:55:31  
2 to do this or that."

3 They said, "Okay. We can live with this language."

4 Q. And that second version remained constant, then,  
5 throughout passes all the way through the end of the tentative 08:55:44  
6 agreement; is that correct?

7 A. Correct. There was no further discussion on that section.

8 Q. Okay. And other than that, were you involved in any  
9 discussions about 10H?

10 A. No, I was not. 08:55:57

11 Q. Do you know what the purpose of 10H is?

12 A. Just in my reading of it, it's just pretty much to clarify  
13 what the seniority lists were in effect.

14 Q. Does 10H have anything to do with terminating the  
15 Transition Agreement? 08:56:17

16 A. No.

17 Q. Are there other sections in the Memorandum of  
18 Understanding that deal with terminating the Transition  
19 Agreement?

20 A. Yes. 08:56:26

21 Q. Do you know what sections those are?

22 A. If you were to look at the -- at MOU paragraph four deals  
23 with the Transition Agreement.

24 Q. Can we put the MOU and paragraph four up, please.

25 And that's the provision that starts at the bottom of 08:56:54

DEAN COLELLO - Direct

1 the first page of the MOU?

08:56:56

2 A. Yes. As you read through that paragraph, essentially,  
3 what it says is that at the end of this process, that the  
4 MOU -- the MOU in conjunction with the American contract forms  
5 the MTA, which is the Merger Transition Agreement. And that's  
6 going to replace -- at the effective date, that's going to  
7 replace all contracts in effect, all Collective Bargaining  
8 Agreements that are in effect at the time. If you go to the --

08:57:18

9 Q. The second page; right?

10 A. Right.

08:57:35

11 Q. And the last sentence.

12 A. The last sentence there.

13 Q. "Once the MTA has been fully implemented, it shall fully  
14 displace and render a nullity any prior Collective Bargaining  
15 Agreements applicable to US Airways pilots and any status quo  
16 arising thereunder."

08:57:49

17 Did I read that correctly?

18 A. Correct.

19 Q. And this particular provision, was it proposed by USAPA?

20 A. No. This was a provision that the management side wanted,  
21 the UCC wanted to make sure that they knew exactly what the  
22 costs of this merger were going to be.

08:58:08

23 And you couldn't cost it out if you didn't know what  
24 the contract was going to be. So they wanted to make sure that  
25 the MOU, up to the MTA, that gave them the certainty of what

08:58:32

DEAN COLELLO - Direct

- 1 all of our costs were going to be without anything hanging on 08:58:39  
2 from prior agreements.
- 3 Q. Okay. Was there a counterpart to this in the first  
4 Memorandum of Understanding?
- 5 A. Yes, there was similar language in the MOU I. 08:58:49
- 6 Q. Okay. We'll get that.
- 7 And that is paragraph two in MOU I?
- 8 A. Yes. And, again, the last sentence of that, you'll see  
9 that it says that the JCBA will replace any -- replace any and  
10 all prior Collective Bargaining Agreements. So in MOU I 08:59:33  
11 also -- since it replaced the Collective Bargaining Agreement,  
12 the Transition Agreement would go away.
- 13 Q. So there was really no change with respect to the  
14 Transition Agreement between MOU I and MOU II?
- 15 A. No. The language was stated a little differently but in 08:59:49  
16 both cases it stated that MOU I and MOU II, that the final  
17 product would replace the existing Collective Bargaining  
18 Agreements.
- 19 Q. And if I understand correctly from what you said about the  
20 reaction to 10H, that there were no objections from anybody on 09:00:19  
21 the Negotiating Advisory Committee to the revised 10H?
- 22 A. No, there weren't.
- 23 Q. Did members of the committee feel free to bring issues to  
24 you about the collective bargaining negotiations?
- 25 A. Yes. Basically, any concerns anybody had we would discuss 09:00:41

DEAN COLELLO - Direct

1     them as a committee. 09:00:44

2     Q.    Okay.

3                 MR. SZYMANSKI:  Can we have paragraph 10B of the

4     first Memorandum of Understanding up, please.

5                 I'm sorry.  I said the first, I meant the second.  I 09:01:07

6     apologize.  I meant the second Memorandum of Understanding.

7     Paragraph 18B of the second one.

8     Q.    I know everybody over there is saying, "What is Pat

9     saying?"  I'm sorry.

10                At the bottom, the first one says, "This memorandum 09:01:30

11    shall become applicable to USAPA upon the later of (i) the,"

12    and then the rest of the page is -- the rest of the paragraph

13    is on the next part.  And this talks about -- this paragraph,

14    what does this paragraph address?

15    A.    It addresses what happens to -- essentially, what the 09:01:56

16    choices there are for the -- for USAPA.  And it says that --

17    Q.    The last sentence.

18    A.    The last sentence says:  If USAPA does not agree to the

19    MOU, that, in essence, the MOU will still apply to the other

20    parties.  The merger will proceed, and USAPA will not partake 09:02:15

21    in the MOU.

22    Q.    And what would that mean with respect to terms and

23    conditions for both the East Pilots and the West Pilots?

24    A.    The East and West Pilots would continue to operate under

25    their current Collective Bargaining Agreements as the merger 09:02:31

United States District Court

DEAN COLELLO - Direct

- 1 proceeds with the same working conditions, the same pay rates, 09:02:35  
2 vacation, et cetera until such time as a new collective  
3 bargaining agent was determined and then whatever that  
4 collective bargaining agent determined would happen. Most  
5 likely, what it would be is we would be under our current 09:02:56  
6 contracts for probably 18 months to two years until such time  
7 as a new Collective Bargaining Agreement was formed with the  
8 new bargaining agent and brought us into that.
- 9 Q. No new wages, no new benefits?
- 10 A. Correct. 09:03:13
- 11 Q. So you got to the end of this process and we understand  
12 from other testimony that there were periods of time where  
13 people remained in Dallas up until Christmas and that there was  
14 continuing back and forth over the holidays and it finally came  
15 to a tentative complete comprehensive agreement sometime in 09:03:37  
16 January 2 or 1?
- 17 A. Right about -- probably about the first.
- 18 Q. And at that point, there was a meeting of the Board of  
19 Pilot Representatives?
- 20 A. Correct. 09:03:50
- 21 Q. Was there retrospective pay in the memorandum, this second  
22 memorandum, the one that ultimately got ratified, as you be  
23 went to the Board of Pilot Representatives on the second,  
24 third, and fourth of January of this year?
- 25 A. Yes, there was. 09:04:08

United States District Court

DEAN COLELLO - Direct

1 Q. And what retrospective pay was there in that memorandum? 09:04:09

2 A. There was a pay that would pay us back to the American  
3 rates once all -- once the shareholders had approved it and  
4 there was all regulatory approval, our pay would start from  
5 that date until -- up until the -- basically, from the POR back 09:04:30  
6 to that date.

7 So if the regulatory approval and the shareholders  
8 approved it in May and we had -- the merger was final in  
9 September, we would get paid from September back to May. If it  
10 was a short period of time, if it was two weeks between the 09:04:47  
11 time that there was regulatory approval and the merger was  
12 complete, we would get a minimum of 30 days back-pay.

13 Q. And under the current circumstances where the regulatory  
14 approval has not been obtained yet but the POR has been  
15 approved by the bankruptcy court, would there be any 09:05:05  
16 retrospective pay?

17 A. No.

18 Q. The 30 days?

19 A. Other than the 30 days, correct.

20 Q. Other than the 30 days, okay. 09:05:14

21 So as a result of action that happened that has  
22 already been described, and we don't have to go through, there  
23 was an extension of the retrospective pay during the meeting  
24 between the second and the fourth?

25 A. Yes. 09:05:30

United States District Court

DEAN COLELLO - Direct

- 1 Q. And what was the extension? 09:05:30
- 2 A. Well, through the efforts of some of the board members, we  
3 were able to get the retrospective pay back to the ratification  
4 date, the date that the votes were counted for the  
5 ratification, which was February 8. 09:05:45
- 6 Q. And we've had testimony and it's a stipulated fact that  
7 the BPR unanimously agreed to send the Memorandum of  
8 Understanding out for ratification with a recommendation to  
9 approve; correct?
- 10 A. Correct. 09:06:14
- 11 Q. Was there opposition to the Memorandum of Understanding?
- 12 A. There was some concerns about sections of it but  
13 ultimately they approved it.
- 14 Q. I probably wasn't clear enough. I mean opposition not  
15 within the Board of Pilot Representatives but once it got sent 09:06:31  
16 out for ratification, was there opposition?
- 17 A. From?
- 18 Q. Anybody in the bargaining unit, any of the pilots, groups  
19 of pilots or otherwise.
- 20 A. There were some concerns about some aspects of it. 09:06:45
- 21 Q. What did the Negotiating Advisory Committee then do after  
22 the BPR meeting concluded?
- 23 A. We set up a schedule for road shows and produced some  
24 educational materials that -- we had two documents, one to be  
25 mailed at the pilots' homes and another to be handed out during 09:07:09



DEAN COLELLO - Direct

- 1 the road shows. 09:07:13
- 2 Q. One of them is called, if I understand correctly, Flight  
3 Plan to Merger?
- 4 A. Yes.
- 5 Q. I would just not go through it in detail but just show the 09:07:20  
6 Court the front page.
- 7 This document was produced by the Negotiating  
8 Advisory Committee?
- 9 A. Yes.
- 10 Q. And was there any dissenting or disagreement about 09:07:33  
11 agreement about this particular document?
- 12 A. No. It went through a number of iterations but the final  
13 product was approved by everybody on the committee.
- 14 Q. And how was this distributed?
- 15 A. This was mailed to each pilot's home. 09:07:47
- 16 Q. Hard copy?
- 17 A. Yes.
- 18 Q. And then the second one is what the Memorandum of  
19 Understanding means to me I think. Can we just put the first  
20 page up there? Means to you. Anyway. That was produced in a 09:08:02  
21 similar fashion?
- 22 A. Yes. This was a more expanded version of what was mailed  
23 to the pilots' homes and we had these available in hard copy to  
24 hand out during road shows.
- 25 Q. Did either of these documents include the actual copy of 09:08:28

United States District Court

DEAN COLELLO - Direct

- 1 the Memorandum of Understanding? 09:08:30
- 2 A. I'm not sure. I believe it was in one of those. If not,  
3 the Memorandum of Understanding was available to the pilots.
- 4 Q. And that would have included all of the paragraphs that  
5 we've identified previously. 09:08:45
- 6 A. Correct.
- 7 Q. And then during the road shows, did you develop a bank of  
8 questions and answers?
- 9 A. Yes.
- 10 Q. And that was also the Negotiating Advisory Committee. 09:08:58
- 11 A. In conjunction with the Communications Committee, what  
12 would happen is we had members from the Communications  
13 Committee listen to questions, allow the common questions that  
14 came up during the road shows. They would write down those  
15 questions. They would present them to us, and we would make 09:09:17  
16 sure the answers were correct and we circulated that amongst  
17 the committee and then we gave our approval to the  
18 Communications Committee to post that on the website and that  
19 was updated as additional questions were asked during the  
20 subsequent road shows. 09:09:35
- 21 MR. SZYMANSKI: Can we bring up the question and  
22 answer bank?
- 23 BY MR. SZYMANSKI:
- 24 Q. There are two sections of this that I would like to  
25 highlight for you and for the Court. There's one section 09:09:45

United States District Court

DEAN COLELLO - Direct

1 concerning the Transition Agreement. Can we find that question 09:09:49  
2 and answer?

3 "Does the MOU replace the current Transition  
4 Agreement?"

5 "Answer. The MTA (consisting of the MOU and the 2012 09:10:13  
6 AA-APA agreement) will replace the Transition Agreement when  
7 implemented on and after the effective date."

8 I read that correctly?

9 A. Correct.

10 MR. SZYMANSKI: And there is another section that I'm 09:10:32  
11 not going to read, Your Honor, but it has to do with seniority  
12 and the Merger Committee. Can we have that highlighted in that  
13 area.

14 Q. We can't really read it. But it's titled Seniority  
15 McCaskill-Bond and it goes through and talks about the 09:10:55  
16 process --

17 MR. HARPER: Your Honor I object to him testifying by  
18 this. I mean I've been very tolerant on leading questions.

19 THE COURT: Sustained.

20 MR. SZYMANSKI: Okay. Thank you. 09:11:07

21 BY MR. SZYMANSKI:

22 Q. So those materials were sent out to everybody?

23 A. These were available on the website for everybody to  
24 access, yes.

25 Q. Okay. And during the road shows, about how many sessions 09:11:18

DEAN COLELLO - Direct

- 1 did you have in the four different domiciles? 09:11:23
- 2 A. I would say we probably had at least 20 if not more  
3 sessions. We would generally have at least three a day and  
4 large domiciles, we had at least two days of sessions.
- 5 Q. And what was the pattern for those presentations? 09:11:42
- 6 A. Generally, we had a PowerPoint presentation and for the  
7 most part, I would run through the slides. Occasionally, a  
8 couple times John Owens did. We would -- it was in a briefing  
9 room or a meeting room. The members of the NAC were there  
10 along with yourself, Roland Wilder was there, the officers were 09:12:06  
11 generally represented and usually the domicile, BPR domicile  
12 representatives were there and I would run through the  
13 PowerPoint presentation. And, generally, after the first or  
14 second road show, we realized there was generally a lot of  
15 seniority questions. So then what would happen is usually when 09:12:29  
16 I was done with my presentation or John was doing it, then we  
17 would turn it over to yourself to give a short blurb on  
18 seniority and then we would open it up to questions and  
19 answers.
- 20 Q. And John Owens? 09:12:46
- 21 A. Yes.
- 22 Q. Right. Okay.
- 23 In the course of those road shows, did anybody of the  
24 Negotiating Advisory Committee raise any concerns about  
25 paragraph 10H? 09:13:04

United States District Court

DEAN COLELLO - Direct

- 1 A. No. 09:13:05
- 2 Q. Did they raise any concerns about the fact that the  
3 Transition Agreement was ending?
- 4 A. No.
- 5 Q. Did Mr. Scherff, who testified here previously, did he go 09:13:14  
6 to the road shows?
- 7 A. Yes. He was at every road show.
- 8 Q. Did he raise any concerns about either 10H or the  
9 Transition Agreement terminating?
- 10 A. No. 09:13:29
- 11 Q. So we know that the memorandum was ratified on February 8.  
12 Were there any changes to the MOU that occurred after  
13 ratification?
- 14 A. There were a few changes. We have a side letter that  
15 deals with the retrospective pay and that had to be modified to 09:13:54  
16 reflect the agreement that was made with the BPR. There was  
17 also paragraph 24, the MOU deals with valuations. There was an  
18 \$87 million valuation that was -- that had to be discussed  
19 between APA and the management side and that made a few changes  
20 to the MOU. But other than that, the body of the MOU stayed 09:14:20  
21 the same.
- 22 Q. And then the process, the Memorandum of Understanding  
23 describes a Merger Transition Agreement. What's a merger  
24 Transition Agreement?
- 25 A. If you look at what has been being referred to as the 2012 09:14:39

DEAN COLELLO - Direct

1 CBA, this is -- when American declared bankruptcy, initially 09:14:44  
2 the American pilots, subsequent to the deal they made with the  
3 initial labor agreement that they made with US Airways, they  
4 had negotiations with AMR management, American Airlines  
5 management, and came up with what has been referred to as the 09:15:03  
6 last, best, final offer. This was terms for Collective  
7 Bargaining Agreement that was rejected by the pilots. They  
8 went back in at the direction of Judge Lane from the bankruptcy  
9 Court to renegotiate. They were able to successfully negotiate  
10 another agreement that was ratified by the pilots and this is 09:15:24  
11 the 2012 Collective Bargaining Agreement covering American  
12 Airlines pilots.

13 Q. And that is an agreement between whom?

14 A. Between American Airlines and the Allied Pilots  
15 Association. 09:15:39

16 Q. Okay.

17 A. That served as the basis for the Collective Bargaining  
18 Agreement moving forward. The MOU modified portions of that so  
19 if you take the Collective Bargaining Agreement, the 2012  
20 Collective Bargaining Agreement, you tie in the MOU to that, 09:15:54  
21 that results in what is called the merger Transition Agreement,  
22 the MTA, which goes into effect when the Merger is effective at  
23 the POR date, the plan of reorganization date.

24 So at that point, the MTA is the governing document  
25 for all the pilots of American Airlines which would be the US 09:16:14

DEAN COLELLO - Direct

- 1 Airways pilots and the American pilots. That document, every 09:16:22  
2 portion of that document would not go into effect on that date.  
3 There are certain things that you can't flip the switch on,  
4 things like pay, retirement, things like that you could make  
5 effective on that date. Other things take time. The 09:16:37  
6 scheduling system will take time to change. So the MTA is, in  
7 essence, the working document that the Collective Bargaining  
8 Agreement would be working under with some changes made in the  
9 joint collective bargaining process to follow.
- 10 Q. So there's an implementation procedure? 09:16:54
- 11 A. Yes. There is -- you have to implement the changes that  
12 that contract brings about.
- 13 Q. And that involves discussions?
- 14 A. Correct.
- 15 Q. But among or between whom? 09:17:05
- 16 A. We have been having pretty much monthly discussions with  
17 US Airways management on how we were going to implement the  
18 changes that the MTA calls for and which ones will take effect  
19 on the POR date, which ones will take effect maybe on the next  
20 calendar year or at some subsequent date. 09:17:22
- 21 Q. It might be obvious to everybody but I don't think that  
22 it's in the record.
- 23 If the merger is effective, who is going to manage  
24 the new merged airline?
- 25 A. You mean who -- 09:17:42

United States District Court

DEAN COLELLO - Direct

- 1 Q. Which management team? Is it going to be the American 09:17:43  
2 team? Is it going to be the US Airways team? Is it going to  
3 be somebody else?
- 4 A. There has been announcements made of some of the  
5 management appointments. I mean, the big ones, the CEO and the 09:17:53  
6 president, I mean Doug Parker and Scott Kirby are going to  
7 survive as that and then there's been other announcements made  
8 and some of them are former US Airways management and some are  
9 former American management and there's also been some people  
10 brought in from outside for the new management team. 09:18:11
- 11 Q. Mr. Parker and Mr. Kirby are from US Airways?
- 12 A. Yes.
- 13 Q. And then you mentioned the Joint Collective Bargaining  
14 Agreement. That's the next step after the MTA?
- 15 A. Yes. Starting as soon as possible after the POR, we can 09:18:27  
16 enter into negotiations with the new management team for the  
17 Joint Collective Bargaining Agreement to form a final document  
18 that's going to incorporate any changes that we're going to  
19 make to the MTA for a final document.
- 20 Q. But there's a pattern for that; correct? 09:18:49
- 21 A. Yes. There's a process for that, yes.
- 22 Q. And it's based on the 2012 American agreement and the MOU?
- 23 A. Yes.
- 24 Q. Have there been preliminary discussions with respect to  
25 that? 09:19:06

United States District Court



DEAN COLELLO - Direct

- 1 A. We had been having planning sessions with APA to discuss 09:19:06  
2 what things we would like to discuss with management over that.  
3 We haven't -- other than some discussions we've had with  
4 management in dealing with the pilot retirement plan, we really  
5 haven't had any discussions about what the final document is 09:19:21  
6 going to look like yet.
- 7 Q. And is there a timeline for completing the joint  
8 Collective Bargaining Agreement?
- 9 A. Yes.
- 10 Q. What is that timeline? 09:19:33
- 11 A. The discussions can start as soon as practical after the  
12 POR date and continue on to the point when a new collective  
13 bargaining agent is selected. And if there's no Joint  
14 Collective Bargaining Agreement completed by 30 days after that  
15 date, then any opened items will go to arbitration. 09:19:57
- 16 Q. Are there time estimates for how long after the POR date  
17 these events will occur?
- 18 A. I'm sure everybody's goal is to attempt to get the process  
19 done sooner rather than later to bring some certainty to this.  
20 But as far as an estimate of what it takes to get a new 09:20:20  
21 collective bargaining agent, you know, you are kind of at the  
22 mercy of the NMB and the government works in strange and  
23 mysterious ways sometimes.
- 24 But it's probably going to be at least a year to 18  
25 months. 09:20:39

United States District Court

DEAN COLELLO - Direct

- 1 Q. And the NMB is the National Mediation Board? 09:20:40
- 2 A. Right, yes.
- 3 Q. Okay. A couple of additional questions. Mr. Scherff,  
4 when he testified, talked about members of the BPR looking for  
5 retro pay? 09:20:59
- 6 A. Right.
- 7 Q. What kind of retro pay was involved and what was being  
8 requested? Was it just the East?
- 9 A. No. I mean, we've been discussing retro pay back in --  
10 when we were doing single-agreement discussions and retro pay 09:21:13  
11 was never intended to just benefit one side or the other. I  
12 mean, the retro pay we looked at was back to the amendable  
13 dates of the contract. The West contract was amendable in  
14 December of 2006 and the East contract was December of 2009 so  
15 any retroactive pay would go back to their amendable dates. So 09:21:34  
16 for the West Pilots, it would go back to 2006; for the East  
17 Pilots, it would go back to 2009.
- 18 Q. In the second MOU, the one that was ratified, did you  
19 achieve everything that the Board of Pilot Representatives sent  
20 you out to get? 09:21:55
- 21 A. We achieved the bulk of it. There was some discussion  
22 about what we achieved, if it met certain people standards or  
23 not. But overall we felt it was an improvement.
- 24 Q. What were the additional items that you were able to get  
25 in the second Memorandum of Understanding? 09:22:16

United States District Court

DEAN COLELLO - Direct

- 1 A. As compared to the first one? 09:22:20
- 2 Q. As compared to the first one.
- 3 A. Well, we achieved the retrospective pay. We were able to  
4 fix the pay parity language. Initially, the pay parity  
5 language was a six-year. It would take you six years to get to 09:22:31  
6 parity with American and Delta. This brought it to three. It  
7 improved on the pay rates, improved on retirement  
8 contributions. We were able to get an extension on our  
9 survivor benefits and insurance benefits for both the  
10 American -- sorry, for both the East and the West Pilots 09:22:58  
11 because it's better than what is in the American contract.
- 12 A big thing was scope protections. We were able to  
13 get some good restrictions on the use of regional jets in the  
14 system. So there were significant improvements from one I to  
15 II. 09:23:15
- 16 Q. So can you tell us generally what scope protections mean?  
17 That's a fairly technical term.
- 18 A. It's how many of the smaller jets can be flown by pilots  
19 that are not on the US Airways or the American Airlines  
20 seniority list. 09:23:32
- 21 And we were also able to get some protections on  
22 wide-body flying and lock-hour protections that weren't  
23 available in the first one.
- 24 Q. Did the second Memorandum of Understanding represent gains  
25 for both the US Airline Pilots Association members and for the 09:23:54

United States District Court

DEAN COLELLO - Direct

- 1 Allied Pilots Association members? 09:23:58
- 2 A. Yes.
- 3 Q. In the course of negotiating the various agreements and so  
4 forth, were you able to represent everybody in the  
5 organization? 09:24:14
- 6 A. Yes, and I think that if you look at our committee, our  
7 committee has never worked on an East and West. We never dealt  
8 with East/West issues other than collectively. If you go back  
9 to the formation of the committee, and I would challenge  
10 anybody in this room or anybody out there to come up with an 09:24:35  
11 example where this committee, under either my leadership or  
12 Paul's leadership, whether we had West Pilots on the committee  
13 or not on the committee, that we advocated anything that would  
14 benefit the East Pilots at the detriment to the West Pilots.  
15 It has always been a collective group that has worked for the 09:24:56  
16 good of all of the pilots.
- 17 Q. Were there particular provisions in the memorandum, the  
18 second Memorandum of Understanding, that dealt with West Pilots  
19 or came from West Pilots?
- 20 A. Right. I mean, the West Pilots in their contract have 09:25:11  
21 some short-term disability protections to protect them in the  
22 event of illness, and we ensured that that was going to be  
23 there for at least three years and that was -- just a West  
24 issue. We made accommodations to ensure that the 40 or 42 West  
25 Pilots who were on furlough were protected in this and they 09:25:36

United States District Court

DEAN COLELLO - Direct

1 were brought under the umbrella so that they wouldn't be left 09:25:38  
2 out in the cold in the event that this merger was going  
3 through.

4 Q. And was Mr. Holmes involved in either of these?

5 A. Yes, he was involved and Ken fought for the STD language 09:25:49  
6 and we agreed with that and it survived in both -- there was an  
7 MOU I and also an MOU II.

8 Q. Now, in an argument that was presented by the plaintiffs  
9 while you were here, there was a reference to trickery. Was  
10 there any trickery involved in what you did with MOU II? 09:26:16

11 A. No. No.

12 THE WITNESS: Your Honor, this is the largest merger  
13 in airline history. It's going to benefit East Pilots, West  
14 Pilots, American pilots, baggage handlers, flight attendants,  
15 everybody. It's even going to benefit management. 09:26:34

16 And the improvements we were able to make in this  
17 agreement dwarfs what we would be able to get in  
18 single-agreement talks and it also benefits the American  
19 pilots. The improvements in the MOU are better than they would  
20 have got on a stand-alone basis. 09:26:55

21 So for anybody to suggest that we made -- that we  
22 would resort to trickery and take a chance on having this thing  
23 blow up on us or not go through is -- it's crazy to believe  
24 that we would do something like that.

