

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

)
)
) CV-13-00471-PHX-ROS
 Don Addington, on behalf of)
 himself and all similarly situated)
 former America West Pilots, et al.,)
)
 Plaintiffs,) Phoenix, Arizona
) October 22, 2013
) 8:39 a.m
 and)
)
 US Airline Pilots Association, an)
 unincorporated association, et al.,)
)
 Defendants.)
)

BEFORE: THE HONORABLE ROSLYN O. SILVER, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BENCH TRIAL - Day 1

(Pages 1-265)

Official Court Reporter:
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Proceedings Reported by Stenographic Court Reporter
Transcript Prepared by Computer-Aided Transcription

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APPEARANCES

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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 8:39.)

THE COURT: Please be seated.

COURTROOM DEPUTY: This is this case number

08:39:32

CV-13-471, *Addington, et al. v. US Airline Pilots Association et al.*, on for bench trial.

Counsel, please announce for the record.

MR. HARPER: Your Honor, Marty Harper, Jen Axel, and Andy Jacob on behalf of the plaintiffs.

08:39:48

THE COURT: Thank you.

MR. SZYMANSKI: From here, Your Honor?

THE COURT: As long as I can hear you.

MR. SZYMANSKI: Okay. For the defendant US Airline Pilots Association, Patrick Szymanski, Gary Silverman, Joy Mele and Jennifer Kroll.

08:39:58

THE COURT: Thank you.

MR. SIEGEL: Good morning, Your Honor. For Intervenor US Airways, Robert Siegel with my partner, Chris Hollinger, and Paul Jones of US Airways at counsel table with me.

08:40:24

THE COURT: Thank you.

Are we ready to proceed?

MR. HARPER: We are, Your Honor. We do have a couple of housekeeping matters that we collectively would like to

08:40:34

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1 bring to the Court's attention. The first one has to do with
2 Count in our complaint which is the count for fees and it was
3 my understanding that we are not going to be litigating that
4 count today but I think we need the Court's clarification on
5 that.

08:40:38

08:40:57

6 THE COURT: Do you agree, Mr. Szymanski?

7 MR. SZYMANSKI: No, Your Honor. As a matter of fact,
8 we had a dispute that was before the Court concerning discovery
9 on this point, which is unresolved, and we do not believe that
10 any issue should be outstanding; that when the Court issues its
11 decision, it should be a final decision on the merits of all of
12 the claims.

08:41:12

13 THE COURT: Mr. Harper?

14 MR. HARPER: We briefed this I think two or three
15 times, and this count is not going to be ripe until there's
16 been a determination if the plaintiffs here are the prevailing
17 party.

08:41:28

18 THE COURT: I agree. Let's proceed.

19 MR. HARPER: Okay.

20 The second point is, we have reached a stipulation,
21 Your Honor, with respect to the admissibility of the exhibits
22 and so I would like to try to articulate it subject to being
23 corrected by either of the other counsel.

08:41:41

24 The stipulation, I believe, is that all parties waive
25 the technical objections we might have, or anybody might have,

08:42:01

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1 to the relevance of any of the exhibits with the reservation 08:42:05
2 that if someone later, if we have closing or at some other
3 opportunity, wants to argue to the Court that a certain exhibit
4 is not relevant for whatever reason, that party would have the
5 opportunity to make that argument either in closing or in 08:42:24
6 writing or however we conclude this trial after tomorrow.

7 And then with the understanding that the Court will
8 give whatever weight it wants to any of the exhibits that have
9 been admitted and/or argued, that shouldn't be relevant.

10 THE COURT: All right. So what you're saying is when 08:42:42
11 you use the word "technical," then you said relevancy, you mean
12 technical objections in terms of hearsay, authenticity and the
13 issue of relevancy will be left to the Court?

14 MR. HARPER: Right. And there are a couple of
15 reservations that we entered into and I don't know, Pat, if you 08:43:02
16 want to have those on the record but we talked them through
17 yesterday. They had some exceptions to this rule and we agreed
18 with all of their exceptions that there would be no
19 disadvantage to USAPA by entering into this stipulation.

20 For example, they have some documents that they 08:43:21
21 objected to as being confidential, attorney-client privilege.
22 We agreed that if they put those documents in and waive that
23 privilege, we would not press further that there's any further
24 waiver of the privilege as a result of those documents.

25 THE COURT: I see. Now that you've made that clear, 08:43:36

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1 I understand. 08:43:38

2 MR. SZYMANSKI: And that is absolutely correct, Your
3 Honor.

4 THE COURT: Thank you.

5 MR. HARPER: That might be the last time we agree in 08:43:45
6 the course of this.

7 But with the Court's permission, Davina and I would
8 like to go forward with our opening.

9 So if it pleases the Court, well, here we are for the
10 third time in six years but it's now imperative that to get 08:44:00
11 this East/West dispute resolved, if for no other reason than
12 the collective need for all of the US Airways pilots to have
13 their seniority house in order before they sit down to begin
14 negotiations for a single seniority list with the American
15 pilots, which may occur in not too near future. 08:44:18

16 The alleged unfairness of the Nicolau Award, we
17 submit, is not material to the issues in this trial. The Court
18 has never indicated a willingness to relitigate the Nicolau
19 Award or replace George Nicolau's judgment with its own. As
20 this Court said last year, Mr. Nicolau's award itself is 08:44:36
21 powerful evidence of a fair result.

22 You have that top slide?

23 We all need to stay focused on the central issue in
24 this trial, did USAPA have a legitimate union purpose to put
25 the language into the Memorandum of Understanding, which we 08:45:04

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1 refer to as MOU II, specifically section 10H, that USAPA now
2 says supersedes the Transition Agreement seniority provisions,
3 provisions that require the utilization of the Nicolau Award.
4 And the key phrase here is this paragraph 10H that is shown on
5 the screen.

08:45:07

08:45:25

6 Both Captain Hummel, USAPA's president, and Captain
7 Bradford, as vice president, were deposed last month. Both
8 said that paragraph H amends the Transition Agreement and
9 abandons the obligation to use the Nicolau Award. This is from
10 president Hummel's deposition, Your Honor.

08:45:46

11 And, Davina, can you show her Bradford's?

12 THE COURT: I'm sorry. Put that back up again. You
13 say amends as opposed to abandons?

14 MR. HARPER: Amends the Transition Agreement and he
15 answered yes and this is the questions that were put to Captain
16 Bradford, Your Honor. And he said -- and I asked him: Has the
17 MOU replaced the Transition Agreement that required utilization
18 of the Nicolau Award?

08:46:04

19 Yes, I understand that to be correct.

20 So the president and vice president answered those
21 questions last month that the Transition Agreement has been
22 amended. Neither could offer any justification for making such
23 a contract other than asserting that this Court's order of
24 October 12 empowered USAPA to do so without regard to its DFR.
25 We will show that you USAPA's actions after October 12 had no

08:46:22

08:46:40

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1 rational relationship to a legitimate union purpose. 08:46:47

2 USAPA's action should be used in the context of the
3 existing legal framework that is defined by the 2010 Ninth
4 Circuit decision and by this Court's order in October of '12.
5 USAPA knew from the Ninth Circuit decision that there would be 08:47:01
6 a ripe DFR claim if it made a contract that abandoned the
7 Nicolau Award.

8 US Airways first publicly expressed interest in
9 merging with American Airlines, then in bankruptcy, at the end
10 of 2011. By April of 2012, US Airways and the Allied Pilots 08:47:19
11 Association, that is the union that represents the American
12 pilots, had negotiated what is referred to as a conditional
13 labor agreement, or what is often sometimes also referred to as
14 the APA term sheet. USAPA learned about the contingent labor
15 agreement after it was finalized in April of 2012. 08:47:42

16 After initial hesitation, US Airways entered into
17 negotiation with USAPA's bargaining Negotiating Advisory
18 Committee, or what we call the NAC, to obtain a contract that
19 would ensure the cooperation of US Airways pilots with the
20 American merger. 08:48:05

21 By August of 2012, a tentative contract had been
22 negotiated, referred to as MOU I. The contract is tentative
23 because it still had to pass review by the US Airways Board the
24 Pilot Representatives and had to be ratified by the USAPA
25 members. 08:48:26

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1 The NAC presented MOU I to the BPR in late August of
2 2012. The BPR delineated specific points of dissatisfaction
3 with MOU I. It was not satisfied, for example, with some
4 aspects of compensation, work rules, and insurance. So the BPR
5 instructed the NAC to go back to the table and try to negotiate
6 modifications to the MOU I.

7 It's important to note, Your Honor, we believe, that
8 MOU I, contained in paragraph 9, this language with respect to
9 how the pilots would proceed on seniority litigation
10 integration. It's a straightforward, plain, vanilla statement
11 about seniority integration process that follows the provisions
12 of the federal statute McCaskill-Bond. It makes no reference
13 to the 2005 Transition Agreement or the current status of
14 seniority at US Airways.

15 It would have no impact on the ongoing East/West
16 seniority dispute. It arguably would not have triggered a DFR
17 claim under the Ninth Circuit's opinion.

18 While we have paragraph nine in front of you, I would
19 also like to point out how this paragraph starts. It starts
20 with the words "the pilot representatives." It does not start
21 with "the union." It does not start with "USAPA." It does not
22 start with "APA."

23 So in August of 2012, this language, which was
24 totally acceptable to the USAPA's BPR, left room in this
25 language for the West Pilots to participate in the

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1 McCaskill-Bond process. We'll show that this was changed in 08:50:05
2 MOU II as it pops back up.

3 Before USAPA's NAC could reopen MOU negotiations with
4 US Airways, the merger between American and US Airways had
5 advanced to the point where both carriers were constrained 08:50:27
6 about what information they could share with others under the
7 federal securities law.

8 So beginning in September of 2012, MOU negotiations
9 were suspended. These discussions did not begin again until
10 December of 2012 in Dallas. So for almost three months, 08:50:42
11 nothing significant happened directly between USAPA and US
12 Airways regarding labor contract negotiations.

13 We submit that the only significant event that
14 happened during that 90-day period of time, Your Honor, was
15 your order from October of 2012. 08:51:02

16 As the Court will see, in December of 2012, the
17 negotiation took a very different approach to East/West
18 seniority. The only evident reason for this is your Court's
19 order where the USAPA officials read it to mean that you had
20 said in the order that it was okay for them to abandon the 08:51:24
21 Nicolau Award. As you may recall, the Court and Mr. Szymanski
22 had some discussions about this attitude at the May hearing
23 in -- May 14 hearing, 2013. This is from the transcript, Your
24 Honor.

25 We now know, from discovery in this matter, that 08:51:48

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1 almost immediately after the Court issued its order, USAPA 08:51:50
2 began telling its members that it had won the DFR issue and
3 that the Court had decided it was free to use whatever
4 seniority list it wanted.

5 Not only did USAPA misread the Court's October order, 08:52:02
6 but it went to lengths to mislead the East Pilots to believe
7 that this order had provided them with an open path to abandon
8 the Nicolau Award. Prior to the Court's October 12 order,
9 USAPA feared that if it made a contract demanding its
10 obligations to use the Nicolau Award without a legitimate union 08:52:21
11 purpose, it would be subject to a ripe DFR claim. Immediately
12 after your order, USAPA's leadership apparently was no longer
13 concerned about DFR ripeness because, in USAPA's words, there
14 is no basis in law for USAPA to use the Nic Award.

15 Union leaders like Captain Bradford and Captain 08:52:49
16 Hummel told the East Pilots that the Court's October 2012 order
17 was an absolute victory for the East Pilots and date of hire.
18 This raised East Pilots' expectations and made it, after that,
19 politically impossible for USAPA to move off its date of hire.
20 And we have these in evidence for Your Honor. 08:53:12

21 October 16 of 2012, Captain Hummel told the head of
22 USAPA's Communications Committee, responsible for sending all
23 communications, to brief your crew. No more legal opinions or
24 debates emanating from USAPA. We won. It's over. We are
25 moving on. That's all that needs to be said. 08:53:36

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1 In response to an East pilot who, rightfully,
2 questioned USAPA's reading of your order, Captain Bradford
3 wrote --

4 Can we have the slide, Exhibit 17?

5 The essence of it is here, Your Honor: We won. It's
6 safe to say there's no legal basis for USAPA to be forced to
7 use the Nicolau Award, none. There is no basis in law for
8 USAPA to use the Nicolau. This is a bigger win than you can
9 imagine it means that the Nicolau Award has no special meaning
10 and that USAPA is free to negotiate something different.

11 In October 2012, Captain Bradford again explained to
12 the rank and file East Pilots what the orders really meant
13 telling them, "I attended a special meeting between our lawyers
14 and the officers last week after the decision. We left nothing
15 out. The win is conclusive and complete. Suffice it to say
16 that our legal team is very pleased with the decision and they
17 are very comfortable with the union stated position in this
18 matter."

19 Other East pilot members under the -- who, under the
20 USAPA's constitution, have to approve the seniority list were
21 even more brazen in telling their constituents about the
22 Court -- what the Court order meant. This is slide 152.

23 In essence, it says here, this is the Charlotte BPR,
24 Your Honor, writing to the Charlotte pilots. Another myth,
25 USAPA prevailed in Phoenix. Another myth -- this is really

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1 amazing I think. Another myth being circulated is that USAPA
2 does not have a legitimate union purpose for pursuing something
3 other than the Nicolau Award. Common sense would dictate that
4 Judge Silver obviously believes there are legitimate union
5 purposes for setting aside the Nicolau Award. If she didn't,
6 she certainly wouldn't have decided that USAPA had the right to
7 propose something else, and that the company was obligated to
8 negotiate about something else. She would have simply
9 dismissed USAPA's claim and granted the West motion for summary
10 judgment. But that's not what happened. She did just the
11 opposite.

08:55:29

08:55:46

08:56:06

12 Relying upon your award, October of 2012, and we've
13 got a number of these that we had as part of the record, Your
14 Honor, that we'll highlight as the case goes on.

15 So going back to the Dallas negotiations. We picked
16 up in December of 2012 about a month and a half after your
17 order came down. So mid-December when MOU negotiations
18 resumed, USAPA's mind set apparently was the Court had said it
19 did not need a legitimate union purpose to abandon the 2005
20 Transition Agreement commitment to use the Nicolau Award. What
21 USAPA thought, and wrongly, that it could make a contract that
22 would trigger -- I'm sorry -- that would not trigger DFR
23 ripeness by abandoning the Nicolau Award but could defeat a DFR
24 claim on the merits so long as it kept the evidence of animus
25 towards the West Pilots out of the record.

08:56:25

08:56:47

08:57:11

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1 Emboldened by their misinterpretation of the Court's
2 October order, one of the very first things that the NAC and
3 other USAPA representatives did when MOU negotiations resumed
4 in Dallas in December was to renegotiate the seniority
5 provisions -- I showed you before from MOU I that were
6 acceptable in August to the BPR. The record is devoid,
7 however, of any evidence that the BPR, or any other USAPA
8 officer, directed the NAC, which is the Negotiating Committee,
9 to renegotiate the language with respect to seniority
10 litigation.

08:57:13

08:57:29

08:57:52

11 We believe that such direction came from Pat
12 Szymanski because at their depositions, Captain Hummel and
13 Bradford, NAC members John Owens and Dean Colello, Merger
14 Committee chairman Jess Pauley and other BPR members could not
15 tell us that anyone directed the NAC to redo the MOU language.

08:58:09

16 With no evident need to do so, Your Honor, other than
17 to deprive the West Pilots of the Nicolau Award, USAPA proposed
18 the language for -- this language for MOU II on December 12 or
19 13, 2012. This is what was proposed initially. The MOU is not
20 intended to, nor shall it constitute, the single agreement
21 referred to in paragraph VI(a) of the September 23, 2005,
22 Transition Agreement applicable to the merger of America West
23 and US Airways.

08:58:45

24 With the Court's permission, I would just like to
25 recall for the Court what needed to happen in order to have the

08:59:06

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1 Transition Agreement from 2005 fully implemented. Three things
2 needed to occur. First, single carrier status for US Airways
3 needed to be achieved. This actually happened in 2007.

4 Second, a determination needed to be made through
5 negotiations, mediation or arbitration regarding a single
6 integrated seniority list. This happened when George Nicolau
7 reported his decision on May 1, 2007.

8 The last thing that needed to be achieved in order to
9 fully implement the Transition Agreement and, therefore,
10 require the utilization of the Nicolau Award, was the
11 negotiations and ratification of a new collectively bargaining
12 agreement with a single agreement as it was referred to in the
13 TA.

14 What USAPA proposed initially in the Dallas
15 negotiations was to include this language which was a
16 straightforward attempt to avoid triggering the Transition
17 Agreement by declare what they were going to negotiate and
18 enter into, MOU II, was not going to be that single agreement.

19 What happened as the evidence will -- as we will
20 prove to the Court when this language came up and was brought
21 to the attention of the West members of the NAC, they told
22 Mr. Szymanski and Hummel that if they went forward with this
23 language and included in the MOU II, then for sure the West
24 Pilots would not vote to ratify MOU II.

25 So Captain Holmes, who was on our Negotiating

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08:59:13

08:59:26

08:59:49

09:00:05

09:00:28

09:00:51

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1 Committee, said, "If you need to have the West votes in order
2 to ratify the MOU II, you need to take this language out."

09:00:55

3 On December 15, USAPA took that language out and
4 substituted it for this language which, at that point in time,
5 was paragraph I in the draft and subsequently became paragraph
6 10.

09:01:15

7 And can you go to the right-hand side, Davina, a
8 little bit?

9 This language proposed on October 15, if you look
10 over here, came at the suggestion of Pat Szymanski.

09:01:32

11 What does 10H do? On its face, 10H merely states
12 that McCaskill-Bond controls the seniority integration between
13 US Airways and American pilots. But that can't be the real
14 purpose for 10H because McCaskill-Bond is federal law and
15 automatically applies whether or not the MOU says so.

09:01:53

16 So if that's the reason for 10H, it's superfluous.
17 The Court undoubtedly will hear their argument over the next
18 couple of days that paragraph 10H is seniority neutral. That
19 is what the merger council and the officers told the West
20 Pilots on the NAC back in December and what USAPA told the West
21 Pilots during the ratification period leading up to the vote on
22 February 8.

09:02:12

23 If that were true, we would not be here today. If
24 this was neutral, we would not be here today.

25 What we have learned in discovery is that USAPA's

09:02:28

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1 officers and committee chairmen have told us that they firmly
2 believe that 10H establishes a seniority integration process
3 that fully replaces the process in the 2005 Transition
4 Agreement, a process -- a new process that does not require
5 implementation of the Nicolau Award.

09:02:31

09:02:51

6 In effect, all have testified that this language,
7 10H, amends the Transition Agreement and thus nullifies the
8 Nicolau Award. Captain Bradford acknowledged this when I took
9 his deposition last month, line 14: Yes, the Transition
10 Agreement has been amended, that is correct.

09:03:23

11 Through this language, the neutral seniority neutral
12 language and in sum, since USAPA could not get away with plan
13 A, which was simply to say that the MOU was not the single
14 agreement, which would arguably have not triggered the
15 implementation of the Transition Agreement, they went about it
16 in another way. They went about it through 10H, telling the
17 pilots that it was neutral while all of the time having a plan,
18 all of the leaders of USAPA and the committee chairman having a
19 plan that when they get into this McCaskill-Bond seniority
20 integration process, they were going to submit only a
21 date-of-hire list, not the Nicolau Award, because they have
22 taken the position that the Transition Agreement has been
23 amended, done away with, so that they no longer are obligated
24 through that language, 10H, to implement the Transition
25 Agreement.

09:03:46

09:04:05

09:04:29

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1 Here's what they told the pilots during the
2 ratification process.

3 Exhibit 78, Davina.

4 In essence, the MOU is completely neutral with
5 respect to the Nicolau Award. In fact, paragraph 10H of the
6 MOU says explicitly that neither the MOU nor the JCBA, Joint
7 Collective Bargaining Agreement, shall provide a basis for
8 changing the seniority lists currently in effect at US Airways
9 other than through the McCaskill-Bond process. So no East
10 pilot should vote against the MOU because that fear that
11 ratifying -- because they fear that ratifying the MOU would
12 implement the Nicolau Award. And no West Pilot should vote for
13 the MOU because they believe the MOU would implement the
14 Nicolau Award.

15 In addition, USAPA representatives also stated in
16 other writings and various road shows that the MOU was neutral
17 with respect to seniority.

18 So during the campaign, during the ratification
19 period, in writing, verbally and at the road shows,
20 representatives from USAPA stood up in front of the West Pilots
21 here in Phoenix and said, "10H is neutral. Don't worry about
22 it. Vote for it," and the West Pilots did, overwhelmingly.

23 Any doubt, though, that USAPA leadership intended,
24 when it proposed the 10H language as part of MOU II, to use it
25 to advance only a date of hire is set aside, Your Honor, in the

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1 pleadings in front of this -- the Court today. 09:06:24

2 If you look at the sixth affirmative defense USAPA
3 has in its pleadings, it says, part one, the MOU did not
4 contain any reference to the Nicolau Award.

5 Part two, USAPA had no intention of advancing the 09:06:43
6 Nicolau Award in any seniority integration proceeding or
7 otherwise. They told them it was neutral but that was their
8 intent and that is what they are about doing now, putting
9 together a plan if they get to the table in the McCaskill-Bond
10 process, to submit only a date of hire list. 09:07:06

11 Deception is back but it's worse when somebody who
12 has a fiduciary duty does it, and this union does have a
13 fiduciary duty to the West Pilots. If they had simply come
14 forward and said to the West Pilots what they wrote in this
15 pleading, "Vote for it," that is fine but, "Beware, we do not 09:07:26
16 intend ever to advance anything other than the date of hire in
17 any seniority integration process," the outcome would have been
18 different with respect to the MOU. At least I don't think that
19 the West Pilots would have voted for it under those set of
20 conditions. 09:07:47

21 Now, where did all of this start? Let's look what
22 Captain Bradford wrote back in May of 2007.

23 Can you put up slide 36?

24 This is a letter that Captain Bradford wrote 15 days
25 after the Nicolau Award came down in 2007. He wrote it to 09:08:02

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1 ALPA -- 09:08:10

2 Can you highlight?

3 The move is purely defensive. We are not trying to

4 take anything from anyone, just trying to hold onto what we

5 have. Make no mistake, we don't want to leave ALPA, but we 09:08:28

6 will just to ensure we can have some say in the next merger.