25 MR. SZYMANSKI: No further questions, Your Honor. 09:27:19

United States District Court

DEAN COLELLO - Direct

1 Pass the witness. 09:27:20

2 **CROSS - EXAMINATION**

3 BY MR. HARPER:

4 Q. This timeline, Mr. Colello, that you talk about from the

5 POR -- what's the POR? 09:28:20

6 A. The plan of reorganization.

7 Q. Okay. From that date until when you get a Merger

8 Transition Agreement is going to take 12 to 18 months

9 approximately?

10 A. The Merger Transition Agreement is effective on the POR. 09:28:39

11 Q. Back on the POR date?

12 A. The Merger Transition Agreement is effective on the POR.

13 Q. And when is the POR date?

14 A. It depends on -- it all depends on the Department of

15 Justice right now. 09:28:59

16 Q. So it's not in effect right now?

17 A. No.

18 Q. So the merger TA has not yet replaced the Transition

19 Agreement; correct?

20 A. That's correct. 09:29:10

21 Q. So the 2005 TA is still in effect; correct?

22 A. Yes.

23 Q. And it will be until we get to the plan of reorganization

24 date; correct?

25 A. Correct. 09:29:25

United States District Court

## DEAN COLELLO - Cross

- 1 Q. So the provisions of the Transition Agreement are still 09:29:28  
2 effective as we sit here today; correct?
- 3 A. Correct.
- 4 Q. Now, I'm a little confused about where the 10H language  
5 came from. 09:29:43
- 6 As I heard you today, you said it came from a group  
7 of lawyers; correct?
- 8 A. Yes.
- 9 Q. But it was given to you directly by Pat Szymanski;  
10 correct? 09:30:01
- 11 A. I don't know if it was given to me directly by Pat or by  
12 Roland or who it was.
- 13 Q. It was in an e-mail that you got that said 10H, Pat  
14 Szymanski, this is our new language; correct?
- 15 A. I would have to see the e-mail you're referring to. 09:30:19
- 16 Q. Okay.
- 17 MR. HARPER: Can we have that one up, please.  
18 Do you want to go to the next page, please.
- 19 BY MR. HARPER:
- 20 Q. I think we found it. This is the exhibit I was talking 09:33:10  
21 about. Exhibit 93. You'll see down there which is 10I.
- 22 A. Can I see the e-mail? You said I received this one from  
23 Pat.
- 24 Q. This is the front of the e-mail.
- 25 A. Okay. 09:33:41

## DEAN COLELLO - Cross

- 1 Q. The e-mail on December 15, 2012, to yourself; correct? 09:33:41
- 2 A. Correct.
- 3 Q. Taking over the 10I language, which is becoming 10H, was  
4 being sent to that group with the notation Pat Szymanski -- I  
5 assume that's PJS -- our new version; correct? 09:33:57
- 6 A. Okay.
- 7 Q. So as a group, the lawyers didn't send this language to  
8 you. Mr. Szymanski did; correct?
- 9 A. Mr. Szymanski was in the group of lawyers -- does our new  
10 language refer to the group of lawyers? 09:34:19
- 11 MR. HARPER: I move to strike, Your Honor. It's not  
12 responsive.
- 13 THE COURT: Sustained.
- 14 BY MR. HARPER:
- 15 Q. This e-mail with this language came to you directly from 09:34:25  
16 Pat Szymanski; correct?
- 17 A. Yes.
- 18 Q. And you don't know where he got that language, do you?
- 19 A. By this, he says it's our new language, I would assume  
20 it's more than one person. 09:34:40
- 21 Q. You don't know where he got the language from, do you?  
22 Yes or no, Dean?
- 23 A. No.
- 24 Q. And I asked you about where the language came from in the  
25 deposition I took from you on -- about a month ago; correct? 09:34:56



## DEAN COLELLO - Cross

- 1 A. Correct. 09:35:02
- 2 Q. And I asked you who prepared this language. Can you  
3 remember what you told me?
- 4 A. I believe I told you I didn't know.
- 5 Q. I'm not sure since I wasn't on those conference calls. I 09:35:11  
6 don't know who proposed it.
- 7 Did Wes Kennedy propose it? Did Pat propose it? Did  
8 Jess propose it? Did Roland propose it?
- 9 I don't know.
- 10 You didn't tell me in that deposition that a group of 09:35:26  
11 lawyers prepared it, did you?
- 12 A. I would --
- 13 Q. Did you?
- 14 A. I said that we had a group of lawyers working on that  
15 section. 09:35:37
- 16 Q. You didn't -- when I asked you who prepared it, you listed  
17 Wes, Pat, Roland, and Jess; correct?
- 18 A. If that's what the deposition says, then I guess that's  
19 what I said.
- 20 Q. You didn't mention anything about this language coming out 09:35:52  
21 of the work of a group of lawyers, did you?
- 22 A. I said that we outsourced this to a group of lawyers.  
23 That's what I said in my deposition.
- 24 Q. Not in that answer, did you?
- 25 A. Maybe not in answer to that question but I told you that a 09:36:08

## DEAN COLELLO - Cross

1 group of lawyers were working on it.

09:36:10

2 Q. I also asked you if -- who would know best about who  
3 prepared this language and you said to me: I don't know if it  
4 was Pat's idea or it might have been Jess's idea or it might  
5 have been Roland's idea. Honestly, since I was there, I don't  
6 know.

09:36:32

7 You just said nothing about a group of lawyers, did  
8 you?

9 A. Not in answer to that question but I established that a  
10 group of lawyers were working on it.

09:36:45

11 Q. And indeed the single-agreement language came from you,  
12 didn't it?

13 A. What single-agreement language?

14 Q. The initial language that the West Pilot representatives  
15 had a problem with. That came from you, didn't it?

09:37:00

16 A. Are you saying I wrote it?

17 Q. I said you sent it to people, didn't you?

18 A. I sent it to people. I did not write it.

19 Q. Where did you get it from?

20 A. From the same group of lawyers.

09:37:15

21 Q. You got it from a group of lawyers?

22 A. We had a group of lawyers working on the language.

23 MR. HARPER: Can you show him the e-mail that I'm  
24 talking about, please.

25

## DEAN COLELLO - Cross

- 1 BY MR. HARPER: 09:37:38
- 2 Q. Do you remember this e-mail that we talked about in your  
3 deposition, Dean?
- 4 A. Yes.
- 5 Q. It was on the December 14? 09:37:42
- 6 A. Yes.
- 7 Q. And it refers to a probably that you had sent or had been  
8 sent I guess to Chris the day before; correct?
- 9 A. Basically. This is -- Chris isn't on this e-mail but I  
10 must have sent a document to Pat James and David Dean, who were 09:38:03  
11 the two addressees on this, and I sent them this. I said this  
12 was left out of the document I sent you yesterday.
- 13 Q. Right. And this is the single-agreement language that  
14 eventually shows up in the longer initial draft of the  
15 McCaskill-Bond? 09:38:23
- 16 A. M'hum.
- 17 Q. And are you saying this language came from the lawyer  
18 group, too?
- 19 A. I did not write this language. It came to me from --
- 20 Q. And when I asked you about it, you didn't know. 09:38:39
- 21 A. I still don't know.
- 22 Q. You still don't know so you can't sit here and say that  
23 this came from the lawyer group; right?
- 24 A. If the lawyer group was working on --
- 25 Q. You can't say it came from there; right? 09:38:48

## DEAN COLELLO - Cross

- 1 A. No. 09:38:55
- 2 Q. The 10H language and the pass that you were talking about,  
3 do you remember that?
- 4 A. Yes.
- 5 Q. And I understood your testimony to be, in effect, that 09:39:05  
6 proposals would be made perhaps by USAPA, sent over or sent  
7 around and then perhaps there's a response to that and they --  
8 negotiations would go on that way; correct?
- 9 A. Well, normally, the passes are made on a face-to-face  
10 basis. You explain what your reasoning for making the changes. 09:39:28
- 11 Q. And I just want to make sure that everybody understands  
12 that with respect to the 10H language, that no benefits were  
13 proposed by US Airways to USAPA in exchange for the precise  
14 language in 10H. You agree with me on that point, don't you?
- 15 A. I explained that that's not how the process works. 09:40:00
- 16 Q. Well, let's walk through it; okay? The 10H language did  
17 not come in until December of 2012; right?
- 18 A. The 10H itself --
- 19 Q. The language goes into the MOU in December of 2012;  
20 correct? 09:40:24
- 21 A. It was in as a body of the MOU II which was discussed in  
22 December '12, yes.
- 23 Q. So let's talk about December '12. Before December '12 US  
24 Airways had already committed the \$40 million for the -- as  
25 Captain Holmes talks about it, the sign-up bonus; correct? 09:40:48

## DEAN COLELLO - Cross

- 1 A. Correct. 09:40:51
- 2 Q. That had been agreed to, tentatively anyway, back in  
3 August of 2012?
- 4 A. Yes.
- 5 Q. The retrospective pay that we have been talking about came 09:40:59  
6 about after the fact in public before the BPR in January of  
7 2013; correct?
- 8 A. No. The retrospective pay was in the MOU prior to the  
9 going to the BPR.
- 10 Q. But it got enhanced back to the February 8 day in public 09:41:18  
11 at the BPR meeting in January of 2004?
- 12 A. It was actually a closed meeting but, yes, it was as a  
13 result of the BPR meeting.
- 14 Q. Okay. The base Collective Bargaining Agreement that's the  
15 base for all of the benefits in the MOU is the 2012 Collective 09:41:39  
16 Bargaining Agreement that was negotiated between APA and  
17 AMR earlier in 2012; correct?
- 18 A. Can you -- I don't understand what you're saying by the  
19 base that brought about the improvements.
- 20 Q. Well, when you got to Dallas, the collective bargaining 09:42:06  
21 rates of pay and stuff like that had been as set forth in the  
22 conditional labor agreement from earlier in 2012; right?
- 23 A. They were modified but basically --
- 24 Q. I understand that. And when you get to Dallas in December  
25 of 2012, one of the first things that the NAC was asked or told 09:42:24

## DEAN COLELLO - Cross

- 1 about, APA and AMR have a new agreement, Collective Bargaining 09:42:30  
2 Agreement. Do you want to work off that agreement or do you  
3 want to work off the conditional labor agreement, improvements  
4 agreement; right?
- 5 A. That was part of the discussion, yes. 09:42:45
- 6 Q. And there's more but we'll talk about that.
- 7 But that document was just given to USAPA and said,  
8 "Do you want to use that as the green book going forward?" And  
9 a decision was made; right?
- 10 A. It was a collective decision. 09:43:01
- 11 Q. That's right. I mean everybody joined hands and we agreed  
12 on it. I'm not saying it was you. But it had no direct  
13 connection to 10H, did it?
- 14 A. No.
- 15 Q. And when you got to Dallas, there were some savings that 09:43:14  
16 were made through the negotiation of the 2012 agreement in the  
17 approximate amount of \$75 million; correct?
- 18 A. Yes.
- 19 Q. And then there was an additional savings that you agreed  
20 to in Dallas to the tune of about \$12 million; right? 09:43:36
- 21 A. Correct.
- 22 Q. So there was some more money on the table in Dallas,  
23 approximately \$87 million, to be discussed and used to enhance  
24 benefits; correct?
- 25 A. Correct. 09:43:53

## DEAN COLELLO - Cross

- 1 Q. And most of those discussions -- in fact, all of those 09:43:54  
2 discussions you told me occurred between APA and USAPA; right?  
3 Between APA and the union, USAPA?
- 4 A. The discussions on --
- 5 Q. How to use those moneys? 09:44:15
- 6 A. Well, we had discussions with APA and USAPA on that but  
7 ultimately -- and they -- APA did an analysis to see where the  
8 money could be spent.
- 9 Q. Right.
- 10 A. And we had discussions, okay, where do we want to direct 09:44:31  
11 it? To pay, to retirement, pay, things like that, but then  
12 ultimately they had to meet with management.
- 13 Q. I was getting there. But the discussions about how to use  
14 that \$87 million was on an agenda that APA and the USAPA  
15 representatives worked off of in Dallas; correct? 09:44:52
- 16 A. Well, we had discussions on it.
- 17 Q. You came to an agreement, for example, on the short-term  
18 disability to be extended three years; right?
- 19 A. No. APA was not involved in that discussion at all. APA  
20 was not involved in any discussions we had with items that were 09:45:10  
21 just germane to the US Airways pilots.
- 22 Q. Okay. Let's get to the bottom line here, Dean, then. On  
23 that discussion of that \$87 million, US Airways never came up  
24 and said, "Guys, you can go ahead and use that money provided  
25 you put 10H into the Collective Bargaining Agreement"? 09:45:27

## DEAN COLELLO - Cross

- 1 A. No. 09:45:33
- 2 Q. So there was no economic benefit of any type, as far as  
3 you know, that was given by US Airways to have USAPA include  
4 10H into the MOU?
- 5 A. I have a -- you keep saying USAPA included. Remember this 09:45:55  
6 was a joint agreement. Basically, a lot of parties had input  
7 into this. So was there any economic benefit for the parties  
8 to agree to include 10H? I would say the answer was no.
- 9 Q. And you understood that when 10H came in, even though the  
10 TA was still in effect, you thought the effect of 10H was to 09:46:20  
11 provide a clean slate for seniority; right?
- 12 A. It was basically belts and suspenders language that would  
13 help make it --
- 14 Q. You actually said it was a clean slate, didn't you?
- 15 A. I was getting to that in the rest of my sentence. 09:46:43
- 16 Q. You said it was a clean slate; correct?
- 17 A. To help provide a clean slate for seniority.
- 18 Q. Right. And you never, as the chairman of the NAC, ever  
19 told any pilots, especially the West Pilots, that including 10H  
20 into the MOU provided a clean slate for seniority; right? 09:47:00
- 21 A. Nobody ever asked me about 10H.
- 22 Q. I didn't ask you if anybody ever asked you. You didn't  
23 stand up and say, "Folks, 10H, in my opinion, provides for a  
24 clean slate on the issue of seniority"?
- 25 A. No. 09:47:24



## DEAN COLELLO - Cross

- 1 Q. So even though the Transition Agreement is still in 09:47:25  
2 effect, your personal belief was that 10H provided a clean  
3 slate, wiped out the need to use the Nicolau but never told the  
4 West Pilots?
- 5 A. I never said -- 09:47:41
- 6 Q. Is that correct?
- 7 A. Those are your words, Mr. Harper. I did not say that 10H  
8 wiped out the Nicolau.
- 9 Q. Well, Transition Agreement is still in effect; correct?
- 10 A. Correct. 09:47:53
- 11 Q. I want to take you back to see is I understood it --
- 12 MR. HARPER: Can you put up the -- well, we'll just  
13 work with this one.
- 14 BY MR. HARPER:
- 15 Q. As you saw yesterday -- and you were in the courtroom 09:48:29  
16 yesterday; correct?
- 17 A. Yes.
- 18 Q. Early on, on December 12 or December 13 or December 14  
19 there was an e-mail that includes the single-agreement language  
20 at the bottom. Do you remember that? 09:48:45
- 21 A. You mean the --
- 22 MR. HARPER: Can you find that one?
- 23 BY MR. HARPER:
- 24 Q. I'll show you the one. We can't find it. I'm sorry,  
25 Dean. 09:50:35

## DEAN COLELLO - Cross

- 1 MR. HARPER: Can you put the one we just had back up? 09:50:38
- 2 BY MR. HARPER:
- 3 Q. Okay. Mr. Colello, I want to --
- 4 A. That's the one that was in the earlier e-mail that was up  
5 there 10 minutes ago. 09:51:59
- 6 Q. That's what I thought. I saw it.
- 7 Let's talk about this because this is the language  
8 that the two pilot representatives had a problem with; correct?
- 9 A. Correct.
- 10 Q. And you say they brought to it your attention; correct? 09:52:15
- 11 A. Yes.
- 12 Q. And you just have no recollection of what it was that they  
13 had the problem with or how they articulated it to you?
- 14 A. Honestly, no, I don't. I just remember that it was an  
15 issue. 09:52:25
- 16 Q. So you're not contradicting what Captain Holmes said about  
17 it yesterday, what his problems were?
- 18 A. As far as what his problems were with it, are you  
19 referring to his testimony where he talked about losing the  
20 West Pilot votes and BPR members? 09:52:40
- 21 Q. Yes.
- 22 A. I don't know.
- 23 Q. You just have no recollection?
- 24 A. No.
- 25 Q. Okay. And you heard him testify yesterday that he brought 09:52:48

## DEAN COLELLO - Cross

- 1 those issues to Captain Hummel's attention and then there was a 09:52:53  
2 conversation with Pat Szymanski. Do you remember him  
3 testifying about that?
- 4 A. Yes.
- 5 Q. And you didn't participate in that; is that correct? 09:53:00
- 6 A. I don't recall. Honestly, you know, during these  
7 negotiations, anybody can tell you there was a lot of small  
8 meetings in and out and I can't recollect whether I was there  
9 or not.
- 10 Q. Sure. So you're not saying no, that didn't happen. The 09:53:12  
11 best you can recall is, "I didn't hear it happen," or, "I don't  
12 recall participating"?
- 13 A. Correct.
- 14 Q. The Negotiating Committee is made up of, right now, an  
15 equal number of West Pilots, equal number of East Pilots; 09:53:51  
16 correct?
- 17 A. Correct.
- 18 Q. And as you have testified, the charter for the Negotiating  
19 Committee really has nothing to do with seniority; correct?
- 20 A. Correct. 09:54:02
- 21 Q. It was just a happenstance in these negotiations that the  
22 seniority issues that have popped up occurred in the presence  
23 of, in essence, the Negotiating Committee; correct?
- 24 A. Correct.
- 25 Q. Now, the committee that has to make decisions and 09:54:24

## DEAN COLELLO - Cross

- 1 recommendations on seniority is the Merger Committee? 09:54:27
- 2 A. Yes.
- 3 Q. And you agree with me that there are four East members and  
4 two West members on that committee?
- 5 A. The best I can recollect. 09:54:41
- 6 Q. Right. And that is the committee that initially has to  
7 make recommendations on seniority and pass it up to the BPR,  
8 either for approval or for guidance or for additional  
9 instructions; correct?
- 10 A. Correct. 09:54:54
- 11 Q. And that, as we heard yesterday, is dominated 11 -- eight  
12 East Pilots and three West Pilots; correct?
- 13 A. The BPR is representative of the pilot force at US  
14 Airways.
- 15 Q. Okay. Pardon me? 09:55:10
- 16 A. I said the BPR is representative of the pilots at US  
17 Airways.
- 18 Q. And that's now made up of eight East Pilots and three West  
19 Pilots; correct?
- 20 A. The BPR is. 09:55:23
- 21 Q. Thank you.
- 22 And do you agree with the opening statement that  
23 Mr. Szymanski made, that USAPA is run as a democracy?
- 24 A. Yes.
- 25 Q. And in a democracy, the majority will prevails; correct? 09:55:42

## DEAN COLELLO - Cross

- 1 A. If you've been reading the papers lately, I don't know. 09:55:52  
2 But that's the way it's supposed to work.
- 3 Q. That's the way it's supposed to work. And you'll agree  
4 with me that the current ratio of membership at USAPA is about  
5 two to one in favor of the former East Pilots over the former 09:56:04  
6 West Pilots; correct?
- 7 A. On a numbers basis, that's correct.
- 8 Q. Let me make sure I understand a bit of your previous  
9 testimony. During these Dallas negotiations, the 10H language  
10 in MOU II was initially included in a 10 -- a McCaskill-Bond 09:56:54  
11 e-mail by USAPA; correct? We just went through that. Pat  
12 Szymanski said, "Here's our new language," included it in the  
13 body of the proposed McCaskill-Bond and then it was forwarded  
14 on to the other parties in these negotiations; correct?
- 15 A. Pat sent language that said that it was their proposal and 09:57:26  
16 that, yes, that was included.
- 17 Q. That was our new language, USAPA's new language; correct?
- 18 A. As I've stated before, you can't tell me that all our  
19 refers to USAPA. It could be our referring to the group of  
20 lawyers. 09:57:46
- 21 MR. SZYMANSKI: Your Honor, can I just clear this up?  
22 I drafted the first version --
- 23 THE COURT: Well, hold on. Unless you're going to  
24 testify under oath. We'll call you up here and you can  
25 testify. 09:57:57

## DEAN COLELLO - Cross

- 1 MR. SZYMANSKI: I would offer to stipulate. 09:57:57
- 2 THE COURT: Well, stipulate under oath. We can have
- 3 you take the stand. You refused to testify in the past.
- 4 Go ahead.
- 5 BY MR. HARPER: 09:58:07
- 6 Q. But I just wanted to get the process down. The e-mail,
- 7 our, whatever that means, to be included and then USAPA passed
- 8 that on to others in these negotiations?
- 9 A. Yes, and the -- if others in those negotiations had a
- 10 problem with it, they easily could have struck it. 09:58:26
- 11 Q. But it was passed on by USAPA initially?
- 12 A. Yes.
- 13 Q. Okay. And during the road shows, just so I make it clear,
- 14 you participated in all of them?
- 15 A. Yes. 09:58:42
- 16 Q. And you helped prepare all of the materials that the NAC
- 17 sent out to the West Pilots during the ratification period?
- 18 A. All of the NAC members participated in the materials that
- 19 were sent to all of the pilots, not just to the West Pilots.
- 20 Q. And it included that information about the Nic, a vote in 09:58:59
- 21 favor should not and a vote against should not be concerned
- 22 over the Nic; right?
- 23 A. I'm not sure if that is in information we sent out or if
- 24 it was just in updates.
- 25 Q. But it was discussed in the road shows? 09:59:17

## DEAN COLELLO - Cross

- 1 A. Yes. 09:59:18
- 2 Q. And when that was discussed, the MOU has no effect on the  
3 Nic, you didn't stand up and say, as you just told me, "But,  
4 guys, understand I believe that this provides a clean slate on  
5 seniority"? You didn't say that? 09:59:36
- 6 A. No.
- 7 Q. And you didn't tell anybody else to say that on your  
8 behalf?
- 9 A. No.
- 10 MR. HARPER: No further questions, Your Honor. 09:59:47
- 11 THE COURT: Redirect?
- 12 **REDIRECT EXAMINATION**
- 13 BY MR. SZYMANSKI:
- 14 Q. During the course of the negotiations, who did the  
15 drafting of various language? 10:00:14
- 16 A. A lot of people were involved in the drafting of different  
17 languages.
- 18 Q. And were lawyers involved in drafting language?
- 19 A. Very much so.
- 20 Q. During your deposition testimony, you were asked about 10:00:31  
21 merger related items.
- 22 The question was: What would be those merger related  
23 items. For example? And you answered there was --
- 24 MR. HARPER: What page are you on, Pat?
- 25 MR. SZYMANSKI: 62 and 63. These are part of the 10:00:52

## DEAN COLELLO - Redirect

1 designated excerpts of the transcripts, Your Honor, that has 10:00:55  
2 been submitted.

3 Q. The bottom of page 62, the top of page 63.

4 Answer: There was -- there was a paragraph in  
5 document 10-23 referring to the McCaskill-Bond process. 10:01:07

6 Question: So he was involved in that?  
7 Talking about Jess Pauley.

8 Answer: Yes.

9 Question: And is that why Pat Szymanski was  
10 involved, too? 10:01:19

11 Answer. Yes.

12 Question: So it was just on McCaskill-Bond?

13 Answer: Yes. They were not involved in other  
14 aspects of it.

15 Did you give that testimony in your deposition? 10:01:29

16 A. Yes.

17 Q. And at the bottom of page 64, actually it goes from page  
18 63 to page 65 --

19 MR. HARPER: Your Honor, I'm going to object to him  
20 reading his testimony into the record. 10:01:45

21 THE COURT: That's correct.  
22 You can ask him questions.

23 MR. SZYMANSKI: Okay.

24 BY MR. SZYMANSKI:

25 Q. During the course of your deposition, did you give 10:01:54



## DEAN COLELLO - Redirect

1 testimony concerning who was involved in the McCaskill-Bond  
2 discussions? 10:01:56

3 A. Yes.

4 Q. And did you say anything about lawyers?

5 A. Yes. 10:02:08

6 THE COURT: You can refresh his recollection if you  
7 wish. Is there specific language that you are referring to?

8 BY MR. SZYMANSKI:

9 Q. On page 65, it says: And most of those discussions  
10 concerning the McCaskill-Bond paragraph and document 1023, MOU 10:02:27  
11 II, that was the document that was MOU II, that was the 1023  
12 was the number that it was given in the course of the  
13 depositions, was done by the lawyers. And I mean the lawyers  
14 from all the parties were involved in those.

15 A. Yes. 10:02:48

16 MR. HARPER: I object to that, Your Honor, because I  
17 thought he was supposed to be asking the question and getting  
18 an answer.

19 THE COURT: Well, that isn't the way you refresh  
20 recollection. But I'm going to allow it in because had he done 10:02:56  
21 it the right way, it would have come in anyway.

22 So overruled.

23 THE WITNESS: I believe in my deposition I explained  
24 how the process works and how the Negotiating Committee brings  
25 in experts from different areas, as I said earlier today. And 10:03:15

## DEAN COLELLO - Redirect

1 I did say that for that McCaskill-Bond process, that it was 10:03:19  
2 relegated to the duties of the lawyers to include both  
3 association, legal counsel, and company legal counsel to  
4 develop that.