7 Date of hire, 2007 looking forward to this merger.

8 From then until today, the entire purpose of USAPA

9 is -- has been to make sure that when they get into the next

10 negotiations for pilot seniority, date of hire is going to be 09:09:00

11 used.

12 For a moment I would just like now to turn to the

13 McCaskill-Bond part of it but I think probably US Airways will

14 be addressing that most. We have tried to explain to the Court

15 that in this seniority process that is coming up, 09:09:23

16 McCaskill-Bond, that it's absolutely imperative to have the

17 West Pilots have a seat at the table. And the arguments have

18 been made that we're entitled to it. And as we will show the

19 Court through testimony, the reason for it is there is a

20 conflict over here at USAPA that cannot be overcome. From 09:09:43

21 2007, they have been working consistently to get date of hire

22 as the seniority list in this next merger with American

23 Airlines.

24 If we are not there at the table to make sure that

25 the Nicolau Award is presented, it will never be presented. 09:10:01

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1 So as part of the remedy that we're asking the Court
2 to enter in this case is, first, look at 10H and interpret it
3 not to amend the Transition Agreement. That language doesn't
4 do it. It simply sets up a process to going forward in the
5 future.

09:10:10

09:10:28

6 So if the Court finds that 10H does not amend the
7 Transition Agreement, the obligation to use the Nicolau Award
8 is still there. So we would like the Court, at the end of this
9 hearing, to interpret 10H that way.

10 Part two is if you interpret it that way, then
11 Transition Agreement is still in play, there's an obligation
12 now because all three prongs have been satisfied under the
13 Transition Agreement so you can tell USAPA going forward use
14 the Nicolau Award and then, as a failsafe, give us a place at
15 the table so that we can be there to make sure that USAPA does,
16 hopefully, what you tell them to do because as you can see from
17 this evidence, they can't be trusted to do the right thing.
18 They will go out and deceive, as they deceived our pilots
19 leading up to the ratification vote, that something they said
20 was neutral really was intended to take away their right to the
21 Nicolau Award.

09:10:44

09:11:09

09:11:30

22 Thank you, Your Honor.

23 THE COURT: Mr. Szymanski?

24 MR. SZYMANSKI: So, Your Honor, as recent events have
25 shown us, democracy is a messy process and US Airline Pilots

09:11:53

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1 Association is a particularly democratic organization. It 09:11:58
2 places an uncommon amount of authority in its board of pilot
3 representatives and although the officers attend the
4 BPR meetings and president Hummel presides, the officers have
5 no vote on the board of pilot representatives. It runs by 09:12:16
6 majority vote based on the actions of the representatives that
7 are elected by their domiciles, the four domiciles:
8 Philadelphia, Charlotte, Phoenix, three each, and DC, which has
9 a smaller number of pilots, a smaller must number -- only two
10 members so it's an 11-member board. 09:12:39

11 It was deliberately designed that way as a reaction
12 to the Airline Pilots Association which had the authority to
13 take many actions concerning contracts and seniority without
14 regard to the pilots voting on it. USAPA, since 2008 when it
15 was certified USAPA, has had to deal with all sorts of factions 09:12:59
16 among its members. And as you will see from many of the
17 exhibits, if you have a chance to look at them, its officers
18 and board members are subject to constant criticism,
19 second-guessing and often very pointed personal attacks.

20 Yet USAPA deals with these conflicting groups working 09:13:23
21 through the various issues, discussing them, analyzing them at
22 the Board of Pilot Representatives and among the officers and
23 with our committee members making the decisions that are
24 necessary to represent our members.

25 Captain Hummel and the three other officers who ran 09:13:42

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1 with him were elected in 2012 to replace what can only be
2 described as a rancorous prior administration. Captain Hummel
3 campaigned as the peace maker. He immediately reached out to
4 all factions including, in particular, the West Pilots. He
5 appointed West representatives to all of USAPA's committees
6 and, despite the constant criticism, sniping and attacks, he
7 has led the organization to negotiate a Memorandum of
8 Understanding that gains an unprecedented \$1.6 billion over its
9 life for its pilots and otherwise to effectively represent our
10 members.

09:13:45

09:14:06

09:14:28

11 Along the way USAPA has had to deal with an employer
12 that has been anything but cooperative. It used the dispute
13 over the Nicolau Award as a way to avoid increasing wages and
14 benefits and in negotiating a new Collective Bargaining
15 Agreement. Although it avoided that, it didn't have any
16 problem going off and conducting secret negotiations with the
17 Allied Pilots Association for an agreement that would take
18 effect in the event of a merger, something that Captain Hummel,
19 as the president, found out on the first day he took office in
20 inking a deal with the APA to rescue them from the situation
21 they were facing bankruptcy with respect to their Collective
22 Bargaining Agreement.

09:14:47

09:15:12

23 And upon announcing that agreement and coming to
24 USAPA, the company said it didn't need anything from USAPA. It
25 had already made its deal with ABA but USAPA addressed the

09:15:29

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1 problem under Captain Hummel's leadership, persuaded the
2 company that it really needed to negotiate with USAPA
3 concerning the merger principally because of the scope
4 provisions in the East contract concerning change in control
5 and code share that would have interfered with an orderly
6 merger with American.

09:15:35

09:15:49

7 USAPA even found a way, working together, the Board
8 of Pilot Representatives all of them working together in early
9 January to get a last-minute improvement in the Memorandum of
10 Understanding which provides that the US Airways pilots will
11 receive wages at the rate of American wages starting on
12 February 8, the day the Memorandum of Understanding was
13 negotiated, that retrospective pay is accruing and won't be
14 paid unless there is a merger and will be paid, then, after the
15 merger.

09:16:08

09:16:35

16 And obviously that is a much -- that is a very
17 valuable improvement that gets more and more valuable as we
18 face the delay as a result of the government's antitrust case.

19 So that brings us to the issue in this case which as
20 framed by the Court and not as framed by Mr. Harper, is that
21 whether or not the USAPA breached the duty of fair
22 representation when it entered into the MOU, because the MOU
23 does not require USAPA to use the Nicolau Award in the
24 McCaskill-Bond process. That was the issue that the Court
25 identified that we're here on. The question is whether or not

09:16:51

09:17:11

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1 this action by USAPA was irrational and violated the duty of
2 fair representation or whether it was reasonable and we think
3 it was reasonable under all of the circumstances. The
4 stipulated facts show that from the beginning, US Airways, and
5 later the other parties to the MOU -- and there were four. 09:17:36
6 There are four parties to the MOU. Mr. Harper said there's
7 only one thing that changed between the first MOU, which was
8 never a completed agreement, and the MOU that we're here on
9 today which was the Court's decision. Well, a lot changed.

10 The first MOU was a three-party agreement. It 09:17:55
11 involved US Airways, the Allied Pilots Association, and USAPA.
12 But when we get to the second MOU, it's now a four-party
13 agreement that includes American Airlines and was negotiated
14 with the assistance of the Unsecured Creditors Committee from
15 the bankruptcy case. 09:18:13

16 But the stipulated facts show that from the very
17 beginning US Airways, and then later the other parties to the
18 MOU, took the position that the only way to resolve the
19 seniority issues would be to push them into a McCaskill-Bond
20 process that would follow after a joint Collective Bargaining 09:18:32
21 Agreement was negotiated.

22 This is the process that was followed in major
23 mergers between Delta and Northwest and, more recently, the
24 completed seniority integration proceeding between United and
25 Continental. And it's completely different than the process 09:18:52

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1 that was followed back in 2007 and 2008 with respect to the US
2 Airways/America West merger, attempted to resolve the seniority
3 issue first and then do the Collective Bargaining Agreement.

09:18:56

4 Moreover, the parties to the MOU made it clear that
5 if USAPA did not ratify the MOU, the merger would go forward.

09:19:16

6 The MOU would go forward but the US Airways pilots would be
7 left behind at their current wages and benefits without the
8 retrospective pay, without the increases until the Joint
9 Collective Bargaining Agreement would be negotiated which could
10 be significantly beyond what we're talking about. Certainly at
11 this point the retrospective pay goes from February of 2013
12 until now and we still don't have a decision on the merger, an
13 effective date or the beginning of negotiations for the Joint
14 Collectively Bargaining Agreement.

09:19:39

15 So it was reasonable under all of these circumstances
16 to agree to the terms of the Memorandum of Understanding to
17 guarantee for its pilots these increased and significant
18 economic benefits.

09:20:02

19 The evidence will show that USAPA was entirely
20 transparent about the Memorandum of Understanding and what it
21 did and did not do. The leafed show that the pilots were
22 informed and knew that the MOU was, in fact, neutral with
23 respect to the seniority dispute.

09:20:16

24 The pilots knew that the Nicolau Award was not part
25 of the MOU. There's nothing in that agreement that says that

09:20:39

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1 that was so. The pilots knew, of course, that USAPA was 09:20:41
2 opposed to the Nicolau Award. That's something that I have
3 said to the Court I think on every occasion that I've appeared
4 before Your Honor and it's not something that USAPA runs from
5 or tries to hide. It's not that we don't believe that the West 09:20:58
6 Pilots need to be represented. That is what we're doing. But
7 the unmodified Nicolau Award is something that we do not
8 believe that they have the right to under the Transition
9 Agreement or any other legal basis.

10 So let me say a minute something about the Transition 09:21:17
11 Agreement for a minute. The Transition Agreement does talk
12 about a single Collective Bargaining Agreement but what it
13 talks about is a single Collective Bargaining Agreement that
14 would govern the combined operations of US Airways and America
15 West. That single agreement that is referred to in the 09:21:32
16 Transition Agreement certainly can't be this Memorandum of
17 Understanding, which is a four-party agreement, which includes
18 American Airlines and the Allied Pilots Association and which
19 is intended to govern the results of a merger between American
20 and US Airways, not the merger between US Airways and America 09:21:51
21 West. So to say that the Transition Agreement required the Nic
22 Award because we've now done this Memorandum of Understanding
23 is a canard. It's just not true, Your Honor. There was no
24 agreement at that particular point or obligation.

25 So the MOU was put out. It was accurately put out. 09:22:17

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1 The evidence will show that everybody understood what it was
2 all about and it was approved by a vote of 75 to 25. USAPA
3 fully supports the merger and we, frankly, hope that that
4 merger is going to go forward. We are all waiting, like
5 everybody else has to wait, for the results of the litigation
6 in the United States District Court in the District of
7 Columbia; and once that happens, USAPA will face its next
8 challenge which is representing its members in the seniority
9 integration proceeding and it will do that the way it has done
10 and addressed prior situations, through deliberation among the
11 members of the Board of Pilot Representatives, the
12 recommendation of the appropriate committees, consideration,
13 debate and vote based on a democratic basis of what happens.

14 And with respect to this, it really stretches my
15 imagination, Your Honor, that anybody can say that the people
16 at the US Airline Pilots Association don't understand the duty
17 of fair representation. We live with the threat of a duty of
18 fair representation case with respect to these issues and have
19 lived with that threat every day since the union was certified.

20 We've had two court cases, now a third, and it is a
21 consideration in every decision that the union makes and a
22 consideration among all of the members of the Board of Pilot
23 Representatives. President Hummel has appointed, and the
24 BPR has approved, the appointment of a Merger Committee. The
25 six members of the committee represent a cross-section of our

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1 members. Senior pilots and not-so-senior pilots, captains and
2 First Officers, members from all three of the major domiciles:
3 D.C., Charlotte and Phoenix. The committee includes captain
4 Ken Stravers who was the chairman of the Merger Committee for
5 America West in the proceeding that led to the Nicolau Award.
6 It includes Rocky Calveri, a member of the Negotiating Advisory
7 Committee, who is also a Phoenix-based pilot.

09:24:22

09:24:43

8 That committee is going to work through this problem.
9 They have started doing that. They haven't come to conclusions
10 yet, frankly, because of the antitrust case. They don't know
11 whether or not there's going to be a merger at this point but
12 they have worked on this issue. They have looked at a number
13 of different scenarios and they will continue to do so.

09:25:08

14 The question is no longer East versus West, Your
15 Honor. The question is USAPA versus the Allied Pilots
16 Association, an organization that is twice as large and has a
17 rift of taking cut-throat conditions in seniority integration
18 proceedings. In fact, it was the actions of the Allied Pilots
19 Association with respect to the TWA pilots that led to the
20 McCaskill-Bond amendment. Allied Pilots Association has always
21 been an independent group, not part of the Air Line Pilots
22 Association and as a result, not party to or bound by the Air
23 Line Pilots Association merger and fragmentation policy.

09:25:28

09:25:53

24 So they have been, previous to the McCaskill-Bond
25 amendment, free to make demands without regard to any legal

09:26:19

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1 standard about what happens in the event of seniority
2 integration.

09:26:23

3 After the TWA situation, the senators from the state
4 of Missouri where TWA was located drafted proposed and had
5 passed the McCaskill-Bond amendment to the Aviation Act which
6 requires adherence to Sections 3 and 13 of the Allegheny-Mohawk
7 labor protective provisions which provide for the
8 McCaskill-Bond process, the process of negotiation and, if
9 there is no agreement between the unions, an arbitration which
10 is final and binding which is where find we ourselves now.

09:26:38

09:27:04

11 Your Honor, the cases are legion and uniform, that
12 the difficult issues like this of conflicts are issues that are
13 left to the union to be resolved; and, frankly, the fact that
14 they are left to the union and that the union is required to
15 resolve them is one of the major factors that persuade that
16 they are in the same life boat and they have to cooperate to
17 get to shore. If parties involved in the union negotiations
18 know that they can go to somebody outside and have that outside
19 party interfere in the resolution that they otherwise have to
20 reach, then it affects the ability of the union to resolve
21 those problems internally and that is the main reason why
22 courts uniformly have said that there is a wide degree of
23 discretion to the union in resolving these conflicts and the
24 courts should stay out.

09:27:35

09:28:00

25 The relief valve to that is the duty of fair

09:28:19

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1 representation and that is what we're here about today. 09:28:22

2 And, Your Honor, just in closing, under all of the
3 circumstances with respect to this Memorandum of Understanding,
4 the decision of USAPA to agree to this Memorandum of
5 Understanding, to put it out to be transparent about it was not 09:28:37
6 a breach of a duty of fair representation. In fact, it was in
7 the interests of all of the pilots at US Airways and as a
8 result, that part of the claim, we think, should be dismissed.

9 Thank you, Your Honor.

10 THE COURT: Thank you. 09:28:55

11 Mr. Siegel?

12 MR. SIEGEL: Good morning, Your Honor. I do not want
13 to take a good deal of the Court's time. US Airways is here on
14 a limited basis under Rule 24 as an intervenor. As the Court
15 knows from our pleadings, the carrier is neutral on the issue 09:29:14
16 of the duty of fair repetition dispute between the two pilot
17 groups. We argue only for ripeness determination and an
18 expedited resolution of a multiyear fight, litigation fight,
19 between these pilot groups in order to facilitate the
20 integration following the coming merger. 09:29:40

21 We are also an intervenor, Your Honor, with regard to
22 Count 4 in the complaint where the plaintiffs are seeking a
23 declaratory judgment that the West Pilots have an independent
24 seat in the McCaskill-Bond process. We support that argument.
25 We have supported it from the day that we began speaking to 09:29:58

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1 USAPA and the West Pilots regarding resolution of the seniority
2 dispute, including the day when the Memorandum of Understanding
3 was being negotiated and drafted with the two unions, APA and
4 USAPA.

5 I don't need to repeat the argument I don't think to
6 the Court in this opening statement. We have filed a written
7 summary judgment motion on this issue; but the fundamental
8 point is that McCaskill-Bond, the relatively new federal
9 statute, requires that the integration be governed by that
10 statute under a fair and equitable basis.

11 And from all of the facts that have been developed
12 that are pretty much undisputed in this case, it is clear that
13 what we said back many months ago to the parties who are
14 litigating is that for a fair and equitable process under
15 McCaskill-Bond, the -- and based on precedence that developed
16 under the labor protected positions prior to McCaskill-Bond,
17 all parties who have a significantly distinct seniority
18 interest, as do the plaintiffs and West Pilot Class in this
19 case, should be permitted to have separate representation and
20 to participate in McCaskill-Bond so that each of those parties
21 can present their argument for or against the Nicolau list to
22 the McCaskill-Bond panel.

23 We are singularly focused on that. That has been our
24 position and we think the law requires that under the
25 McCaskill-Bond. We presented this to the Court under a summary

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1 judgment motion and that is a primary reason why we are here 09:31:38
2 today as an intervenor, to support that request for declaratory
3 judgment.

4 Thank you, Your Honor.

5 THE COURT: Thank you. 09:31:46

6 Mr. Harper, your first witness?

7 MR. HARPER: We call First Officer Koontz, Your
8 Honor.

9 JEFFREY KOONTZ,
10 called as a witness herein by the Plaintiffs, having been first 09:32:02
11 duly sworn or affirmed to testify to the truth, was examined
12 and testified as follows:

13 COURTROOM DEPUTY: Please state your name for the
14 record and spell your last name.

15 THE WITNESS: Jeffrey Koontz. K-O-O-N-T-Z. 09:32:10

16 **DIRECT EXAMINATION**

17 BY MR. HARPER:

18 Q. Mr. Koontz, are you presently employed?

19 A. Yes.

20 Q. By whom? 09:32:36

21 A. US Airways.

22 Q. And did you work for an airline before going to work for
23 US Airways?

24 A. Yes.

25 Q. What airline was that? 09:32:43

JEFFREY KOONTZ - Direct

- 1 A. America West Airlines. 09:32:45
- 2 Q. When did you begin working for America West Airlines?
- 3 A. December 1999.
- 4 Q. And what position do you hold at US Airways today?
- 5 A. I am a First Officer. 09:32:55
- 6 Q. And have you always then been a First Officer while
- 7 working at America West and US Airways?
- 8 A. Yes.
- 9 Q. Do you hold any other degrees or certificates?
- 10 A. I have an undergraduate degree from Northwestern 09:33:07
- 11 University in 1990 in mathematics and I have a juris doctor
- 12 degree from the University of Arizona in 2006.
- 13 Q. Okay. Are you currently practicing law?
- 14 A. No.
- 15 Q. Have you ever practiced law? 09:33:21
- 16 A. Yes.
- 17 Q. When and for approximately how long?
- 18 A. In 2000 -- I was licensed in California in 2007 and I
- 19 opened a family law, domestic relations practice and it lasted
- 20 about a year before I decided to discontinue practicing. 09:33:39
- 21 Q. Okay.
- 22 I wanted to just take you briefly back to the
- 23 2007-2008 time period. Who was the America West bargaining
- 24 representative in 2007?
- 25 A. The Air Line Pilots Association. 09:33:58

JEFFREY KOONTZ - Direct

1 Q. And during that time period, while ALPA was the bargaining
2 representative for the America West pilots, were you personally
3 active in any ALPA affairs?

09:34:01

4 A. No.

5 Q. And why was that?

09:34:13

6 A. I was a line pilot and it was three -- ever since I got
7 hired, I was a line pilot and I went to law school so I had no
8 time for anything and then I studied for two bar exams and then
9 opened a practice. It was simply go to work, punch the clock,
10 go home.

09:34:32

11 Q. Well, still focusing back on 2007 and you saw we flipped
12 up the May 16, 2007, letter from Captain Bradford, were you
13 aware of any effort by anyone during that time period to take
14 the US Airways pilots away from ALPA and to put them someplace
15 else?

09:34:55

16 MR. SZYMANSKI: Your Honor, I object on the grounds
17 of relevance. We're going back far beyond, way beyond before
18 your decision.

19 THE COURT: Sustained.

20 BY MR. HARPER:

09:35:06

21 Q. I'm going to take you forward to 2008. Were you aware in
22 2008 that USAPA became the bargaining representative?

23 A. Yes.

24 Q. And did you try to keep track of what USAPA did after it
25 became the bargaining representative?

09:35:23

JEFFREY KOONTZ - Direct

- 1 A. I was watching everything closely, yes. 09:35:24
- 2 Q. Okay. And were you aware of the USAPA's constitution?
- 3 A. Yes.
- 4 Q. And does anything in that constitution create an issue for
5 you? 09:35:36
- 6 A. Yes.
- 7 Q. What is that?
- 8 A. That East and West would be merged according to date of
9 hire.
- 10 Q. Date of hire? 09:35:43
- 11 A. Date of hire.
- 12 Q. And why does that bother you?
- 13 A. Because it is extremely detrimental to the America West
14 pilots. What they were trying to get through their
15 constitution and bylaws and a majority crammed down on the 09:35:53
16 minority was what they couldn't get in arbitration.
- 17 Strike that. It was worse than they couldn't get in
18 arbitration. What they won in arbitration in Nicolau was a
19 length of service integration. So by going to date of hire,
20 what they did was they moved into the category where now your 09:36:11
21 date of hire, even if you are on furlough, you still are
22 getting credit so to speak.
- 23 Q. Okay. And as a result of learning that and becoming aware
24 of that, did you do anything personally in order to try to
25 protect your position? 09:36:28

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JEFFREY KOONTZ - Direct

- 1 A. Yes. 09:36:30
- 2 Q. What did you do?
- 3 A. I started examining the situation with my training trying
4 to understand what is happening. Labor law is quite different.
5 I still had a Westlaw account from my practice and I got a free 09:36:39
6 membership for a month trial membership with Westlaw that gave
7 you access to all of the labor databases and I studied and
8 printed up as much information as I could.
- 9 Q. For what purpose?
- 10 A. Understanding where we would stand if USAPA could execute, 09:36:59
11 by becoming the collective bargaining agent, a single carrier
12 for all East and West.
- 13 Q. And after studying that, did you have any particular
14 concerns?
- 15 A. Yes. 09:37:12
- 16 Q. What were they?
- 17 A. That we would be left bare, "we" being the West Pilots,
18 when it comes to seniority advocacy.
- 19 Q. So what did you do about that, if anything?
- 20 A. Well, I communicated with the -- I started to become 09:37:28
21 involved with communicating with the West ALPA MEC people just
22 to see what's happening in the time frame leading up to April
23 2008 when the NMB was going to have an election and reviewing
24 with my knowledge trying to think what do we have if ALPA is
25 not successful in that certification drive and that we're left 09:37:55

United States District Court

JEFFREY KOONTZ - Direct

1 bare. So I formed an organization with the help of Eric 09:38:03
2 Ferguson and I formed an organization to facilitate protecting
3 whatever interests we might be able to protect.