5 MR. SZYMANSKI: Nothing further, Your Honor. 10:03:38  
6 THE COURT: All right.  
7 And we'll take a 15-minute break.  
8 We're in recess.  
9 COURTROOM DEPUTY: All rise.  
10 (Recess at 10:03; resumed at 10:32.) 10:03:45  
11 (Court was called to order by the courtroom deputy.)  
12 THE COURT: Please be seated.  
13 All right.  
14 MR. HARPER: Your Honor, at this particular point in  
15 time, we would propose to show the Captain Bradford video. 10:32:39  
16 We're doing it that way because we had thought he would be here  
17 for this trial but as it turned out, he opted not to show.  
18 THE COURT: That's fine. And you worked it out with  
19 Ms. Martin?  
20 MR. HARPER: I believe we have. 10:32:54  
21 If there are any technical issues, it's beyond my pay  
22 grade and I would have to turn it over to somebody else.  
23 We're okay to go, Susan?  
24 MS. MARTIN: We haven't seen it, Your Honor, but they  
25 have represented that all of our designations were there. 10:33:06

## DEAN COLELLO - Redirect

1 We're fine. 10:33:09

2 (Videotaped begins to be played of Captain Bradford.)

3 MS. MARTIN: Your Honor, the counter designations  
4 were not read. I wanted to stop now because the first set was  
5 not. 10:34:53

6 THE COURT: I certainly don't have any  
7 responsibility. It is the responsibility of plaintiffs'  
8 counsel to ensure that they are all included.

9 Ms. Martin --

10 MS. MARTIN: We'll just mark the ones that are 10:35:07  
11 missing.

12 THE COURT: All right. Why don't you talk to counsel  
13 right now and figure out why they weren't included?

14 MS. AXEL: Your Honor, alternatively, they could play  
15 the designations that they say are missing. The issues that we 10:35:24  
16 had with sending the files is the way that the files are  
17 located, it just was not practical to do last night.

18 THE COURT: Well, then we should have been told  
19 because I anticipated that they were all going to be included  
20 in one presentation. But now -- did you try to do that and you 10:35:42  
21 were unable to?

22 MS. AXEL: We tried to do that and we -- I understand  
23 that the designations that they provided to us are in here.  
24 Are they in here after?

25 To the best of our ability, we tried to put their 10:35:56

## DEAN COLELLO - Redirect

1 designations in here. 10:36:02

2 MS. MARTIN: Fine. Okay.

3 What I would suggest, Your Honor, is if we miss any  
4 designations, that we'll --

5 THE COURT: That you'll include them later. 10:36:11

6 As long as it's not choppy of some sort. I suppose  
7 what you could do is play yours and then Ms. Martin can play  
8 hers. I don't know how to do this at this time but I want it  
9 resolved as soon as possible.

10 MS. MARTIN: Perhaps this would be best done on a 10:36:30  
11 break, Your Honor, because we asked for a copy of what they  
12 were going to present and it was not technically -- they said  
13 not possible to give it to us in advance so perhaps we could  
14 take a break and not --

15 THE COURT: Are you able to do that on a break? 10:36:44

16 MS. AXEL: Your Honor, the issue was we got a request  
17 about 7:30 last night, after my paralegal had already left the  
18 office, to send them the files and I understand that it was not  
19 feasible for us to do that even if we had been in the office.  
20 Again, we were planning on presenting Mr. Bradford via direct 10:37:00  
21 testimony but he did not show up, so we didn't know that ahead  
22 of time in order to send them the files.

23 Now, as you can see when we go through, the  
24 transcript is right there. So if there are items that they  
25 think that are not playing for the Court, they certainly can 10:37:14

## DEAN COLELLO - Redirect

1 point that out. 10:37:18

2 THE COURT: Well, a transcript is there but only the  
3 transcript I presume of what you're going to play.

4 MR. JACOBS: Correct. Because they are synced. If  
5 we missed a short designation, it was not intentional. 10:37:34

6 THE COURT: I know it's not internal but,  
7 nonetheless, we have to get this trial finished today.

8 MS. AXEL: Correct.

9 THE COURT: So how are we going to do that?

10 MS. MARTIN: My suggestion was the parties on a 10:37:44  
11 break, without wasting the Court's time, preview to verify that  
12 our counter designations have been added and if they have  
13 not --

14 THE COURT: Let's go ahead with another witness,  
15 then. 10:37:56

16 MS. MARTIN: Yes.

17 MR. SILVERMAN: Your Honor, USAPA calls John Owens.

18 JOHN OWENS,  
19 called as a witness herein by the Defendants, having been first  
20 duly sworn or affirmed to testify to the truth, was examined 10:38:19  
21 and testified as follows:

22 COURTROOM DEPUTY: Please state your name for the  
23 record, spell your last name, please.

24 THE WITNESS: John Owens. O-W-E-N-S.

25 THE COURT: You may proceed. 10:38:59

## DEAN COLELLO - Redirect

1 MR. SILVERMAN: Thank you, Your Honor. 10:39:01

2 **DIRECT EXAMINATION**

3 BY MR. SILVERMAN:

4 Q. Mr. Owens, by whom or what are you employed?

5 A. US Airways. 10:39:05

6 Q. And in what capacity, sir?

7 A. I'm a pilot.

8 Q. And for how long have you been employed by US Airways as a  
9 pilot?

10 A. 24 years. 10:39:12

11 Q. I'm sorry?

12 A. 24 years.

13 MS. AXEL: Can we just have the witness speak up a  
14 little bit? I'm having a hard time hearing him.

15 THE COURT: Thank you. 10:39:21

16 THE WITNESS: 24 years.

17 BY MR. SILVERMAN:

18 Q. Thank you, Mr. Owens. Can you give the Court some  
19 indication of your business-related educational background,  
20 sir? 10:39:30

21 A. Yes, sir. I studied aviation law and management, received  
22 a bachelor's degree in business management. I also have a  
23 master's in business administration from Columbia. I was an  
24 Air Force fighter pilot, an officer and served in the Persian  
25 Gulf. 10:39:52

JOHN OWENS - Direct

- 1 Q. Thank you. Do you have some outside experience aside from 10:39:52  
2 being pilot in business-related matters, sir?
- 3 A. Yes, I do.
- 4 Q. And what is that?
- 5 A. I've owned and/or operated several small companies. I 10:39:59  
6 also have a consulting company where I consult for both private  
7 and public companies.
- 8 Q. And on what matters do you consult, sir?
- 9 A. Various matters depending on the client's needs, anything  
10 from financial analysis to operations to executive management 10:40:14  
11 coaching.
- 12 Q. Are you a member of USAPA, sir?
- 13 A. I am.
- 14 Q. Do you serve on any committees, USAPA committees,  
15 presently? 10:40:25
- 16 A. Yes, I do.
- 17 Q. And what committees do you sit on?
- 18 A. I am the chairman of the Business Intelligence Committee  
19 and I also serve as a member of the Negotiating Advisory  
20 Committee. 10:40:34
- 21 Q. Directing your attention to the Business Intelligence  
22 Committee, sir, with whom else do you serve?
- 23 A. Mr. Johan de Vicq.
- 24 Q. And what is the function of the Business Intelligence  
25 Committee? 10:40:44

United States District Court

JOHN OWENS - Direct

- 1 A. We provide the association and the membership with 10:40:46  
2 analysis of the industry, specifically financial analysis as it  
3 applies to other airlines and also US Airways filings. We also  
4 provide guidance on business-related matters to the association  
5 and we also are involved in communications to facilitate other 10:41:05  
6 chairmen.
- 7 Q. And where is Mr. De Vicq based as a pilot for US Airways?  
8 A. Phoenix, Arizona.
- 9 Q. And are you able to work with Mr. De Vicq cooperatively in  
10 your dealings on the Business Intelligence Committee? 10:41:19  
11 A. Yes, I am. I consider him a very capable, talented  
12 individual and happy to have him.
- 13 Q. Sir, directing your attention to change of control, are  
14 you familiar with those terms?  
15 A. Yes, sir. 10:41:39
- 16 Q. And can you tell us previously what is change of control?  
17 A. It is a provision of the 1998-2003 Collective Bargaining  
18 Agreement on the East Collective Bargaining Agreement. It's in  
19 Section 1's scope and it provides that if certain corporate  
20 transactions occur that are major transactions, that control 10:42:00  
21 would be changed, that the pilots will be afforded a snap-back  
22 wage that is defined in the agreement.
- 23 Q. So just to go over it a little bit, the change in control  
24 is with respect to the union or the company?  
25 A. It is -- it affects -- the union has opportunity to not be 10:42:22

United States District Court



JOHN OWENS - Direct

- 1 left behind in the event that the company undergoes a major 10:42:27  
2 transaction.
- 3 Q. Now, what contract contains a change-of-control provision?
- 4 A. The East Collective Bargaining Agreement.
- 5 Q. Does the West Collective Bargaining Agreement contain a 10:42:44  
6 change-in-control provision?
- 7 A. No, sir.
- 8 Q. Can you explain why one contract has a change-in-control  
9 provision and the other one doesn't?
- 10 A. It's a factor of negotiations, what you bargain for. Some 10:43:01  
11 contracts, the negotiators bargain for change of control in  
12 relation to other things and some contracts, it doesn't make  
13 it.
- 14 Q. For how long have the -- has the East CBA had a  
15 change-in-control provision? 10:43:24
- 16 A. I know it at least originated in the 1998 Collective  
17 Bargaining Agreement and it survived two bankruptcy seats and  
18 it has been memorialized in the Letter of Agreement '93 that we  
19 currently operate under.
- 20 Q. Now, sir, in relation to the Memorandum of Understanding 10:43:43  
21 negotiations of matters, did you analyze the change-of-control  
22 provisions of the East CBA?
- 23 A. Yes, sir.
- 24 Q. And approximately when did you begin that analysis?
- 25 A. Spring of 2012. 10:44:08

United States District Court

JOHN OWENS - Direct

- 1 Q. And what was the purpose of that analysis, sir? 10:44:09
- 2 A. Basically, we learned that the potential merger was in  
3 front of us, that US Airways and the pilots of American  
4 Airlines had a contingent Collective Bargaining Agreement. So  
5 we felt that, obviously, a corporate transaction of the one we 10:44:24  
6 just spoke of was probably looming and so we decided we needed  
7 to do our research and due diligence on our change-of-control  
8 provisions.
- 9 Q. Was there some thought that the merger with -- between US  
10 Airways and American Airlines would trigger the 10:44:41  
11 change-in-control provisions of the East contract?
- 12 A. Yes, sir.
- 13 Q. Were you working with any other individuals in relation to  
14 the change-in-control language?
- 15 A. Yes. I worked with Johan de Vicq, shared some information 10:45:00  
16 with Johan and he helped. I also worked with the -- in the  
17 initial due diligence phase, worked with the attorneys,  
18 specifically Pat Szymanski and Brian O'Dwyer.
- 19 Q. And what occurred next with respect to the analysis of the  
20 change-of-control provisions of the East Collective Bargaining 10:45:21  
21 Agreement in relation to the potential merger between US  
22 Airways and American Airlines?
- 23 A. It was recognized that the change of control had  
24 significant value and, therefore, we decided to continue and do  
25 the number-crunching analysis. 10:45:38

United States District Court

JOHN OWENS - Direct

- 1 Q. And did you eventually crunch the numbers, sir? 10:45:41
- 2 A. Yes, sir.
- 3 Q. Did you report on that initial analysis of the numbers to  
4 the BPR?
- 5 A. Yes, we did. 10:45:50
- 6 Q. And Board of Pilot Representatives, USAPA?
- 7 A. That's correct.
- 8 Q. And when did you do that?
- 9 A. We reported to the Board of Pilot Representatives on  
10 change of control in closed session in September of 2012. 10:45:59
- 11 Q. And generally speaking, what were your findings with  
12 respect to the change-in-control provision, sir?
- 13 A. We found that it offered a significant increase in pay,  
14 upwards of 63 percent, to a certain group of East Pilots who  
15 qualified. However, it didn't affect all pilots. 10:46:21
- 16 Q. And what pilots in particular did it not affect, sir?
- 17 A. E190 pilots flying on the East side and all pilots flying  
18 on the West side.
- 19 Q. And in terms of the East Pilots who would be affected by  
20 that, can you estimate, sir, the number of pilots who would be 10:46:41  
21 affected, that is to say, pilots excluding the E190 pilots?
- 22 A. The pilots that would be affected?
- 23 Q. Yes, sir.
- 24 A. It would be our entire seniority list that were active  
25 minus about 200 E190 pilots. 10:46:53

United States District Court

JOHN OWENS - Direct

- 1 Q. Thank you, sir. 10:46:56
- 2 As a result of the report that you made to the BPR at  
3 this time, what occurred next?
- 4 A. The BPR reviewed the information and based on what they  
5 learned and what they saw, they agreed that we would continue 10:47:14  
6 to negotiate with the possible opportunity of exchanging change  
7 of control if the final agreement warranted such.
- 8 Q. And can you tell us, sir, as of that time, what was the  
9 thought process with respect to the negotiations with the  
10 company with respect to change of control? 10:47:40
- 11 A. The thought process --
- 12 MS. AXEL: Objection. Foundation.
- 13 THE COURT: Sustained.
- 14 BY MR. SILVERMAN:
- 15 Q. Mr. Owens, did you have -- did you and the rest of the 10:47:49  
16 committee have a plan that you would go forward with in terms  
17 of negotiating change-of-control provisions of the East  
18 Collective Bargaining Agreement with the company?
- 19 A. We had a plan that we understood that from the company's  
20 perspective, that change of control was something they were 10:48:12  
21 going to ask us to waive. Our plan was that we needed to be  
22 focusing on all pilots, East and West, and we needed to deliver  
23 an agreement that made it clear that the change-in-control  
24 provisions could be given up in exchange for the benefits to  
25 all of the pilots. 10:48:35

United States District Court

JOHN OWENS - Direct

1 Q. Is it fair to say that you were looking to get something 10:48:39  
2 in exchange for waiving change in control?

3 A. Yes, it is fair.

4 Q. Now, Mr. Owens, even as the BPR authorized the Negotiating  
5 Advisory Committee to continue negotiations with respect to 10:48:50  
6 change of control, was there some resistance at the BPR level  
7 or elsewhere with respect to going forward on that ground?

8 A. Yes, sir.

9 MS. AXEL: Objection. Leading, Your Honor.

10 THE COURT: Sustained. 10:49:10

11 BY MR. SILVERMAN:

12 Q. Was there any resistance to the waiving change in control,  
13 Mr. Owens?

14 A. Yes, sir.

15 Q. And what was the resistance? 10:49:20

16 A. Particularly East Pilots, many East Pilots who had  
17 understood the value and had, you know, continued to hang on to  
18 this change-in-control language. They felt that for all of the  
19 years and sacrifice and so on and so forth that it was  
20 something that would be very good for them if it were to occur 10:49:43  
21 and they felt that they weren't willing to give up that  
22 potential pay raise in exchange for an MOU pay raise, which  
23 affected everyone but would be slightly lower.

24 Q. What happened next with respect to change in control and  
25 the MOU negotiations, sir? 10:50:08

JOHN OWENS - Direct

- 1 A. MOU I, when we presented, was -- we were in the black-out 10:50:11  
2 period between when the company was in their nondisclosures.  
3 We presented it and then of course the company invited us with  
4 the other parties to start negotiations on MOU II. So we,  
5 again, looked at the change of control to see what ultimately 10:50:30  
6 the valuations would look like with the pay rates in place.
- 7 Q. And did the -- or does the final MOU provide for waiver of  
8 change in control, sir?
- 9 A. Yes.
- 10 MR. SILVERMAN: Can I have Exhibit 24, page nine, 10:50:53  
11 please.
- 12 BY MR. SILVERMAN:
- 13 Q. Directing your attention, sir, to paragraph 14?
- 14 A. Yes, sir.
- 15 Q. And is that the change of control provision of the MOU, 10:51:17  
16 sir?
- 17 A. Yes, sir.
- 18 Q. And this is what the Negotiating Advisory Committee  
19 negotiated with the company, sir, or the other parties, sir?
- 20 A. That's correct, sir. 10:51:30
- 21 Q. The MOU was approved by the BPR; is that correct?
- 22 A. That is correct, sir.
- 23 Q. Following the approval of the MOU by the BPR with this  
24 change-of-control waiving language, did you do an analysis of  
25 the value of the waiver of the change of control? 10:51:50

United States District Court

JOHN OWENS - Direct

- 1 A. Yes, together with the Negotiating Advisory Committee, we 10:51:53  
2 looked at the wages, benefits. There were other things that  
3 had been gained at that point. Of course we had the 40 million  
4 but we also had a retroactive pay to a date certain. And so we  
5 decided that at this point in time, as the membership was about 10:52:11  
6 to undertake the ratification vote, we needed to advise them of  
7 the value of the change of control as -- versus the MOU.
- 8 Q. And did you -- did the Negotiating Advisory Committee  
9 present that analysis to the membership?
- 10 A. Yes, we did. 10:52:30
- 11 MR. SILVERMAN: Can I have Exhibit 96, please.
- 12 BY MR. SILVERMAN:
- 13 Q. Direct your attention to not the top part of this, sir,  
14 the bottom part where it talks about the Negotiating Advisory  
15 Committee, can you tell us what that is, please. 10:52:48
- 16 A. This is a Negotiating Advisory Committee update. It's  
17 sent to the pilots on January 27 of 2013.
- 18 Q. And, generally speaking, what does it entail? What does  
19 it provide?
- 20 A. It's a discussion on the current MOU, the benefits under 10:53:02  
21 it as opposed to change of control if triggered; and for a  
22 certain period of time we did an analysis to give the pilots an  
23 apples to apples understanding of the value of what they were  
24 about to potentially ratify.
- 25 Q. And directing your attention to the next page of this 10:53:25

JOHN OWENS - Direct

- 1 document, sir, the tables there at the bottom part of the page 10:53:27  
2 which we'll highlight in a moment, can you tell us briefly what  
3 was the analysis of the value of the change of control as  
4 provided to the membership in January -- on January 27, 2013?
- 5 A. As you see in the upper table, far right column, it's a 10:53:47  
6 little bit grayed out. You'll see COC, which is change of  
7 control, and we valued the -- we showed 2013, 2014 with a total  
8 value of \$1.36 billion and that is all ages and benefits.
- 9 Q. Okay. And for the same periods of time was a valuation of  
10 the MOU, sir? 10:54:11
- 11 A. Yes, there was.
- 12 Q. And what was the valuation of the MOU?
- 13 A. Same period of time we used the wage, the DC contributions  
14 plus the increases, the \$40 million went into this calculation  
15 as did the retrospective pay, and we came up with a figure of 10:54:25  
16 \$1.38 billion.
- 17 Q. And can you tell the Court what this meant in terms of the  
18 recommendation with respect to change of control?
- 19 A. Basically, what this represents is that the value of  
20 change of control as it applies to only a certain number of 10:54:47  
21 pilots as compared to the value of the MOU, which we had and we  
22 were about to ratify and was a known entity, it was very, very  
23 close. But the big catalyst here was the fact that the MOU  
24 included all pilots, brought all pilots as equals.
- 25 Q. And what about the change in control? 10:55:12

United States District Court



JOHN OWENS - Direct

- 1 A. The change of control would be based on if a merger 10:55:14  
2 occurred and the section one change of control was triggered, a  
3 certain group of pilots would receive a certain benefit for a  
4 period of up to 18 months.
- 5 Q. Sir, as a result of the waiver of change of control, did 10:55:35  
6 the East Pilots sacrifice any increases in pay?
- 7 A. Yes.
- 8 Q. Did the West Pilots sacrifice any increases in pay as a  
9 result of change of control?
- 10 A. No. 10:55:47
- 11 Q. Did the West Pilots benefit as a result of change of  
12 control waiver?
- 13 A. Yes.
- 14 Q. Sir, did you attend any road shows conducted following  
15 approval of the MOU for the education of the pilots with 10:56:07  
16 respect to the terms of the MOU?
- 17 A. I did.
- 18 Q. And can you tell us generally, did you -- how many road  
19 shows there were?
- 20 A. I would say there was eight, possibly nine sessions. 10:56:25
- 21 Q. Did you attend all of the road shows, sir?
- 22 A. I did.
- 23 Q. What was the format, generally, of the road shows?
- 24 A. Either chairman Colello or myself would present our  
25 presentation on the MOU to the attendees and after that, 10:56:38

United States District Court

JOHN OWENS - Direct

1 normally we would address seniority integration. We would hand 10:56:45  
2 that over to counsel Szymanski and chairman Jess Pauley and his  
3 committee if they were present and then, generally, it would go  
4 to a question-and-answer session.

5 Q. At any of these road shows that you attended, sir, did you 10:57:05  
6 receive feedback with respect to the waiver of the  
7 change-of-control provisions of the MOU?

8 A. Yes, sir.

9 Q. And what sort of feedback did you receive?

10 A. To put it simply, we took a lot of flak from certain 10:57:16  
11 pilots that we were giving up change of control too easily,  
12 that we were -- you know, we weren't considering the best  
13 interest of certain East Pilots. Of course our argument was  
14 always that we were considering the best interest of all  
15 pilots. But nonetheless, that were certain pilots that felt we 10:57:37  
16 should hold out for it.

17 Q. Okay. Were there any other considerations with respect to  
18 the change-in-control provisions that were important aside from  
19 getting the best deal for all of the pilots, sir?

20 A. Aspects of the change-of-control provision itself? Could 10:57:58  
21 you restate the question, sir?

22 Q. Was there a concern with going into -- withdrawn.

23 Was there a concern with parity with APA pilots, sir?

24 A. Yes, absolutely. I mean our intent as guided by our legal  
25 advisors from the beginning, officers and the NAC, we felt that 10:58:17

JOHN OWENS - Direct

1 in this situation, what was in the best interest of our pilots 10:58:23  
2 was to arrive at a plan of reorganization, at the effective  
3 date as complete equals with the American pilots.

4 Q. Did waiver of change of control have an effect on that,  
5 sir? 10:58:40

6 A. Yes.

7 Q. In what respect?

8 A. We arrived in that position as equals with the American  
9 pilots at the effective date.

10 Q. Sir, directing your attention to the first page of 10:58:50  
11 Exhibit 96, which is on your screen?

12 MR. SILVERMAN: Could we have the first page, please,  
13 the top of that.

14 BY MR. SILVERMAN:

15 Q. Mr. Owens, did you ever receive any e-mails from any 10:59:38  
16 pilots concerning their response to the waiver of  
17 change-of-control language?

18 A. I did, yes.

19 Q. Directing your attention to the top of page -- of  
20 Exhibit 96 that on your screen -- I'm sorry. 10:59:55

21 MR. SILVERMAN: Again, Judge, these documents are  
22 unredacted. There is offensive language in here and I caution  
23 about that.

24 BY MR. SILVERMAN:

25 Q. Can you tell us generally, what this document is, sir? 11:00:12

JOHN OWENS - Direct

- 1 A. Basically, it's an e-mail from a disgruntled pilot to the 11:00:17  
2 Negotiating Advisory Committee. Of course communications would  
3 be copied in on this. And it's, you know, just shows that if,  
4 based on the language, this might have come from a West Pilot  
5 and I don't mean that -- the bad language. I'm not implying 11:00:36  
6 that. But that, in fact, there was a lot of skepticism and  
7 debate over change of control?
- 8 Q. Thank you, sir.
- 9 Mr. Owens, at any road show you attended, did you  
10 hear Mr. Szymanski make presentations regarding the effects of 11:01:09  
11 the MOU?
- 12 A. Yes.
- 13 Q. Did you ever hear of Mr. Szymanski saying a presentation  
14 that the Nic is dead or some words to that effect?
- 15 A. No, sir. 11:01:29
- 16 Q. Was anything like that ever raised at a road show that you  
17 attended?
- 18 A. Yes, sir.
- 19 Q. And what do you recall about that, sir?
- 20 A. Pilots from the audience had a barrage of questions to 11:01:38  
21 Mr. Szymanski, very emotional, said, "We need to know whether  
22 or not, in your opinion, is the Nic dead."
- 23 Q. And what response do you recall Mr. Szymanski making?
- 24 A. He said, "Some might say that but I wouldn't qualify it  
25 that way." 11:01:59

United States District Court

JOHN OWENS - Direct

- 1 Q. Directing your attention, Mr. Owens, to retrospective pay, 11:02:02  
2 can you tell us what that is, sir?
- 3 A. It was pay that was negotiated in MOU II that basically  
4 set a date and time in which if the POR were to occur, pilots  
5 of US Airways from that date and time to the POR would receive 11:02:23  
6 the wages that were negotiated in the MOU.
- 7 Q. Now, at the time that the MOU was presented for  
8 ratification to the BPR, was there a provision relating to  
9 retrospective pay?
- 10 A. Yes, sir. 11:02:39
- 11 Q. And without going too far into the details of it, can you  
12 tell the Court what was the retro date that that pay went back  
13 to, as presented in the MOU as presented to the BPR?
- 14 A. It's specified that when the merger had been approved by  
15 AMR and that all regulatory approvals had occurred, from that 11:03:03  
16 date -- and if you take the difference in the POR from that  
17 date, that would trigger the retrospective pay to the pilots of  
18 US Airways, that there was a caveat that it would be no less  
19 than 30 days.
- 20 Q. And were reservations concerning the retrospective pay 11:03:23  
21 raised by the BPR at some point?
- 22 A. Yes, sir.
- 23 Q. And what were those reservations?
- 24 A. That it was inadequate, that we could -- how could we know  
25 when the regulatory approvals would occur as we've seen, and so 11:03:37

United States District Court

JOHN OWENS - Direct

1 there was lot of debate and there was questions of -- we tried 11:03:42  
2 harder to do more which we talked to the BPR about. So there  
3 was some healthy debate on it.

4 Q. And as a result of that healthy debate, did the  
5 Negotiating Advisory Committee do anything? 11:04:01

6 A. The Negotiating Advisory Committee, at the Board's  
7 request, was asked to go back to the companies one more time  
8 and ask for one more item in the MOU.

9 Q. And what was asked for, sir?

10 A. It was asked for that the retrospective pay would take 11:04:17  
11 effect at the ratification date, which was set for February 8,  
12 2013, and of course that would be between the POR and the  
13 ratification date.

14 Q. And eventually was the Negotiating Advisory Committee able  
15 to get that enhancement, sir? 11:04:33

16 A. Yes, but we -- what's important to note is that when we  
17 brought the MOU back, it was a complete document for  
18 presentation. We explained to the board that there was no  
19 ability to just go back and ask for more at that point.

20 However -- 11:04:53

21 Q. What was that, sir?

22 A. However, we were willing to do that but we would have to  
23 give something or explain something to the person we were  
24 requesting that what would we get in return for that.

25 Q. And what was the quid pro quo, so to speak, for that? 11:05:10

United States District Court

JOHN OWENS - Direct

- 1 A. It was a unanimous vote by the BPR. 11:05:12
- 2 Q. And as a result of a unanimous vote of the BPR, what  
3 specifically did US Airways pilots get in terms of  
4 retrospective pay?
- 5 A. As a result of the unanimous vote, the side Letter of 11:05:30  
6 Agreement was changed to reflect that as of February 8, 2013,  
7 if, in fact, the MOU was ratified, that that would be the date  
8 that would trigger retrospective pay at the POR.
- 9 Q. In terms of the projection as of the time of that  
10 negotiation, what was the expectation with respect to the 11:05:52  
11 number of months additional that that -- that, going back to  
12 February 8, would obtain for the pilots?
- 13 A. About three months based on somebody's opinion.  
14 Basically, the original retrospective pay folks thought  
15 possibly would happen a couple of months prior to the POR, so 11:06:14  
16 this would have -- if we were looking at a July POR, this would  
17 have given us an initial three months of retro pay.
- 18 Q. And what was the value of that enhancement as of that  
19 date?
- 20 A. What was the value as of that date? 11:06:30
- 21 Q. Yes. Put it differently, do you have a figure for the  
22 monthly value of that retrospective pay?
- 23 A. Yes. I think it was between \$10 and \$11 million a month.
- 24 Q. And have events proven that the value of that  
25 retrospective pay going back to February 8, 2013, has 11:06:45

JOHN OWENS - Direct

- 1 additional value, sir? 11:06:49
- 2 A. Absolutely.
- 3 Q. And what is that, sir?
- 4 A. Well, since the date was certain, February 8, and the  
5 ratification has occurred, that clock has started. As we all 11:07:02  
6 know, DOJ issues have postponed the regulatory approvals.  
7 However, if and when this merger occurs, that clock started on  
8 February 8 and so a much larger sum of money.
- 9 Q. And do you have an estimate of the value of that  
10 enhancement as of this date? 11:07:18
- 11 A. Yes. Offhand, I think we spoke of somewhere in the  
12 neighborhood of between \$80 and \$90 million.
- 13 Q. Thank you, sir.
- 14 MR. SILVERMAN: Could we have Exhibit 100, please,  
15 just the first and second page, please. 11:07:29
- 16 BY MR. SILVERMAN:
- 17 Q. Mr. Owens, I did want to direct your attention to  
18 Exhibit 100 as soon as it's up on the screen.
- 19 Directing your attention to the first page of this  
20 document, look at that and if you would look at the first page 11:08:06  
21 where some names appear, please?
- 22 A. Yes. This is an e-mail from myself to Dean Colello on  
23 Christmas Day 2012.
- 24 Q. And -- okay. And what had you received?
- 25 A. I had received a seniority list of sorts. 11:08:24

United States District Court



JOHN OWENS - Direct

- 1 Q. Okay. Directing your attention to what's on the screen 11:08:30  
2 now --
- 3 MR. SILVERMAN: Can we enlarge the top where it says  
4 Proposed Merger?
- 5 BY MR. SILVERMAN: 11:08:44
- 6 Q. Mr. Owens, what is this, to the best of your knowledge?
- 7 A. Basically, it's Projected Merged Pilot Seniority List for  
8 American Airlines/US Air East and West Based on Seniority Date.
- 9 Q. Did you have anything to do with the creation of this  
10 list, sir? 11:09:00
- 11 A. No.
- 12 Q. Do you know where it came from?
- 13 A. No. Initially, I thought it was sent to me by Captain Ken  
14 Holmes; but on further reflection, I can't be certain.
- 15 Q. So you received an e-mail that was shown on the first 11:09:11  
16 page?
- 17 A. Correct.
- 18 MR. SILVERMAN: Actually, can we have the second page  
19 of that document, please.
- 20 Q. Can you tell us what happened with this list, how you got 11:09:37  
21 it and what you did with it?
- 22 A. This list was mailed to me by someone without a message?
- 23 Q. E-mailed?
- 24 A. Yes, correct.
- 25 Q. Okay. 11:09:50

United States District Court

JOHN OWENS - Direct

1 A. As we do as a committee. I was mailed the list. I shared 11:09:50  
2 it with chairman Colello. We never spoke of the list again.  
3 We never reviewed the list. We never did anything with this  
4 list.

5 Q. Thank you, sir. 11:10:00

6 MR. SILVERMAN: No further questions, Judge.

7 THE COURT: All right.

8 Cross?

9 **CROSS - EXAMINATION**

10 BY MS. AXEL: 11:10:18

11 Q. Good morning, Mr. Owens, how are you?

12 A. Good morning, Ms. Axel.

13 Q. I would like to put up the MOU, which is Exhibit 24, and  
14 focus on paragraph 14 which was the waiver of the  
15 change-of-control provision. 11:10:39

16 A. Okay.

17 Q. Would you agree with me that this is a pretty explicit  
18 waiver of the change of control?

19 A. Yes.

20 Q. Would you agree that any East pilot that read this 11:10:58  
21 document would understand that the change-of-control provision  
22 in their contract was being waived?

23 MR. SILVERMAN: Objection. Speculating as to what  
24 other people think, Judge.

25 THE COURT: I'm sorry. I can't hear you. 11:11:11

United States District Court

## JOHN OWENS - Cross

1 MR. SILVERMAN: Speculating as to what other people 11:11:12  
2 think.

3 THE COURT: Sustained without foundation.

4 BY MS. AXEL:

5 Q. Do you have any knowledge of what East Pilots read this 11:11:18  
6 provision to be?

7 A. I believe they would read it to see USAPA agrees to waive  
8 all change-of-control provisions.

9 Q. So they read it for exactly what it stated. It was an  
10 explicit waiver of the East change-of-control provision; 11:11:35  
11 correct?

12 A. Black and white, yes.

13 Q. All right. Now, I would like to look at, while we're on  
14 the MOU, can we go to Section 10H?

15 And you understand, Mr. Owens, that it's USAPA's 11:11:55  
16 position that the Transition Agreement, including this  
17 provision, waived the obligation in the -- excuse me, this  
18 provision and others in the MOU waived the obligation to use  
19 the Nicolau award from the Transition Agreement; correct?

20 MR. SILVERMAN: Objection. Beyond the scope. 11:12:14

21 THE COURT: Overruled.

22 THE WITNESS: Please restate the question.

23 BY MS. AXEL:

24 Q. You understand that it's USAPA's position that the MOU,  
25 and specifically this provision, waives the obligation in the 11:12:23

## JOHN OWENS - Cross

1 2005 Transition Agreement to use the Nicolau Award; correct? 11:12:27

2 A. I do not.

3 Q. You don't have that understanding?

4 A. I do not understand that.

5 Q. Okay. 11:12:34

6 A. I'm not sure I understand the question. Are you asking me  
7 if USAPA has stated this?

8 Q. My question is, the waiver of the change of control was  
9 explicit, clear, everybody got it. The waiver of the Nicolau  
10 Award, which this alleges to be, it's not clear. I mean, 11:12:49  
11 you're telling me that you don't even understand that; correct?

12 MR. SILVERMAN: Objection. Foundation,  
13 argumentative.

14 THE COURT: Overruled.

15 THE WITNESS: It doesn't address the Nicolau Award 11:12:59  
16 either way.

17 BY MS. AXEL:

18 Q. Correct. And you told me at your deposition that it was  
19 neutral; right?

20 A. Correct. 11:13:10

21 Q. And you also told me at your deposition that, in fact, the  
22 entire McCaskill-Bond provision was neutral; correct?

23 A. Correct.

24 Q. And you told me at your deposition that the West Pilots  
25 would participate in the McCaskill-Bond process, correct, under 11:13:23

## JOHN OWENS - Cross

- 1 the language in this agreement? 11:13:29
- 2 A. I really feel more comfortable if you could show me what  
3 we're specifically talking about at this point.
- 4 Q. I'm asking you your recollection. Do you remember telling  
5 me that? 11:13:40
- 6 A. I do not.
- 7 Q. Okay. Do you remember telling me that this provision  
8 doesn't preclude the use of Nicolau Award at the McCaskill-Bond  
9 arbitration?
- 10 A. Yes. 11:13:52
- 11 Q. And do you remember telling me that it was for the merger  
12 counsel to decide who was going to participate and what list  
13 was going to be used; correct?
- 14 A. Restate the question one more time, please.
- 15 Q. You told me at your deposition that it was for the Merger 11:14:08  
16 Committee to decide who was going to participate and what list  
17 was going to be used; correct?
- 18 A. The Merger Committee handles all seniority matters, not  
19 the NAC, correct.
- 20 Q. Okay. Correct. 11:14:20
- 21 And your reading of this document was that it did not  
22 preclude the Nicolau Award; correct?
- 23 MR. SILVERMAN: Objection. Asked. Argumentative.
- 24 THE COURT: Sustained.
- 25

## JOHN OWENS - Cross

1 MS. AXEL: Davina, can we put up Exhibit 78? I'm 11:14:44  
2 sorry, 96.

3 BY MS. AXEL:

4 Q. Did the NAC put out an update about the Nicolau Award with  
5 respect to the MOU? 11:15:19

6 A. No, we did not.

7 Q. Did the NAC put out any materials whatsoever about the  
8 Nicolau Award being waived by the MOU?

9 A. No, we did not.

10 Q. Did the NAC put out an update about the Transition 11:15:30  
11 Agreement that all obligations under the Transition Agreement  
12 were going to be waived by the MOU?

13 A. No, we did not.

14 MS. AXEL: And if we could go to the next page when  
15 we're -- yeah. Can we highlight the box about the numbers? 11:15:57

16 Q. Now, you are -- scratch that.

17 Are you aware that the company has taken the position  
18 that the change-of-control provision does not apply to this  
19 merger?

20 A. They stated that. 11:16:15

21 Q. I'm sorry?

22 A. The company has made that statement, yes.

23 Q. Okay. Did you, when you did this analysis, did you make  
24 any addition count for the fact that the change of control was  
25 something that may not apply? 11:16:25

## JOHN OWENS - Cross

- 1 A. I did not. 11:16:29
- 2 Q. And when you made this presentation or this document, the  
3 MOU, those were benefits that you already had; correct?
- 4 A. Correct.
- 5 Q. So those were 100 percent going to happen assuming the 11:16:37  
6 merger goes forward?
- 7 A. Well, no. It was not correct. It was at this point in  
8 time the MOU had not been ratified.
- 9 Q. Thank you for clarifying. If the MOU was ratified, then  
10 the pilots would get those benefits; correct? 11:16:53
- 11 A. Correct.
- 12 Q. Now, if the MOU was not ratified, there was no guarantee  
13 that the change-of-control benefits would have accrued to the  
14 East; correct?
- 15 A. Correct. 11:17:03
- 16 Q. And you had testified a little bit about the East  
17 resistance to the change-of-control waiver; correct?
- 18 A. Correct.
- 19 Q. And that was something that was actively debated among  
20 East Pilots, among the BPR; correct? 11:17:25
- 21 A. Correct.
- 22 Q. And that was because everybody knew that the MOU waived  
23 the change-of-control provision; correct?
- 24 A. They knew that in language that had been presented to them  
25 that the company would like us to waive the change-of-control 11:17:39

## JOHN OWENS - Cross

- 1 provision. 11:17:42
- 2 Q. Well, the MOU waives the change-of-control provision. You  
3 just told me that; correct?
- 4 A. That wasn't your question, though. I'm sorry.
- 5 Q. Okay. Let's start over. 11:17:51
- 6 The MOU -- you told me earlier that the MOU  
7 unequivocally waives change of control; correct?
- 8 A. The ratified MOU does, correct.
- 9 Q. And you also testified earlier with Mr. Silverman that  
10 there was a lot of debate and discussion amongst East Pilots 11:18:04  
11 about that waiver; correct?
- 12 A. Correct.
- 13 Q. And that was because they all knew, going into the MOU  
14 ratification, that the change of control was going to be waived  
15 if that document was ratified; correct? 11:18:17
- 16 A. Correct.
- 17 Q. Okay. And there was no debate among the West Pilots about  
18 whether the MOU should be ratified because of the waiver of the  
19 Nicolau; correct?
- 20 A. Correct. 11:18:33
- 21 Q. And that is because the NAC, the BPR, nobody from USAPA  
22 told the West pilots, prior to the vote on the ratification of  
23 the MOU, that they were waiving the right to pursue the  
24 Nicolau; correct?
- 25 A. We didn't say that because we didn't believe that. 11:18:48



## JOHN OWENS - Cross

- 1 Q. You didn't believe that. Okay. 11:18:50
- 2 You didn't believe that -- you personally testified  
3 that you didn't believe. But my question was that nobody ever  
4 told the West Pilots, "Hey, listen, guys, if you ratify this,  
5 you're waiving your right to pursue the Nicolau"; right? 11:19:08
- 6 MR. SILVERMAN: Objection. Foundation.
- 7 THE COURT: Overruled.
- 8 THE WITNESS: We never said that like that, no.
- 9 BY MS. AXEL:
- 10 Q. The NAC never said that; correct? 11:19:17
- 11 A. Not in those words, no.
- 12 Q. And the officers of USAPA never said that; correct?
- 13 A. Not in those words, no.
- 14 Q. A little bit about the road shows. Now, you said that  
15 either you or Mr. Colello did all of the presentations; 11:19:48  
16 correct?
- 17 A. Correct.
- 18 Q. There were no presentations by either of the two West  
19 members on the committee; correct?
- 20 A. They didn't -- 11:19:57
- 21 Q. Is that yes or no?
- 22 MR. SILVERMAN: Objection.
- 23 THE WITNESS: Yes, there were presentations.
- 24 BY MS. AXEL:
- 25 Q. You told us in your direct examination that either you or 11:20:03

## JOHN OWENS - Cross

- 1 Mr. Colello did the presentation for the road show and then 11:20:05  
2 there were questions and answers afterwards; correct? Do you  
3 remember that testimony?
- 4 A. Yes.
- 5 Q. Okay. So the presentations that you and Mr. Colello did 11:20:13  
6 were about the MOU as a whole; correct?
- 7 A. From our slide show, correct.
- 8 Q. And did the West Pilots ever do those slide shows?
- 9 A. Not in the entirety but they did some portions.
- 10 Q. Okay. So the answer is no. 11:20:28
- 11 MR. SILVERMAN: Objection. The answer is what it is.
- 12 MS. AXEL: If he would like --
- 13 THE COURT: Overruled. He can answer that question.  
14 Is it no?
- 15 THE WITNESS: It is not no. They did some portions 11:20:41  
16 but they never did an entire presentation, no.
- 17 BY MS. AXEL:
- 18 Q. And I would like to talk about the Charlotte road show a  
19 little bit.
- 20 A. Okay. 11:20:55
- 21 MS. AXEL: Could we pull up Exhibit 123, Davina. And  
22 go to page three. And can we pull out the paragraph that  
23 starts with, "How do you ensure. . . ."?
- 24 BY MS. AXEL:
- 25 Q. Do you who Billy Glynn is? 11:21:18

## JOHN OWENS - Cross

- 1 A. He's a pilot for US Airways. 11:21:22
- 2 Q. He's an East pilot?
- 3 A. I believe that to be the case. I'm not positive, though.
- 4 Q. And in this e-mail, Mr. Glynn is writing: Watching the  
5 two Phoenix reps standing in front of me nod enthusiastically 11:21:55  
6 when Szymanski said the Nic was dead made me wonder why he was  
7 so happy about it.
- 8 Now, your testimony was that Mr. Szymanski did not  
9 say that; correct?
- 10 A. Correct. 11:22:07
- 11 Q. And were you there for all of those road shows? Did you  
12 ever step out?
- 13 A. It was for a couple of hours where I was ill but other  
14 than that, I was there for the entire time of all of the road  
15 shows. 11:22:20
- 16 Q. But you do see here that Mr. Glynn said that Mr. Szymanski  
17 intimated -- not intimated, said the Nic was dead; correct?
- 18 A. That's what it says, correct.
- 19 Q. And are you familiar with the results, the ratification  
20 results for the MOU? 11:22:44
- 21 A. Yes.
- 22 Q. Okay. And you know they were reported by domicile;  
23 correct?
- 24 A. I do.
- 25 MR. SILVERMAN: Objection. Beyond the scope, Judge. 11:22:50

## JOHN OWENS - Cross

1 THE COURT: Overruled. 11:22:52

2 BY MS. AXEL:

3 Q. And the MOU was ratified, I believe we've heard, by about  
4 75 percent; correct?

5 A. I believe that's correct. 11:22:59

6 Q. And was there a particular domicile that did not vote  
7 overwhelmingly in support of the MOU?

8 A. Did one domicile vote less enthusiastically? Yes.

9 Q. And that was Charlotte; right?

10 A. No, I don't believe so. I believe it was Philadelphia. 11:23:17

11 Q. It was Philadelphia, okay. And the consternation from the  
12 East Pilots about the change of control waiver made it  
13 particularly important that the West Pilots supported the MOU,  
14 didn't it?

15 A. I have to think about the question for a second. Can you 11:23:40  
16 ask it one more time? I want to make sure I answer you  
17 properly.

18 Q. You previously told me that there were East Pilots who  
19 were upset about the waiver of the change of control; correct?

20 A. Correct. 11:23:57

21 Q. And there were a number of East Pilots that ended up not  
22 voting in favor of the MOU; correct?

23 A. I don't know what the reasons are but correct.

24 Q. Right. And, in fact, that was about 25 percent; correct?

25 A. Okay. 11:24:15

## JOHN OWENS - Cross

- 1 Q. Well, I think we just established that 75 voted in favor 11:24:15  
2 so that would mean 25 voted against.
- 3 A. Overall, 75 percent of the members voted in favor. We're  
4 talking about East Pilots right now so I don't know the  
5 specific -- but, yes, you are probably close. 11:24:24
- 6 Q. Okay. And the Phoenix domicile is -- I think we've heard  
7 testimony about 38 percent of USAPA. Does that sound correct  
8 to you?
- 9 A. Okay. That's close. I'm not positive.
- 10 Q. And right. And if the Phoenix pilots had not voted in 11:24:40  
11 favor of the MOU, it would not have passed; correct?
- 12 MR. SILVERMAN: Objection. Speculation.
- 13 THE WITNESS: Sustained.
- 14 BY MS. AXEL:
- 15 Q. If 38 percent of the pilots had not voted in favor of the 11:24:49  
16 MOU, it would have gone below 50 percent. Just as a purely  
17 mathematical calculation; correct?
- 18 MR. SILVERMAN: Objection. Foundation. Speculation.
- 19 THE COURT: Overruled.
- 20 THE WITNESS: I would have to honestly -- I mean, 11:25:03  
21 based on what you are saying, I could make an assumption but I  
22 don't think, you know, from a mathematical standpoint, this is  
23 not an analysis that I've done or have I considered. I would  
24 be willing to do that if we could take the time to look at it.  
25

## JOHN OWENS - Cross

1 BY MS. AXEL: 11:25:19

2 Q. Five minus 38.

3 A. Okay.

4 Q. What is that number? You have an M.B.A. I'm a lawyer. I  
5 shouldn't do math. 11:25:27

6 A. I would agree with that statement. That's 40 and then we  
7 had -- you tell me. You have the pen.

8 Q. 37 percent; correct?

9 A. I believe you.

10 Q. And that's lower than 50 percent? 11:25:44

11 A. It is lower than 50 percent, correct.

12 Q. When you were in Dallas negotiating on the NAC, did you  
13 ever have any conversations with the West Pilots that said,  
14 "We're going to waive change of control if you guys agree to  
15 waive the Nicolau Award"? 11:26:30

16 A. No, I did not.

17 Q. And the waiver of the change of control was something that  
18 benefited only the company, correct, the company being US  
19 Airways?

20 A. No, that not a correct statement. 11:26:42

21 Q. Well, scratch that.

22 Are you aware in the first draft of the MOU where the  
23 seniority language came from in the McCaskill-Bond provision?

24 MR. SILVERMAN: Objection. I didn't ask that.

25 Foundation, Judge. 11:27:15

## JOHN OWENS - Cross

1 THE COURT: Sustained on foundation. 11:27:16

2 BY MS. AXEL:

3 Q. Do you know where the McCaskill-Bond language in the first  
4 draft of the MOU came from?

5 MR. SILVERMAN: Same objection. 11:27:25

6 THE COURT: You can answer that yes or no.

7 THE WITNESS: No.

8 BY MS. AXEL:

9 Q. So you're not aware that you told me in your deposition  
10 that it was presented by the company? 11:27:33

11 A. It was presented by the company.

12 Q. Okay. So you're changing your answer?

13 A. No. You asked me who it came from. It was presented to  
14 us by the company.

15 Q. Okay. 11:27:42

16 MS. AXEL: No further questions, Your Honor.

17 THE COURT: All right. Redirect?

18 **REDIRECT EXAMINATION**

19 BY MR. SILVERMAN:

20 Q. Mr. Owens, Ms. Axel asked you if change of control 11:27:57  
21 benefited the company. Do you recall that question?

22 A. I do.

23 Q. Did change of control benefit the West Pilots?

24 A. The waiver of change of control benefited the West Pilots.

25 Q. Did the West Pilots give anything up in their -- that was 11:28:11

## JOHN OWENS - Redirect

1 existing in their contract by virtue of a waiver of change of 11:28:16  
2 control?

3 A. No.

4 Q. Did East Pilots give up something that was present in  
5 their Collective Bargaining Agreement that they had bargained 11:28:28  
6 for as a result of waiver of change of control?

7 A. Yes.

8 Q. And can you put a value on what it was that the East  
9 Pilots gave up?

10 MS. AXEL: Objection. Leading, Your Honor. 11:28:41

11 THE COURT: Overruled.

12 You can answer that.

13 THE WITNESS: In terms of a number?

14 BY MR. SILVERMAN:

15 Q. In terms of a number or a percentage of their pay 11:28:50  
16 increase.

17 A. I believe that the -- there was the exhibit that you  
18 showed earlier. What's missing from that exhibit is a graph.  
19 And in that graph it shows that the group of pilots, East  
20 Pilots, that could benefit from a change in control being 11:29:04  
21 triggered would receive 63 percent increase in pay.

22 Q. Over what period of time, sir?

23 A. That measurement period was 18 months.

24 Q. This is something that the West Pilots didn't have in  
25 their contract; is that correct? 11:29:25



## JOHN OWENS - Redirect

- 1 A. That's correct. 11:29:27
- 2 Q. If there had been a change of control, would the West  
3 Pilots have gotten any of that 63 percent?
- 4 A. No, sir.
- 5 Q. Would they have gotten any percent increase in their rate 11:29:38  
6 of pay?
- 7 A. No.
- 8 Q. Was there resistance among East Pilots with respect to  
9 waiver of change of control?
- 10 A. Was there resentment? Yes. 11:29:56
- 11 Q. Sir, Miss Axel went through some arithmetic. The figure  
12 of 38 percent of the number of pilots are Phoenix based. Even  
13 assuming that to be true, sir, does that necessarily mean that  
14 38 percent of that, that entire 38 percent is entitled to vote  
15 in USAPA ratification, referendum, or officer elections? 11:30:20
- 16 MS. AXEL: Foundation, Your Honor.
- 17 THE COURT: Sustained.
- 18 BY MR. SILVERMAN:
- 19 Q. Mr. Owens, are you aware of the qualifications for being  
20 able to vote on something like the MOU ratification? 11:30:37
- 21 A. Yes.
- 22 Q. And what is that, sir?
- 23 A. Member in good standing.
- 24 Q. Okay. So is it possible that there's a difference between  
25 the number of Phoenix-based pilots on the seniority list and 11:30:45

## JOHN OWENS - Redirect

1 the number of Phoenix-based pilots who are entitled to vote in 11:30:50  
2 a USAPA MOU ratification?

3 MS. AXEL: Objection, Your Honor. Speculation.

4 THE COURT: Foundation.

5 BY MR. SILVERMAN: 11:31:02

6 Q. If not all of those 38 percent of the Phoenix-based pilots  
7 are members in good standing, would they be entitled to vote?

8 A. No, sir.

9 MR. SILVERMAN: No further questions, Judge.

10 THE COURT: Your next witness? 11:31:27

11 MR. HARPER: Your Honor, we -- I think we fixed the  
12 glitch. We found that we had dropped four lines apparently  
13 right at the beginning and we have added those four lines, so  
14 if we can go back to Bradford we can start over.