4 Q. During this time period, April of 2008 and thereafter, did
5 you take any specific actions in that regard, then? 09:38:16

6 A. In April of 2008?

7 Q. After, beginning and after in 2008.

8 A. Well, what I was doing was just studying the situation and
9 waiting for -- to see what the result was going to be, study it
10 and move on. If ALPA was voted off the property, we America 09:38:36
11 West pilots would have nothing in terms of advocacy for our
12 seniority interests. So, obviously, we are looking at what do
13 we have and, obviously, what I could tell is we would be left
14 to litigation, that was it.

15 Q. And did litigation eventually ensue in 2008? 09:38:54

16 A. Did it?

17 Q. Approximately when?

18 A. In September of 2008, a complaint was filed. We -- "we"
19 being Eric Ferguson, myself and several others -- searched for
20 a law firm and we found Shughart, Thompson, Kilroy, Mr. Marty 09:39:13
21 Harper, as an attorney who has experience in this sort of
22 matter and we moved in to just gathering the resources to
23 execute and file the DFR suit in September of 2008.

24 Q. And that eventually became known as Addington number one;
25 correct? 09:39:37

JEFFREY KOONTZ - Direct

- 1 A. Yes. 09:39:38
- 2 Q. And can you briefly tell the Court what involvement you
3 had during the life of Addington one?
- 4 A. My involvement was as I was not a named plaintiff,
5 obviously, I was somebody who was committing their time and 09:39:46
6 resources on a strictly volunteer basis to do whatever I can,
7 to aid the effort.
- 8 Q. And at some point in time, Addington one came to an end;
9 correct?
- 10 A. Yes. 09:40:04
- 11 Q. Did some other action start immediately after that or
12 shortly after that?
- 13 A. Yes. There was a jury verdict in May of 2009 in our favor
14 and that resulted in an appeal by USAPA to the Ninth Circuit.
- 15 Q. And what was the result of the appeal? 09:40:18
- 16 A. In 2010, June of 2010, the Ninth Circuit panel, Judge
17 Tashima and Judge Graber dismissed our case, remanded and
18 dismissed it for ripeness.
- 19 Q. And did other litigation then begin shortly after that?
- 20 A. The following month -- yes, it did. US Airways filed a 09:40:39
21 declaratory action the following month.
- 22 Q. And were you involved like you had been before in helping
23 manage the DFR litigation?
- 24 A. Yes. US Airways named the West Class as -- well, the West
25 Pilots as a purported class and so, therefore, we were -- I 09:40:54

United States District Court

JEFFREY KOONTZ - Direct

- 1 suppose you could say we were defendants then and I, again, 09:40:57
2 continued to facilitate whatever I could to help out in that
3 effort.
- 4 Q. Mr. Koontz, at some point in time, did you actually join
5 USAPA? 09:41:11
- 6 A. I did.
- 7 Q. Approximately when?
- 8 A. I think it was 2009. I don't recall but I think it was
9 2009.
- 10 Q. And are you a member in good standing? 09:41:16
- 11 A. Yes.
- 12 Q. And have you been a member in good standing ever since you
13 joined USAPA?
- 14 A. Yes. Yes.
- 15 Q. Since you joined USAPA, have you become involved at all in 09:41:25
16 any USAPA activities?
- 17 A. Yes. In -- I would occasionally substitute in for one of
18 the Phoenix representatives up through about the period of -- I
19 think December of 2011, up to December 2011 I would
20 occasionally substitute to be a representative at the Board of 09:41:49
21 Pilot Representatives meeting.
- 22 Q. Could you explain to the Court what the Board of Pilot
23 Representatives is and what it does?
- 24 A. The BPR is the governing body. You can call it the
25 legislative branch of USAPA and it's a board composed of 11 09:42:08

United States District Court

JEFFREY KOONTZ - Direct

1 pilots at this point and the number is based on domicile size 09:42:11
2 so each domicile has a certain number of representatives.

3 Q. How many domiciles are there?

4 A. There are four totaled.

5 Q. And is Phoenix a domicile? 09:42:28

6 A. Yes.

7 Q. And how many representatives does it have?

8 A. Three.

9 Q. And are they East or former West Pilots?

10 A. They are all former West Pilots. 09:42:35

11 Q. Does Charlotte have a domicile?

12 A. Yes.

13 Q. And how many representatives does it have?

14 A. They have three representatives.

15 Q. Are they all former East Pilots or are they some West 09:42:43
16 Pilots from there?

17 A. All East.

18 Q. And the third domicile is Philadelphia; is that correct?

19 A. Yes.

20 Q. How many pilots do they have? 09:42:53

21 A. They have three pilot representatives, all East.

22 Q. And what about DC?

23 A. DC has two pilot representatives, all East.

24 Q. All East. So out of the 11, eight are East and three are
25 West? 09:43:05

United States District Court

JEFFREY KOONTZ - Direct

- 1 A. Correct. 09:43:06
- 2 Q. And has that been the situation as far as you can recall
3 as long as you have been involved in -- actively involved in
4 USAPA?
- 5 A. The numbers have changed somewhat because some bases have 09:43:15
6 closed but for the most part, yes, it's been a -- about a 70
7 percent/30 percent difference in terms of the makeup.
- 8 Q. So you've actually participated in BPR meetings and
9 activities for a period of time as an alternate or substitute;
10 correct? 09:43:36
- 11 A. Yes.
- 12 Q. Does the BPR make decisions about seniority?
- 13 A. Yes.
- 14 Q. If there is going to be a -- based on your personal
15 knowledge, if there is going to be a seniority list that will 09:43:49
16 be used in the upcoming McCaskill-Bond process, who will decide
17 what that list is?
- 18 A. It's the BPR.
- 19 Q. And how will it be decided at the BPR level?
- 20 A. By vote. 09:44:08
- 21 Q. And is there any chance based upon your experience --
- 22 MR. SZYMANSKI: Objection, Your Honor. It's
23 speculation.
- 24 THE COURT: Well, he hasn't finished asking the
25 question but perception is speculation. Sustained. 09:44:21

United States District Court

JEFFREY KOONTZ - Direct

- 1 MR. HARPER: My question -- can I get the full 09:44:27
2 question out before we get a ruling?
- 3 THE COURT: Go ahead.
- 4 BY MR. HARPER:
- 5 Q. Based upon your experience, Mr. Koontz, is there any 09:44:33
6 chance that a BPR split eight to three in favor of the East
7 will ever recommend any list other than date of hire?
- 8 A. No.
- 9 Q. And is the BPR, as it is presently constituted,
10 constrained in any way by the USAPA constitution? 09:44:53
- 11 A. Yes.
- 12 Q. And in what way?
- 13 A. Well the constitution and bylaws, they -- "they" being the
14 East BPR members -- consistently refer to the constitution
15 mandates, date of hire, end of story. 09:45:12
- 16 Q. Now, besides sometimes sitting on the BPR as an alternate,
17 have you become involved in any other USAPA activities?
- 18 A. Well, I ran for the position of vice president of the US
19 Airline Pilots Association.
- 20 Q. When was that? 09:45:29
- 21 A. In February -- January through March of 2012.
- 22 Q. Okay. And did -- so you ran as a West Pilot and who was
23 your opponent?
- 24 A. My opponent was Steven Bradford.
- 25 Q. Okay. Did any other West Pilots run for office at the 09:45:47

United States District Court

JEFFREY KOONTZ - Direct

- 1 same time? 09:45:49
- 2 A. Yes.
- 3 Q. Who ran for office at the same time with you?
- 4 A. There was Eric Ferguson and he was a person I've known
- 5 since we familiar with each other since the beginnings of USAPA 09:45:59
- 6 and the threats to the West Pilot group and he ran as president
- 7 and I ran as vice president. We had campaign materials, a
- 8 website, www.fergusonforpresident.com.
- 9 Q. Since you did not introduce yourself as vice president of
- 10 USAPA, I assume you didn't win the election? 09:46:20
- 11 A. No.
- 12 Q. Approximately how many votes, though, did you garner in
- 13 the election, if you can recall?
- 14 A. About 38 percent of the vote I think.
- 15 Q. Have you become involved in any other USAPA activities 09:46:36
- 16 since you joined it?
- 17 A. Yes.
- 18 Q. And what is that, please.
- 19 A. Currently, Captain Gary Hummel appointed me when he began
- 20 his administration in the spring of 2012 and he appointed me to 09:46:49
- 21 the position of the vice-chairman of the Grievance Committee.
- 22 Q. And you took that position once it was offered to you?
- 23 A. Yes.
- 24 Q. And why was that?
- 25 A. Because it's an opportunity to participate in what I think 09:47:02

United States District Court

JEFFREY KOONTZ - Direct

- 1 is probably the most vital part of any sort of labor 09:47:07
2 organization, which is the protection of the Collective
3 Bargaining Agreement, and also the representation of pilots,
4 employees, in disciplinary proceedings.
- 5 Q. Currently, as far as you know, are there any West Pilots 09:47:22
6 who are committee chairpersons?
- 7 A. Yes.
- 8 Q. And which committee is that?
- 9 A. It's the Hotel Committee.
- 10 Q. So there are no other West Pilots that are committee 09:47:31
11 chairmen of any other committees; is that right?
- 12 A. No.
- 13 Q. And do you know what the current composition of the USAPA
14 Merger Committee is?
- 15 A. Yes. 09:47:44
- 16 Q. And what that, please, Mr. Koontz?
- 17 A. It's four East Pilots and two West Pilots.
- 18 Q. And with respect to the Merger Committee, can you tell the
19 Court what the relationship is, if you know, between the Merger
20 Committee and the BPR? 09:47:58
- 21 A. The Merger Committee presents a product to the BPR for
22 approval.
- 23 Q. And does the BPR give instructions to the Merger Committee
24 on issues like seniority?
- 25 A. Yes. 09:48:19

United States District Court

JEFFREY KOONTZ - Direct

- 1 Q. And does the BPR give some instructions also to the 09:48:19
2 Grievance Committee on how grievances should be handled?
- 3 A. Yes.
- 4 Q. So the BPR is active in providing guidance as, far as you
5 know based upon your firsthand knowledge, guidance to the 09:48:29
6 committees and what the committees are supposed to be
7 attempting to achieve?
- 8 A. Yes. And the Grievance Committee routinely has to brief
9 the Board of Pilot Representatives to receive permission before
10 we do anything, I'll call it, major such as file a claim in 09:48:45
11 federal court which we have done.
- 12 Q. So in your role as a member of the Grievance Committee,
13 you also come in contact periodically with the BPR; is that
14 correct?
- 15 A. Yes. 09:49:02
- 16 Q. I would like now to move to -- I referred to in my opening
17 as MOU II; okay? Can you describe for the Court what MOU II is
18 as you understand it?
- 19 A. The MOU II, as I understand it, is a complete Collective
20 Bargaining Agreement. It incorporates all of the provisions of 09:49:17
21 what would be in any sort of Collective Bargaining Agreement
22 and pay, work rules, scheduling. It's all sections.
- 23 Q. And when was the first time you heard about MOU II?
- 24 A. January of 2013.
- 25 Q. And how did that happen? 09:49:37

United States District Court

JEFFREY KOONTZ - Direct

- 1 A. There was communications from the union. This was the MOU 09:49:41
2 II was a product from the Negotiating Committee that went to
3 the Board of Pilot Representatives and it was, of course, in
4 closed session and there was a nondisclosure agreement which
5 the Grievance Committee -- I didn't have an NDA signed so when 09:49:57
6 I first learned about it officially I was in the communications
7 from USAPA when it was presented to all US Airways pilots at
8 large.
- 9 Q. And which month of which year did that occur?
- 10 A. January 2013. 09:50:13
- 11 Q. And did you, during that time period, actually receive
12 information from USAPA about the MOU?
- 13 A. I did.
- 14 Q. Can you tell the Court the type of information that you
15 received? 09:50:25
- 16 A. Written pamphlets were mailed to my house and I know that
17 from -- I understand most all other pilots received those
18 mailings as well and there were frequent e-mail communications
19 from the president of USAPA as well as the Negotiating
20 Committee. 09:50:46
- 21 Q. And did you attend any of the -- what we have heard
22 referred to as the road shows in connection with MOU II?
- 23 A. I did.
- 24 Q. Which ones did you attend?
- 25 A. I attended the first day of Phoenix. 09:50:59

United States District Court

JEFFREY KOONTZ - Direct

- 1 Q. And approximately when was that, Mr. Koontz? 09:51:01
- 2 A. That was in probably third week of -- it was the third
3 week of January 2013.
- 4 Q. And where did that meeting occur?
- 5 A. At the Phoenix Sky Harbor Airport. 09:51:11
- 6 Q. Okay. And were there people there on behalf of USAPA to
7 explain what the MOU II was?
- 8 A. Yes.
- 9 Q. Can you identify who some of the people that were there on
10 behalf of USAPA? 09:51:27
- 11 A. The Negotiating Committee was there and that composed of
12 Dean Colello and --
- 13 Q. At counsel table?
- 14 A. Yes. And Mr. John Owens was there and of course
15 Mr. Roland Wilder, who he was the negotiator, was there, and 09:51:42
16 then Rocky Calveri from the West and Ken Holmes from the West.
- 17 Q. Anybody else there on behalf of USAPA?
- 18 A. There was --
- 19 Q. Was merger counsel there?
- 20 A. I'm sorry. Pat Szymanski was there, yes, as the merger 09:52:07
21 counsel.
- 22 Q. And the road show that you attended in Phoenix,
23 Mr. Koontz, was there any discussion during that presentation
24 about the McCaskill-Bond paragraph 10 in the MOU?
- 25 A. Yes. 09:52:27

JEFFREY KOONTZ - Direct

- 1 Q. And can you recall for the Court what was said about that 09:52:27
2 paragraph?
- 3 A. The impression I had was that it is seniority neutral.
- 4 Q. And did you have any reaction to that?
- 5 A. No. 09:52:39
- 6 Q. Why is that?
- 7 A. Because it made sense.
- 8 Q. Why did it make sense to you?
- 9 A. Because if you go back to what we had, "we" being East and
10 West, in 2007, where we were going through the seniority 09:52:54
11 integration process, the merger process, and what was called
12 for was a finished seniority product. And once that's
13 finished, we would await a joint contract and there was a
14 comprehensive joint contract proposed by US Airways in May of
15 2007. It's known as the Kirby proposal. And the Kirby 09:53:17
16 proposal was seniority neutral.
- 17 Q. Why was it seniority neutral?
- 18 A. Because you're just taking -- you're doing all sections
19 but Section 22, which is the seniority section, and it contains
20 the seniority list and you just drop in section 22. 09:53:34
- 21 Q. What listing was to be dropped in at that point in time?
- 22 A. The Nicolau arbitration award.
- 23 Q. And so when they told you the MOU II was seniority
24 neutral, your reaction was?
- 25 A. It makes sense, just like the Kirby. 09:53:49

United States District Court

JEFFREY KOONTZ - Direct

- 1 Q. Based upon prior experience? 09:53:51
- 2 A. Yes.
- 3 Q. How did you vote on MOU II?
- 4 A. I voted for it.
- 5 Q. Why is that? 09:54:02
- 6 A. Because it represented what was absolutely so elusive,
7 which is a joint contract that increased the pay and benefits
8 for all.
- 9 Q. And taking you back to that road show, who is it that
10 explained that MOU II was seniority neutral as you recall it? 09:54:16
- 11 A. It was the merger counsel, Mr. Szymanski.
- 12 Q. And you recall him making that statement to the West
13 Pilots?
- 14 A. Yes.
- 15 Q. And to yourself? 09:54:28
- 16 A. Yes. I was in the audience.
- 17 Q. Okay. I would like to switch now, just to wrap this up,
18 to the McCaskill-Bond process. You've heard the discussion
19 here in court and other places about that process; correct?
- 20 A. Yes. 09:54:44
- 21 Q. And you heard Mr. Siegel stand up and say that at least
22 Airways believes, in order to have a fair and equitable
23 process, the West Pilots need to be a participant?
- 24 A. Yes.
- 25 Q. Do you have a position on that, Mr. Koontz? 09:54:56

JEFFREY KOONTZ - Direct

- 1 A. As long as seniority is an issue between East and West, 09:54:59
2 absolutely.
- 3 Q. Why do you say that?
- 4 A. Because there is an irreconcilable conflict of interest?
- 5 Q. Between whom? 09:55:10
- 6 A. Between the East and the West on seniority.
- 7 Q. And you heard Mr. Szymanski stand up here and say that the
8 union can fairly represent the West Pilots. What is your
9 reaction to that?
- 10 A. That is absolutely -- in terms of seniority, absolutely 09:55:20
11 not true.
- 12 Q. Why?
- 13 A. Because I would not, as a West Pilot, even endorse the
14 idea that the West can tell the East or anybody else what the
15 seniority list can be and vice versa. That's the whole nature 09:55:34
16 of submitting something such as seniority, which is everything
17 in our careers. Everything is governed by your position on the
18 list.
- 19 And so it's an inherent conflict of interest for
20 anyone to tell anybody else the way it's going to be. It 09:55:46
21 absolutely has to go to a third party neutral which is exactly
22 what McCaskill-Bond codifies.
- 23 Q. And what happened in the Nicolau Award, too; correct?
- 24 A. Yes.
- 25 Q. The Nicolau Award has not been implemented since it was 09:56:03

JEFFREY KOONTZ - Direct

- 1 announced by George Nicolau in '07; correct? 09:56:07
- 2 A. Correct.
- 3 Q. Has that had any economic impact on you, Mr. Koontz?
- 4 A. Yes.
- 5 Q. Can you explain to the Court how? 09:56:15
- 6 A. Well, based upon the integration method that Mr. Nick --
- 7 Arbitrator Nicolau proffered, my position on the combined list
- 8 would be such that I would most likely not be a First Officer
- 9 anymore. I would be a captain on a narrow-body airplane and
- 10 the impact is on the order of a 50 percent increase in pay and 09:56:36
- 11 benefits.
- 12 MR. HARPER: I have no further questions, Your Honor.
- 13 THE COURT: Cross?
- 14 **CROSS - EXAMINATION**
- 15 BY MR. SZYMANSKI: 09:57:05
- 16 Q. So, Mr. Koontz, I understand it was president Hummel who
- 17 appointed you to the Grievance Committee; yes?
- 18 A. Yes.
- 19 MR. HARPER: Your Honor, I can't hear.
- 20 MR. SZYMANSKI: I'm sorry, Your Honor. I'll speak 09:57:27
- 21 up.
- 22 THE COURT: Just move the microphones closer to you.
- 23 MR. SZYMANSKI: Okay. How's that? Does that sound
- 24 better? Thanks.
- 25 Okay. 09:57:39

United States District Court

JEFFREY KOONTZ - Cross

1 BY MR. SZYMANSKI:

09:57:39

2 Q. And when you testified about what was required by the
3 USAPA constitution, which is Exhibit 201 on page eight -- can
4 we get that up on -- I want to show you a provision in the
5 constitution in the objective section and ask you whether or
6 not that is the section you were referring to.

09:57:58

7 COURTROOM DEPUTY: Counsel, are we using a computer
8 or do you need me to pull the exhibit? Are you using the
9 computer?

10 MS. KROLL: Yes.

09:58:18

11 MS. AXEL: What exhibit was this?

12 MR. SZYMANSKI: It's Exhibit 201, page eight.

13 MS. KROLL: It's 117. It's a duplicate.

14 BY MR. SZYMANSKI:

15 Q. I'm sorry. It's your Exhibit 117. I was referring to the
16 original exhibit number that we had but it's 117. And I am
17 asking you about Section 8, paragraph D. That is the section
18 you were talking about?

09:58:31

19 A. Yes.

20 Q. And you also indicated that -- and you talked about an
21 organization that you formed with Eric Ferguson, that's
22 Leonidas, LLC?

09:59:04

23 A. Yes.

24 Q. And the position of Leonidas, LLC, is that USAPA must
25 implement the Nicolau list in merging seniority; is that

09:59:34

JEFFREY KOONTZ - Cross

1 correct? 09:59:37

2 A. Yes.

3 Q. And it's Leonides's position that they will not agree to
4 any changes in the Nicolau list; is that correct?

5 A. Yes. 09:59:47

6 Q. And then let me ask you a few things about what you knew
7 in early January of 2013 as the Memorandum of Understanding was
8 beginning to go out for a vote among the pilots.

9 You were aware, were you not, that the Nicolau Award
10 was not included in that agreement? 10:00:18

11 A. No, I wasn't.

12 Q. Can we put a copy of the MOU before you and ask you where
13 it is in that agreement.

14 A. Well, that would be pointless because -- can I answer?

15 Q. Yes, absolutely? 10:00:33

16 A. Because it's a recital. I mean, why would you recite
17 something which is already going to be incorporated into it?
18 It doesn't make any sense. It didn't need specific
19 acknowledgment.