15 THE COURT: Let's do that. Good idea. 11:31:40

16 You're excused.

17 (Witness excused.)

18 (Whereupon the videotaped deposition of Mr. Stephen  
19 Bradford was played for the Court.)

20 THE COURT: All right. Counsel, we're going to take 11:58:53  
21 a break now. We'll take a break and we'll see you at 1  
22 o'clock.

23 (Recess at 11:59; resumed at 1:22.)

24 (Court was called to order by the courtroom deputy.)

25 THE COURT: Please be seated. 01:23:00

CV-13-00471-PHX-ROS, October 23, 2013

1 All right. Let's continue. 01:23:01  
2 (Whereupon the videotaped deposition of Stephen  
3 Bradford continued to be played.)  
4 MR. HARPER: Your Honor, that's the end of the  
5 testimony. 01:50:42  
6 THE COURT: Does that include the portion that the  
7 defense wished to use?  
8 MS. MARTIN: That included all of the portions the  
9 defense wished to use, Your Honor.  
10 THE COURT: All right. Let's go forward. Next 01:50:56  
11 witness?  
12 MR. SZYMANSKI: Your Honor, first, before I go with  
13 the next witness, I want to give you up of where we are with  
14 the issue of Captain Hummel. We have not been able to get in  
15 contact with Dr. Gleason who you spoke to earlier this week or 01:51:17  
16 last week.  
17 THE COURT: Last week, on the 17th.  
18 MR. SZYMANSKI: We have been in contact with his  
19 personal physician, a Dr. Peter Lambrou, who is a flight  
20 surgeon who would be available anytime in the next hour or hour 01:51:35  
21 and a half. We don't -- we just haven't been able to get in  
22 touch with Dr. Gleason.  
23 As I said, Captain Hummel has been released from the  
24 hospital. He is home. I spoke to him briefly late yesterday.  
25 He's still taking pain medication and he tires easily; but as I 01:51:57

CV-13-00471-PHX-ROS, October 23, 2013

1 say, his personal physician is available. Dr. Gleason we 01:52:09  
2 haven't been able to contact yet.

3 THE COURT: So what's your position?

4 MR. SZYMANSKI: Your Honor, to the extent we've  
5 talked with his personal physician, his personal physician says 01:52:18  
6 that Captain Hummel can't participate by telephone in the kind  
7 of examination and cross-examination that I expect would happen  
8 for approximately another two hours.

9 THE COURT: And who is this doctor?

10 MR. SZYMANSKI: Peter Lambrou who is a flight surgeon 01:52:41  
11 in the Pittsburgh area.

12 THE COURT: When you say "flight surgeon," is he a  
13 surgeon who is not a private surgeon? He's working for the  
14 military?

15 MR. SZYMANSKI: No, Your Honor. He's a private 01:52:54  
16 surgeon but flight surgeon is a term used in the industry to  
17 doctors who are certified to conduct flight physicals, the  
18 physicals that pilots are required to take on a periodic basis  
19 and certify them as physically able to fly.

20 THE COURT: Okay. So physically able to fly, he is 01:53:15  
21 now making a determination as to whether or not he is  
22 physically and mentally able to participate in a hearing?

23 MR. SZYMANSKI: Yes, Your Honor. He is otherwise, in  
24 addition -- a flight surgeon maybe is misleading. General  
25 practitioners who take care of patients often are certified as 01:53:37

CV-13-00471-PHX-ROS, October 23, 2013

1 flight surgeons. They have to go through a certain process in 01:53:43  
2 order to conduct those kinds of physicals for pilots.

3 THE COURT: Was Mr. -- Dr. Lambrou, was he, then, in  
4 accordance with the orders of Dr. Gleason? Did Dr. Gleason  
5 then relinquish all responsibility and say, "Dr. Lambrou is the 01:54:01  
6 doctor who is now responsible for his care"?

7 MR. SZYMANSKI: I just don't know, Your Honor. I  
8 just don't know.

9 THE COURT: All right. So our hearing with Dr.  
10 Gleason was held on Thursday, October 17, at 1 and Dr. Gleason, 01:54:17  
11 who is his surgeon, after some questions by me, said he did not  
12 see why he could not participate in telephonic testimony before  
13 this court. And I asked counsel to let me know -- and he also  
14 said he was in stable condition. He was on a telemeter and  
15 that he was not in critical condition. He was going to be 01:54:58  
16 released he expected in the next couple of days. I ordered  
17 counsel to inform me of circumstances where his health  
18 depreciated where he was unstable, his status, that is his  
19 health, had deteriorated to such an extent that he could not  
20 participate in a hearing such as this. 01:55:21

21 So you know, as a footnote, in a criminal case that I  
22 held on Monday, a defendant appeared after I determined that he  
23 was competent to appear who was charged with very serious  
24 offenses but was on dialysis and the hearing of course was  
25 confrontational. However, he was able to appear. 01:55:51

United States District Court

CV-13-00471-PHX-ROS, October 23, 2013

1           And I heard also Mr. Szymanski said that -- 01:55:54  
2           You told me you learned this from somebody, that is  
3 the opinion of Dr. Lambrou, on Sunday.  
4           This hearing did not occur until Tuesday. I made  
5 clear that if there has been change in circumstances, I was to 01:56:20  
6 know. We could have perhaps made arrangements for me to talk  
7 to the doctor at that time to make an appropriate determination  
8 as to whether or not a communication in court over the phone  
9 could be accomplished without causing deterioration or  
10 instability of Mr. Hummel's condition. To merely say it's 01:56:49  
11 stressful for him is not enough.  
12           So either -- and the other aspect, too, is although I  
13 have appreciation, having been there, that counsel, when a  
14 deposition is taken of a party or a witness, the opposing party  
15 doesn't always ask questions of that witness and perhaps you 01:57:19  
16 didn't have reason to do so at the time because you didn't  
17 anticipate that Mr. Hummel would have emergency surgery.  
18 Nonetheless, that was your choice.  
19           So this is my ruling. If he is not here or he can't  
20 appear by phone, then there's no reason for this court to put 01:57:45  
21 off this hearing to allow that to take place. You can submit  
22 the information by affidavit that he would testify to, provide  
23 it to plaintiffs' counsel, Mr. Harper. If Mr. Harper is  
24 inclined to say, well, he would have many questions to ask him  
25 based upon what he would testify to and that cannot -- that 01:58:10

United States District Court

CV-13-00471-PHX-ROS, October 23, 2013

1 really takes care of it, then his testimony will not be 01:58:19  
2 considered by the Court.

3 So that my ruling.

4 MR. SZYMANSKI: Your Honor, can I ask just two  
5 questions, please? 01:58:27

6 Number one, what deadline do we have for submitting  
7 this? Friday?

8 THE COURT: Submitting the information?

9 MR. SZYMANSKI: The declaration.

10 THE COURT: Okay. Today is -- you can have until 01:58:39  
11 tomorrow.

12 MR. SZYMANSKI: Okay.

13 THE COURT: And Mr. Harper can respond. Or you can  
14 talk to Mr. Harper about it. It's probably easier to tell him  
15 what you would want him to testify to and what kind of an 01:58:53  
16 affidavit you would submit. It sounded to me from what  
17 Mr. Harper said, however, yesterday that he would probably have  
18 many follow-up questions, as I would expect of any competent  
19 aggressive attorney, and what I would expect of you.

20 Mr. Harper would then have questions to ask him and after the 01:59:18  
21 answer was received, then we would be dealing with what we  
22 would call in court redirect examination.

23 So the two of you try to work it out. If you can't  
24 work it out, the testimony is not going to be considered by the  
25 Court. 01:59:38

CV-13-00471-PHX-ROS, October 23, 2013

1 All right. Will there be any other witnesses? 01:59:38

2 MR. SZYMANSKI: Yes, Your Honor. We call Jess  
3 Pauley.

4 WILLIAM G. PAULEY, JR.,  
5 called as a witness herein by the Defendants, having been first 01:59:55  
6 duly sworn or affirmed to testify to the truth, was examined  
7 and testified as follows:

8 COURTROOM DEPUTY: State your name for the record,  
9 spell your last name, please.

10 THE WITNESS: William Gordon Pauley, Jr. Last name 02:00:02  
11 is P-A-U-L-E-Y.

12 COURTROOM DEPUTY: Great. Have a seat right up  
13 there.

14 **DIRECT EXAMINATION**

15 BY MR. SZYMANSKI: 02:00:32

16 Q. Mr. Pauley, you're employed by US Airways?

17 A. Yes.

18 Q. As a pilot?

19 A. That's correct.

20 Q. How long? 02:00:37

21 A. 25 and a half years.

22 Q. And before that, what flying experience had you had?

23 A. I worked for several commuters, New England and Florida.

24 Q. And what domicile, what equipment do you fly? What's your  
25 status? 02:01:02



WILLIAM G. PAULEY, JR - Direct

- 1 A. Now I'm Philadelphia based flying the Airbus A320 as a 02:01:02  
2 First Officer.
- 3 Q. Are there representatives of the Allied Pilots Association  
4 in the room?
- 5 A. Yes, there are. 02:01:14
- 6 Q. And of US Airways?
- 7 A. That's correct, yes.
- 8 Q. And those are two of the parties you would deal with in --  
9 I haven't actually asked you this but you have a position with  
10 the Merger Committee? 02:01:29
- 11 A. Yes, sir.
- 12 Q. And your position is?
- 13 A. The Merger Committee chairman.
- 14 Q. And those are two parties that you would deal with in a  
15 seniority integration proceeding if there is a merger? 02:01:35
- 16 A. Yes.
- 17 Q. Tell us, in addition to your current position as Merger  
18 Committee chairman, what other positions you've held with US  
19 Airline Pilots Association?
- 20 A. I was the vice-chairman of the Boston domicile prior to 02:01:52  
21 becoming a member of the Merger Committee.
- 22 THE COURT: Let's have you get in front of the  
23 microphone. You can move it towards you if you prefer to sit  
24 back.
- 25 THE WITNESS: Thank you very much. 02:02:03

United States District Court

WILLIAM G. PAULEY, JR - Direct

1 BY MR. SZYMANSKI: 02:02:04

2 Q. So do you want to repeat that?

3 A. Certainly. I was the vice-chairman of the Boston domicile  
4 prior to becoming a member of the Merger Committee.

5 Q. And how long have you been on the Merger Committee? 02:02:19

6 A. Since 2010.

7 Q. And how long have you been chairman of the Merger  
8 Committee?

9 A. I was appointed to the chairman of the Merger Committee by  
10 Hummel in April of 2012. 02:02:30

11 Q. All right. Did you hold any positions with the Air Line  
12 Pilots Association?

13 A. No.

14 Q. Would you tell us what the responsibility of the Merger  
15 Committee is? 02:02:43

16 A. It's to represent the US Airways pilots in the event of a  
17 merger.

18 Q. And can you tell me who the current members of the Merger  
19 Committee are?

20 A. There's six members total, including myself. We also have 02:02:57  
21 Tom Kubik (phonetic), Bob Davison, Ken Stravers, Rocky Calveri,  
22 and Kevin Barry.

23 Q. And very briefly, can you tell us approximately where on a  
24 seniority list, what equipment and what status each of those  
25 members have? 02:03:20

United States District Court

WILLIAM G. PAULEY, JR - Direct

- 1 A. Certainly. We have a wide range of experienced and 02:03:21  
2 longevity for the pilots that are represented on the Merger  
3 Committee. Most senior pilot is Tom Kubik. He's a large  
4 wide-body captain on the Airbus A330 in Charlotte. We also  
5 have Ken Stravers, who is an Airbus captain. He's based in 02:03:38  
6 Phoenix. Kevin Barry is a First Officer in Charlotte on the  
7 Airbus A320. Bob Davison is a Captain on the Airbus A320. And  
8 Rocky Calveri is a First Officer on the Airbus in Phoenix.
- 9 Q. Okay. Thank you.
- 10 Over the last -- well, how long have all of those 02:04:00  
11 members of the committee been members of the committee?
- 12 A. The members were appointed and approved by the Board of  
13 Pilot Representatives in June of 2013.
- 14 Q. What sort of activities -- well, let me ask you this: Did  
15 you -- have you met with members of the Allied Pilots 02:04:21  
16 Association Merger Committee?
- 17 A. Yes, we have.
- 18 Q. Once or more than once?
- 19 A. With the larger group it's only one time. I met with the  
20 Merger Committee chairman on another occasion, actually several 02:04:36  
21 occasions, in Washington, D.C., just during other arbitration  
22 processes.
- 23 Q. And when did you meet with the larger group as you  
24 described it?
- 25 A. It was on August 13 of this year. 02:04:48

United States District Court

WILLIAM G. PAULEY, JR - Direct

- 1 Q. And what sort of meeting was that? What was discussed 02:04:53  
2 generally?
- 3 A. It was framed as a meet and greet where we would get  
4 together and just exchange pleasantries, introduce each other  
5 to the rest of the committees and get background experience, 02:05:03  
6 our intent and our hope that we would be able to work  
7 constructively together going forward in a merger.
- 8 Q. And August 13, if I remember correctly, was also the same  
9 day that the Department of Justice filed its antitrust case  
10 against the merger. 02:05:24
- 11 A. That's correct.
- 12 Q. What kind of activities have you had among the Merger  
13 Committee members since that date?
- 14 A. Well, somewhat diminished because of the Department of  
15 Justice lawsuit but we continue to do the regular Merger 02:05:36  
16 Committee work which is to collate information about the  
17 various airlines and the prospects and so forth of the merger,  
18 what each airline will be bringing in terms of its fleet, its  
19 route structure, assets, makeup of the pilot groups and so  
20 forth. 02:05:57
- 21 We've also been assembling our professional team to  
22 advise the committee and to represent us going forward in the  
23 merger should it take place.
- 24 Q. So your professional committee includes what kind of  
25 individuals? 02:06:09

United States District Court

WILLIAM G. PAULEY, JR - Direct

- 1 A. Merger counsel, financial advisors, also statisticians and 02:06:10  
2 other -- and other airline analysts.
- 3 Q. Do you have any responsibility as the Merger Committee  
4 with respect to the seniorities lists at US Airways?
- 5 A. Just in terms of maintaining the valid information, 02:06:32  
6 keeping it up to date and so forth.
- 7 Q. And is that something that you are in the process of doing  
8 which is completed or where is it?
- 9 A. Ongoing. It's something that we try to keep up to date.  
10 The uniform operating manual, that's one of the obligations of 02:06:46  
11 the Merger Committee, is to maintain the seniority lists and  
12 keep it up to date as best we can.
- 13 Q. So the union operating --
- 14 A. The union operating manual, UOM.
- 15 Q. And can you tell us exactly what the UOM is, because I 02:07:04  
16 don't think we've discussed it?
- 17 A. It's essentially a policy manual for the union, gives the  
18 structure of the makeup of the committees, the processes that  
19 are germane to the operation of the union itself and gives  
20 descriptions of various, again, obligations and processes the 02:07:18  
21 unions follow.
- 22 Q. It's something that is adopted by or approved by the Board  
23 of Pilot Representatives?
- 24 A. That's correct, yes.
- 25 Q. And let me ask you just generally, are you familiar with 02:07:36

United States District Court

WILLIAM G. PAULEY, JR - Direct

1 the McCaskill-Bond process? 02:07:40

2 A. Yes.

3 Q. Can you tell us how that process unfolds, what the steps  
4 are?

5 A. In general? 02:07:50

6 Q. In general.

7 A. In general, the process is the statute has been written.  
8 It's a statute that requires that any merger that has labor  
9 organizations that pertain to aviation, labor groups, will be  
10 merged through a process of first negotiations. And failing 02:08:06  
11 negotiations, there's a process for mandatory arbitration that  
12 results in merging the seniority of the labor group.

13 Q. And have you followed any seniority list integration  
14 merger proceedings as chair of the Merger Committee?

15 A. We've done extensive review of past integrations 02:08:29  
16 throughout the industry, collated various transcripts and other  
17 information that has been available to us to understand and do  
18 due diligence in the past.

19 Most recently, we had the benefit of the  
20 Continental/United seniority integration proceeding which began 02:08:45  
21 in April of this year and just concluded with the result of the  
22 award just last month, in September.

23 So I was able to follow along the opening statements,  
24 the proposals, I attended numerous arbitration hearings during  
25 that process and had an opportunity to bring other members with 02:09:03

United States District Court

WILLIAM G. PAULEY, JR - Direct

1 me from the Merger Committee to actually view the process. 02:09:07

2 So it was very, very helpful to see the types of  
3 exhibits that were brought forward, the arguments that were  
4 made to the arbitration panel, what was persuasive to them, and  
5 then almost the Monday morning quarterbacking, the results that 02:09:22  
6 came from there, again, to be able to see what was persuasive  
7 to the arbitration panel.

8 Q. So that proceeding involved several days of hearing?

9 A. Over several months. There was probably 15 days of  
10 hearings. 02:09:42

11 MR. SZYMANSKI: And results, Your Honor, are in  
12 Exhibit -- it's Exhibit 324. I could have the witness identify  
13 it but he's familiar with it. I don't think we need to take  
14 time to do that.

15 Q. Do you do something called certifying or verifying your 02:10:05  
16 seniority lists at the beginning of the proceedings?

17 A. Yes, but, again, it's more of an extension of what we  
18 talked about earlier about just updating the seniority lists.

19 As pilots, as the time passes, pilots will leave the seniority  
20 list by early retirement, mandatory retirement, sick leave. If 02:10:21

21 they return from furlough or otherwise, you have to maintain  
22 the seniority list and that something that you would make sure  
23 you have as close to accurate as humanly possible before you  
24 would go into a seniority integration proceeding.

25 Q. And so if you go into a seniority integration proceeding, 02:10:38

WILLIAM G. PAULEY, JR - Direct

- 1 what is the very first thing that happens? 02:10:42
- 2 A. The first thing you would want to do is to -- other than  
3 your due diligence and preparation, you would exchange data  
4 with the other participant.
- 5 Q. Have you had any exchange of data with the Allied Pilots 02:10:56  
6 Association?
- 7 A. Nothing formally. When the seniority -- I'm sorry. When  
8 the merger was first announced that we became aware that the  
9 merger may be going forward, there was an overture made by  
10 Captain Hummel to then Captain Bates at American. We just had 02:11:11  
11 the data delivered back and forth.
- 12 Q. So you got an Allied Pilots Association seniority list of  
13 some sort?
- 14 A. Yes.
- 15 Q. And you provided ours to them? 02:11:25
- 16 A. I believe the President Hummel did see that that happened.
- 17 Q. When you do this in the actual McCaskill-Bond proceeding,  
18 what kind of information do you provide for each pilot?
- 19 A. We provide the information that would be necessary in  
20 order to merge the two seniority lists. For instance, their 02:11:42  
21 date of hire at the airline, your date of birth, the position  
22 which you hold, the domicile and so forth, basic information,  
23 employee number, name and so on.
- 24 Q. And you agree with the other side so it's apples to  
25 apples? 02:12:02

United States District Court



WILLIAM G. PAULEY, JR - Direct

- 1 A. Yes. 02:12:05
- 2 Q. And then what's the next step after that?
- 3 A. The next step is to have negotiations. First what you  
4 have to do before you can actually enter into negotiations is  
5 come up with a protocol agreement. That basically sets forth 02:12:19  
6 the meeting place, the number of days to meet, the location,  
7 how it's funded and any types of precautions that one side may  
8 want to do in terms of confidentiality and so on.
- 9 Q. And then you enter into negotiations. What do you do at  
10 the beginning of negotiations? 02:12:44
- 11 A. Basically, you would come up with a proposal to bring  
12 forward. Again, before you even get to the proposal, you would  
13 probably come up with that building blocks, establish, again,  
14 it's more towards the protocol side but in negotiations, you  
15 would come forward with the proposal and try to come up with a 02:13:01  
16 consensual seniority integration.
- 17 Q. And under the USAPA constitution, what does the Merger  
18 Committee have to do with respect to a proposal?
- 19 A. We would bring the proposal to the Board of Pilot  
20 Representatives to have it approved. 02:13:21
- 21 Q. If in the course of negotiations, I assume then you get a  
22 proposal from the other side as well?
- 23 A. That's correct.
- 24 Q. And negotiations go forward. Is there any way of telling  
25 what would happen in the course of negotiations? 02:13:40

United States District Court

WILLIAM G. PAULEY, JR - Direct

- 1 A. It would be give and take, like any other negotiations. 02:13:43  
2 Both sides would have to do their due diligence, run the  
3 analysis to see what can be worked out consensually. Chances  
4 are the first pass wouldn't be accepted so we would have to  
5 negotiate. 02:13:57
- 6 Q. Now, can I get from the Memorandum of Understanding -- at  
7 the end of the Memorandum of Understanding there is a sheet  
8 with three timelines on it and if we can focus on the last  
9 timeline which deals with seniority integration.
- 10 At the bottom of this page, Mr. Pauley, it has a 02:14:38  
11 timeline. The first point, on and after merger POR. The POR,  
12 I assume that POR is actually meaning the effective date of the  
13 POR?
- 14 A. That's how I understand it, yes, that's correct.
- 15 Q. And as we've had testimony previously, that effective date 02:14:57  
16 hasn't occurred yet because there is no approval from the  
17 antitrust division.
- 18 A. That's correct. There's not.
- 19 Q. And the next one says 30 days. What is that and what has  
20 to be -- has to occur within that period of time? 02:15:12
- 21 A. After the POR there's a 30-day period for APA and USAPA  
22 seniority integration protocol agreement to take place.
- 23 Q. And 90 days from the effective date?
- 24 A. Direct negotiations between USAPA and APA and, again, this  
25 is 90 days starting from the POR date. 02:15:32

United States District Court

WILLIAM G. PAULEY, JR - Direct

- 1 Q. And then if there -- I assume that this is what it means. 02:15:35  
2 It's fleshed out in paragraph 10 of the MOU. But if there's no  
3 agreement within that 90 days, then there's a 15-day period.  
4 What has to be accomplished then?
- 5 A. That is the time allotted for selecting the arbitrators. 02:15:51  
6 Q. And then tell me what the next --
- 7 A. It says panel of three arbitrators to be designated, three  
8 arbitrators.
- 9 Q. And then what's the next column?
- 10 A. There's a timeline there that states 60 days, and this is 02:16:07  
11 beyond that last period, but not before the JCBA becomes  
12 effective, the integrated seniority list arbitration commences.
- 13 Q. And then the final column?
- 14 A. Six months and no later than 24 months after the POR, the  
15 arbitrator panel renders an award. 02:16:26
- 16 Q. So in terms of the situation with the US Airlines Pilots  
17 Association and the Allied Pilots Association, assuming that  
18 the merger goes forward and you do an initial exchange of data  
19 as you said, what is it that USAPA gives APA and what do you  
20 expect from APA? 02:16:57
- 21 A. Again, there would be an initial exchange of the  
22 information, the status quo of what we have today at US Airways  
23 which would be information that is listed on two separate  
24 seniority lists.
- 25 Q. And from APA we would get? 02:17:11

United States District Court

WILLIAM G. PAULEY, JR - Direct

- 1 A. Their seniority list and information. 02:17:12
- 2 Q. What do you understand to be the authority of the Merger  
3 Committee with respect to the proposals that it develops?
- 4 A. We have free authority to do the analysis on any range of  
5 seniority integration methodologies. 02:17:41
- 6 Q. And what sort of methodologies or things have you  
7 considered in the Merger Committee?
- 8 A. We've looked at the full gamut of seniority integration  
9 methodologies. The two goalposts which are typically  
10 negotiated as one is a date of hire, length of service 02:17:59  
11 seniority list, and the other is a -- just straight ratio of  
12 the pilots and then there's lots of variations in between  
13 including status and category, amount modified by date of hire  
14 or a hybrid type of seniority lists. There's other  
15 methodologies that you would call a dynamic list which has the 02:18:20  
16 ability for each individual pilot group to capture its  
17 attrition individual and the pilots would reorder every time  
18 there's an attrition from one of the lists. So, again, we're  
19 able to analyze these different methodologies freely without  
20 any constraining. 02:18:39
- 21 Q. And have you analyzed these kinds of methodologies based  
22 on the Nicolau Award?
- 23 A. We have reviewed the Nicolau Award, yes.
- 24 Q. And have you done them based on date of hire?
- 25 A. Yes. 02:18:59

United States District Court

WILLIAM G. PAULEY, JR - Direct

1 Q. And have you done them based on the two lists that you've 02:18:59  
2 talked about?

3 A. Yes, we have.

4 Q. In terms of making a -- then once we get to the point  
5 where there actually is a merger and we go to the -- you go to 02:19:12  
6 the Board of Pilot Representatives to discuss this, what is  
7 your understanding about the proposal that you can bring before  
8 the Board of Pilot Representatives?

9 A. Again, just to be clear about the analysis we've done to  
10 date, a lot of it has been just throwing things up on the wall 02:19:33  
11 to see what is there, just play the what-if game. We haven't  
12 really come up with any complete analysis that is ready for  
13 presentation, but we're working through that and that is part  
14 of the process going forward for us.

15 Once we get to the BPR level, we'll have a fully 02:19:47  
16 developed process, or at least we can give updates periodically  
17 prior to that timeline. But once we have a seniority list that  
18 we believe is worthy of bringing forward as our proposal, we'll  
19 bring it with the description to the BPR with the analysis, and  
20 the intent is to come with the seniority integration 02:20:07  
21 methodology that, again, it's fair and equitable for all of the  
22 US Airways pilots.

23 MR. SZYMANSKI: Can I have the constitution, USAPA  
24 constitution, the objective 8D brought up, please.

25

United States District Court

WILLIAM G. PAULEY, JR - Direct

1 BY MR. SZYMANSKI: 02:20:41

2 Q. Are you familiar with this portion of the constitution,  
3 Mr. Pauley?

4 A. Yes, I am.

5 Q. And what sort of restriction does this have with respect 02:20:46  
6 to what you can bring before the Board of Pilot  
7 Representatives?

8 A. It may be helpful to read just what I'm looking at on the  
9 screen. It's titled Section 8, Objectives of USAPA, and they  
10 are objectives. And number D here, letter D, is to maintain 02:21:05  
11 uniform principles of seniority based on date of hire and the  
12 perpetuation thereof, with reasonable conditions and  
13 restrictions to preserve each pilot's unmerged career  
14 expectations.

15 So the element there that everyone likes to focus on 02:21:23  
16 is to maintain seniority based on date of hire and the  
17 perpetuation thereof. We believe that the principles of date  
18 of hire is to make sure that there has been due consideration  
19 to the length of service of the individual pilot going forward.  
20 We don't believe that it's the straitjacket that prevents us 02:21:44  
21 from considering a wide range of seniority methodologies. The  
22 key component is to make sure that the length of service is,  
23 again, given its due consideration.

24 Q. At one point, based on the direction of the Court, did the  
25 USAPA Board of Pilot Representatives constitute an ad hoc 02:22:19

United States District Court

WILLIAM G. PAULEY, JR - Direct

1 committee? 02:22:22

2 A. Yes, it did.

3 Q. What was the purpose of that committee?

4 A. It was to discuss potential settlements with the

5 plaintiffs in this case. 02:22:31

6 Q. I don't want you to talk at all about any discussions that

7 there might have been in that respect, but I want to ask you

8 about a Board of Pilot Representatives meeting that occurred on

9 a Monday afternoon in that time frame.

10 Was the ad hoc committee appointed? 02:22:52

11 A. Yes, it was.

12 Q. And who was appointed to that committee?

13 A. The East members of the Merger Committee and an additional

14 member was put on with a BPR member and there was an additional

15 consideration of bringing Dean Colello with us, the Negotiating 02:23:07

16 Advisory Committee chairman.

17 Q. And was there a resolution passed with respect to the

18 committee's authority?

19 A. Yes, there was.

20 Q. And was the committee -- the committee's authority 02:23:19

21 restricted in any way?

22 A. No, it was not. We were told to go and discuss potential

23 settlement over seniority with the plaintiffs, negotiate the

24 best deal we could get in negotiations and bring back the

25 results to the Board of Pilot Representatives. 02:23:41

United States District Court

WILLIAM G. PAULEY, JR - Direct

1 Q. Now, there are in evidence here a statement by President 02:23:47  
2 Hummel in January I think or early February concerning date of  
3 hire and then an update from the Merger Committee at that same  
4 point generally saying that the proposal that would be made in  
5 a McCaskill-Bond would be date of hire. Are you familiar with 02:24:12  
6 those documents?

7 A. Yes, I am.

8 Q. Has anything changed since then with respect to the  
9 proposal you expect will be made?  
10 A. Not necessarily, but the charge of the Merger Committee, 02:24:25  
11 the last approved proposal prior to that date was a date of  
12 hire with conditions and restrictions. It was brought forward  
13 with the intent of a Section 6 contract negotiation between  
14 USAPA and US Airways.

15 So when I wrote the update and was asked what type of 02:24:43  
16 proposal we might be bringing forward, it was easy to say the  
17 last approved proposal was a date of hire with conditions and  
18 restrictions. But since that date, as we just described, there  
19 was a meeting at the Board of Pilot Representatives and they  
20 had, again, give us authority to negotiate in the auspices of a 02:25:00  
21 potential settlement.

22 Q. Now, I want to ask you about negotiations concerning the  
23 Memorandum of Understanding that occurred in Dallas in December  
24 and did you participate at all in those negotiations?

25 A. I was updated by phone but I was not in Dallas and did not 02:25:24



WILLIAM G. PAULEY, JR - Direct

1 physically attend but I was patched in on a conference call. 02:25:27  
2 Q. And you're familiar with a provision the later became  
3 paragraph 10H of the Memorandum of Understanding?  
4 A. Yes. And just to be clear, I also received a couple of  
5 e-mails updating very briefly but some of the language that was 02:25:45  
6 being considered.  
7 Q. And you're aware that there were two versions, as we have  
8 had testimony here, you've been in the courtroom, of paragraph  
9 10H; is that correct?  
10 A. Yes. 02:26:01  
11 Q. And do you know who drafted those two versions of  
12 paragraph 10H?  
13 A. I believe you did, Pat Szymanski.  
14 Q. And were you -- do you know why there was a change between  
15 the first version and the second version? 02:26:20  
16 A. My understanding was that there was some concern.  
17 MR. JACOBS: Objection. Foundation, Your Honor.  
18 THE COURT: Sustained on foundation.  
19 BY MR. SZYMANSKI:  
20 Q. If you know based on your own personal knowledge, Mr. 02:26:30  
21 Pauley.  
22 A. I was told that there was some concern.  
23 Q. You were told?  
24 A. Yes.  
25 MR. SZYMANSKI: We have testimony. We don't need to 02:26:44

United States District Court

WILLIAM G. PAULEY, JR - Direct

1 go into that with Mr. Pauley. 02:26:45

2 BY MR. SZYMANSKI:

3 Q. Did you participate in a conference call late one evening  
4 in mid-December?

5 A. Yes, I did. 02:26:54

6 Q. Concerning paragraph 10 or whatever the number was at that  
7 particular time?

8 A. Yes.

9 Q. The seniority integration section of the MOU?

10 A. That's correct, I did participate. 02:27:05

11 Q. And you participated by telephone?

12 A. Yes, sir.

13 Q. Can you tell me, as best you can recall, who else was on  
14 that telephone call?

15 A. I believe I was the only nonlawyer on the call. There was 02:27:16  
16 representatives from each of the parties that were in  
17 attendance as I understand down in Dallas. So representing  
18 USAPA there was yourself, Roland Wilder, I believe Neal Mullen  
19 was on the call; Wes Kennedy, which was the APA merger counsel,  
20 was on the call. And I know there were others. 02:27:38

21 Q. Neal Mullen is with what organization?

22 A. I'm not certain. I believe AMR.

23 Q. I'm going to throw some other names in the hat. Was  
24 Mr. Hollinger on the call if you remember?

25 A. I believe he was. I also believe Ed James was on the 02:27:55

United States District Court

WILLIAM G. PAULEY, JR - Direct

1 call, general counsel for the Allied Pilots Association. 02:27:58

2 MR. SZYMANSKI: And I've kept his name out so far,

3 Your Honor.

4 Q. But Mr. Siegel?

5 A. Yes, Mr. Siegel was also on the phone. 02:28:05

6 Q. And do you remember whether anybody else was on?

7 A. Not to my knowledge.

8 Q. Now, I want to direct your recollection of that call

9 specifically to whatever was on that call concerning paragraph

10 10H. Would you tell us what you remember was said about 02:28:24

11 paragraph 10H and what was said by whom?

12 A. I believe it was at that point it was a general review of

13 the language that was in the entire paragraph of 10H. There

14 were some exchanges about various points of the language. But

15 it generally was a read-through of the document and 10H was 02:28:41

16 just, again, another paragraph there and there was some

17 discussion but not significant that I recall.

18 Q. And that was the second version of paragraph 10H that was

19 under consideration?

20 A. That's right. 02:29:01

21 Q. Do you recall anything that I said about paragraph 10H?

22 A. That it was, again -- no, I don't recall exactly.

23 Q. And you don't recall anything that anybody else said?

24 A. Not on the call itself. I've had conversations with you

25 since about it. 02:29:20

United States District Court

WILLIAM G. PAULEY, JR - Direct

- 1 Q. What's the purpose of paragraph 10H? 02:29:25
- 2 MR. JACOBS: Objection, Your Honor, foundation.
- 3 THE COURT: Sustained.
- 4 BY MR. SZYMANSKI:
- 5 Q. Do you know what the purpose of paragraph 10H is? 02:29:31
- 6 A. Yes.
- 7 MR. JACOBS: Objection, Your Honor. Foundation.
- 8 THE COURT: Sustained. Sustained.
- 9 BY MR. SZYMANSKI:
- 10 Q. How do you know or how -- what knowledge do you have about 02:29:40
- 11 the purpose of paragraph 10H?
- 12 A. We had conversations prior to that phone call about the
- 13 issues of the paragraph 10H.
- 14 MR. JACOBS: Objection, again, Your Honor. He
- 15 asserted attorney-client privilege during his deposition as to 02:29:56
- 16 those conversations.
- 17 THE COURT: Yes. I'm not sure who "we" is or are.
- 18 THE WITNESS: Myself and Pat Szymanski, Your Honor.
- 19 THE COURT: Okay.
- 20 BY MR. SZYMANSKI: 02:30:11
- 21 Q. Mr. Pauley, when we were looking at the object in the
- 22 constitution, Section 8, paragraph D, it talks about career
- 23 expectations, the last two words of that objective. What are
- 24 career expectations?
- 25 A. Career expectations is the progress you make of the 02:30:29

United States District Court

WILLIAM G. PAULEY, JR - Direct

1 seniority list over the course of your career. Gives you the 02:30:33  
2 expectation when you first start off, you are the most junior  
3 pilot and depending on your age and the age of the pilots that  
4 are senior to you, the progression that you'll have as the list  
5 either expands by additional pilots being added to the list or 02:30:48  
6 the progression of the list by attrition of the pilots that  
7 have to leave for mandatory retirement age or otherwise.  
8 Different thresholds of different positions that you can hold  
9 throughout the course of your career. So, generally, pilots  
10 again, you begin as a very junior pilot. Mid-career you have 02:31:08  
11 additional opportunities; and towards the end of your career,  
12 you have the maximum benefit of your years of service.  
13 Q. Does the Merger Committee have a position with respect to  
14 the issue in this case concerning separate representation of a  
15 group of West Pilots? 02:31:29  
16 A. Yes.  
17 Q. And what is that position?  
18 A. We don't believe that it's necessary to have separate  
19 representation for the West Pilots.  
20 Q. Is that a position that is held by each of the members of 02:31:40  
21 the committee?  
22 A. Yes. It's unanimous. All of the members of the merger  
23 committee oppose a separate seat at the table for West Pilots.  
24 Q. And that includes Captain Stravers and Mr. Calveri?  
25 A. Yes. 02:31:59

United States District Court

WILLIAM G. PAULEY, JR - Direct

1 Q. What disadvantage or harm would there be to giving a group 02:32:06  
2 of pilots, separate group of pilots, whatever that group of  
3 pilots is, a separate representation in the seniority list  
4 integration proceeding?

5 A. The -- I believe we would end up with a much better, much 02:32:24  
6 stronger position if they were unified going forward in the  
7 seniority integration if we could come up with a proposal that  
8 is deemed the best solution. We would be advocate, again, as a  
9 unified group, as opposed to going through testimony, why we  
10 believe that the other party's portion of the seniority list or 02:32:44  
11 their portion of the operation would be less valuable. I think  
12 if we put all of the pilots in the same union, we could go  
13 forward and get a much better integration methodology, which is  
14 the end result of the Merger Committee.

15 Q. Do you believe that the Merger Committee can represent all 02:33:04  
16 of US Airways pilots?

17 A. Yes, I do.

18 Q. And why do you believe that?

19 A. I believe that these are serious people with serious  
20 intentions of taking advantage of this opportunity to finally 02:33:17  
21 put this dispute behind us and move forward. And the end  
22 result would be a fair and equitable seniority integration for  
23 all of our pilots.

24 MR. SZYMANSKI: No further questions, Your Honor.

25 THE COURT: Counsel?

02:33:36

WILLIAM G. PAULEY, JR - Cross

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25**CROSS - EXAMINATION**02:33:37  
  
  
  
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02:35:14

BY MR. JACOBS:

Q. Good afternoon, Mr. Pauley. You recall I took your deposition in Charlotte; is that correct?

A. Yes, sir.

Q. And have you read that deposition transcript since then?

A. I have.

Q. How many times have you read it?

A. Probably twice.

MR. JACOBS: Can we put Exhibit 24 up, please, and go to the timeline at the very bottom.

BY MR. JACOBS:

Q. Do you see there's a box there that has the 30 days at the top. It says APA and USAPA seniority protocol integration.

Did I read that right?

A. Yes, sir.

Q. Can you tell me what the elements of that agreement are going to be?

A. The general elements, again, will be setting up the dates and times to integrate. I think the other key components will be the funding for the parties, the length of negotiations and so forth.

Q. Is APA going to present their roster of pilots to you in that phase?

A. It's possible it may take place immediately on the POR.

## WILLIAM G. PAULEY, JR - Cross

- 1 Q. But part of the agreement is that you reach an agreement, 02:35:20  
2 if possible, as to what each other's roster is.
- 3 A. I don't believe that's the case, no. We'll exchange data  
4 as to what the status quo is if that's what you're asking, what  
5 will be the status quo? 02:35:43
- 6 Q. So APA is going to give you a list. I seem to recall they  
7 have about 10,000 pilots.
- 8 A. That sounds correct, yes, sir.
- 9 Q. And they are going to give you 10,000 names?
- 10 A. Yes. 02:35:55
- 11 Q. And those names are going to be in an order?
- 12 A. Yes, sir.
- 13 Q. They will say what airplanes they fly on?
- 14 A. That's correct, yes.
- 15 Q. What dates they were hired? 02:36:03
- 16 A. Correct.
- 17 Q. What time intervals they were on furlough?
- 18 A. Yes.
- 19 Q. Anything else that might be on that list?
- 20 A. That is pretty much the critical information would be 02:36:14  
21 there, yes, sir.
- 22 Q. And they are going to give it to you at that time?
- 23 A. Yes.
- 24 Q. And what is your committee going to give to them that  
25 would be comparable to that? 02:36:29



## WILLIAM G. PAULEY, JR - Cross

- 1 A. Again, the same information of the status quo as it exists 02:36:32  
2 at the time that we make the exchange.
- 3 Q. Are you going to give them one list of pilots?
- 4 A. No. We exchange two lists of the status quo as it exists  
5 today. 02:36:47
- 6 Q. They are going to give you one list and you're going to  
7 give them two lists?
- 8 A. Yes, sir.
- 9 Q. And when do you anticipate that you're going to tell them  
10 what single list you're going to integrate with their list? 02:37:00
- 11 A. I never said it would be single list.
- 12 Q. So you're anticipating that if you can't agree with them,  
13 you're going to go out at the very right-hand boxes there and  
14 you're going to walk into an arbitration and you're going to  
15 have an East list and a West list and the APA list and you're 02:37:22  
16 going to discuss with the arbitrators how to integrate those  
17 three lists?
- 18 A. Well, hopefully before we get to arbitration, we've had  
19 exchange of proposals for seniority solutions, so you skipped  
20 over hopefully some fruitful discussions. 02:37:44
- 21 Q. Right. Skip over and say we can't agree. Your  
22 anticipation is you're going to go into that room with an  
23 East/West -- East list and a West list and negotiate  
24 integrating them with the APA list or arbitrate integrating  
25 them with the APA list? 02:38:05

## WILLIAM G. PAULEY, JR - Cross

- 1 A. In both cases, that would be correct. 02:38:07
- 2 Q. And when in that process are you going to decide how  
3 you're going to measure the East and the West lists with each  
4 other or is that something that you're going to have APA  
5 decide? 02:38:23
- 6 A. Well, the point of the seniority integration is to come  
7 out with a single list so any proposals will incorporate the  
8 solution. You take your data and what the proposal is going to  
9 be is one list out the other side.
- 10 So if we were to propose some hybrid methodology, you 02:38:41  
11 would come up with what the seniority integration is that you  
12 are proposing to them so that they could see what the result  
13 is. You wouldn't come with the raw parts and have them  
14 assemble it for you. We would do the due diligence and we  
15 would, again, do the evaluation if we believed it was worthy. 02:38:57  
16 We would have it approved by the Board of Pilot Representatives  
17 and take that. So, essentially, if you take it that way, we do  
18 pass a single list and that single list would include all of  
19 the American Airlines pilots on it as well.
- 20 Q. Okay. Well, you make this easier. Let's say that APA 02:39:14  
21 tells you we've got 10,000 pilots. You've got 5,000 pilots.  
22 Let's make a list where we have two APA pilots, one US Airways  
23 pilots, two APA, one USAPA and to just do it that way so it's a  
24 blend. How are you going to decide what order you put the  
25 USAPA pilots into such a blend? 02:39:42

## WILLIAM G. PAULEY, JR - Cross

1 A. Again, you would have to come up with some type of a basis 02:39:46  
2 or rationale for that proposal that you are making there  
3 because, number one, you have to, again, try to compel them to  
4 agree with you if you're in negotiations. So part of that  
5 process, the negotiations, is to establish the fact that what 02:39:58  
6 you're proposing is reasonable, fair and equitable for all of  
7 the pilots. If you don't do that, you're not going to end up  
8 with an agreement because they have the obligation, as do we,  
9 to be serious about this process, serious men doing serious  
10 work and we have a lot of opportunity here. So this is what 02:40:15  
11 we're going to do. We're going to come out with something that  
12 is logical and have to be able to substantiate it with  
13 objective reasoning. It wouldn't be a random selection.  
14 Q. Okay. Let's get to that reasoning. Let's say that APA  
15 says, "We don't care who you put in. We want to have two out 02:40:29  
16 of every three slots," so they hand you something that says APA  
17 pilot A, APA pilot B, USAPA blank. So you have 5,000 blanks in  
18 that list. When are you going to decide what order you put the  
19 USAPA pilots into that kind of an integration?  
20 A. Again, this is serious work. It's not something that we 02:40:59  
21 can do here in the courtroom.  
22 Q. I didn't ask how. I said when. Look in this protocol.  
23 Tell me when you are going to decide the order that you're  
24 going to put the USAPA pilots into such a blend if that is what  
25 APA wants to see. 02:41:16

## WILLIAM G. PAULEY, JR - Cross

1 A. Well, again, the answer -- the answer I had given before 02:41:19  
2 is, part of our proposal will actually have that blend already  
3 done and then we expect that they will, in kind, send us a  
4 proposal and be able to demonstratively show why they believe  
5 that it should be accepted to us. 02:41:33

6 Q. I see. 30 days, I see 90 days from POR, 15 days, 60 days.  
7 You've got all of those boxes. Which of those boxes is where  
8 you're going to decide the order that you're going to put the  
9 US Airways pilots into that kind of a blend?

10 A. Again, the direct negotiations begin 90 days after the 02:41:53  
11 POR --

12 Q. APA doesn't care who you put in. APA has --

13 THE COURT: Hold on. Let him answer.

14 Go ahead.

15 THE WITNESS: The question? I'm sorry. The question 02:42:07  
16 was when are we going to make the proposal?

17 BY MR. JACOBS:

18 Q. No, it's not.

19 A. Okay.

20 Q. The question is, if APA gives you blanks to put your 02:42:14  
21 pilots into, when in this process are you going to decide what  
22 order you're going to put your pilots into it? APA doesn't  
23 care. There's no negotiation with APA. They have given you  
24 5,000 slots. When are you going to decide what order your  
25 pilots would go into slots like that? 02:42:38

## WILLIAM G. PAULEY, JR - Cross

1 A. It certainly wouldn't work like that, sir. The slots are 02:42:41  
2 very contingent upon the expectations of those individual  
3 pilots and you have to be able to see where they reside on an  
4 individual list. If those slots were occupied, for instance,  
5 at the top, with very young pilots, they eventually, as 02:42:54  
6 attrition goes forward, then the model moves forward as you age  
7 the list.

8 Of course over time what would happen is all of the  
9 older pilots would vacate the top of the seniority list and it  
10 would also become inhabited by much more younger pilots and 02:43:09  
11 blockers for all of the other pilots. So it's not as if they  
12 are just peanut shells. It's very, very critical of how the  
13 list will operate and you can't just do that in a random  
14 slotting fashion.

15 Q. Is it fair to say that if USAPA proposed a scheme to APA 02:43:24  
16 where the USAPA pilots were there and you had blanks for APA  
17 pilots, that APA knows what order their pilots would go into  
18 those slots?

19 A. Again, the same answer I gave you before. It's very, very  
20 critical how the list would function depending on who those 02:43:43  
21 pilots are, their length of service because, again, the  
22 assumptions that you have to do, you determine offenses or time  
23 of other conditions of restrictions and they may modify other  
24 anomalies throughout the list is based, again, on the  
25 progression over time of that seniority list. So it's very, 02:44:02

## WILLIAM G. PAULEY, JR - Cross

- 1 very critical. It's not just put some of ours in and some of 02:44:05  
2 theirs in. You have to do this in a very logical way.
- 3 Q. When I took your deposition, you told me you had studied  
4 integrations involving your pilot group in the past. Is that  
5 correct? 02:44:21
- 6 A. I reviewed all of the pilot integration at some point in  
7 time, yes, sir.
- 8 Q. So you have some idea of how things work in 2005 in the  
9 arbitration that is at issue today; is that correct?
- 10 A. I am familiar with that, yes, sir. 02:44:35
- 11 Q. Before that arbitration began, did the East Pilots know  
12 the relative order that they would be in no matter what the  
13 outcome of that arbitration was?
- 14 A. No, but I'm sure they had expectations of what the outcome  
15 would be. 02:44:55
- 16 Q. If a pilot was ahead of another pilot on the East list  
17 going into the Nicolau arbitration, wasn't it understood they  
18 would be ahead of that pilot on the single list coming out?
- 19 A. That is ALPA policy. I think that's pretty standard, yes,  
20 sir. 02:45:10
- 21 Q. Have you ever heard of it ever being done any way other  
22 than that?
- 23 A. I'm sure there is arbitrations or procedures where pilots  
24 have been reordered to subsequent arbitrations if they find out  
25 things were, again, improperly done. So it has -- there are 02:45:23

## WILLIAM G. PAULEY, JR - Cross

- 1 some exceptions, I'm sure. 02:45:26
- 2 Q. Have you ever heard of a seniority integration arbitration  
3 that changed the relative order of one of the two pilot groups  
4 going into the arbitration?
- 5 A. Again, just post-arbitration adjustments. So the answer 02:45:42  
6 that I can give you is, no, I don't believe that's correct, no,  
7 I do not.
- 8 Q. So the West Pilots knew what order they would be in; the  
9 East Pilots knew what order they would be in; and all that  
10 Mr. Nicolau did was integrate them; right? 02:45:57
- 11 A. They did remain in the same order most of their peers,  
12 that's correct.
- 13 Q. And the APA pilots will know what order they are going to  
14 be in relative to each other in this process?
- 15 A. I can't answer for them. That is a reasonable assumption, 02:46:16  
16 sir.
- 17 Q. Right. But you're telling me that you can't point to any  
18 point in time where the USAPA pilots are going to know what  
19 their relative order will be?
- 20 A. They will know their relative order amongst the current 02:46:32  
21 status quo lists, the East Pilots will remain in the same order  
22 amongst themselves and the West Pilots will remain amongst  
23 themselves in the same order where they reside now. However,  
24 the flexibility that we'll have going forward in this seniority  
25 integration with the two lists, because that's our status quo 02:46:50

## WILLIAM G. PAULEY, JR - Cross

1 and that's what we signed on to, as I understand it, in the 02:46:53  
2 MOU, through this process is to finally resolve this dispute  
3 that has been going on a very long time.

4 Q. Is it true to say that once two pilot groups know how they  
5 are going to be aligned with each other, from that point on 02:47:06  
6 they have a common interest when they get integrated with  
7 another pilot group because they are going to, as a whole, move  
8 up or down in that order; is that right?

9 A. I'm not sure I follow you. Sounds like a two-step process  
10 that you are referring to. 02:47:30

11 Q. The APA pilots can have a single representative to  
12 represent them when they integrate with the USAPA pilots  
13 because they know what their relative order to each other is  
14 going to be?

15 A. I'm not certain of that. As I understand, there's an 02:47:42  
16 outstanding litigation on the order of their seniority list at  
17 this time.

18 Q. You talked about your committee was giving authority to  
19 negotiate with the plaintiffs in May of 2013; is that correct?

20 A. Yes, sir. 02:48:11

21 Q. Were they given authority to commit USAPA to anything?

22 A. Our authority was to negotiate and get the best that we  
23 could bring back to the Board of Pilot Representatives. They  
24 wanted a briefing on the progress we had made but we did not  
25 have authority to sign a seniority agreement and bind the union 02:48:31



## WILLIAM G. PAULEY, JR - Cross

1 at that time. 02:48:36

2 Q. So you had authority to chat?

3 A. I believe it was a sincere effort on our part to put  
4 together serious people for a serious purpose. We have been  
5 trying to resolve this for a very long time. We have been 02:48:49  
6 asking the pilots of America West to consider sitting down with  
7 us in serious negotiations. Judge Silver ordered that and I  
8 can't say any more.