20 Q. Okay. And that is because of your position that you've 10:00:46
21 explained, that the Memorandum of Understanding was the single
22 agreement that is referred to in the Transition Agreement?

23 A. The memorandum, yes, it is the single agreement referred
24 to in the TA.

25 Q. But you're not saying that the Nicolau Award was otherwise 10:01:02

JEFFREY KOONTZ - Cross

- 1 explicitly included in the Memorandum of Understanding? 10:01:05
- 2 A. It was not explicitly acknowledged.
- 3 Q. Okay. And you were aware at that point that the
- 4 Memorandum of Understanding would terminate the Transition
- 5 Agreement upon the effective date? 10:01:19
- 6 A. Correct.
- 7 Q. And you were aware that the Memorandum of Understanding
- 8 referred any seniority dispute to a process of seniority
- 9 integration process that was consistent with McCaskill-Bond?
- 10 A. No, not a dispute, not a dispute. 10:01:35
- 11 Q. What were you aware of?
- 12 A. It was aware the McCaskill-Bond is a process for merging
- 13 corporate entities after December of 2007, that if there are
- 14 different unions as would be the case hypothetically between US
- 15 Airways and American Airlines, that McCaskill-Bond law would be 10:01:53
- 16 used. It was not used in Delta or Northwest or
- 17 Continental/United because they were both ALPA.
- 18 Q. Yes.
- 19 A. So in terms of resolving the dispute, no.
- 20 Q. Okay. And you were aware at that point that USAPA, as an 10:02:16
- 21 organization, was opposed to the Nicolau Award, were you not?
- 22 A. Very aware of it even though you are my bargaining agent.
- 23 Q. I am not going to argue with you about that. It's your
- 24 statement of opinion and that is fine.
- 25 Do you know what the approximate ratio of East Pilots 10:02:43

JEFFREY KOONTZ - Cross

1 to West Pilots is? Is it approximately two to one East versus 10:02:48
2 West?

3 A. Yes.

4 COURTROOM DEPUTY: Can everyone make sure your phones
5 are turned off. We're getting feedback. 10:03:42

6 BY MR. SZYMANSKI:

7 Q. The irreconcilable conflict that you referred to between
8 USAPA and West Pilots, that irreconcilable conflict is a
9 conflict over the unmodified Nicolau Award, it not?

10 A. No. 10:03:58

11 Q. So what is it?

12 A. It's inherent in each of us to fulfill what is best for us
13 as individuals and then collectively with those who are
14 similarly situated.

15 Q. So is that any different a conflict than a portion of 10:04:13
16 USAPA's membership who were interested in a pension issue on
17 the East but not a similar pension issue on the West?

18 A. I don't understand the question.

19 Q. Supposing, for example, we have a grievance brought by a
20 West member. Are you saying, then, that only a West member can 10:04:37
21 represent him in the grievance?

22 A. Not at all, no. Because it's the common benefit. I mean,
23 what is beneficial, and I can't think of a single grievance
24 anywhere in the contract which would not be mutually beneficial
25 for East or West even though we have separate Collective 10:04:57

JEFFREY KOONTZ - Cross

1 Bargaining Agreements right now, whether they are -- whether 10:05:00
2 it's discipline or contractual, scheduling, work rules and so
3 forth.

4 Q. For example, you're involved in a grievance involving Ed
5 Myers, who is a West Pilot; correct? 10:05:14

6 A. Yes.

7 Q. That's a termination grievance. He was terminated as a
8 pilot?

9 A. Yes. Yes.

10 Q. And that is a grievance that USAPA has taken -- has, in 10:05:19
11 fact, filed legal action to compel the company to choose an
12 arbitrator. Yes?

13 MR. HARPER: I don't know the answer to this. Is
14 this supposed to be public information or is it confidential?

15 THE COURT: I can't hear you, Mr. Harper. 10:05:40

16 MR. HARPER: I just don't know if this is supposed to
17 be confidential as part of a grievance process or can it be
18 discussed?

19 THE COURT: Generally, that is resolved by agreement.

20 MR. SZYMANSKI: It was a court case, Your Honor. 10:05:54

21 THE COURT: It's a court case now. Okay. So it's
22 public.

23 THE WITNESS: I can speak to some of it and,
24 Mr. Szymanski, the issue that I have is we are going to go to
25 arbitration for this individual next month and it is obviously 10:06:04

JEFFREY KOONTZ - Cross

1 against the company and -- 10:06:08

2 BY MR. SZYMANSKI:

3 Q. I don't want you to go into any litigation strategy but I
4 am asking about the court case that was filed.

5 A. Well, I don't think you want to ask me why we had to go to 10:06:18
6 court. And it's because USAPA no-funded our West Pilot at the
7 worst possible time. Unbelievable. They went to the GRB --

8 Q. Before Captain Hummel --

9 THE COURT: Wait, wait, wait. All right.

10 Mr. Koontz, wait until a question is asked. 10:06:34

11 And, Mr. Szymanski, wait until he answers.

12 MR. SZYMANSKI: That was before --

13 THE COURT: I'm sorry. And also until I finish.

14 MR. SZYMANSKI: Yes, Your Honor.

15 THE COURT: All right. Go ahead and ask a question. 10:06:46

16 BY MR. SZYMANSKI:

17 Q. That was before Captain Hummel took office; correct?

18 A. Yes.

19 Q. And there are other grievances that are pending?

20 A. Yes. 10:06:56

21 Q. On behalf of West Pilots. Yes?

22 A. Yes.

23 Q. That USAPA is prosecuting?

24 A. Yes.

25 Q. An ACARS grievance for example? 10:07:03

JEFFREY KOONTZ - Cross

- 1 A. Yes. 10:07:07
- 2 Q. And a grievance involving LOA-5?
- 3 A. Yes.
- 4 MR. SZYMANSKI: I don't have anything further, Your
5 Honor. 10:07:15
- 6 THE COURT: Redirect?
- 7 MR. HARPER: None, Your Honor.
- 8 THE COURT: All right. You may step down.
9 We're taking a break for 20 minutes.
- 10 COURTROOM DEPUTY: All rise. 10:07:22
- 11 (Witness excused.)
- 12 (Recess at 10:29; resumed at 10:29.)
- 13 THE COURT: Please be seated.
14 Your next witness?
- 15 MR. HARPER: Captain Holmes. 10:29:04
- 16 KENNETH HOLMES,
17 called as a witness herein by the Plaintiffs, having been first
18 duly sworn or affirmed to testify to the truth, was examined
19 and testified as follows:
- 20 COURTROOM DEPUTY: State your name for the record, 10:29:14
21 spell your last name, please.
- 22 THE WITNESS: Kenneth Holmes. H-O-L-M-E-S.
- 23 **DIRECT EXAMINATION**
- 24 BY MR. HARPER:
- 25 Q. Captain Holmes, by whom are you currently employed? 10:29:42

KENNETH HOLMES - Direct

- 1 A. US Airways. 10:29:44
- 2 Q. And did you work for America West before that?
- 3 A. Yes, I did.
- 4 Q. When were you first hired by America West?
- 5 A. October of 1990. 10:29:53
- 6 Q. And your current position at US Airways is captain; is
7 that correct?
- 8 A. That's correct.
- 9 Q. When did you first become a captain?
- 10 A. I was hired as a captain on the Dash 8. 10:30:02
- 11 Q. When was that?
- 12 A. That was in 1990. I was hired as a captain right off the
13 street.
- 14 Q. Okay. So as I understand, ever since 1990 you've held the
15 position of captain? 10:30:13
- 16 A. No. They got rid of the Dash 8s. There was a period of
17 time, just a little period of time where I was a first officer
18 and the rest of the time I was a captain.
- 19 Q. And are you a member of USAPA?
- 20 A. Yes. 10:30:28
- 21 Q. And how long have you been a member of USAPA?
- 22 A. I joined probably six months after they became the
23 bargaining agent.
- 24 Q. Which would have been approximately mid-2008?
- 25 A. That's correct. 10:30:40

KENNETH HOLMES - Direct

- 1 Q. Are you active on any USAPA committees? 10:30:42
- 2 A. Yes.
- 3 Q. Now, what committee or committees are you active on?
- 4 A. I'm actually on two committees. The first one is the
- 5 Constitutional and Union Operating Committee and the second is 10:30:51
- 6 the Negotiating Advisory Committee. We call it the NAC.
- 7 Q. Okay. Today I just want to focus on the Negotiating
- 8 Advisory Committee. Is that okay?
- 9 A. Yes.
- 10 Q. And what position do you have on that committee? 10:31:09
- 11 A. I am just one of the four representatives on the
- 12 committee.
- 13 Q. Four representatives?
- 14 A. There are four on the committee. I am one of the four.
- 15 Q. How many West? 10:31:18
- 16 A. There are two West.
- 17 Q. How many East?
- 18 A. Two.
- 19 Q. What are the responsibilities of the NAC?
- 20 A. We are tasked by the Board of Pilot Representatives, or 10:31:31
- 21 BPR, to negotiate contracts or letters of agreement as
- 22 necessary.
- 23 Q. Okay. And when did you first become a member of the NAC?
- 24 A. May 2012.
- 25 Q. And when you say the NAC is tasked by the BPR to do 10:31:49

KENNETH HOLMES - Direct

- 1 certain things, can you explain to the Court what you mean by 10:31:53
2 that?
- 3 A. Sure. Like for the MOU, for example, they sent us to
4 go -- they had a list of objectives and they sent us to try to
5 get them in a Memorandum of Understanding between the company 10:32:09
6 and we were able to do that. There could be a side letter
7 between a particular committee where they need something done,
8 say these new iPads that are coming out, we are trying to
9 facilitate a iPad Letter of Agreement.
- 10 Q. And so the BPR, in general or specifically sometimes, 10:32:27
11 tells the NAC what to go out and try to accomplish?
- 12 A. That's correct.
- 13 Q. Let's go back to the time that you joined the NAC in May
14 of 2012. Can you recall for the Court what the first bit of
15 activity was that you got involved in during that time period? 10:32:43
- 16 A. Sure. It was the potential merger between American and US
17 Airways.
- 18 Q. And what role or what was the position, the reason for
19 NAC -- the NAC to become involved in that?
- 20 A. Because US Airways and American had just -- I'm sorry, 10:32:58
21 APA, the union representing the pilots for American, had just
22 negotiated a conditional labor agreement, what we call the term
23 sheet, that outlined the wages, work rules, scheduling and
24 benefits package for a merger.
- 25 Q. And what other items? I mean, that agreement that had 10:33:21

KENNETH HOLMES - Direct

- 1 been negotiated between APA and USAPA, did that also have 10:33:25
2 anything -- have anything to do with rates of pay or wages or
3 benefits for pension funds or anything like that?
4 A. Yes. That term sheet covered all of that.
5 Q. Well, let's make sure the Court understands. What do you 10:33:46
6 mean all that?
7 A. It covered rates of pay, retirement benefits, insurance
8 benefits, scheduling, leave of absence, discipline grievance,
9 covers everything, a normal Collective Bargaining Agreement.
10 Q. A complete Collective Bargaining Agreement? 10:34:00
11 A. That's correct.
12 Q. And when you say "rates of pay," are you actually talking
13 about a specific rate for a particular position for a
14 particular airplane within the then US Airways fleet?
15 A. That's correct. It would have fallen into one of the 10:34:17
16 categories, that's correct.
17 Q. So all of that had already been negotiated between APA and
18 US Airways?
19 A. That's correct.
20 Q. And when did that approximately come to the NAC's 10:34:27
21 attention?
22 A. It was shortly before I came on the committee. I believe
23 it was the latter part of April of 2012.
24 MR. HARPER: Can we put up Exhibit 133 perhaps?
25 Q. Captain Holmes, can you identify for us Exhibit 133? 10:34:50

United States District Court

KENNETH HOLMES - Direct

- 1 A. Yes. That's a document I have been referring to, the 10:34:54
2 conditional labor agreement and plan of organization agreement
3 dated 4-13-2012.
- 4 Q. Okay. When this document then came to the attention of
5 the NAC or maybe Captain Hummel, as Mr. Szymanski stated in his 10:35:07
6 opening, what specifically did the NAC set out to do then?
- 7 A. To learn -- to educate ourselves about this document, find
8 out what's in it and --
- 9 Q. And how did the NAC go about doing that?
- 10 A. We met with representatives from the Air Line Pilots 10:35:28
11 Association -- Allied Pilots Association. I'm sorry, APA.
- 12 Q. Over what period of time approximately?
- 13 A. Well, when I got on the committee, that's what we started
14 doing was meeting with them to try to learn more about it.
- 15 Q. And were they cooperative, APA representatives cooperative 10:35:43
16 in telling you about -- telling the NAC about the term sheet?
- 17 A. Yes, they were.
- 18 Q. And at some point in time did the NAC report some of its
19 initial findings back to the BPR?
- 20 A. Yes, we did. 10:36:03
- 21 Q. And just before I move off on to that, you're absolutely
22 clear, I saw what your testimony is, that this Exhibit 133 was
23 negotiated, as far as you understand, exclusively between US
24 Airways and APA?
- 25 A. That is correct. There was no USAPA involvement in that 10:36:21

United States District Court

KENNETH HOLMES - Direct

1 at all. 10:36:23

2 Q. Okay. And so at some point in time, you actually reported
3 back to the BPR and what initially the NAC had found out about
4 the term sheet; is that correct?

5 A. That's correct. 10:36:35

6 Q. Can I show you Exhibit 101, then, please. Can you
7 identify Exhibit 101 for us?

8 A. Yes. That's the first PowerPoint presentation that we
9 gave the BPR after we analyzed the conditional -- that's the
10 term sheet. It's easier to say. 10:36:57

11 Q. And when you say you gave to the BPR, was there a
12 presentation to the BPR?

13 A. Yes, there was.

14 Q. Were you involved in it?

15 A. Yes. 10:37:08

16 Q. And were you involved in all of -- as far as you know, all
17 of the presentations to the BPR with respect to the conditional
18 labor agreement?

19 MR. SILVERMAN: Objection.

20 THE COURT: The basis of your objection? 10:37:24

21 MR. SILVERMAN: He didn't get on the committee until
22 May 2012. He can't know what occurred before that.

23 THE COURT: Sustained.

24 MR. HARPER: Okay.

25

KENNETH HOLMES - Direct

1 BY MR. HARPER: 10:37:32

2 Q. From May 2012 going forward. Were you involved as far as
3 you know in all of the presentations to the BPR?

4 A. Yes.

5 MR. HARPER: Your Honor, I just -- can I have an 10:37:40
6 understanding of what the rules are, how many of them at that
7 table get a chance to object to my questions?

8 THE COURT: Well, if he's handling the
9 cross-examination, then he can make the objection.

10 MR. SILVERMAN: We understand your rules, Judge. I 10:37:54
11 will be handling Mr. Holmes' cross-examination.

12 THE COURT: Okay.

13 BY MR. HARPER:

14 Q. I would like to take you to page two of this document.
15 Look at page two. What information is reflected on page two, 10:38:09
16 Captain Holmes?

17 A. Well, as it states at the top, that's the recent
18 activities with APA. It shows the dates that we met with them
19 and basically what we were doing for that period from April,
20 before I came on the committee, through first of June. 10:38:29

21 Q. Okay.

22 MR. JACOB: And can we go to page seven of
23 Exhibit 101, Davina?

24 Q. What information is shown here, Captain Holmes?

25 A. This shows major concerns that we had identified, 10:38:50

KENNETH HOLMES - Direct

1 shortcomings with the term sheet. 10:38:56

2 MR. HARPER: Davina, can you go to eight?

3 BY MR. HARPER:

4 Q. Is there more information. Those are additional areas of
5 concern? 10:39:07

6 A. There was a number of them, yes.

7 Q. Okay. And part of the -- what was the purpose, then, of
8 bringing these concerns to the BPR's attention?

9 A. So that they could let us know what they would like for us
10 to try to change. I was just saying what was acceptable to 10:39:21
11 them.

12 Q. Didn't the BPR provide guidance or tasks for the
13 Negotiating Committee?

14 A. Yes, they did.

15 Q. And what was -- what were some of those things that the 10:39:33
16 BPR, at this point in time, wanted the NAC to do?

17 A. The parity language we didn't -- they didn't like. The
18 E190 pay they didn't like. They wanted to make sure we had
19 fleet protections and stuff like that.

20 Q. Things like that? 10:39:55

21 A. M'hum.

22 Q. But they didn't have any comments about the base rates of
23 pay or anything that were included in the term sheet; is that
24 correct?

25 A. I don't believe so. Base rates of pay -- it's possible. 10:40:03

KENNETH HOLMES - Direct

- 1 I can't remember for sure but I don't think that was -- the 10:40:08
2 E190 pay was the biggest thing.
- 3 Q. And so the Court understands, what is the E190?
- 4 A. It's the small regional jet that is flown with main line
5 pilots so it would be the smallest airplane in the fleet. 10:40:21
- 6 Q. Okay. And at some point in time, did the NAC attempt to
7 begin negotiations directly with US Airways?
- 8 A. We tried.
- 9 Q. When was that?
- 10 A. I don't remember the exact date but it was after we were 10:40:40
11 tasked by the BPR to see if we could become part of the
12 process.
- 13 Q. And when you say you tried, what do you mean by that?
- 14 A. Well, we contacted the company and initially they said
15 they weren't interested in dealing with us. 10:40:55
- 16 Q. Did they say anything else?
- 17 A. Not really at that time.
- 18 Q. Okay. Did that attitude eventually change?
- 19 A. Yes, it did.
- 20 Q. Approximately when? 10:41:05
- 21 A. Not too long after that. We knew there were upcoming
22 meetings. We asked if we could be involved at the meetings.
23 The company's position was that if you're going to be involved,
24 APA has to approve it.
- 25 Q. And did at some point in time APA say okay? 10:41:18

KENNETH HOLMES - Direct

- 1 A. Yes. They did. 10:41:21
- 2 Q. Now, once you got the NAC got the permission from the APA,
3 can you tell the Court what happened then in general?
- 4 A. Yes. We had a meeting in Phoenix with APA and US Airways.
5 The meeting went well. So I think that dispelled the company's 10:41:34
6 concerns about whatever their concerns may have been at the
7 time.
- 8 Q. And once you got into direct discussions with both APA and
9 US Airways, what did the NAC attempt to accomplish?
- 10 A. We were trying to get an agreement where we would become 10:41:51
11 part of the process where we could have some of our concerns
12 brought forward so that we could have them addressed.
- 13 Q. The concerns like what's reflected on the screen in front
14 of you?
- 15 A. Correct. 10:42:06
- 16 Q. Okay. And then was the NAC eventually successful in doing
17 that?
- 18 A. Yes.
- 19 Q. Can you explain to the Court, did this lead to any result?
- 20 A. Yes, it did. It led to the MOU I being negotiated and we 10:42:16
21 reached a tentative agreement on that document.
- 22 Q. Approximately when, Captain Holmes?
- 23 A. I believe it was in August.
- 24 MR. HARPER: Can we show Captain Holmes Exhibit 7?
- 25 Q. Captain Holmes, can you identify Exhibit 7 for us? 10:42:39

KENNETH HOLMES - Direct

- 1 A. Yes. That's what we refer to as MOU I. It was tentative 10:42:41
2 agreement date August 20, 2012.
- 3 Q. And the initials in the top right-hand corner are whom, if
4 you recognize them?
- 5 A. From the company, Paul Jones; and from USAPA, it would be 10:42:54
6 Negotiating Committee chairman Dean Colello.
- 7 Q. Okay. Once this document was negotiated in this form,
8 what did the NAC do with it next?
- 9 A. We presented it to the BPR.
- 10 Q. Approximately when was this document presented to the BPR? 10:43:11
- 11 A. I believe it was the very next day, the 21st.
- 12 Q. Did you participate in that presentation to the BPR?
- 13 A. Yes.
- 14 Q. In general, will you tell the Court what the BPR's
15 reaction was to the work that the NAC had just completed? 10:43:25
- 16 A. They weren't very pleased.
- 17 Q. What do you mean by that?
- 18 A. Well, there were some aspects they liked but overall, they
19 did not like the document. They were still upset about the
20 E190 pay, a few other things. Some of them wanted retroactive 10:43:41
21 pay. They thought that should be in there.
- 22 MR. HARPER: Okay. Before we move on, Davina, can
23 you pull up paragraph nine for us, please.
- 24 Q. Captain Holmes, I want to draw your attention here to
25 paragraph nine. That is the seniority integration process 10:44:00

United States District Court

KENNETH HOLMES - Direct

- 1 portion of MOU I; correct? 10:44:05
- 2 A. Correct.
- 3 Q. And it generally refers to a process, McCaskill-Bond
4 process; correct?
- 5 A. Yes. 10:44:13
- 6 Q. And this paragraph was in the MOU I when it was presented
7 to the BPR on August 21, 2012?
- 8 A. Yes.
- 9 Q. Before I go to the other issues that the BPR had with
10 respect to the contents of MOU I, did anyone on the BPR express 10:44:26
11 any concerns at all with this provision?
- 12 A. No, not one word.
- 13 Q. Paragraph nine?
- 14 A. That's correct.
- 15 Q. That's what we're talking about. 10:44:38
- 16 MR. HARPER: Okay. Davina, can we move on, then, to
17 Exhibit 104?
- 18 BY MR. HARPER:
- 19 Q. Can you identify Exhibit 104 for us, Captain Holmes?
- 20 A. That's the PowerPoint presentation that we gave in 10:44:54
21 conjunction with MOU I to the BPR. It's dated 21 August, 2012.
- 22 Q. And I don't have it in my notes. What's the page where --
23 I think it's 33.
- 24 MR. HARPER: Can we go to page 33?
- 25 Q. We have it in color today. Captain Holmes, can you 10:45:17

KENNETH HOLMES - Direct

- 1 explain to the Court what is reflected here? 10:45:21
- 2 A. Yes. This is where we, being the members of the NAC,
3 graded ourselves on how we did based on what we believed the
4 BPR was asking us to do.
- 5 Q. So the written words are the tasks that the BPR -- 10:45:36
- 6 A. That's correct. That's correct.
- 7 Q. -- had given the NAC back in the summer of 2012?
- 8 A. Yes.
- 9 Q. And when you came back to the BPR, the NAC graded itself
10 and the green indicating what? 10:45:52
- 11 A. The green indicated we felt we fully accomplished what
12 they asked us to get.
- 13 Q. And the yellow reflecting what?
- 14 A. We came close but weren't able to achieve everything they
15 wanted. 10:46:04
- 16 Q. And the big red?
- 17 A. We didn't get it.
- 18 Q. What was the reaction to the BPR, as you recall it, to the
19 presentation that the NAC made with respect to MOU I?
- 20 A. Well, they appreciated the presentation but it -- it still 10:46:23
21 fell short of what they wanted.
- 22 Q. Did they say anything to the NAC?
- 23 A. Yes. After we gave the presentation, they just -- they
24 gave us a list of things where they thought it was deficient.
25 Ultimately, they took a vote. They rejected it and voted to 10:46:42

KENNETH HOLMES - Direct

- 1 send it out with a recommendation to not ratify. 10:46:47
- 2 Q. Let's go back over that. Eventually the BPR took a vote
3 and they did what.
- 4 A. They rejected it so they did not accept this agreement.
- 5 Q. Okay. Was that vote unanimous, if you recall? 10:46:59
- 6 A. I don't recall the vote count. I'm sorry.
- 7 Q. I won't get into that, then.
- 8 Then what did they do with respect to the membership?
- 9 MR. SILVERMAN: Objection.
- 10 THE COURT: I'm sorry? 10:47:13
- 11 MR. SILVERMAN: Objection.
- 12 THE COURT: On what basis?
- 13 MR. SILVERMAN: Ambiguous. What did they do?
- 14 THE COURT: Sustained.
- 15 BY MR. HARPER: 10:47:19
- 16 Q. What action did the BPR take with respect to the
17 membership in connection with MOU I?
- 18 A. They voted to send it out to the pilots with a
19 recommendation to not ratify so, in other words, they did not
20 want the pilots to vote yes on this agreement. 10:47:35
- 21 Q. Got it.
- 22 And in connection with MOU I, even though we've
23 already gone through the actual exhibit, was there any other
24 money that was agreed to in the context of MOU I that was not
25 specifically included in the body of MOU I? 10:48:00

KENNETH HOLMES - Direct

- 1 A. There was a totally separate agreement for a lump sum of 10:48:06
2 \$40 million that was separate from the MOU I, yes.
- 3 Q. Can you explain to the Court what the purpose of this \$40
4 million payment was?
- 5 A. Most people just called it -- it's just an enhancement to 10:48:21
6 get the pilots to vote yes is really all it was.
- 7 Q. To get the pilots to vote yes on the MOU?
- 8 A. Yes.
- 9 Q. And what was to happen with the \$40 million?
- 10 A. The \$40 million was to be distributed to the pilots in a 10:48:35
11 manner that BPR would decide at a later date after the
12 POR date.
- 13 Q. And US Airways agreed the this \$40 million payment?
- 14 A. That's correct.
- 15 Q. In the summer of 2012? 10:48:46
- 16 A. Yes.
- 17 Q. In the context of MOU I?
- 18 A. Well, it wasn't part of MOU I. It was a totally separate
19 thing; okay? But it was related but it was not in the body of
20 MOU I. I just want to make that clear. 10:49:01
- 21 Q. It was an enticement to have the US Airways pilots vote in
22 favor of MOU?
- 23 A. Sure. That's it.
- 24 Q. Now, at some point in time, did the BPR instruct NAC to do
25 anything further with respect to US Airways? 10:49:16

KENNETH HOLMES - Direct

- 1 A. Yes. 10:49:19
- 2 Q. What did they ask you to do?
- 3 A. They asked us to -- they had a list of items that they
4 wanted us to go back and to revisit to see if we could make
5 positive adjustments to them, let's say. 10:49:34
- 6 Q. Okay. And what did the NAC do after receiving that
7 instruction from the BPR?
- 8 A. We informed the company that we wanted to get back
9 together and talk about the issues and why the BPR didn't vote
10 to affirm it and they agreed to do that. 10:49:51
- 11 Q. And where were these meetings supposed to take place?
- 12 A. They were going to take place in Dallas at APA
13 headquarters.
- 14 Q. And did the NAC actually go to Dallas?
- 15 A. Yes, we did. 10:50:06
- 16 Q. What happened when the NAC got to Dallas?
- 17 A. When we got to Dallas, we were told by the company's
18 representatives that they thought they might be close to
19 signing the nondisclosure agreement with American Airlines.
20 That would be US Airways and American Airlines signing this. 10:50:20
21 And if they did, they wouldn't be able to talk to us. So we
22 were told to just hang out for half an hour and they would
23 know.
- 24 Q. And what happened after the 30 minutes or so?
- 25 A. It really didn't take that long. The company, both 10:50:32

KENNETH HOLMES - Direct

1 companies did sign the nondisclosure agreement. The company 10:50:36
2 representatives left and no discussions took place.
3 Q. And this meeting or event that you are talking about
4 occurred approximately when, Captain Holmes?
5 A. I believe it was within a couple of weeks of this BPR 10:50:52
6 meeting.
7 Q. So sometime within two weeks, approximately, after August
8 21?
9 A. That's my recollection of it, yes.
10 Q. So when the company said, "We can't talk any further," 10:51:04
11 were there any further negotiations then with US Airways over
12 an MOU?
13 A. No, not at that time. Once they walked away from the
14 nondisclosure agreement, we never discussed it again until
15 later in the year. 10:51:24
16 Q. What do you mean by "later in the year" then?
17 A. In December. I guess they got to the point in the merger
18 talks to where they were really bearing fruit so they asked us
19 to come back and retalk about the issues that we had with the
20 nondisclosure -- I'm sorry, with the MOU and we did that in 10:51:41
21 Dallas.
22 Q. And did you actually participate in those discussions?
23 A. Yes.
24 Q. And who else was there in Dallas participating in these
25 negotiations on behalf of USAPA? 10:51:53

United States District Court

KENNETH HOLMES - Direct

- 1 A. Oh, on behalf of USAPA, it was the Negotiating Advisory 10:51:55
2 Committee so that would be Dean Colello; John Owens; Rocky
3 Calveri; myself; Roland Wilder; counsel for the East, Brian
4 O'Dwyer; Steve Smyser was there.
- 5 Q. Steve? 10:52:12
- 6 A. He is their executive vice president for USAPA. Gary
7 Hummel was there, USAPA president.
- 8 Q. Okay. And did others periodically participate in these
9 discussions by phone?
- 10 A. Yes. 10:52:24
- 11 Q. Can you explain to the Court some of those who
12 participated by phone?
- 13 A. Sure. We had a conference call over scope. Several of
14 them, Paul Diorio was on that, Pat O'Neil was on that call,
15 there were several others. I can't remember their names right 10:52:41
16 now that were also on that call. We also had calls with Merger
17 Committee, Pat Szymanski, Jess Pauley were on those calls.
- 18 Q. And these negotiations began approximately in December of
19 2010. Did I understand correctly?
- 20 A. December 10, 2012, m'hum. 10:53:00
- 21 Q. Okay. Can you describe for us how the initial part of
22 those meetings and negotiations went?
- 23 A. Sure. Initially, we got there and for the first day,
24 maybe just a hair longer. Most of the meetings were group
25 where we had everybody. There was a lot of people, probably 10:53:19

KENNETH HOLMES - Direct

1 around 30 people. So it didn't take long to figure out that it 10:53:22
2 would be much better to work in small groups.

3 Q. One of the general groups, bigger groups, what are some of
4 the topics or issues, if you recall, that were discussed in
5 that way? 10:53:38

6 A. Right. Well, initially, we -- the framework was part of
7 it. So MOU was decided to be the -- where the starting point,
8 what we would work off of MOU I.

9 Q. Off of I?

10 A. Off of MOU I and further develop that because now we were 10:53:52
11 bringing in American Airlines so now it was going to be a
12 four-party agreement instead of the previous three-party
13 agreement. We verified the \$40 million was still, in fact,
14 from MOU I and there were a host of other issues.

15 Q. And in context, then, of MOU I, was, still, the 10:54:10
16 conditional labor agreement that you previously talked to us
17 about still the base economic document for discussions
18 initially in Dallas?

19 A. It was the baseline contract, yes.

20 Q. Did that subsequently change while you were in Dallas? 10:54:29

21 A. Yes. A couple of days later.

22 Q. And can you describe to the Court what the change was?

23 A. Right. Well, the APA had just negotiated the 2012
24 Collective Bargaining Agreement with their company and it
25 had -- 10:54:48

KENNETH HOLMES - Direct

- 1 Q. APA had negotiated a 2012 agreement with whom? 10:54:50
- 2 A. With their company, American Airlines.
- 3 Q. Okay.
- 4 A. Okay. And that document had an amount of savings in it
- 5 and the pay rates were better. There's also some things that 10:55:04
- 6 they were able to address, problems we had in MOU I mainly with
- 7 the parity language. They were able to address that in that
- 8 contract and so we had a choice whether to use that as a
- 9 baseline or stick with the term sheet as a baseline and we
- 10 elected -- 10:55:27
- 11 Q. Who had that choice?
- 12 A. The parties that were there.
- 13 Q. Okay.
- 14 A. And we were asked, as USAPA, which -- what would we like
- 15 to do and we agreed to switch to the 2012 APA CBA as a new 10:55:36
- 16 baseline.
- 17 Q. As a new baseline?
- 18 A. As a new baseline.
- 19 Q. And that document, like the APA term sheet that we have
- 20 been talking about, had all of the economics already included 10:55:51
- 21 in the 2012 Collective Bargaining Agreement?
- 22 A. That's correct. It's something like 600 pages long. It
- 23 covers every aspect of a pilot's life working for the company.
- 24 Q. Okay.
- 25 Now, at some point in time, did the parties get away 10:56:09

KENNETH HOLMES - Direct

- 1 from the general type of discussions and break down into 10:56:14
2 smaller groups?
- 3 A. Yes. We did.
- 4 Q. And can you tell the Court some of the groups that you
5 broke down into or some of the groups that you joined? 10:56:23
- 6 A. Sure. Participated in most of them but the scope would be
7 one. We were talking about block hours, aircraft, to make sure
8 that the deliveries that we had on order would come to US
9 Airways, the ones that American had on order would go to the
10 American side, benefits. We needed some interim agreements on 10:56:43
11 those, stuff like that.
- 12 Q. Okay. Before you get to Dallas on December 10, Captain
13 Holmes, are you aware of any instructions that the NAC was
14 given by the BPR with respect to renegotiating or changing the
15 McCaskill-Bond language that was in MOU I? 10:57:13
- 16 A. None. Don't know of anything.
- 17 Q. And it was not any of the objectives that you heard the
18 BPR talk about when you made the presentation on August 21 or
19 the NAC made the presentation?
- 20 A. That's correct. There was no comments on it. 10:57:31
- 21 Q. At some point in Dallas, did you personally get involved
22 in discussions about the McCaskill-Bond language?
- 23 A. Yes.
- 24 Q. And when did that happen for the first time, Captain
25 Holmes? 10:57:46

KENNETH HOLMES - Direct

- 1 A. The first time was midday on December 2012. 10:57:46
- 2 Q. Can we show you Exhibit No. 66, please. Can you identify
3 Exhibit 66 for us, Captain Holmes?
- 4 A. Yes. That was the -- we had just -- we had moved some
5 paragraph numbers around so McCaskill-Bond stuff now is in 10:58:13
6 paragraph 12.
- 7 Q. At this point in time?
- 8 A. At this point in time it's paragraph 12. It moves around
9 as time goes on. But, yes, this is the language that was
10 submitted by Pat Szymanski. 10:58:28
- 11 Q. Now, how did you personally get involved, if at all, in
12 discussions about this Exhibit 66?
- 13 A. We had a scheduled conference call with the Merger
14 Committee for that day. It was early afternoon from what I
15 recall and so all of the members of the NAC were there as well 10:58:49
16 as the support people, Gary Hummel, Steve Smyser and the legal
17 team.
- 18 Q. And what was the discussion that you and Mr. Szymanski
19 have about this Exhibit 166, and particularly what part of it
20 did you have a discussion about? 10:59:08
- 21 A. Right. Well, we went through it and the top part seemed
22 fine until we got to the last paragraph; and as soon as I read
23 that, I immediately objected.
- 24 Q. Why?
- 25 A. Why? Because I didn't agree with it. 10:59:21

KENNETH HOLMES - Direct

- 1 Q. And why didn't you agree with it? 10:59:25
- 2 A. Because he's saying the MOU not the single agreement. I
3 asked Pat Szymanski why is this in here and he said, "Because I
4 overheard pilots talking at the BPR meeting. They were saying
5 that the MOU is going to trigger paragraph 6 A of the 10:59:40
6 Transition Agreement causing the Nicolau to be implemented,"
7 and he wanted to stop that line of thinking.
- 8 Q. Did he tell you that?
- 9 A. Yes, he did. Everybody in the room heard that, yes,
10 that's correct. And he went on to say that it eliminates the 10:59:55
11 Transition Agreement. My response was, "How could it?"
- 12 And he says, "It just does."
- 13 I said, "Well, I don't understand how it can when
14 every aspect of the Transition Agreement has not been complied
15 with yet," and then -- 11:00:10
- 16 Q. Did anybody else get involved at this point in time in the
17 discussion?
- 18 A. No, not at this point in time. He went on to say that he
19 just -- after that comment he said, "It just does."
- 20 And I said, "Well, I think that's up for a court to 11:00:29
21 decide," to which Gary Hummel replied, "Absolutely." So Gary
22 agreed with me at that point in time and he asked Pat -- well,
23 I'll skip that for a minute.
- 24 Q. Yes. Did you say anything about if this stays in, what
25 the effect is going to be down the road? 11:00:48

United States District Court

KENNETH HOLMES - Direct

- 1 A. Yes, I did. 11:00:51
- 2 Q. What did you tell him?
- 3 A. I told him with this language they are going to loss all
4 of West Pilots vote. They are also going to lose the three
5 West BPR members' votes. They are not going to support it. 11:00:59
6 And I asked him, "Can you afford to do that?"
- 7 There was a pause and Gary Hummel asked Pat Szymanski
8 if he could soften the language up. Pat said, "I'll look at
9 it."
- 10 Q. At this point on the 12th, any more discussion about the 11:01:14
11 single agreement language McCaskill-Bond that you can recall?
- 12 A. No. After Gary asked him to revisit the language, see if
13 he could soften it up, Pat agreed. As I recall, that was the
14 end of the discussion and they hung up and we moved on to some
15 other topic. 11:01:36
- 16 Q. Okay. At some point in time did you see some different
17 language or additional language in connection with the
18 paragraph 12 or 10 of the MOU?
- 19 A. Yes. It was about a day, maybe a day and a half later I
20 believe. 11:01:52
- 21 MR. HARPER: Can we put up Exhibit 93, please. He
22 may need to see the entire --
- 23 A. I'm familiar with the document.
- 24 Q. Let's just go, then, to the end. I want to highlight
25 there. 11:02:16

United States District Court

KENNETH HOLMES - Direct

- 1 When did you see this language, Captain Holmes? 11:02:18
- 2 A. About a day. Like I said, I believe it was like a day,
3 day and a half later. We had another conference call with the
4 Merger Committee, Pat Szymanski put forth this language. He
5 said it was completely neutral. 11:02:34
- 6 Q. How do you know it's from Mr. Szymanski?
- 7 A. Well, on the right, the comment section.
- 8 Q. And that is PJS10, colon, our new version; is that right?
- 9 A. That's correct.
- 10 Q. And this is the first time you saw this language? 11:02:53
- 11 A. I don't recall if it was in this particular e-mail but we
12 had it to look at, yes, m'hum.
- 13 Q. And what was your reaction to it?
- 14 A. Well, I still objected. I said, "If it's neutral, why
15 does it even need to be in there?" 11:03:08
- 16 And Pat Szymanski said, "It just needs to be in the
17 MOU," or it needs to -- something to that effect. It has to be
18 in there.
- 19 I said, "Okay." I said, "Gary, I need you to talk
20 to" -- 11:03:20
- 21 Q. Who are you talking to?
- 22 A. Gary Hummel. "I need you to tell the three West Pilot
23 representatives on our next BPR conference call about this
24 language to see if they are okay with it," and he said he
25 would. 11:03:32

KENNETH HOLMES - Direct

1 Q. And did he as far as you know? 11:03:33

2 A. No, he did not.

3 Q. Okay.

4 A. I asked him about it and he said he forgot. He would do
5 it on the next call. 11:03:43

6 Q. What happened on the next call?

7 A. He forgot again. I continued to bug him about it for the
8 next two, three days. He finally had had enough. He got
9 upset. He said a couple of cuss words. He said, "We're done.
10 This is it. I do not want to hear another word about it." 11:03:56

11 At that point, this was actually paragraph 10H at
12 that point and as far as I'm concerned, it was locked in stone
13 at that point.

14 Q. So he objected to the single agreement language and it was
15 changed; correct? 11:04:15

16 A. Correct.

17 Q. And you objected several times to 10H and you were told,
18 "We're done. It's over"?

19 A. That was the eventually outcome. "We're done. It's
20 over," yes. 11:04:27

21 Q. You were told that by Captain Hummel?

22 A. That is correct.

23 Q. Okay.

24 MR. HARPER: Davina, can we go to Exhibit 24?
25

KENNETH HOLMES - Direct

1 BY MR. HARPER: 11:04:42

2 Q. And can you identify Exhibit 24 for us, Captain Holmes?

3 Maybe you need to go to the last sheet so that you can see the

4 end of the document. Not there but the signature part. Just

5 so maybe Captain -- 11:05:01

6 A. Oh. Okay. That would be the final version of what we

7 call MOU II.

8 Q. And the 10H language is found in the final version of MOU

9 II?

10 A. That's correct. 11:05:14

11 Q. I would like to go to what happened next. When this was

12 negotiated, what involvement did you next have?

13 A. Well, our next involvement would be to -- we presented it

14 to the BPR.

15 Q. And approximately when did that occur? 11:05:33

16 A. January 2.

17 Q. How long did you stay in Dallas?

18 A. Oh, I believe from December 10, I believe we left on --

19 Dean Colello and I left on December 22 and went to Charlotte to

20 brief the BPR on our -- where we were, the current status. 11:05:51

21 John Owens and Rocky Calveri and Roland Wilder stayed in Dallas

22 to finish up discussions on scope.

23 Q. Did you ever go back to Dallas to finish up?

24 A. No.

25 Q. Okay. Then the presentation was made to the BPR 11:06:05

KENNETH HOLMES - Direct

- 1 approximately when? 11:06:10
- 2 A. After this was signed on the -- I believe it was the
3 second of January.
- 4 Q. Okay. And how many days of presentation or discussions
5 did the BPR have over this? 11:06:22
- 6 A. A couple. They finally ratified it or approved it on
7 January 4.
- 8 Q. What was the BPR in general's reaction initially to MOU
9 II?
- 10 A. I would say kind of middle of the road. They weren't 11:06:39
11 overjoyed with it but they weren't as dismissive with it as
12 they were MOU I.
- 13 Q. Okay. Specifically, what was the Charlotte BPR
14 representative's attitude towards MOU I or some of them?
- 15 A. I don't remember which one particularly but some of them, 11:07:00
16 they were still unhappy with the E190 pay. They still were
17 unhappy that it didn't have retroactive pay. There's just a
18 couple of issues like that.
- 19 Q. When you say "retroactive pay," what do you mean by that?
- 20 A. There's some people that thought they should have 11:07:19
21 retroactive pay going back from the last amendable date of
22 their contract up until the date that this contract would go
23 into effect.
- 24 Q. And what would retroactive pay have included, money for --
- 25 A. Right. It would have included difference in salary or a 11:07:34

KENNETH HOLMES - Direct

- 1 certain percentage for each year or something like that. 11:07:37
- 2 Q. Does MOU II contain any retroactive pay?
- 3 A. No.
- 4 Q. Now, you heard Mr. Szymanski talk about retrospective pay.
5 Do you recall that? 11:07:48
- 6 A. Yes.
- 7 Q. Is there any retrospective pay associated with MOU II?
- 8 A. Yes, there is.
- 9 Q. Can you tell us when you left Dallas, was there any
10 retrospective pay in MOU II? 11:08:02
- 11 A. No.
- 12 Q. Then how did that come about, Captain Holmes.
- 13 A. Well, after the BPR spent some time, they finally realized
14 on the last day that together they had some power to get
15 something through the offering the company, particularly the 11:08:16
16 UCC, unanimous vote --
- 17 Q. Could you tell the Court what you mean by UCC, please.
- 18 A. The Unsecured Creditors Committee. They were the ones
19 really facilitating the discussions between all of the parties
20 in Dallas and thereafter up until through the signing -- 11:08:36
21 through the ratification of this agreement.
- 22 Q. Okay. And then what happened with respect to the
23 retrospective pay?
- 24 A. Well, the decision was made to contact Jack Butler of the
25 UCC to see if we could get retrospective pay from the 11:08:54

KENNETH HOLMES - Direct

1 ratification date to the POR date which would put us on an even 11:08:58
2 pay scale with American pilots in exchange for a unanimous vote
3 from the BPR, and so Brian O'Dwyer contacted Jack Butler and
4 they were able to work that out.