9 Q. Do you recall when I took your deposition, I asked you has  
10 there ever been a time that USAPA has proposed, considered, 02:49:08  
11 suggested putting the East and the West Pilots in a neutral  
12 definitive process to determine the outcome of the East/West  
13 seniority dispute with no preconditions and not subject to a  
14 democratic ratification but to allow a neutral party to hear  
15 the arguments on both sides and decide the integration? Do you 02:49:39  
16 recall that I asked you something like that?

17 A. You did.

18 Q. And what was your answer? Has that ever been offered,  
19 considered, or entertained?

20 A. Yes, it has been considered. I submit to you that you've 02:49:55  
21 put a very eloquent protocol agreement together in putting us  
22 into a very tight box, but the offer has been there in terms of  
23 serious negotiations to sit down by mediators and that may  
24 have, as you brought to something more formal which you just  
25 described. 02:50:16

## WILLIAM G. PAULEY, JR - Cross

1 Q. But you're about to go into a process that if you can't  
2 agree, you will get a result that you'll be bound to that you  
3 can't bring back to the BPR to have them say, "Okay. It will  
4 be imposed on them like the Nicolau arbitration."

5 Has there ever been discussion about saying we'll  
6 take away preconditions such as the constitutional mandate for  
7 date of hire. We'll take away the right to vote it down and  
8 we'll put representatives from both sides in front of a neutral  
9 who has expertise in this industry and let that neutral decide  
10 what is a fair way to resolve the East/West integration? Has  
11 that ever happened?

12 A. That has not taken place at this time, no.

13 Q. Other than in front of Mr. Nicolau; right?

14 A. This dispute did not exist at that time in front of  
15 Arbitrator Nicolau, sir.

16 Q. The dispute of how to integrate the East and West Pilots  
17 was in front of him; no?

18 A. It was a very different time and different circumstances,  
19 that's for sure.

20 Q. And you when I asked you if that has ever been done, I  
21 asked you whether you thought that would be a good idea. And  
22 if I recall, you were hesitant to answer and then you did  
23 answer me. What was the answer that you gave when I asked you  
24 if you thought that would be a good idea?

25 A. I think I said it had potential. We would have to bring

## WILLIAM G. PAULEY, JR - Cross

- 1 it back to the Board of Pilot Representatives and I'm sure I 02:51:57  
2 followed up with the idea that we've signed on to a new process  
3 with the MOU where we can go to McCaskill-Bond and through that  
4 process, resolve this seniority integration dispute as well as,  
5 again, attain all of the benefits that go forward for all of 02:52:13  
6 our pilots in that merger through a fair and equitable  
7 seniority integration in front of an arbitrating panel of three  
8 members and that is, I believe, what my answer was.
- 9 Q. You met with the merger representatives from APA; is that  
10 correct? 02:52:33
- 11 A. Yes. I described that earlier, yes.
- 12 Q. What do they call that group there?
- 13 A. I'm not sure of their official term.
- 14 Q. Let's call it the APA Merger Committee then. How many  
15 members were on it? 02:52:50
- 16 A. There are seven members of the APA Merger Committee as I  
17 understand it.
- 18 Q. How much work has, as far as you know, has the NAC done  
19 since April of 2013? Have they done more work than your Merger  
20 Committee has done? 02:53:11
- 21 A. Yes.
- 22 Q. Okay. You mentioned that your committee met with the  
23 other committee once from APA and that you've met with their  
24 chairman a few times; is that correct?
- 25 A. And clarified the meeting with the chairman. It was a 02:53:28

## WILLIAM G. PAULEY, JR - Cross

1 casual cup of coffee down in Washington, D.C. Their general 02:53:30  
2 counsel, Ed James, is near our merger counsel in Washington,  
3 D.C., so we met there and there was an arbitration that took  
4 place at APA for some seniority protection rights that  
5 pertained to the former TWA pilots and the Allied pilots and 02:53:45  
6 there was an arbitration. And at that time, the Merger  
7 Committee chairman was testifying there and we thought it would  
8 be valuable for some of our Merger Committee members to attend.  
9 There was some language in the MOU that ties us to the results  
10 of that arbitration. 02:54:04

11 So in the context of being present with him, we  
12 exchanged pleasantries over the coffee pot. That's really the  
13 extent of those merger associations.

14 Q. Is it fair to say that the four members of the NAC have  
15 done a lot more work in the past year than the six members of 02:54:18  
16 your committee?

17 A. It depends on how you evaluate work. A lot of our work  
18 has been done in doing due diligence and working again with our  
19 professionals. It's contemplative work. It's arduous work.  
20 It's serious work. And we're endeavoring, again, to be very 02:54:35  
21 prepared for the upcoming integration.

22 Q. Have you worked with any of the officers of the union on  
23 some of these issues?

24 A. I'm in contact with the officers regularly. It's one of  
25 the jobs as a Merger Committee chairman is to coordinate the 02:54:50

## WILLIAM G. PAULEY, JR - Cross

1 efforts of the committee and work with the Board of Pilot 02:54:54  
2 Representatives, other committees that may pertain to -- again,  
3 have expert knowledge on contract language and so forth.

4 Q. Which of the officers have you been in communication with  
5 about your committee's work? 02:55:09

6 A. Again, just a general update with Captain Hummel from time  
7 to time. Generally, we are autonomous but we do keep them up  
8 to date.

9 Q. Who else besides Captain Hummel?

10 A. If you want me to name the officers, I can, again, 02:55:24  
11 regularly communicate with many members of the organization so  
12 I could go down the list. We have Captain Hummel, vice  
13 president Stephen Bradford, executive vice president Steven  
14 Smyser. Ralph Streble is our secretary-treasurer.

15 Q. So you e-mail Captain Bradford about issues that relate to 02:55:42  
16 the Merger Committee business?

17 A. From time to time.

18 Q. When the MOU was up for ratification, did you play any  
19 role in advising the pilots what the impact of the MOU would be  
20 on the business of the Merger Committee? 02:56:37

21 A. The Negotiating Advisory Committee put up most of the  
22 information regarding the work that they had down in Dallas and  
23 the MOU Merger Committee did put out an update again describing  
24 what is on the screen here, the process going forward. So  
25 there was some communication from the Merger Committee. But 02:56:58

## WILLIAM G. PAULEY, JR - Cross

1 during are the discussions and road shows, although I was there 02:57:00  
2 in attendance, I did not speak very often publicly. It was a  
3 presentation that was exclusively given to the NAC.

4 Q. And did you tell the pilots at large that you were  
5 anticipating this unusual situation where you would have no 02:57:16  
6 idea when you were going to figure out how you were going to  
7 integrate the East and West Pilots before you integrated with  
8 the APA pilots?

9 A. I'm not sure I agree with your assumption that we had no  
10 idea, sir. 02:57:33

11 Q. Well, what is your ideal as to when you're going to  
12 integrate the East and West Pilots?

13 A. I believe I described the process going forward in  
14 negotiations. And absent a consensual agreement, we'll proceed  
15 to arbitration. And through that process, we'll integrate the 02:57:49  
16 three lists together to a single seniority list.

17 Q. So you're planning to integrate the East and West list in  
18 the process of integrating with the APA list?

19 A. That the process as I understand we've described in the  
20 MOU, yes, sir, that the status quo is two separate seniority 02:58:05  
21 lists to be taken forward in the seniority integration with the  
22 APA.

23 Q. And you don't see any conflict between the people on the  
24 East and the West list going into that process if it's not  
25 defined beforehand how they are going to integrate with each 02:58:26

## WILLIAM G. PAULEY, JR - Cross

1 other? 02:58:30

2 A. Again, the defined process will be through the diligence  
3 of the Merger Committee which is made up of representatives  
4 from various parts of the seniority list. There's domiciles,  
5 former East, former West and the process which we'll endeavor 02:58:44  
6 is to come up with, again, a proposal which we expect -- well,  
7 we hope will be adopted in negotiations with the Allied Pilots  
8 Association. And absent that, we would take that proposal to  
9 the arbitration panel and if the arbitration panel feels as  
10 though that seniority integration methodology is not fair and 02:59:05  
11 equitable, that they will take a result that will be different  
12 from ours. But through that process, that is what we  
13 anticipate in terms of the blending of the lists will take  
14 place in our proposal.

15 Q. That doesn't strike you like having a couple be 02:59:21  
16 represented in a divorce by the same attorney perhaps where the  
17 husband gets two votes and the wife gets one vote?

18 A. No.

19 Q. Thank you.

20 Are you aware as to whether USAPA gave any 02:59:49  
21 information to the West Pilots prior to the ratification vote  
22 on the MOU that it was going to report the results of the vote  
23 by domicile?

24 A. No.

25 Q. You're not aware that there was any notice that was given 03:00:06

## WILLIAM G. PAULEY, JR - Cross

1 to that effect? 03:00:10

2 A. It seems like a fairly insignificant thing to make public

3 ahead of time.

4 MR. JACOBS: If you can give me just a minute,

5 please. 03:00:54

6 BY MR. JACOBS:

7 Q. Prior to the vote on the MOU, are you aware that any

8 information was given to the pilots represented by USAPA to the

9 effect that they would not be put into an integrated list with

10 each other before you would enter the process of integrating 03:01:57

11 them with the APA pilots?

12 A. I think it was described in the road shows.

13 Q. What was said in the road shows to that effect?

14 A. That we would be taking two lists to the integration. It

15 would be the status quo of the East list and the West list 03:02:17

16 going forward.

17 Q. Is there any document that you can point us to where that

18 was said where it said that your plan is to integrate three

19 lists: East, West, and APA?

20 A. Not to my knowledge there's no document that says that, 03:02:37

21 sir.

22 Q. Were you at the road shows?

23 A. Yes, I was.

24 Q. And you heard this said?

25 A. That there would be two lists, that would be the list -- 03:02:46



## WILLIAM G. PAULEY, JR - Cross

1 it was often very frequently asked question. 03:02:49

2 Q. Who said that?

3 A. Pat Szymanski generally took the questions regarding  
4 seniority at the road shows.

5 Q. And when pilots asked him, he said our plan to keep the 03:02:58  
6 two lists separate and to never combine the East and West lists  
7 together prior to combining them with the APA list.

8 A. The description was given that we would have two lists and  
9 we would be taking two lists. We would have first exchanged  
10 data with the APA. And what exists today is two separate 03:03:19  
11 seniority lists. And then we would enter into the seniority  
12 integrations through the McCaskill-Bond process and that would  
13 be the -- the result would be a single list that represents the  
14 new American Airlines pilots.

15 Q. Is there any possibility, realistic possibility in your 03:03:42  
16 mind, that those plans could change and that the four East  
17 Pilots and two West Pilots on the Merger Committee would  
18 decide, you know, the fair thing to do is to use the Nicolau  
19 list, recommend that to the Board of Pilot Representatives and  
20 that board, with eight East Pilots and three West Pilots, would 03:04:04  
21 vote to integrate seniority using the Nicolau list blending it  
22 into the APA list? Is there any possibility that that could  
23 happen?

24 A. I believe the way it will go is we will take the input  
25 from all of the committees -- to me from the committee members 03:04:24

## WILLIAM G. PAULEY, JR - Cross

1 and we'll do our due diligence and go through various 03:04:26  
2 proposals. The proposals will, again, give due weight to the  
3 status and category of the pilots as they exist on our lists  
4 today. Those components, statuses of Captain or First Officer,  
5 and the categories of whether they fly a large wide-body 03:04:45  
6 aircraft, a small wide-body aircraft, a narrow-body aircraft  
7 and so forth. Those are the status and categories. So it  
8 would give due weight to those positions as we blend the list  
9 together.

10 And the other key component, as we talked about 03:04:58  
11 before, is to maintain the principles of date of hire. One of  
12 the key components in any type of seniority integration we'll  
13 put forward will also include the length of service and give  
14 due weight to that.

15 In the seniority integration that the result from the 03:05:15  
16 Nicolau Award, it was exclusively a status and category list.  
17 It gave no deference whether the pilot had one year of service  
18 or 20 years of service. They were blended on a sheer ratio  
19 from the status and category.

20 So to the extent we will give weight to the status 03:05:33  
21 and category that exists in the Nicolau list, it would be a  
22 blend. It would be a hybrid. Hopefully, it would be something  
23 that we could all embrace and move forward and the  
24 opportunities of flying more aircraft and more domiciles on a  
25 global, that it would be the largest airline once it's 03:05:51

## WILLIAM G. PAULEY, JR - Cross

1 combined, the opportunities for all of us are grand. The 03:05:54  
2 career for the younger pilots in this industry is wonderful.  
3 And the career of the new-hire pilots and younger pilots  
4 amongst US Airways is quite right.

5 So we believe, through this process, we can come up 03:06:09  
6 with a hybrid methodology that our all of our members on the  
7 committee, as I attested to, are very serious members and  
8 serious about coming to a resolution on this. We can give due  
9 consideration to the things that Arbitrator Nicolau had given  
10 consideration to. But in addition to that, in conjunction with 03:06:23  
11 our charter, we do have to give due consideration to the  
12 pilots' length of service as well.

13 Q. I know it's a tough question to answer because you're  
14 probably concerned that it might affect the outcome of the case  
15 but I asked you a yes-or-no question. 03:06:40

16 Is there any possibility in your mind that the  
17 sausage factory process of integrating the lists here, that the  
18 end product that comes out through your committee and the BPR  
19 that is then integrated with the APA pilots, is there any  
20 possibility, yes or no, that it could be the Nicolau list? 03:06:59

21 A. No.

22 Q. Thank you.

23 THE COURT: How much time are you going to take? We  
24 can take a break.

25 MR. SZYMANSKI: Certainly no more than 10 minutes, 03:07:16

## WILLIAM G. PAULEY, JR - Cross

1 Your Honor.

03:07:17

2 THE COURT: Well, let's take a break anyway. We'll  
3 take a 20-minute break.

4 (Recess at 3:07; resumed at 3:38.)

5 (Court was called to order by the courtroom deputy.)

03:38:57

6 THE COURT: Please be seated.

7 All right. Redirect?

8 **REDIRECT EXAMINATION**

9 BY MR. SZYMANSKI:

10 Q. So Mr. Pauley, the record will show obviously what the  
11 question was and Mr. Jacob wanted a yes-or-no answer to the  
12 last question that he asked you before he finished his  
13 examination.

03:39:08

14 Did you understand him to be referring, when he did,  
15 to the Nicolau list to the unmodified Nicolau list?

03:39:22

16 A. Yes.

17 Q. And your answer was you didn't believe it would be used --  
18 as I say, the record will show.

19 Why not?

20 A. Well, because the determination of many people who have  
21 analyzed the Nicolau list as it is, it doesn't comport with  
22 what we would consider a fair and equitable seniority  
23 integration solution. That may sound like an opinion to me but  
24 there's been ramifications that had taken place throughout the  
25 industry after the result of the Nicolau Award.

03:39:41

03:39:57

## WILLIAM G. PAULEY, JR - Redirect

1           The dispute has caused angst among the entire group      03:40:02  
2      that is here today and it also reverberated through ALPA, the  
3      Air Line Pilots Association, whose merger policy was conducted  
4      under to create that proposal.

5           The Air Line Pilots Association, based on the, again,      03:40:17  
6      dispute that has arisen from that proposal, has reviewed its  
7      merger policy and come up with different criteria to evaluate  
8      mergers going forward in the future.

9           Since then, they have completed a merger very  
10     recently. As I referred to before, the Continental/United      03:40:37  
11     seniority integration methodology. So I would testify today  
12     that if the Nicolau proposal was put forward to the arbitrating  
13     panel who sat in front of the Continental/United, that they  
14     would not have approved such a proposal.

15     Q.     And would using the unmodified Nicolau Award in a      03:41:03  
16     seniority -- as a starting point in a seniority integration  
17     proceeding with the Allied Pilots Association, what effect  
18     could that have?

19     A.     Again, it's pure speculation but the --

20           MR. JACOBS: Objection, Your Honor.                      03:41:20

21           THE COURT: Sustained.

22     BY MR. SZYMANSKI:

23     Q.     You gave some testimony about two lists. What are the  
24     advantages to having two lists?

25     A.     It gives us a lot more opportunities to be creative with      03:41:35

## WILLIAM G. PAULEY, JR - Redirect

1 seniority integration methodologies going forward. We'll have 03:41:40  
2 more opportunities to come up with a fair and equitable  
3 seniority independent immigration going forward as opposed to  
4 trying to put something together ahead of time. I think,  
5 again, it gives us additional opportunities and that, again, 03:41:53  
6 the creative forces that will be at work here between the US  
7 Airline Pilots Association Merger Committee. And we expect  
8 fully to get some proposals coming back from the Allied Pilots  
9 Association, not that they are to render a solution to our  
10 problem but, 2010, it's a group problem. It's a solution that 03:42:12  
11 we all need to find.

12           And, again, it gives us a lot more flexibility as  
13 opposed to going in with predetermined list.

14           One of the methodologies that may be considered I  
15 alluded to earlier is called a dynamic list. I'm not proposing 03:42:27  
16 that we use this but the idea would be that the lists would be  
17 joined with a system list but, again, it could be modified  
18 through the course of time. As the pilots leave the certain  
19 legacy group, the pilots could move up amongst themselves  
20 again. I'm not putting forward that that is what we are going 03:42:48  
21 to do but it allows to us give that due consideration going  
22 forward. It doesn't preclude us from opportunities like that.

23           Other hybrid methodologies could be assembled  
24 independent of our origin airline. Again, it wouldn't reorder  
25 the list amongst the legacy carriers but we could, again, come 03:43:03

## WILLIAM G. PAULEY, JR - Redirect

- 1 up with various methodologies that may bear fruit. 03:43:07
- 2 Q. Mr. Jacob had up the timeline and was asking you questions  
3 about proposals.
- 4 At what point during that timeline do you make  
5 proposals? 03:43:22
- 6 A. During negotiations.
- 7 Q. And that would be in that first 30- to 60-day, 90-day  
8 period?
- 9 A. Yes, sir.
- 10 Q. And when you make a proposal -- I think I already -- is 03:43:35  
11 the proposal just accepted or rejected? What happens after you  
12 make the proposal?
- 13 A. Again, you would have to give explanation on why you came  
14 up with the proposal which you had made. And prior to that,  
15 you have extensive due diligence and you have exhibits prepared 03:43:55  
16 and explanations and have a chance to age the list and so  
17 forth. The proposal would be thoroughly analyzed by the teams  
18 that are at work there.
- 19 Q. And is there any way of telling, whether or not whatever  
20 the proposal is that you make at the beginning, is what happens 03:44:12  
21 at the end of the process?
- 22 A. Certainly not, no.
- 23 Q. Are there elements of the Nicolau Award that you -- to the  
24 extent that you've studied them, that make sense potentially  
25 going forward to use in the seniority integration proceeding? 03:44:37

## WILLIAM G. PAULEY, JR - Redirect

1 A. Well, as I stated before, the status and category that was 03:44:43  
2 considered in the Nicolau Award, the seats which are occupied  
3 now by both pilot groups would be given protections or, again,  
4 give due consideration to the value which those positions bring  
5 to the pilots, that career expectations of the pilots that have 03:45:01  
6 those seats in the Nicolau arbitration award, again, are  
7 basically the status quo at that time the snapshot was taken.  
8 But, again, those positions are very important going forward.

9 So the status and category that was considered there  
10 would be the status and category that would be considered in a 03:45:20  
11 future proposal. Again, we would add additional considerations  
12 to the length of service, the pilot and for sure.

13 MR. SZYMANSKI: Nothing further, Your Honor.

14 MR. JACOBS: Recross, Your Honor?

15 THE COURT: Yes, you can. 03:45:37

**RECROSS - EXAMINATION**

16  
17 BY MR. JACOBS:

18 Q. Mr. Pauley, what airline mergers do you know of where  
19 furloughed pilots were put on an integrated list ahead of  
20 active pilots? 03:45:49

21 A. The most recent Continental/United seniority integration  
22 methodology was just concluded and published September 3 of  
23 this year, just last month.

24 Q. And there were furloughed pilots?

25 A. Yes, sir. 03:46:02



## WILLIAM G. PAULEY, JR - Recross

- 1 Q. Are there any mergers involving the predecessors to the 03:46:02  
2 East Pilots that put furloughed pilots ahead of active pilots?
- 3 A. I believe the Trump Shuttle had some pilots that had some  
4 inactive service. I'm not sure of the status at the time the  
5 award was rendered. After our last discussion I did some 03:46:25  
6 research on the question I had regarding the Allegheny-Mohawk  
7 seniority integration and it was a determination post-merger  
8 that rendered, again, pilots who were furloughed at the time of  
9 the merger seats and positions ahead of the active pilots at  
10 the time. So there was an adjustment. It was a post-seniority 03:46:48  
11 integration merger but it was determined that they were due  
12 positions on the seniority list above active pilots.
- 13 Q. But the Allegheny-Mohawk merger decision, that's the  
14 predecessor of McCaskill-Bond, put the furloughed pilots below  
15 the active pilots; is that correct? 03:47:13
- 16 A. Again, yes, they were and then they were adjusted after  
17 the fact, yes.
- 18 Q. Where do you stand on the Nicolau list?
- 19 A. I was put behind someone who was 16.4 years behind me and  
20 I believe they are 15 years younger than me as well. 03:47:31
- 21 Q. Why were you put there?
- 22 A. It was the determination of the arbitrator.
- 23 Q. Based on what?
- 24 A. Based on the criteria he utilized to produce the award.
- 25 Q. Kind of hurts to say but he put you there because you were 03:47:47

## WILLIAM G. PAULEY, JR - Recross

1 on furlough at the time of the merger; is that correct? 03:47:50

2 A. No, sir. I've never served a single day on furlough.

3 Q. You weren't on furlough when these two airlines merged?

4 A. That's correct, yes.

5 Q. Thank you. 03:48:05

6 THE COURT: All right. You may step down.

7 (Witness excused.)

8 MR. HARPER: Your Honor, I have a point that I would  
9 like to raise with the Court before we go to the next witness.

10 I did not know at the time when Mr. Szymanski announced that 03:48:21

11 they had a letter from a flight surgeon, Peter Lambrou, I think

12 or something like that. And I learned during the break, that

13 this flight surgeon is a former US Airways pilot for about 40

14 years. And I would have expected, and perhaps the Court would

15 have expected, that at least we would have been informed that 03:48:40

16 the letter that they now have is somebody who has been

17 associated with US Airways for 40 years.

18 THE COURT: Well, it doesn't surprise me in a way. I

19 wasn't particularly impressed with the fact that he was a

20 flight surgeon in the sense of this is a situation involving 03:49:00

21 cardiac surgery. That doesn't mean that he isn't a qualified,

22 competent doctor. But this is a different issue here. And for

23 the reasons I already stated, he will not testify unless the

24 two of you can agree to a method and means of his testifying by

25 way of affidavit. 03:49:27

CV-13-00471-PHX-ROS, October 23, 2013

1 All right. Next witness? 03:49:29  
2 MR. SZYMANSKI: We call Bob Davison, Your Honor.  
3 ROBERT E. DAVISON,  
4 called as a witness herein by the Defendants, having been first  
5 duly sworn or affirmed to testify to the truth, was examined 03:49:44  
6 and testified as follows:  
7 COURTROOM DEPUTY: Please state your name for the  
8 record and spell your last name.  
9 THE WITNESS: Robert E. Davison. D-A-V-I-S-O-N.  
10 **DIRECT EXAMINATION** 03:49:59  
11 BY MR. SZYMANSKI:  
12 Q. Mr. Davison, you're employed by US Airways?  
13 A. Yes.  
14 Q. As a pilot?  
15 A. Right. 03:50:16  
16 Q. And for how long?  
17 A. About 26 and a half years now.  
18 Q. And flying experience before that if any?  
19 A. Commuter airlines and hauling checks at night.  
20 Q. You have a position with the US Airline Pilots 03:50:32  
21 Association?  
22 A. Yes, I do.  
23 Q. And what position is that?  
24 A. I am currently on a Merger Committee for USAPA.  
25 Q. How long have you been on the committee? 03:50:44

United States District Court

ROBERT E. DAVISON - Direct

- 1 A. Most recently, I officially have been on the committee 03:50:49  
2 since June.
- 3 Q. And did you work with the committee prior to that?
- 4 A. Yes. I started in June of 2008 and took over the  
5 chairmanship position in 2010 and continued in that position 03:50:58  
6 until 2011.
- 7 Q. And did you have any other or prior experience with the US  
8 Airline Pilots Association?
- 9 A. No, sir.
- 10 Q. Two of your fellow committee members are Captain Ken 03:51:15  
11 Stravers and First Officer Rocky Calveri. Can you tell me what  
12 Mr. Stravers' background is?
- 13 A. Ken Stravers is the former America West Merger Committee  
14 chairman and he served in that position during the Nicolau  
15 arbitration. 03:51:37
- 16 Q. And Mr. Calveri?
- 17 A. Rocky Calveri is formerly -- I'm not sure. He may still  
18 currently be on the NAC for USAPA.
- 19 Q. Okay. You were in the courtroom when we had over here on  
20 the side -- they are not being displayed but they are still 03:51:57  
21 there -- some demonstrative exhibits that Mr. Stockdell  
22 testified to, were you?
- 23 A. I was.
- 24 Q. And I don't want to talk about the first two but the third  
25 one was the one that had the three columns on it. Are you 03:52:12

United States District Court

ROBERT E. DAVISON - Direct

1 familiar with that exhibit? 03:52:15

2 A. Yes. I've seen it.

3 Q. Did that exhibit have anything to do with the Allied  
4 Pilots Association?

5 A. Not really. The things that the two different columns 03:52:30  
6 that were illustrated there on the left, one was from a Nicolau  
7 Award and one was from some sort of date-of-hire list that are  
8 not being contemplated at this time.