5 Q. So let me see if I understand. The retrospective pay, 11:09:19
6 which is pay back to February 8, 2013; correct?

7 A. That's correct.

8 Q. At the MOU II rates?

9 A. That's correct.

10 Q. Was agreed to by the UCC and the airline in return for 11:09:32
11 what?

12 A. Unanimous vote to accept the MOU II and also there was
13 another caveat, to support the merger and to try to get the
14 pilots to vote yes and ratify the agreement.

15 Q. Just so we're absolutely clear, the retrospective pay, was 11:09:56
16 it agreed to in any way in order to have USAPA continue, as far
17 as you know, to press the provisions of paragraph 10,
18 specifically 10H of the MOU?

19 MR. SILVERMAN: Objection.

20 THE COURT: And? 11:10:11

21 MR. SILVERMAN: Leading.

22 THE COURT: Sustained.

23 BY MR. HARPER:

24 Q. The retrospective pay was associated, as far as you know,
25 only in connection with getting -- because you were there, 11:10:20

KENNETH HOLMES - Direct

1 unanimous vote by the BPR to support the MOU and to support the 11:10:25
2 merger; correct?

3 MR. SILVERMAN: Same objection, Judge.

4 THE COURT: Sustained.

5 BY MR. HARPER: 11:10:34

6 Q. What was the purpose of the retrospective pay as you
7 recall it?

8 A. The only purpose of it was to get the unanimous vote.
9 That was it. And then they were also to support the merger.

10 That was it. It had no connection to anything else in the MOU 11:10:51
11 II.

12 Q. And where is the \$40 million lump sum payment at this
13 point in time, Captain Holmes?

14 A. It's in a side letter to the MOU.

15 Q. And what was the purpose of the \$40 million payment? 11:11:01

16 A. The purpose never changed. It was just an enhancement to
17 get -- for the pilots to vote yes. That's all it is.

18 Q. Okay. And then was the MOU II eventually sent out to the
19 US Airways pilots for a vote?

20 A. Yes, it was. 11:11:20

21 Q. And when was the vote set for?

22 A. February 8.

23 Q. And in between the BPR meeting in early January and the
24 February ratification vote, did you or did the NAC do anything
25 to try to educate the pilots about MOU II? 11:11:37

KENNETH HOLMES - Direct

- 1 A. Yes. We did quite a bit. We created a booklet that had a 11:11:41
2 contract comparison in it to what was in the 2012 APA CBA in
3 comparison to the East and the West agreements. We mailed that
4 to the pilots' homes. We had an expanded version available on
5 the website. We held road shows in all four domiciles. We 11:12:03
6 answered an unbelievable amount of e-mails and phone calls.
- 7 Q. In the presentations that the NAC made and the materials
8 that went out, was there any reference in any of those
9 materials to what the McCaskill-Bond language in paragraph 10
10 did? 11:12:33
- 11 A. Yes, there was.
- 12 Q. And what was said about the effect of the McCaskill-Bond
13 language in MOU II by the NAC?
- 14 A. The effect was that it's completely neutral. That's what
15 it was. The language was completely neutral. Pat has a 11:12:48
16 saying, and I can't repeat it exactly, but no pilot should vote
17 for it because they think it will trigger the Nic or something
18 like that. He said that repeatedly. He said that in numerous
19 e-mails that we sent out as well.
- 20 Q. How many of the road shows did you participate in? 11:13:10
- 21 A. All of them.
- 22 Q. What was the first one then?
- 23 A. The first one was in DC.
- 24 Q. What was the second one?
- 25 A. The second one was in Charlotte. 11:13:16

KENNETH HOLMES - Direct

- 1 Q. And how many presentations were made on the MOU II in 11:13:18
2 Charlotte?
- 3 A. Charlotte was three days but the first day was only one
4 presentation done at USAPA headquarters. The next two days
5 were done at the airport. There was a morning and an afternoon 11:13:31
6 presentation.
- 7 Q. And how many of those -- did you attend both the second
8 and third presentations?
- 9 A. Yes.
- 10 Q. And during those presentations, were any comments made by 11:13:47
11 anyone with respect to the MOU provisions -- I'm sorry, with
12 the McCaskill-Bond provisions in the MOU II?
- 13 A. Yes.
- 14 Q. Did any of them stand out for you?
- 15 A. A lot of them stood out to me, yes. 11:14:04
- 16 Q. And specifically, can you tell the Court which ones?
- 17 A. Yes. Well, Pat Szymanski handled all of the merger-related
18 questions, almost all of them. I don't recall us answering any
19 of those because we would refer them to him since he was there.
20 Essentially, what he did is he took what I thought was a 11:14:22
21 neutral agreement and made it completely not neutral.
- 22 Q. And how did he do that?
- 23 A. By his comments.
- 24 Q. What comments were those?
- 25 A. Well, I started -- actually, I couldn't believe what I was 11:14:32

KENNETH HOLMES - Direct

1 hearing so I started taking notes but the effect of all of them 11:14:36
2 was --

3 Q. Can we show you Exhibit 131?

4 A. Sure.

5 Q. Can you identify Exhibit 131 for us, Captain Holmes? 11:14:53

6 A. Yes. That's from one of my days in Charlotte, yes.

7 Q. And when and how did you make these notes?

8 A. I started typing them out on my phone. There was a couple
9 that I was able to write down on a notepad and then I went back
10 later when I got back to my hotel room and was able to fill in 11:15:13
11 the gaps of where I was, but they were all done on the date. I
12 did them for each individual day.

13 Q. So these notes were done concurrently with the meeting,
14 the road show meetings that you were attending in Charlotte; is
15 that correct? 11:15:31

16 A. That is correct.

17 Q. And you wrote them down verbatim?

18 A. I wrote them down verbatim as he was reciting them.

19 Q. And so as best as you can recall, these are accurate --
20 your notes accurately reflecting what Mr. Szymanski said, for 11:15:45
21 the most part, at the Charlotte road shows?

22 A. I believe they are 100 percent correct.

23 Q. And item number seven, for example, is that a correct
24 statement of what Mr. Szymanski said at the Charlotte meeting?

25 A. Yes, it is. 11:16:06

KENNETH HOLMES - Direct

- 1 Q. Okay. What was the next road show, if any, that you 11:16:08
2 attended?
- 3 A. After Charlotte was Phoenix.
- 4 Q. And did you attend those meetings?
- 5 A. Yes, I did. 11:16:24
- 6 Q. And who was there on behalf of USAPA?
- 7 A. Same people as was at the other road shows.
- 8 Q. As far as you recall, was anything said during the Phoenix
9 road show about the McCaskill-Bond portion of MOU II?
- 10 A. Yes. 11:16:44
- 11 Q. What was said?
- 12 A. That it was completely neutral and Pat gave that same
13 little line that he has, somebody should vote for it, and he
14 said that. To my knowledge, that was it. He did answered a
15 few other questions but there wasn't much time to spend on 11:16:58
16 McCaskill-Bond.
- 17 Q. And did you stand up and object to anything that he was
18 saying at that point in time?
- 19 A. No, I did not.
- 20 Q. Did you stand up and say, "Pat, you said something 11:17:09
21 different yesterday in Charlotte"?
- 22 A. No.
- 23 Q. Why didn't do you that?
- 24 A. Well, in Phoenix he's doing just fine. In Charlotte, he
25 was, you know, placating to that audience so I don't know what 11:17:20

KENNETH HOLMES - Direct

1 to believe. I just thought it was best not to say anything. 11:17:26

2 Q. How did you vote on MOU I -- MOU II?

3 A. I was going to say nobody he voted on MOU I. MOU II, I
4 voted for MOU II.

5 Q. And why? 11:17:42

6 A. A couple reasons. Number one is the pay rates. It gives
7 us a contract that we've been waiting on since this merger
8 started in -- I'm sorry, in 2005. USAPA promised us a contract
9 right off the bat and never could deliver one. Now we had one.
10 We could move forward and we were going to go to a new 11:17:59
11 bargaining agent that I think was going to fairly represent the
12 pilots.

13 Q. And who is that going to be?

14 A. That's going to be APA.

15 Q. Eventually? 11:18:08

16 A. Eventually, yes.

17 Q. I want to show you what I've had marked as Exhibit 64 and
18 see if you can help me with this.

19 MR. HARPER: Davina, can you go to the next page,
20 please. 11:18:23

21 BY MR. HARPER:

22 Q. Looking at this next page, Captain Holmes, can you
23 identify what this document appears to be anyway looking
24 perhaps maybe at the title?

25 A. I've never seen the document before but it says Projected 11:18:36

KENNETH HOLMES - Direct

1 Merged Pilot Seniority List for American Airlines/US Air 11:18:40
2 East/West Based on Seniority Date.

3 Q. Have you ever seen this before?

4 A. No, I have not.

5 Q. Let's go back to the first page of Exhibit 64. And the 11:18:53
6 date on the first page is what? December?

7 A. Christmas Day. December 25, 2012.

8 Q. And it's from John Owens. Who is John Owens?

9 A. From John Owens to Dean Colello.

10 Q. And Mr. John Owens was on the NAC at this point in time; 11:19:08
11 correct?

12 A. Yes.

13 Q. And Dean Colello was the chairman of the NAC at the end of
14 December 2012?

15 A. Correct. 11:19:20

16 Q. Now, did you send this Exhibit Number 64 to John Owens?

17 A. No, I did not.

18 Q. Did you know, in December of 2012, that there was in
19 existence a list that purports to represent the merger -- a
20 merger process between the US Airways pilots and the APA pilots 11:19:41
21 based on date of hire?

22 A. No.

23 Q. That was never discussed with you in Dallas?

24 A. No, not at all, no discussions whatsoever. I've never
25 seen the list. I don't know anything about it. 11:19:58

KENNETH HOLMES - Direct

1 MR. HARPER: Can I just take a moment, Your Honor? 11:20:05
2 Just a few questions, Your Honor.

3 BY MR. HARPER:

4 Q. Still staying with Exhibit Number 64. When is the first
5 time that you saw that exhibit? 11:21:07

6 A. I saw this exhibit -- the first time I saw it was when you
7 showed it to me at your office.

8 Q. That was recently; correct?

9 A. Just a couple of days ago, yes.

10 Q. You mentioned -- so we have it in the record, you 11:21:23
11 mentioned an individual named Roland Wilder. Can you, for the
12 Court, identify who Mr. Wilder is, please.

13 A. Sure. He's professional negotiator. He's an attorney and
14 he assists us with all negotiations.

15 Q. And I want to show you what we have now up on the board 11:21:41
16 which I think is Exhibit 78. Do you see that, Captain Holmes?

17 A. Yes.

18 Q. You have been talking about language that Mr. Szymanski
19 uses to identify what pilots -- East/West Pilots should be
20 thinking about in leading up to the ratification. Is this 11:22:01
21 representative, in Exhibit Number 78, of what was being said to
22 the West and the East pilots during the road shows?

23 A. Yes. That's the exact statement. He repeated that I
24 can't tell you how many times. It's a lot of -- and it's also
25 been in, like I said, a lot of updates. 11:22:32

KENNETH HOLMES - Direct

1 Q. And going back to the discussions in Dallas, December 10 11:22:37
2 and thereafter, with respect to the McCaskill-Bond language,
3 did either, did Pat Szymanski at any point in time tell you
4 that the McCaskill-Bond language amended the Transition
5 Agreement. 11:22:57

6 A. Yes. He told me that it eliminates the Transition
7 Agreement.

8 Q. And that was in that December 12 conversation that you had
9 with him?

10 A. That's correct and that is -- 11:23:11

11 Q. And you questioned how that could occur; correct?

12 A. Exactly. I didn't see how it was possible.

13 MR. HARPER: Okay. I pass the witness, Your Honor.

14 THE COURT: Cross?

15 **CROSS - EXAMINATION** 11:23:22

16 BY MR. SILVERMAN:

17 Q. Mr. Holmes, picking up where we just left off with you and
18 Mr. Harper, as of December of 2012, was there any doubt in your
19 mind that there were people, people representing USAPA, who
20 took the position that the MOU amended the Transition 11:23:58
21 Agreement?

22 A. At the -- specify the time for me, please, when you are
23 asking this question?

24 Q. You testified the last question and answer with Mr. Harper
25 about a conversation with Mr. Szymanski in December 2012. Do 11:24:13

KENNETH HOLMES - Cross

- 1 you recall testifying about that? 11:24:18
- 2 A. That is correct.
- 3 Q. As of the time of that conversation, as of that date, was
4 there any doubt in your mind that there were people on behalf
5 of USAPA who took the position that the MOU II amended the 11:24:28
6 transition agreement, yes or no?
- 7 A. It's not really a yes-or-no question.
- 8 Q. Can you answer it yes or no, sir? Was there any doubt in
9 your mind?
- 10 A. I'm not going to answer yes or no. If you want to ask it 11:24:39
11 to me so I can answer it properly, I would be happy to do so.
- 12 MR. SILVERMAN: Judge, I think it's a yes-or-no
13 question.
- 14 THE COURT: He said he can not answer it yes or no so
15 either you let him explain or you ask another question. 11:24:49
- 16 BY MR. SILVERMAN:
- 17 Q. Mr. Holmes, did you just testify that Mr. Szymanski told
18 you that the MOU modified or amended the Transition Agreement,
19 yes or no? Did you just testify to that?
- 20 A. Yes, but I want to make sure that you have the dates 11:25:09
21 proper.
- 22 Q. Thank you. I have my answer. Thank you.
- 23 So as of that date in December 2012, you were on the
24 NAC; is that correct?
- 25 A. Yes. 11:25:31

KENNETH HOLMES - Cross

- 1 Q. And as of December 2012, had the NAC recommended the MOU 11:25:33
2 to the BPR as of that time?
- 3 A. When the MOU was -- in December?
- 4 Q. In December 2012.
- 5 A. No. It wasn't complete. 11:25:48
- 6 Q. All right.
- 7 Moving to a different topic, Mr. Holmes. When did
8 you join the NAC?
- 9 A. In May of 2012.
- 10 Q. Okay. As of that time, what was the composition of the 11:26:09
11 NAC?
- 12 A. Paul Diorio was the chairman, Dean Colello was on there.
13 They were interviewing for positions for West. I was one of
14 the people that interviewed and was selected.
- 15 Q. At that time, were all domiciles represented on the 11:26:28
16 Negotiating Advisory Committee?
- 17 A. Well, I -- we represent all domiciles. We don't have a
18 member from each domicile that I'm aware of. I don't know.
- 19 Q. So at that time, there were two members on the Negotiating
20 Advisory Committee from the Phoenix domicile; is that correct? 11:26:48
- 21 A. No. Rocky was added I believe the first part of June. I
22 could be wrong on that date.
- 23 Q. Okay. At any time, have all members, have all domiciles
24 been represented on the NAC?
- 25 A. All domiciles are represent by the NAC. I don't know -- 11:27:02

KENNETH HOLMES - Cross

- 1 I'm not sure what domicile Dean is based in. I can't remember 11:27:06
2 so I don't know if he's from Philly or Charlotte. I can't
3 remember.
- 4 Q. In December of 2012 when MOU II was being negotiated, what
5 was the composition of the NAC at that time? 11:27:15
- 6 A. We had four members.
- 7 Q. Who were the four members?
- 8 A. Dean Colello, John Owens, Rocky Calveri and myself.
- 9 Q. You and Mr. Calveri are domiciled in Phoenix; is that
10 correct? 11:27:28
- 11 A. Yes.
- 12 Q. Where is Mr. Colello domiciled?
- 13 A. I think it's Philly.
- 14 Q. Where was Mr. Owens domiciled?
- 15 A. Charlotte. 11:27:36
- 16 Q. And was the DC domicile represented with a representative
17 on the NAC at that time?
- 18 A. They don't have a pilot on there, no, but we represent
19 them.
- 20 Q. That's what I mean. Do they have a pilot who sits on the 11:27:47
21 NAC?
- 22 A. No.
- 23 Q. And despite the fact that the DC domicile didn't have a
24 pilot sitting on the NAC, did the NAC represent those pilots
25 fairly? 11:27:58

KENNETH HOLMES - Cross

- 1 A. Yes. 11:27:59
- 2 Q. Mr. Holmes, the Negotiating Advisory Committee negotiates
3 agreements with the company. That's one of the
4 responsibilities of the NAC.
- 5 A. You said companies. If you are referring to US Airways, 11:28:19
6 the answer is yes.
- 7 Q. Okay. And you're familiar with the give and take in
8 collective bargaining. Would that be fair to say?
- 9 A. Yes.
- 10 Q. There are some groups in collective bargaining who want 11:28:34
11 one thing and other groups who want something else. Would that
12 be fair to say?
- 13 A. Always, yes.
- 14 Q. And those kinds of tensions exist all the time. Would
15 that be fair to say? 11:28:42
- 16 A. Yes.
- 17 Q. Younger pilots may want grader pay; older pilots may want
18 pension enhancements; is that correct?
- 19 A. Could be.
- 20 Q. And USAPA or unions represent those interests and 11:28:50
21 reconcile those interests; is that correct?
- 22 A. Yes.
- 23 Q. In fact, USAPA has gone through base closings; is that
24 correct? Or US Airways has gone through base closings; is that
25 correct? 11:29:05

KENNETH HOLMES - Cross

- 1 A. Yes. 11:29:05
- 2 Q. And USAPA has had to negotiate the effects of those base
3 closings with the company; is that correct?
- 4 A. That is actually in the existing Collective Bargaining
5 Agreement. I don't know how much negotiating USAPA would have 11:29:18
6 to do for that. All they have to do is follow the existing
7 language. So the answer would be no.
- 8 Q. Would you agree, then, that base closings -- base closings
9 create certain tensions within pilot groups as to new pilots
10 coming on to that domicile? Would you agree that there creates 11:29:34
11 tension sometimes?
- 12 A. It could, but they are limited because it's a reality in
13 the industry. It happens fair frequently so it's not something
14 unexpected.
- 15 Q. Thank you. 11:29:47
- 16 Now, Mr. Holmes, directing your attention to your
17 testimony concerning the APA term sheet. Do you recall that?
- 18 A. M'hum.
- 19 Q. Now, the APA term sheet was an agreement between what
20 parties? 11:30:01
- 21 A. American -- I'm sorry, US Airways and APA, the union
22 representing American Airlines pilots.
- 23 Q. And USAPA?
- 24 A. The term sheet, no, USAPA was not part --
- 25 Q. The term sheet, APA and American Airlines and US Airways; 11:30:16

KENNETH HOLMES - Cross

- 1 is that correct? 11:30:19
- 2 A. Just those two parties.
- 3 Q. Yes. Now, was there any anything in that APA -- in that
4 term sheet that affected the terms and conditions of employment
5 of US Airways pilots? 11:30:32
- 6 A. If we had moved forward under that -- with the merger and
7 had not changed, in other words, that was the baseline
8 agreement, it hit the POR date, shortly after that time, that
9 would be our new contract.
- 10 Q. Did US Airways pilots get a chance to negotiate any of the 11:30:49
11 terms that were in that term sheet?
- 12 A. No.
- 13 Q. Isn't it true, sir, as a member of the NAC and the BPR,
14 that there were concerns that the APA term sheet did not
15 contain sufficient protections for the interests of US Airways 11:31:08
16 pilots?
- 17 A. Correct.
- 18 Q. And, in fact, that's why the NAC was tasked with the duty
19 to get protections for US Airways pilots in a separate
20 agreement; isn't that correct, sir? 11:31:27
- 21 A. That's what I previously said, yes.
- 22 Q. But to be clear -- withdrawn.
- 23 You mentioned, sir, the concerns that the BPR had
24 with respect to the APA term sheet. Do you recall testifying
25 about certain concerns? 11:31:54

KENNETH HOLMES - Cross

- 1 A. Yes. 11:31:55
- 2 Q. You didn't mention the rate of pay. Did the BPR have a
3 concern about the rate of pay?
- 4 A. Yes. That was one of the issues. I thought I had.
- 5 Q. And didn't the BPR have a concern about the rate of pay in 11:32:04
6 relation to, for example, the Delta/United matter?
- 7 A. Yes.
- 8 Q. And the NAC was tasked with seeking improvements upon the
9 term sheet, getting protections for US Airways pilots and
10 seeing that it could get the best deal possible for US Airways 11:32:25
11 pilots; is that correct?
- 12 A. That's correct.
- 13 Q. And the focus at that time was US Airways versus a merged
14 airline; is that correct?
- 15 A. I'm not sure exactly what you mean by that. 11:32:39
- 16 Q. Well, all of this was in contemplation of a possible
17 merger; is that correct?
- 18 A. That's correct.
- 19 Q. So the focus at that time wasn't just with respect to US
20 Airways -- sorry, USAPA and US Airways, it was USAPA, US 11:32:49
21 Airways, and the possible merger partner; is that correct?
- 22 A. That's correct, yes.
- 23 Q. And as part of that merger, wasn't it also on the horizon
24 that USAPA would be involved in seniority integration with the
25 APA; is that correct? 11:33:12

KENNETH HOLMES - Cross

- 1 A. At some point, yes. 11:33:13
- 2 Q. At some point that became clear to the NAC and others that
3 was on the horizon; is that correct?
- 4 A. If there was going to be a merger, that was going to have
5 to happen, yes. 11:33:26
- 6 Q. Yes. Yes. And at that point, it was also known that the
7 APA is a larger union; is that correct?
- 8 A. They are larger, yes.
- 9 Q. And isn't it true that they are approximately twice the
10 size, that is to say APA is approximately twice the size of 11:33:39
11 USAPA?
- 12 A. I think it's a little less than that but approximately.
- 13 Q. Approximately, yes. And that the focus at that time was
14 also on making sure that US Airways pilots stood in the best
15 possible position with respect to APA. Would that be fair to 11:33:53
16 say?
- 17 A. Yes.
- 18 Q. Now, MOU I, sir, as it's been described, it didn't deal
19 with seniority in any way; is that correct?
- 20 A. It just -- it mentioned McCaskill-Bond I believe in 11:34:22
21 paragraph nine and that was the only reference to that.
- 22 Q. Okay. Well, among the concerns that the BPR had that you
23 testified to that was shown earlier, there was no mention of
24 seniority by the BPR at that time. Do you recall that, sir?
- 25 A. Yes, m'hum. 11:34:45

KENNETH HOLMES - Cross

- 1 Q. And is it fair to say at that time that the NAC wasn't 11:34:47
2 tasked to discuss seniority with -- in conjunction with MOU I?
3 Would that be fair to say, that you weren't tasked with that?
- 4 A. The NAC doesn't do seniority. The Merger Committee does
5 seniority. 11:35:08
- 6 Q. Thank you, sir.
- 7 And for the merger, what is the Merger Committee,
8 sir?
- 9 A. Jess Pauley is the chairman. I can't name all of the
10 members but they have input into the document as well. 11:35:21
- 11 Q. I don't mean so much the composition, sir, but the basic
12 responsibilities of the Merger Committee. Could you describe
13 those, please.
- 14 A. They are to facilitate merging the pilots I guess at the
15 direction of the BPR. 11:35:44
- 16 Q. Do you recall being told by the BPR or any officer at
17 around the time in relation to MOU I: Don't be involved in
18 seniority because that is the responsibility of the Merger
19 Committee?
- 20 A. No. I don't recall anything coming up about it at all. 11:36:00
- 21 Q. Sir, you testified concerning certain conversations you
22 had with -- concerning the language of what became 10H of MOU
23 II. Do you recall, that sir?
- 24 A. Yes.
- 25 Q. And your initial reservation with respect to the language 11:36:45

KENNETH HOLMES - Cross

- 1 of 10H was what, sir? 11:36:49
- 2 A. That the initial language submitted by Pat Szymanski
3 eliminated the Transition Agreement and that was my concern
4 with that.
- 5 Q. And approximately when was that concern, did that concern 11:37:03
6 come to the fore?
- 7 A. At the time he first proposed that language which I
8 testified was midday on December 12.
- 9 Q. And certain concerns were brought forward by you and
10 Mr. Calveri with respect to the specific language; is that 11:37:26
11 correct?
- 12 A. That's correct. Rocky voiced the exact same concerns I
13 did throughout the -- as that whole section was developed.
- 14 Q. And those concerns were addressed; is that correct?
- 15 A. No, not -- the initial concerns were addressed with the 11:37:47
16 initial language. The revised language came out. I asked Gary
17 to notify the reps. He never did. I had a problem with that
18 because I still wasn't sure if neutral was really neutral as
19 Pat said. But Gary drew the line in the sand and that was it
20 so that the language is what the language is now. 11:38:08
- 21 Q. Let's take it step by step. You had an initial objection
22 to the words "single agreement" appearing in that paragraph; is
23 that correct?
- 24 A. I had an objection to every word in that sentence, not
25 just one or two words. 11:38:23

KENNETH HOLMES - Cross

- 1 Q. Right. And that sentence was modified; is that correct? 11:38:25
- 2 A. It was completely replaced.
- 3 Q. It was completely replaced. And it was changed. There
4 was new language, different language, in there in response to
5 your objection. Is that fair to say? 11:38:36
- 6 A. I don't like the word you used because when you say it was
7 modified, it makes you think that it was only changed a smaller
8 portion of it. It's a completely new sentence, a completely
9 new sentence, okay?
- 10 Q. And that was in response to the objection brought forward 11:38:50
11 by you and Mr. Calveri; is that correct?
- 12 A. That is correct, yes.
- 13 Q. Your testimony here today is that you never agreed to the
14 modified language, to the changed language in 10H; is that your
15 testimony? 11:39:09
- 16 A. I'm saying that I agreed to move forward because there was
17 no other way to -- we were stuck. In other words, like you
18 said before, it's a take and give thing and at the point -- at
19 that point, we had no more -- there was nothing else we could
20 do with it. We're moving forward with it. We agreed to move 11:39:21
21 forward. That's it.
- 22 Q. Mr. Holmes, are you aware of the change in control
23 provisions, change of control provisions in the East contract?
- 24 A. Yes.
- 25 MR. HARPER: Your Honor, I object. Beyond the scope. 11:39:35

KENNETH HOLMES - Cross

- 1 I didn't change of control with him. 11:39:37
- 2 THE COURT: I'm going to overrule the objection.
- 3 I'll allow it.
- 4 BY MR. SILVERMAN:
- 5 Q. Mr. Holmes without getting too deep in the change of 11:39:49
- 6 control, was that something in the East Collective Bargaining
- 7 Agreement that provided certain benefits, certain monetary
- 8 benefits to East pilots in the event of a change in the
- 9 corporate structure of US Airways?
- 10 A. It provided that it was found that it was a triggering 11:40:08
- 11 event to where that would actually kick in.
- 12 Q. So if there was a triggering event by virtue of a change
- 13 in control in corporate structure, certain pay rates would be
- 14 increased for the West -- for the East Pilots; is that correct?
- 15 A. If it was -- if it did trigger it, that is correct, yes. 11:40:24
- 16 Q. Okay. Is that something that was an East contract but not
- 17 in the West contract; is that correct?
- 18 A. Yes.
- 19 Q. And as part of the give and take for the MOU, for MOU II,
- 20 did the East Pilots give up change of control? 11:40:36
- 21 A. Yes, they did.
- 22 Q. And would that be an example of the kind of give and take
- 23 that you're familiar with in the formation of Collective
- 24 Bargaining Agreements?
- 25 A. It could be except for the fact that the change of control 11:40:53

KENNETH HOLMES - Cross

1 provision that they gave up would only have kicked in for a 11:40:55
2 limited amount of time, until APA became the bargaining agent,
3 at which time it would have gone away most likely and they
4 would have fallen completely under the APA agreement so it
5 would have been a time-limited event. 11:41:09

6 Q. Understood. But there was something that was given up; is
7 that correct? There was some monetary value that was given up
8 by the East Pilots to get a combined MOU for the benefit of the
9 entire US Airways group; is that correct, sir?

10 A. Yes, sir, that's correct. 11:41:24

11 Q. As of this point in December of 2012, you and others had
12 concerns about the language of 10H; would that be fair to say?

13 A. Yes.

14 Q. And other people had views about 10H and its effects that
15 you disagreed with; is that correct? 11:41:52

16 A. Yes, we disagreed with that.

17 Q. But that as of that time, you knew there was a question
18 mark in the air, what is the effect of the MOU on the
19 Transition Agreement. That was a question mark; is that
20 correct? 11:42:13

21 A. That's a question mark.

22 Q. I'm sorry?

23 A. I agreed with you.

24 Q. You agree with me.

25 You had your view; other people had their views; is 11:42:18

KENNETH HOLMES - Cross

- 1 that correct? 11:42:20
- 2 A. Yes.
- 3 Q. And at some point you decided to put that question mark,
4 that concern aside because there were other things in the MOU
5 which you thought were worth going forward with. Is that your 11:42:31
6 testimony, sir?
- 7 A. I was forced to put that aside. It wasn't an agreement
8 that -- you know, if it's truly neutral, why did it need to be
9 in there? I said that repeatedly.
- 10 MR. SILVERMAN: Move to strike as nonresponsive, 11:42:46
11 Judge.
- 12 THE COURT: Sustained.
- 13 BY MR. SILVERMAN:
- 14 Q. Mr. Holmes, at some point, did you, as part of the NAC,
15 recommend the MOU for approval to the BPR? 11:42:55
- 16 A. Yes.
- 17 Q. And would it be fair to say that in your doing so, you
18 implicitly or explicitly agreed that the benefits of the MOU as
19 a whole, MOU II as a whole, overrode your concerns that you had
20 with respect to 10H as you've testified to here today? Would 11:43:14
21 that be fair to say?
- 22 A. I still had concerns about it but I wouldn't characterize
23 it that way. I was just saying that -- we recommended the
24 agreement as a whole, yes.
- 25 Q. Even though in your mind there was that question mark. 11:43:30

KENNETH HOLMES - Cross

- 1 The question mark hadn't gone away; right? 11:43:32
- 2 A. No. The question mark was still there.
- 3 Q. It was still there. And it was still there when you voted
4 in favor of the MOU. You personally, though, that question
5 mark was still there? 11:43:42
- 6 A. That's correct, m'hum.
- 7 Q. By the way, these conversations with Gary Hummel that you
8 had concerning the versions of what came -- well, what was or
9 became 10H, were they in person or some other means?
- 10 A. They were in front of the entire Negotiating Committee, 11:43:59
11 the legal team, everyone there. When I asked him if he would
12 talk to the Phoenix reps about it at the next BPR conference
13 call, we were having those on a daily basis, sometimes twice a
14 Dave. He said he would. He never did and then he got sick of
15 me asking. 11:44:13
- 16 MR. SILVERMAN: Move to strike as nonresponsive. I
17 asked Mr. Holmes whether it was in person or some other means.
- 18 THE COURT: Sustained.
- 19 BY MR. SILVERMAN:
- 20 Q. Now, if I understand your testimony, Mr. Holmes, at some 11:44:33
21 point in the road show presentations, you felt that you were
22 bamboozled; is that correct?
- 23 A. Yes.
- 24 Q. And when exactly did that take place?
- 25 A. It took place in Charlotte on day two. 11:44:48

KENNETH HOLMES - Cross

- 1 Q. Do you recall the date of that? 11:44:51
- 2 A. No, I'm sorry, I don't.
- 3 Q. Was it before or after the BPR agreed to approve the MOU,
4 MOU II, and send it out to a membership ratification, sir?
- 5 A. Yes. 11:45:19
- 6 Q. I'm sorry, was that it before or after?
- 7 A. It was after. They had already approved it. The road
8 shows were -- I don't know if you want me to go into that.
- 9 Q. The road shows took place after the BPR recommendation; is
10 that correct? 11:45:33
- 11 A. Right. They were the educational material for the pilots
12 so they could make an informed decision.
- 13 Q. Yes. And in point of fact, did the NAC produce any
14 materials in relation to these road shows?
- 15 A. Yes. As I stated previously, quite a few, quite a bit. 11:45:48
- 16 MR. SILVERMAN: Can I have Exhibit 233, please.
- 17 BY MR. SILVERMAN:
- 18 Q. Mr. Holmes, directing your attention to Exhibit 233.
19 We'll get to that when it comes up, sir. Here it is.
- 20 I'm sorry, this isn't it. What the MOU means to you. 11:46:43
21 233, 234. Let me ask you while we're -- I'm sorry. This is
22 it.
- 23 Directing your attention, sir, to this document, the
24 fifth arrow down, do you see, that sir?
- 25 A. Are you talking about the pay protection is provided? 11:47:07

KENNETH HOLMES - Cross

- 1 Q. Yes. 11:47:10
- 2 MR. SILVERMAN: By the way, can we go to the first
3 page of 233, please.
- 4 Q. Do you recognize this document, sir?
- 5 A. Yes. 11:47:25
- 6 Q. And what is it, sir?
- 7 A. This is what we prepared for the pilots.
- 8 Q. And when you say "we prepared for the pilots," do you mean
9 the Negotiating Advisory Committee?
- 10 A. That would be correct, yes. 11:47:33
- 11 Q. And you prepared this for the pilots to educate the pilots
12 concerning the terms and conditions and other matters set forth
13 in the MOU; is that correct?
- 14 A. Not just the -- the MOU and the 2012 APA, CBA.
- 15 Q. Thank you, sir. Absolutely. 11:47:50
- 16 Do you see what is now the -- back on that page in
17 terms of within flight plans and mergers, sir, do you see that
18 arrow there?
- 19 A. I'm sorry, which one?
- 20 Q. Pay protection is provided for pilots -- I'm sorry. It's 11:48:04
21 actually the farther one down. Provisions and procedures are
22 established for seniority list integration process in
23 accordance with McCaskill-Bond. Do you see that, sir?
- 24 A. Yes.
- 25 Q. And isn't it fair to say that by that statement in this 11:48:19

KENNETH HOLMES - Cross

- 1 informational material that's being given to pilots in relation 11:48:23
2 to the MOU, they are saying that seniority will be handled
3 with -- in accordance with McCaskill-Bond? Is that fair to
4 say?
- 5 A. That's correct, yes. 11:48:34
- 6 Q. It doesn't say anything about Nicolau in there, does it?
- 7 A. No.
- 8 Q. It doesn't say anything about date of hire in there, does
9 it?
- 10 A. No. 11:48:41
- 11 Q. And, in fact, the MOU doesn't saying anything about
12 Nicolau or date of hire; is that correct?
- 13 A. Yes, that's correct.
- 14 Q. And you knew that as of the time that you voted to
15 ratify -- you voted to approve MOU II as a member of the NEC; 11:49:01
16 is that correct?
- 17 A. Yes.
- 18 Q. You knew it didn't provide for the Nicolau list to be used
19 in conjunction with McCaskill-Bond; is that correct?
- 20 A. It didn't provide for it but it also didn't say that it 11:49:21
21 couldn't be used either.
- 22 Q. Okay. It didn't provide for -- it didn't provide for
23 Nicolau and it didn't provide for date of hire. It didn't
24 provide for either one in the document itself; is that correct?
- 25 A. Not in the document, no. 11:49:31

KENNETH HOLMES - Cross

- 1 Q. I skipped over something. I apologize, Mr. Holmes. 11:49:36
- 2 When you began conversations with respect to MOU II
- 3 in Dallas, I believe you said --
- 4 A. Yes, it was in Dallas.
- 5 Q. And it was sometime in December 2012. 11:49:49
- 6 A. Started on the 10th and went through -- actually, we went
- 7 through the holidays until the first part of the year.
- 8 Q. Thank you, sir.
- 9 Do you recall at the beginning of those meetings --
- 10 and I think you would testify there were maybe 30 people in a 11:50:03
- 11 room at any one time; is that correct?
- 12 A. That was about the total number of people that were there
- 13 but we only had a few meetings where there were a large group
- 14 like that, yes.
- 15 Q. Do you recall a presentation by the company wherein 11:50:15
- 16 seniority integration was discussed? Do you recall that, sir?
- 17 A. I don't at this time, no.
- 18 Q. You don't recall being present at a meeting wherein
- 19 various company representatives, US Airways, perhaps American,
- 20 perhaps the UCC, said, in sum or substance, this document will 11:50:38
- 21 provide only for seniority integration to be consistent with
- 22 McCaskill-Bond and nothing more about seniority?
- 23 A. I do remember that.
- 24 Q. You do remember that being said?
- 25 A. Yes. 11:50:55

KENNETH HOLMES - Cross

- 1 Q. And it was said by whom, to the best of your recollection? 11:50:55
- 2 A. I don't remember who said it. I just remember the comment
3 and I can't remember if it was direct or indirect that I heard
4 it but I do remember hearing it before.
- 5 Q. I didn't quite catch your answer. Do you recall that it 11:51:08
6 was said by a company representative?
- 7 A. I can't remember for sure. I recall the comment. I just
8 can't remember who said it.
- 9 Q. Okay. Did the NAC -- upon hearing that, did the NAC say,
10 "We're going to disregard that? We're going to negotiate 11:51:34
11 seniority in this document notwithstanding what was said,"
12 anything like that?
- 13 A. No.
- 14 Q. From that point forward, sir, isn't it fair to say that
15 the parties understood that seniority integration -- that the 11:51:49
16 MOU would provide that seniority integration would be governed
17 in accordance with the procedure consistent with
18 McCaskill-Bond? Isn't that fair to say?
- 19 A. Yes.
- 20 Q. Now, back to a road show where, according to your 11:52:09
21 testimony, you heard Mr. Szymanski say something that was very
22 different from what you had heard previously; is that correct?
- 23 A. He said a number of things, yes.
- 24 Q. I'm sorry?
- 25 A. He said a number of things that were different than what 11:52:23

KENNETH HOLMES - Cross

- 1 he had previously stated, yes. 11:52:27
- 2 Q. And one of the things he stated was the Nic is dead; is
3 that correct?
- 4 A. I don't recall that exact phrase but in the essence of all
5 of them put together, that's clearly the message. 11:52:43
- 6 Q. And you had this information as of sometime in January.
7 Is that fair to say?
- 8 A. Actually, a number of pilots did. There were a number of
9 pilots in attendance there.
- 10 Q. And can you tell the Court about the ratification process 11:52:55
11 of the MOU? When did the balloting open and when did it close,
12 sir?
- 13 A. Oh, I don't remember the exact date it opened. I just
14 remember February 8 was the date that it closed.
- 15 Q. And in terms of the way balloting proceeds, does a pilot 11:53:12
16 who is entitled to vote get one chance to vote and then once
17 you cast your vote, it's cast in stone or can you change your
18 vote up through the date the balloting closes?
- 19 A. I believe you can change your vote.
- 20 Q. So if you vote on February 1 and balloting closes on 11:53:29
21 February 8, you want to change your vote, so long as you've
22 changed your vote by the close of the balloting on February 8,
23 you can do that; is that correct?
- 24 A. I believe that's correct.
- 25 Q. So as of mid-January 2013, you had heard something that 11:53:40

KENNETH HOLMES - Cross

- 1 you had thought was a total bait and switch on the part of 11:53:43
2 USAPA. Is that fair to say? That's your testimony, sir?
- 3 A. That was what he said in Charlotte.
- 4 Q. Okay. Did he say something different after that, sir?
- 5 A. In Phoenix he didn't say anything like that. 11:53:56
- 6 Q. But as of -- and Phoenix took place after Charlotte?
- 7 A. That's correct.
- 8 Q. So as of Charlotte's, a question is raised. Phoenix, it's
9 still -- it's not addressed or perhaps not addressed
- 10 satisfactorily. You still had the question in your mind; is 11:54:12
11 that correct?
- 12 A. Well, he somewhat -- because he's saying the right thing
13 in Phoenix, I'm not sure where he's at exactly. But he isn't
14 saying the same thing he was saying in Charlotte so . . .
- 15 Q. At the same time that you were on the Negotiating Advisory 11:54:29
16 Committee for USAPA, you were also involved in an organization
17 called Leonidas; is that correct?
- 18 A. Yes.
- 19 Q. So continuously, during the period of time December 2012
20 through February 8, 2013, you are -- you're on the NAC and then 11:54:43
21 you also are a member of Leonidas?
- 22 MR. HARPER: Beyond the scope, Your Honor.
- 23 THE COURT: I'm not sure where you're going with
24 this, if it's -- if it's contrary to my ruling on the motion in
25 limine, then you are not to go there. 11:55:04

KENNETH HOLMES - Cross

1 MR. SILVERMAN: Where I am going with this, Judge, is 11:55:09
2 to show that there was an outlet for information and an active
3 exchange of information --

4 THE COURT: All right. Overruled.

5 BY MR. SILVERMAN: 11:55:18

6 Q. Mr. Holmes, in fact, weren't you in charge of the website
7 or something that posted updates I believe for Leonidas around
8 that time?

9 A. I ran the Leonidas website that's correct.

10 Q. You ran the Leonidas website? 11:55:35

11 A. I currently do and I did at the time, yes.

12 Q. And at any time, did you, from time to time, prior to that
13 time you had written updates, appear on the Leonidas website;
14 is that correct?

15 A. I have never written an update since I became -- started 11:55:55
16 working with USAPA.

17 Q. Did you have the ability to write an update?

18 A. No. I mean, I couldn't -- I couldn't write an update and
19 send it out on my own, not without approval from, you know, the
20 group, no. 11:56:10

21 Q. At any time did you avail yourself of the Leonidas website
22 to -- withdrawn. Leonidas website has certain subscribers,
23 sir?

24 A. Anybody can go on the Leonidas website. It's open to
25 anybody in the world. There's no passwords or anything to get 11:56:32

KENNETH HOLMES - Cross

- 1 on the website. 11:56:35
- 2 Q. And was the Leonidas website used to put forward
3 information that folks think was important to Phoenix-based
4 pilots, particularly in relation to Addington litigations and
5 seniority integration? Would that be fair to say? 11:56:49
- 6 A. All of the legal filings and -- are on there, are on the
7 website, yes.
- 8 Q. Would it also be fair to say that there are fairly active
9 exchanges of information and updates published by Leonidas
10 concerning matters relating to seniority integration? 11:57:06
- 11 A. Updates related to the legal effort that -- and how that
12 proceeded along are on there and they are available for anybody
13 to read.
- 14 MR. SILVERMAN: Can I have 258, please.
- 15 Q. Directing your attention to what appears on the screen. 11:57:25
16 Is this -- do you recognize what this is, sir?
- 17 A. I recognize it but I don't remember everything that is in
18 it at this time. But I recognize it as an update that we sent
19 out on -- Leonidas sent out on February 7.
- 20 Q. And when you say "sent out," it posts on its website? 11:57:49
- 21 A. Posts on the website and also goes out to anybody that has
22 registered to receive e-mails.
- 23 Q. Now, first paragraph, sir, do you see that that is now
24 being highlighted?
- 25 A. Okay. 11:58:15

KENNETH HOLMES - Cross

- 1 Q. "On Friday, February 1, Leonidas, LLC, published an update 11:58:15
2 encouraging West Pilots to consider voting to ratify the MOU in
3 light of the fact that we do not believe it harmful to our
4 mission of protect and enforcing the Nicolau Award."
- 5 Do you see, that sir? 11:58:29
- 6 A. Yes.
- 7 Q. As of that time -- and the date on this is what, sir?
- 8 A. February 7.
- 9 Q. February 7 you had heard, according to your testimony here
10 today, Mr. Szymanski say something that was very different from 11:58:45
11 what you -- from your prior understanding of the effect of the
12 MOU; is that correct?
- 13 A. That's correct.
- 14 Q. Did you avail yourself of the opportunity to inform
15 Leonidas readers, members, e-mail subscribers of that 11:59:03
16 information?
- 17 A. The members of Leonidas, yes, I did inform them.
- 18 Q. And notwithstanding that, the recommendation was made to
19 ratify the MOU; is that correct?
- 20 A. That's correct. 11:59:22
- 21 Q. But they had the information that you had. They had the
22 information as of February 7, 2013, before balloting closed,
23 that you had heard this startling information from
24 Mr. Szymanski with respect to the seniority list that is going
25 to be used in the McCaskill-Bond; is that correct? 11:59:37

KENNETH HOLMES - Cross

1 A. That's correct. 11:59:40

2 MR. SILVERMAN: Can you put up Plaintiffs' 125,
3 please.

4 Bear with me, please, Judge.

5 BY MR. SILVERMAN: 12:00:18

6 Q. Mr. Holmes, directing your attention to an edition of the
7 Iron Compass dated January 23, 2013, do you see that, sir?