9 Q. And you have been involved in activities of the Merger  
10 Committee considering various methodologies, have you not? 03:52:49

11 A. Yes, I have.

12 Q. And you've looked at various methodologies including --  
13 starting with the Nicolau Award?

14 A. Yes.

15 Q. And with date of hire? 03:53:08

16 A. Yes.

17 Q. And with two lists?

18 A. Yes.

19 Q. Are there advantages or disadvantages to starting with any  
20 of these particular starting points? 03:53:16

21 A. You are speaking in terms of merger with the APA; is that  
22 correct?

23 Q. Yes. Yes.

24 A. Using two lists gives us a lot of flexibility, much more  
25 flexibility than we would have otherwise to be able to look at 03:53:32

United States District Court

ROBERT E. DAVISON - Direct

1 the equities that we could provide to each separate group after 03:53:35  
2 the merger is complete.

3 We're not in that way confined to using the same  
4 methodology for each group for example. We can age these  
5 things out and see how it affects every pilot's career and 03:53:56  
6 determine what might be the best way to integrate each group  
7 separately, for example.

8 Q. You heard the example that was given when Mr. Pauley  
9 testified of the Allied Pilots Association making a proposal at  
10 some point during the seniority integration process of saying, 03:54:23  
11 "Look, we'll give you every third spot on our list and fill it  
12 in." If that offer were given, what would be the process among  
13 the Merger Committee in responding to that?

14 A. We would take a look at it and see what it meant to our  
15 careers and see if there was any validity to it. If we felt it 03:54:49  
16 had credence, then we would take that proposal to the BPR  
17 essentially if we felt that was the best thing to put forth.

18 We might also just see that it had no value and  
19 counter propose something else.

20 Q. And Mr. Jacob suggested if that were the situation, he did 03:55:14  
21 want to know how the Merger Committee would go about filling  
22 those spots. And let's assume for a moment that after all of  
23 the examination that you did, you thought that was otherwise a  
24 fair proposal. Let's just make that assumption.

25 A. Okay. 03:55:41

ROBERT E. DAVISON - Direct

1 Q. How would you go about deciding how to fill those slots? 03:55:41

2 A. We would have to look at how it affected each pilot going  
3 forward. We might have to put together, for example,  
4 conditions and restrictions to go along with that type of  
5 setup. 03:55:54

6 Q. Okay.

7 MR. SZYMANSKI: I don't have any further questions,  
8 Your Honor.

9 **CROSS - EXAMINATION**

10 BY MR. HARPER: 03:56:10

11 Q. Mr. Davison, I think I deposed you back in 2009; correct?

12 A. I believe that was the time, yes.

13 Q. In the context --

14 A. It was in the earlier case.

15 Q. And we didn't go through a deposition this time; correct? 03:56:24

16 A. Correct.

17 Q. I just want to go back, though, and confirm some of the  
18 things you told me back in 2009 to see if they are still the  
19 same today.

20 A. Okay. 03:56:36

21 Q. As I understand it, back in 2009, you were not actively  
22 involved in ALPA affairs; correct?

23 A. In 2009?

24 Q. I'm sorry. 2007.

25 A. Prior to the drive to certify USAPA, I was not involved 03:56:48

## ROBERT E. DAVISON - Cross

- 1 with that, that's correct. 03:56:53
- 2 Q. And then the Nicolau Award comes out on about May 1, 2007;  
3 correct?
- 4 A. I believe that was the time frame, yes.
- 5 Q. You testified before that you saw it that night on an ALPA 03:57:04  
6 website?
- 7 A. I believe I did, yes.
- 8 Q. And your initial first reaction to that award was that you  
9 were shocked; correct?
- 10 A. Correct. 03:57:17
- 11 Q. And you were shocked because apparently Arbitrator Nicolau  
12 did not give, in your opinion, due consideration to length of  
13 service?
- 14 A. Correct.
- 15 Q. But you also understood that the rules at that point in 03:57:28  
16 time were set down by ALPA; right?
- 17 A. The policy was ALPA merger policy, yes, m'hum.
- 18 Q. And Arbitrator Nicolau, therefore, did not have the right  
19 to consider, as you would want him to have considered, length  
20 of service; correct? 03:57:51
- 21 A. I'm not sure if that's -- if he had the right or not but  
22 it had been eliminated from the merger policy, yes.
- 23 Q. And you had strong feelings against that; correct?
- 24 A. Yes, correct.
- 25 Q. And then one of the first things you then did is to go out 03:58:02



## ROBERT E. DAVISON - Cross

- 1 and start putting together Excel sheets to sort of compare the 03:58:06  
2 effects of between the East Pilots and the West Pilots for  
3 Nicolau not giving due consideration to length of hire?
- 4 A. Right. To illustrate the effect it had on everyone's  
5 career. 03:58:22
- 6 Q. And you started passing those out mostly to East Pilots  
7 over the next few months; correct?
- 8 A. Correct.
- 9 Q. And at some point in time, you actually then started to  
10 work with Steve Bradford and others who were forming USAPA; 03:58:31  
11 right?
- 12 A. That's correct.
- 13 Q. And you became an active participant in the formation of  
14 USAPA; correct?
- 15 A. Yes. 03:58:44
- 16 Q. Because you wanted to have a new union other than ALPA  
17 that would do nothing but date of hire in pilot seniority;  
18 correct?
- 19 A. No.
- 20 Q. Primary date of hire as the seniority policy basis for 03:58:51  
21 USAPA in its constitution, that's what you wanted?
- 22 A. Yes. I did want to have consideration of date of hire,  
23 yes, but the main reason I was upset was with things that ALPA  
24 had done including the Nicolau Award.
- 25 Q. But you hadn't left ALPA before that because of that; 03:59:15

## ROBERT E. DAVISON - Cross

1 right? 03:59:18

2 A. Pardon me.

3 Q. You had not left or resigned from ALPA because you were  
4 upset before; correct?

5 A. No. I was still a member at the time. 03:59:24

6 Q. Right. Okay. Moving in to the summer of 2008, you  
7 actually then became a member of USAPA's Merger Committee?

8 A. That's correct.

9 Q. And you were on that committee when the date of hire was  
10 presented to US Airways in September or October of 2008; 03:59:37  
11 correct?

12 A. That is true.

13 Q. And ever since then, what you have done is spend a  
14 substantial time of your life working at USAPA on the issue of  
15 date of hire to make sure that USAPA maintains opportunity to 03:59:55  
16 present date of hire in this merger; correct?

17 A. No.

18 Q. Well, you have never made a proposal different than the  
19 date of hire, the Merger Committee has; correct?

20 A. We haven't made an official proposal but we've put 04:00:14  
21 together a lot of studies that are quite different from date of  
22 hire.

23 Q. And you haven't shared them with anybody, have you,  
24 outside of the BPR even if you have shared them with the BPR?

25 A. I don't think that's true. I have shared with others. 04:00:29

## ROBERT E. DAVISON - Cross

- 1 Q. West Pilots other than the two on the current Merger 04:00:33  
2 Committee?
- 3 A. I don't know I have with West Pilots or not. I may have.
- 4 Q. I'm a little confused --
- 5 MR. HARPER: Can we put the U.S. constitution -- the 04:00:46  
6 USAPA constitution up? Go to that section, Davina, under 8.  
7 Can we highlight D?
- 8 BY MR. HARPER:
- 9 Q. You can see that, Mr. Davison, or Captain Davison?
- 10 A. Yes. 04:01:16
- 11 Q. I want to take you right now to the merger work that you  
12 and your committee are doing.
- 13 A. Okay.
- 14 Q. In getting ready for the upcoming McCaskill-Bond by APA;  
15 okay? 04:01:28
- 16 A. Okay.
- 17 Q. Now, I understand the first part to maintain uniform  
18 principles of seniority based on date of hire and the  
19 perpetuation thereof, with reasonable conditions and  
20 restrictions and then it goes on to say, "...to preserve each 04:01:38  
21 pilot's un-merged career expectations." Do you see that?
- 22 A. I see it.
- 23 Q. With respect to the West Pilots right now, what unmerged  
24 career expectations is your committee considering for that  
25 group of pilots? 04:01:58

## ROBERT E. DAVISON - Cross

- 1 A. We would be looking at the status quo. 04:02:03
- 2 Q. Right. The current West list date of hire; right?
- 3 A. Right.
- 4 Q. This is one of the boards that was up yesterday. You saw  
5 that? 04:02:19
- 6 A. Yes, sir.
- 7 Q. And it's the Nicolau list brought forward; correct?
- 8 A. Pardon me?
- 9 Q. And the old Nicolau list -- I'm sorry.
- 10 MR. HARPER: This is the old Nicolau list. Can you 04:02:31  
11 get the one that has the other two?
- 12 MR. JACOBS: The new one?
- 13 MR. HARPER: Yes, the new one. I'm sorry.
- 14 BY MR. HARPER:
- 15 Q. The new Nicolau list on the left-hand side is the old 04:02:47  
16 Nicolau brought current or an attempt to make it current;  
17 correct?
- 18 A. I assume so. I don't know.
- 19 Q. You worked with Captain Pitt on putting this together,  
20 didn't you, Mr. Davison? 04:03:02
- 21 A. No.
- 22 Q. You exchanged information back and forth about the  
23 contents of these two lists?
- 24 A. Nothing to do with that chart.
- 25 Q. No, but the updating the date-of-hire list, making sure 04:03:11

## ROBERT E. DAVISON - Cross

1 that the various US Airways lists were current and that pilots 04:03:15  
2 who had retired were off the list, pilots who were out because  
3 of medical reasons were off the list. You did that?  
4 A. I made -- I did compare what you submitted to what we  
5 submitted and I don't know what you did with it. 04:03:31  
6 Q. You gave it back to Mr. Szymanski who passed it on to us  
7 and we took it into consideration. You know that, don't you?  
8 MR. SZYMANSKI: Your Honor, argumentative.  
9 THE COURT: Overruled. He can answer it yes or no.  
10 That's a question. 04:03:45  
11 THE WITNESS: Please repeat the question.  
12 BY MR. HARPER:  
13 Q. You gave comments to Mr. Szymanski who passed them on to  
14 us. It was put into that list and you knew that we had put  
15 them into that list so that it was as accurate as possible 04:03:54  
16 today as we could make it?  
17 A. I assume that you have incorporated what we passed into  
18 that particular bar graph there.  
19 Q. Okay. Just so I understand.  
20 A. I don't know. 04:04:08  
21 Q. If you work with me, the Nicolau list is updated as best  
22 it can be updated 2013; right?  
23 A. I assume that's what you are representing.  
24 Q. I appreciate that. We'll kind of work through this  
25 together if you don't mind. 04:04:23

## ROBERT E. DAVISON - Cross

- 1 But -- 04:04:25
- 2 A. I don't mind.
- 3 Q. But the Merger Committee now is not using the career  
4 expectations of the West Pilots based upon the updated Nicolau  
5 Award, is it? 04:04:37
- 6 A. No, we're not.
- 7 Q. And that's because the East/West formed a new union and  
8 never agreed to implement the Nicolau Award; correct?
- 9 A. It's because we're looking at the status quo now.
- 10 Q. And you have the status quo now because for the past six 04:04:50  
11 years, the East/West pilots have never agreed to implement the  
12 Nicolau Award; correct?
- 13 A. I wouldn't put it in those terms, no. There's a dispute  
14 and there's a lot of different reasons for that dispute.
- 15 Q. Are you aware of any other union who had a previously 04:05:06  
16 arbitrated seniority list move out of that union, form a new  
17 one and refuse to impose or go by the previously arbitrated  
18 award?
- 19 MR. SZYMANSKI: Your Honor, argumentative.
- 20 THE COURT: Well, it's his tone maybe. 04:05:25
- 21 MR. HARPER: You told me I was aggressive, Your  
22 Honor. You made me do it.
- 23 THE COURT: Ha. Ha. Ha. All right. We'll take off  
24 the gloves and ask a question.
- 25 THE WITNESS: I don't agree with your 04:05:42

## ROBERT E. DAVISON - Cross

1 characterization of what we have done, but I don't know of 04:05:43  
2 any -- you know, any other similar circumstance, if that's what  
3 you're saying.

4 BY MR. HARPER:

5 Q. I'll tone it down. The effect of forming a new union was 04:05:51  
6 that the previously arbitrated Nicolau Award has not been  
7 implemented for the past seven years; correct?

8 A. That was one of the results of having a new union, yes.

9 Q. Recently. And I'm not, obviously, as conversant with this  
10 as you are but in the Continental/United McCaskill-Bond 04:06:17  
11 arbitration that just came out, my understanding is that United  
12 came out sort of as the winner; is that correct?

13 A. I wouldn't characterize it that way, no.

14 Q. But the -- for sure the Continental pilots were seriously  
15 disappointed by the results of that arbitration award; correct? 04:06:37

16 A. I don't know. I don't know how they felt.

17 Q. Have you seen the letter that came out from the  
18 Continental MEC chairman after that award and show you Exhibit  
19 Number 5 --

20 MS. AXEL: It's Delta. 04:06:55

21 MR. HARPER: I'm sorry. Am I on the wrong one?

22 BY MR. HARPER:

23 Q. What is the most recent arbitration award?

24 A. I believe you are speaking of the Continental/United.

25 Q. United. That's the one that just came out here a few -- 04:07:06

## ROBERT E. DAVISON - Cross

1 A. September. 04:07:09

2 Q. Accept. Okay. I think I have the letter.

3 MR. HARPER: I'm sorry. Jen says we don't have it so

4 I'll pass on it.

5 MS. AXEL: Wait. We do. 04:07:31

6 MR. HARPER: Now we do.

7 MS. AXEL: 37.

8 BY MR. HARPER:

9 Q. Mr. Davison, have you seen this September 6, 2013, from

10 the chairman of -- 04:07:43

11 MR. HARPER: Can you go to the bottom or the top so I

12 can see?

13 Q. The Continental MEC chairman?

14 A. No.

15 Q. On the Merger Committee, you have not been keeping track 04:07:52

16 of how the Continental pilots' MEC chairman reacted in any way

17 to that decision?

18 A. I am interested in it but I have been doing other things

19 recently.

20 Q. Well, if I just paraphrase for you -- and you can take it 04:08:05

21 and read it if you want. In general, what he says, this has

22 been a bad time for us. It's not a good result. We're all

23 seriously disappointed but the one union, we have to join

24 together and we have to go forward. That is about what he says

25 in that letter. Do you want to read it or do you want to take 04:08:25



## ROBERT E. DAVISON - Cross

1 my word for it, Captain Davison? 04:08:29

2 MR. SZYMANSKI: Your Honor, I have to make the same  
3 objection that Mr. Harper made previously. I think he's  
4 testifying at this point and I also don't see the relevance.

5 THE COURT: Well, I think there is some relevance but 04:08:40  
6 if he can't read it, we'll give him an original copy. I  
7 presume you want to ask him a question after he reads it.

8 MR. HARPER: Just the thrust of the way --

9 THE COURT: Can you see it on the screen,  
10 Mr. Davison? 04:08:55

11 THE WITNESS: Yes, I think so.

12 THE COURT: So, now, pinpoint what portion you wish  
13 to have him look at and then ask him a question.

14 MR. HARPER: I'm getting a queue from the back.

15 BY MR. HARPER: 04:09:20

16 Q. Okay. Third paragraph. Do you want to take a look at  
17 that, Captain Davison?

18 A. Okay.

19 Okay.

20 Q. So you agree with me that, in general, the Continental MEC 04:09:51  
21 chairman is saying we had a bad day. We're disappointed with  
22 the results. We have one union and we need to go forward.  
23 That's, in general, what he's telling the Continental pilots  
24 after this decision; correct?

25 A. That's what whoever wrote this is saying. 04:10:11

## ROBERT E. DAVISON - Cross

1 Q. And you and Captain Bradford and others back in 2007 04:10:14  
2 decided to do just the opposite. You decided to pick up all of  
3 your marbles and go form a new union for the purpose of  
4 avoiding implementing the Nicolau Award; correct?

5 A. That's not true. 04:10:31

6 MR. HARPER: No further questions.

7 MR. SZYMANSKI: Nothing further, Your Honor.

8 THE COURT: All right.  
9 You may step down.

10 THE WITNESS: Thank you. 04:10:40

11 (Witness excused.)

12 THE COURT: Mr. Szymanski, anything else?

13 MR. SZYMANSKI: I don't have any other witnesses,  
14 Your Honor. I have one point to raise with you, with the  
15 Court. 04:11:02

16 Your Honor, when you granted the motion in limine  
17 with respect to materials involving Leonidas, you said that if  
18 USAPA believes the evidence regarding Leonidas LLC is  
19 absolutely crucial, it must be prepared to formulate the  
20 precise relevance of that evidence. 04:11:29

21 There are -- I don't know. I know the motion in  
22 limine in general excludes several documents. There are,  
23 however, three documents out of that group that we think are  
24 relevant to the issue of having separate representation in a  
25 McCaskill-Bond process, a seniority integration process. Those 04:11:54

CV-13-00471-PHX-ROS, October 23, 2013

1 are the Exhibit 247, the operating agreement of Leonidas; 248, 04:12:00  
2 a list of Leonidas, LLC, objectives; and 263, a description of  
3 Leonidas, LLC and its purpose and what it sets out to do. And  
4 we think all three of these documents are relative to this  
5 issue because they say that the purpose of Leonidas is to 04:12:30  
6 preserve the unmodified Nicolau Award and that that is  
7 inconsistent with representing a group of West Pilots in a  
8 seniority integration proceeding going forward.  
9 That's what I have.  
10 THE COURT: Okay. Your position? You're familiar 04:12:52  
11 with those documents?  
12 MS. AXEL: Not really.  
13 MR. HARPER: Well, I'm generally familiar with the  
14 documents because they were used with each of our witnesses in  
15 a deposition, I believe. 04:13:08  
16 I need to ask a point of clarification. When we  
17 reached our stipulation Monday night, I thought USAPA  
18 voluntarily took a number of Leonidas documents off its exhibit  
19 list.  
20 Were these among the three that you did? 04:13:26  
21 MR. SZYMANSKI: They were only taken off of the  
22 exhibit list because of the motion in limine and the Court's  
23 ruling.  
24 MR. HARPER: So they took them off on Monday and now  
25 I guess they want to put them back on. 04:13:40

CV-13-00471-PHX-ROS, October 23, 2013

1 THE COURT: I suppose you can read it as the question 04:13:42  
2 is whether or not, in accordance of my ruling, they have  
3 established that it's crucial; and the only way it would be  
4 really crucial is if it related to the credibility of some  
5 witnesses who testified on behalf of the plaintiffs. 04:14:00

6 As I see it, the question here is really a narrow one  
7 and we all know what that is. That is whether or not the  
8 defendants engaged in an unfair -- essentially, unfair labor  
9 practice.

10 And I'm not sure that any of these exhibits would be 04:14:28  
11 relevant to the testimony, that is the credibility of any of  
12 the witnesses who testified.

13 MR. HARPER: That's exactly the way I would put it,  
14 Your Honor. They are not.

15 THE COURT: And I'll give you the last word as to why 04:14:45  
16 those particular witnesses would challenge the credibility of  
17 anyone who testified.

18 MR. SZYMANSKI: Your Honor, the answer to that is no  
19 but we believe these are relevant to Claim 4, not the first  
20 claim in this case. Claim 4, which was amended into the 04:15:04  
21 complaint later on concerning separate representation, not with  
22 respect to the first.

23 THE COURT: All right. They are not admitted.

24 MR. SZYMANSKI: Then, Your Honor, I move for the  
25 admission of our exhibits and our deposition designations. 04:15:21

CV-13-00471-PHX-ROS, October 23, 2013

1 THE COURT: And those deposition designations have 04:15:27  
2 been shared; correct?

3 MR. SZYMANSKI: Yes, Your Honor.

4 THE COURT: And have you reached a stipulation on the  
5 admissibility of those deposition designations? 04:15:37

6 MR. HARPER: We have. We have agreed that they can  
7 be.

8 THE COURT: Okay. All right. Well, that takes care  
9 of that.

10 MR. HARPER: And I would like to do the same thing on 04:15:45  
11 behalf of our deposition designations. I can read them for you  
12 if you think --

13 THE COURT: No. I don't need to have you read them  
14 but I do need to have both of you provide the information to  
15 Christine to make sure it's on the record. 04:15:58

16 So you put it in writing and then submit it to her.

17 MR. HARPER: And that will also include the exhibit  
18 list; correct?

19 THE COURT: Yes.

20 Now, do you have any rebuttal testimony, Mr. Harper? 04:16:10

21 MR. HARPER: No, we don't.

22 THE COURT: All right.

23 Well, then, we are about to be adjourned except for  
24 the following: I do not want much more in the nature of paper.  
25 So today is the 23rd. 04:16:29

United States District Court

CV-13-00471-PHX-ROS, October 23, 2013

1           So, by the 31st, you are to exchange no more each  
2 than 15 pages of a summary of what you believe to be the  
3 evidence, not citing to the evidence, to establish your  
4 position. And then you can -- and that is simultaneous  
5 submissions. And then by the sixth of November you are to  
6 respond to the simultaneous submissions. We don't need closing  
7 argument today. I will look at the submissions that are made  
8 and make up my mind as to whether or not the burden has been  
9 met or not.

10           There has been a motion for summary judgment that has  
11 been filed. I am going to submit an order for expedited  
12 briefing on that motion for summary judgment because it is, at  
13 a minimum, relevant to what I might do or might not do on this  
14 issue.

15           You're aware of what the motion for summary judgment  
16 is?

17           MR. HARPER: I thought there were two, Your Honor.

18           THE COURT: Two? I'm sorry.

19           MR. SZYMANSKI: There's one by US Airways and one by  
20 USAPA.

21           THE COURT: I'm sorry. So I will -- I will submit an  
22 order on the motion for summary judgment on an expedited  
23 briefing on it.

24           They are legal issues essentially and so it shouldn't  
25 be -- you're familiar with the issues. It shouldn't be

CV-13-00471-PHX-ROS, October 23, 2013

1 difficult for you to respond on an expedited basis. 04:18:27

2 Anything else?

3 MR. HARPER: No. I am still standing here a little  
4 confused. Are we talking only about the McCaskill-Bond? No.

5 THE COURT: No. We're talking about both I think. 04:18:40

6 Definitely, definitely McCaskill-Bond. I am going to have to  
7 consider the motion filed -- remind me. The motion filed which  
8 is a motion for summary judgment, was on this very issue before  
9 the Court; correct?

10 MR. SZYMANSKI: Partially, Your Honor, but it 04:19:03  
11 included other issues.

12 THE COURT: All right. Well, then, I'll take a  
13 closer look at that and decide whether or not -- are there  
14 issues where the Court would have to determine whether there  
15 was a genuine issue of material fact or have all of the facts 04:19:18  
16 now been presented as much as they would have been presented so  
17 that, in essence, it is nothing more than a final briefing on  
18 the issue concerning preliminary injunction and injunction?

19 MR. SZYMANSKI: Your Honor, I would have to say,  
20 first of all, that all of the facts have been presented, either 04:19:44  
21 in our statement of undisputed facts or at trial here. I would  
22 have to go back and look to see exactly.

23 THE COURT: So it is whether or not there is a  
24 genuine issue of material fact or whether or not the matter can  
25 be decided, as a matter of law. Is that your understanding, 04:20:04

CV-13-00471-PHX-ROS, October 23, 2013

1 Mr. Harper? 04:20:07

2 MR. HARPER: With all candor, Your Honor, we have not  
3 paid much attention to that motion at all. So I cannot  
4 candidly stand before you and respond to the question that you  
5 have just presented to us. 04:20:21

6 THE COURT: That's all right. So you'll get an order  
7 from me in terms of briefing on that motion for summary  
8 judgment in addition to the one filed by US Air.

9 MR. HARPER: Can I ask, on the 15-page document --

10 THE COURT: And then the responsive document due on 04:20:39  
11 the sixth is no more than 10 pages.

12 MR. HARPER: But that is simply supposed to be our  
13 summary of what we think the facts and situation is?

14 THE COURT: Yes, you don't have to cite the pages.  
15 But you can -- you should cite, say, for example, testimony of 04:20:57  
16 so-and-so without getting into the page numbers and all of  
17 that.

18 MR. HARPER: So as Mr. Colello testified and then you  
19 would just summarize whatever the case may be?

20 THE COURT: Exactly. And if you want a transcript, 04:21:10  
21 you know how to get one.

22 MR. HARPER: Thank you.

23 THE COURT: All right. We're adjourned.

24 COURTROOM DEPUTY: All rise.

25 (Whereupon, these proceedings recessed at 4:21 p.m.) 04:21:20

United States District Court



C E R T I F I C A T E

04:21:20

I, ELAINE M. CROPPER, do hereby certify that I am  
duly appointed and qualified to act as Official Court Reporter  
for the United States District Court for the District of  
Arizona.

04:21:20

I FURTHER CERTIFY that the foregoing pages constitute  
a full, true, and accurate transcript of all of that portion of  
the proceedings contained herein, had in the above-entitled  
cause on the date specified therein, and that said transcript  
was prepared under my direction and control, and to the best of  
my ability.

04:21:20

DATED at Phoenix, Arizona, this 23rd day of October,  
2013.

04:21:20

s/Elaine M. Cropper

04:21:20

Elaine M. Cropper, RDR, CRR, CCP