8 A. Yes, but it's too small. I can't read it.

9 Q. Okay.

10 MR. SILVERMAN: Any way we can make that larger, 12:00:50
11 please.

12 BY MR. SILVERMAN:

13 Q. Generally, speaking, Mr. Holmes, what is the Iron Compass?

14 A. It's a USAPA publication that comes out on Wednesdays.
15 It's just kind of a conglomeration of all of the updates that 12:01:00
16 have gone out during the week and throw them all in here.

17 Q. I'm sorry. I'm not understanding you.

18 A. Not everybody subscribes to all of the updates that the
19 USAPA committees put out. So it's like for the Negotiating
20 Committee, I think there's like 200 something pilots the last 12:01:17
21 time we checked that signed up to get those updates. So to
22 make sure they go out to all of the pilots, they put them in
23 this Iron Compass and all of the updates are in here.

24 Q. Okay. And as of January 23, 2013, the Negotiating
25 Advisory Committee on which you were -- of which you were a 12:01:34

KENNETH HOLMES - Cross

1 member as of that time -- is that correct, sir? 12:01:38

2 A. Yes.

3 Q. -- is putting out information concerning an update with
4 respect to the MOU and because the ratification process is in
5 effect at that time; is that correct? 12:01:51

6 A. Yes.

7 Q. Can you turn to page -- the Merger Committee question and
8 answer, please. Top of page -- this page here, sir. In
9 conjunction with this Iron Compass, the Merger Committee also
10 put out information which is being highlighted here. 12:02:07

11 Question: What list will USAPA present in the
12 McCaskill-Bond process?

13 Answer: The short answer is that USAPA will propose
14 a date of hire integration in accord with USAPA constitution.

15 And it goes on -- that is the first sentence and it 12:02:21
16 goes on. The last sentence and says: In accord with the USAPA
17 constitution, our Merger Committee will propose a date of hire
18 method for integrating seniority.

19 Iron Compass January 23, 2013, the same Iron Compass
20 in which the Negotiating Advisory Committee published an update 12:02:35
21 on which you sat. Isn't it fair to say, sir, that you knew not
22 later than the publication of this update that the date of hire
23 would be presented by USAPA in the McCaskill-Bond process?
24 Isn't that fair to say?

25 A. That's what's in their constitution and so -- that is kind 12:02:58

KENNETH HOLMES - Cross

- 1 of what everybody figured I think. 12:03:02
- 2 Q. And you had no reason to believe, as of January 23 or
3 February 8 when you cast your vote, that the USAPA constitution
4 had been amended by virtue of MOU II; is that correct?
- 5 A. Are you saying that the constitution had been amended? I 12:03:17
6 guess I misunderstood you.
- 7 Q. You said the constitution provides for certain things.
- 8 A. That's correct.
- 9 Q. And did the MOU II modify or amend the constitution?
- 10 A. Not the constitution, no. 12:03:29
- 11 Q. No. So you knew that USAPA was committed to certain
12 principles with respect to seniority integration as of January
13 23 and February 8 and at all times; isn't that correct, sir?
- 14 A. Yes.
- 15 Q. You knew, isn't it fair to say, that USAPA was opposed to 12:03:48
16 an unmodified Nicolau Award. Isn't that fair to say?
- 17 A. Yes.
- 18 Q. It's been quite a few years, the parties disagreeing
19 about that; right?
- 20 A. That's correct. 12:04:03
- 21 Q. You didn't think, by entering into the MOU, that that all
22 of a sudden was going to change; is that correct?
- 23 A. I knew the dispute was still going to be there after the
24 MOU.
- 25 Q. Thank you, sir. 12:04:18

KENNETH HOLMES - Cross

1 THE COURT: How much longer are you going to be? 12:04:32

2 MR. SILVERMAN: I can conclude in something on the

3 order of five or six minutes, Judge.

4 THE COURT: Okay.

5 MR. SILVERMAN: I was going to take ten. 12:04:49

6 THE COURT: Actually, it's five minutes after. We'll

7 take a break for an hour and then you can take whatever time

8 you need. We'll come back at five minutes after one.

9 COURTROOM DEPUTY: All rise.

10 (Recess at 12:05; resumed at 1:13.) 12:05:01

11 THE COURT: Please be seated.

12 And you may proceed, Mr. Silverman.

13 MR. SILVERMAN: Thank you, Judge.

14 BY MR. SILVERMAN:

15 Q. Mr. Holmes, directing your attention to Exhibit 259, which 01:13:57

16 is on your screen, titled Leonidas update February 1, 2013. Do

17 you see, that sir?

18 A. Yes.

19 Q. And this is an update that you posted on the Leonidas

20 website in your capacity as the web controller or something? 01:14:14

21 A. It was sent out via e-mail to those that have signed up to

22 receive our e-mails and it was posted on the website, yes.

23 Q. Directing your attention to paragraph two of the document

24 beginning, "Now that we have had the opportunity."

25 "Now that we have had the opportunity to evaluate the 01:14:43

KENNETH HOLMES - Cross

1 Memorandum of Understanding and contemplate the legal 01:14:45
2 ramifications relating to our mission, Leonidas is prepared to
3 offer our guidance and recommendations."

4 Do you see that, sir?

5 A. Yes. 01:14:53

6 Q. Directing your attention to paragraph three of the
7 document, it is clear that the negotiators of this document
8 took great pains that make this as seniority neutral as humanly
9 possible. Thus, it offers no definite poison pill and so forth
10 and so forth. Do you see that? 01:15:22

11 A. Yes, I do.

12 Q. And you agree with the statements contained in -- or did
13 you agree at the time with the statements contained in that
14 update, sir?

15 A. Yes. It was neutral, yes. 01:15:37

16 Q. Directing your attention to paragraph three of that same
17 document, sir.

18 A. Okay. That's the one that's up right now.

19 Q. I'm sorry. Paragraph four, the next document down. Our
20 attorneys believe -- do you see that, sir? Our attorneys 01:15:55
21 believe that the ratification of this MOU moves us toward the
22 ripeness. Do you see, that sir?

23 A. Yes.

24 Q. So is it fair to say, sir, that at around the time of this
25 open ratification period, there was active discussion amongst 01:16:12

KENNETH HOLMES - Cross

- 1 Leonidas and some of the named plaintiffs in this action as to 01:16:16
2 the MOU's effects on the ripeness question and the duty of fair
3 repetition claim? Is that fair to say, sir?
- 4 A. I believe so. I was at a lot of the discussions. I was
5 kind of removed from some of this because I'm also on the 01:16:32
6 Negotiating Committee. So some discussions took place that I
7 was not privy to.
- 8 Q. Understood, sir, but you are aware that there was active
9 discussion going on; is that correct?
- 10 A. I'm aware that there was discussions, yes. 01:16:44
- 11 Q. And were you aware that attorneys advising Leonidas and
12 the West Pilots were involved in those discussions and advising
13 various folks with respect to this question, that is to say,
14 the effect of the MOU on the ripeness question?
- 15 A. I believe that's correct. 01:17:06
- 16 Q. Did you personally -- withdrawn.
- 17 Thank you. Directing your attention, sir to
18 Exhibit 308.
- 19 A. Is that the same -- oh, it's something different? Okay.
- 20 Q. Directing your attention first to the first page here, do 01:17:37
21 you see this e-mail chain, sir?
- 22 A. I can't see everybody on it but it looks like the members
23 of Leonidas.
- 24 Q. Okay. Directing your attention to I believe it's the
25 third page of this, sir. Toward the bottom of the page it says 01:17:50

KENNETH HOLMES - Cross

- 1 from B&S Stockdell, do you see that, sir? 01:17:58
- 2 A. Yes.
- 3 Q. Generally speaking, what is this e-mail chain in terms
4 of -- is it Leonidas, is it just folks who are interested in
5 certain issues? Can you describe who the tos and froms are 01:18:16
6 here, sir?
- 7 A. I'm sorry. Can you just rephrase it? I'm not quite sure
8 what you're asking for.
- 9 Q. Is there a particular group of people that is having an
10 ongoing conversation as is reflected in this e-mail chain? 01:18:31
- 11 A. Yes. These are members of Leonidas so they were having a
12 discussion, yes.
- 13 Q. And is this members of Leonidas also include some of the
14 named plaintiffs in this action?
- 15 A. Oh, yes. 01:18:42
- 16 Q. Would that include for example, Mr. Soha, Mr. Velez,
17 Mr. Iranpour, Mr. Wargocki, Mr. Addington, including those
18 gentlemen, sir?
- 19 A. Yes.
- 20 Q. Now, the highlighted portion which provides 10G and 01:19:02
21 H worries me greatly. Do you know what is being referenced
22 there, 10G and H?
- 23 A. I'm not sure -- I would have to look at 10G again. I'm
24 familiar with 10H, but I'm not with 10G right off the bat.
- 25 Q. What I mean, sir, is, it fair to say that that is 01:19:23

KENNETH HOLMES - Cross

- 1 referencing paragraphs of the MOU? 01:19:27
- 2 A. I believe that's so.
- 3 Q. On the face, these paragraphs appear to allow USAPA, aided
4 and abetted by the company to amend (abandon) our TA which
5 demands the Nic, this act should make our claim ripe. Do you 01:19:40
6 see that?
- 7 A. Yes.
- 8 Q. You were part of this e-mail chain. Is that fair to say,
9 sir?
- 10 A. My name is on there, yes. 01:19:47
- 11 Q. Do you have any reason to believe -- withdrawn.
- 12 So is it fair to say, sir, this is part of the
13 ongoing conversation, ongoing discussion amongst Leonidas and
14 members of the named plaintiffs here about the effects of the
15 MOU on the DFR claim and the Transition Agreement and so on and 01:20:04
16 so forth? Is that fair to say, sir?
- 17 A. I believe so.
- 18 Q. And there were other e-mails reflecting this kind of
19 discussion and debate as to the effects of the MOU at this
20 time. Is that correct, sir? 01:20:22
- 21 A. I can't say for sure. There could have been. I don't
22 know. I can't remember for sure.
- 23 Q. Okay. It wouldn't surprise you, though, that there were
24 ongoing conversations; right?
- 25 A. No. 01:20:34

KENNETH HOLMES - Cross

1 Q. It was a big topic of conversation amongst this group. Is 01:20:35
2 that right?

3 A. That among other things, yes.

4 Q. Among other things. Thank you.

5 Sir, you testified earlier -- withdrawn. 01:21:00

6 Sir, did you or Mr. Calveri ever bring forward during
7 the negotiations for the MOU, MOU II, for it to include a
8 provision that, in words or substance, that the Nicolau Award
9 must be included in the McCaskill-Bond process? Did you ever
10 bring forward a proposal in that regard? 01:21:30

11 A. No. The first questions, like I said, we had with that
12 were when we had that Merger Committee and conference call and
13 Pat kind of beat us to the punch on that so I didn't see the
14 need that they were going to do 180 degrees on what they
15 proposed. 01:21:46

16 MR. SILVERMAN: I move to strike as nonresponsive,
17 Judge.

18 THE COURT: Sustained.

19 BY MR. SILVERMAN:

20 Q. Mr. Holmes, did you have the ability to bring proposals 01:21:55
21 forward in the give and take leading up to the MOU as a member
22 of the NEC?

23 A. I could mention something. I could bring something
24 forward, yes.

25 Q. Sir, you testified concerning conversation that you had 01:22:19

KENNETH HOLMES - Cross

- 1 with Mr. Hummel and you indicated that he said he was going to 01:22:22
2 do something that he didn't do. Do you recall that testimony?
3 A. Yes.
4 Q. Was there any reason why you needed Mr. Hummel to bring
5 that information forward to the BPR or others? 01:22:36
6 A. The conference calls we were having on a daily basis with
7 the BPR were run with Gary and Dean. Those -- Dean Colello,
8 those were the two people mainly talking to -- the rest of us
9 were basically listening, felt that it was his responsibility
10 to bring that forward to them. 01:22:56
11 Q. I understood it was his responsibility, but is there any
12 reason why you couldn't interject, as a member of the NAC, and
13 make whatever statements you wanted or pose any questions you
14 wanted?
15 A. We were operating under that nondisclosure agreement and 01:23:10
16 we were only allowed to say what we had agreed, so I think if I
17 had brought it up, I wouldn't have been quite compliant with
18 what we had agreed to.
19 Q. Weren't the other members of the -- of these -- withdrawn.
20 Weren't there other people who were also signatories 01:23:27
21 to this nondisclosure agreement to whom you could have brought
22 this information forward?
23 A. I brought it forward to everybody that was there on behalf
24 of USAPA. Everybody was there every time I mentioned it so
25 there wasn't anybody that was not fully aware of it. 01:23:42

KENNETH HOLMES - Cross

- 1 Q. Okay. Did you bring it to the attention of Mr. Pauley, 01:23:47
2 for example, the chairman of the Merger Committee?
- 3 A. He was not there. We only had him on a couple of the
4 conference calls.
- 5 Q. Did you bring it to the attention of Mr. Szymanski? 01:23:58
- 6 A. On one conference call, yes, I believe -- actually, might
7 have been on the phone with Pat Szymanski on a conference call
8 when I mentioned that to them. I believe they were on the
9 phone.
- 10 Q. This was by phone, not in person; is that correct? 01:24:14
- 11 A. Yes. By phone.
- 12 Q. So having brought it forward to these other people, why
13 was it -- withdrawn.
- 14 Mr. Holmes, who appointed you to the Negotiating
15 Advisory Committee in May 2012? 01:24:36
- 16 A. Gary Hummel.
- 17 Q. Who appointed you to, was it, the Retirement Committee,
18 sir?
- 19 A. No, it would -- the Constitution and --
- 20 Q. I'm sorry. The Constitution Committee? 01:24:50
- 21 A. That would be Gary Hummel.
- 22 Q. Sir, you testified previously regarding retrospective pay.
23 I believe you testified that there was no provision for
24 retrospective pay -- let me say it differently, that the entire
25 provision for retrospective pay had been negotiated in MOU I. 01:25:07

KENNETH HOLMES - Cross

- 1 Do I have your testimony correct? 01:25:11
- 2 A. No.
- 3 Q. Isn't it true that respective pay was improved between MOU
4 I and MOU II?
- 5 A. No. Retrospective pay was not in there. That came in MOU 01:25:22
6 II at the end. It was the last day when we were -- when the
7 BPR was trying to make a decision.
- 8 Q. So there was no retrospective pa in MOU I?
- 9 A. That's correct.
- 10 Q. Sir, you testified that the retrospective pay was 01:25:43
11 consideration for the company for delivering a unanimous vote
12 of the BPR. Do you recall that testimony?
- 13 A. Yes. But it wasn't the company that delivered the
14 unanimous vote. It was USAPA that delivered the unanimous
15 vote. 01:25:58
- 16 Q. Yes. I'm sorry. Thank you for that. Would you also
17 agree that retrospective pay is good for USAPA members, US
18 Airways pilots? Would you agree with that, sir?
- 19 A. That's who it was for, yes.
- 20 MR. SILVERMAN: I have no further questions, Judge. 01:26:20
- 21 THE COURT: Redirect?
- 22 MR. HARPER: Just a few, Your Honor, thank you.
- 23 **REDIRECT EXAMINATION**
- 24 BY MR. HARPER:
- 25 Q. Almost done, Captain Holmes. I want to go back to the 01:26:31

KENNETH HOLMES - Redirect

1 beginning of your cross-examination, when you were asked that 01:26:34
2 you testified that the MOU amended the Transition Agreement.
3 Do you remember that?
4 A. Yes.
5 Q. And you were asked to give a yes or a no answer to that 01:27:04
6 and you couldn't; right?
7 A. No, not the way the question was phrased.
8 Q. You can now go forward and just give me the answer that
9 you wanted to give at the beginning.
10 A. Sure. It amends certain aspects of the Transition 01:27:18
11 Agreement, the contractual issues like pay, work rules and all
12 of that and benefits because what happened to the MOU is the
13 collective bargaining agreement, but it does not modify the
14 answer of merging the East and West Pilots. That seniority
15 integration in the Transition Agreement was not modified by 01:27:41
16 this. That's what the term "neutral" means.
17 Q. Okay. So that's the answer you wanted to give --
18 A. That is correct.
19 Q. -- when you were cut off?
20 A. That is correct. 01:27:53
21 MR. HARPER: Will you put up Captain Bradford's
22 testimony from this morning?
23 BY MR. HARPER:
24 Q. This testimony that was in the opening statement that
25 Mr. Bradford happened to give me when I was deposing him last 01:28:09

KENNETH HOLMES - Redirect

1 month in Charlotte. 01:28:12

2 "Question: You say it eliminated the -- the
3 requirement to use the -- the Nicolau. So how can that be
4 neutral?

5 "Answer: Because the Nicolau Award or date of hire 01:28:26
6 or any other seniority solution and outcome does not appear in
7 the document.

8 "Question: Just because it doesn't appear, it's
9 neutral?

10 "Answer: Yes. 01:28:39

11 "Question: But the effect of it is -- from your
12 point of view is to take away the requirement to use the
13 Nicolau?

14 "Answer: Yes, the Transition Agreement has been
15 amended, that is correct." 01:28:52

16 Now, was any language to that effect or like that
17 sent to you by anybody from USAPA during the negotiations in
18 Dallas in December of 2012?

19 MR. SILVERMAN: Objection.

20 THE COURT: Counsel, you'll have to state the nature 01:29:13
21 of your objection.

22 MR. SILVERMAN: The objection is that I don't believe
23 that it's appropriate for Mr. Holmes to be cross-examined or
24 examined on something that Mr. Bradford said in here.

25 THE COURT: He's asking whether or not this was 01:29:26

KENNETH HOLMES - Redirect

1 something that was mentioned or discussed at a meeting. 01:29:28
2 Overruled.
3 BY MR. HARPER:
4 Q. You can answer, Captain Holmes.
5 A. Okay. No, it was not. Like I said before, the revised 01:29:36
6 language in the MOU was neutral.
7 Q. We had a few questions about the change of control and
8 something that the East Pilots allegedly gave up in MOU II. Do
9 you remember that question?
10 A. Yes. 01:29:57
11 Q. Is the change of control waiver expressly in writing
12 provided for in the MOU?
13 A. Yes.
14 Q. Does the MOU II expressly provide in writing that the
15 seniority integration process under the TA has been amended? 01:30:15
16 A. No.
17 Q. Just to make sure -- I'm sorry.
18 MR. HARPER: Davina, can you give me Exhibit 217,
19 please.
20 MS. AXEL: 258? 01:30:47
21 MR. HARPER: The 2-7 update. What number is that?
22 MS. AXEL: 258.
23 BY MR. HARPER:
24 Q. This is Exhibit 258, Captain Holmes, and you've been
25 talked to about it. 01:31:01

KENNETH HOLMES - Redirect

1 MR. HARPER: Can we go to the end and highlight. Can 01:31:03
2 you highlight that last paragraph for me?

3 BY MR. HARPER:

4 Q. That last paragraph seems to indicate that the Leonidas is
5 saying that going forward, they still think they have the 01:31:15
6 opportunity to bring a DFR; correct?

7 A. Yes.

8 Q. And did you agree with that in February of 2013?

9 A. Yes.

10 MR. HARPER: Can you give me Exhibit 259, the last 01:31:34
11 paragraph?

12 BY MR. HARPER:

13 Q. This is Leonidas writing to whoever is on the server
14 everybody list. Am I right?

15 A. Whoever gets our e-mails, which there's a large number 01:31:53
16 East and West Pilots, but also anybody who goes to the website
17 can read it.

18 Q. So in this document, Exhibit 259, Leonidas is writing to
19 the recipients do not hesitate to vote to ratify the MOU out of
20 concern that it could impair our right to the implementation of 01:32:14
21 the Nicolau?

22 Did I read that correctly?

23 A. Yes.

24 Q. Did you have a point of view on the right to pursue the
25 Nicolau in February of 2013 as a West Pilot? 01:32:23

KENNETH HOLMES - Redirect

1 A. Yes. 01:32:29

2 MR. HARPER: Exhibit 308, please. Would you

3 highlight --

4 I'm sorry, Your Honor, I screwed up the screen.

5 Thank you. Okay. 01:32:58

6 Q. This is Mr. Stockdell's writing; correct?

7 A. I believe that's correct.

8 Q. And he's writing if the West vote for the MOU, USAPA will

9 bring out the Phoenix vote and attempt to use it like Ozark/TWA

10 in any DFR. 01:33:19

11 Has USAPA attempted to use the West vote against it

12 in this litigation?

13 MR. SILVERMAN: Objection, beyond the scope of --

14 THE COURT: Overruled.

15 THE WITNESS: The vote results from the MOU 01:33:31

16 ratification were reported by domicile so they could have used

17 it like that, yes.

18 BY MR. HARPER:

19 Q. And they have in this litigation, haven't they?

20 A. Yes. 01:33:45

21 Q. In the form of a waiver?

22 A. Yes.

23 Q. You had some questions about resolving conflicts within

24 USAPA. Do you remember those questions?

25 A. Yes. 01:34:05

KENNETH HOLMES - Redirect

1 Q. And you were asked about resolving conflicts in the 01:34:06
2 context of compromising positions in connection with contract
3 negotiations; correct?

4 A. Correct.

5 Q. Okay. What was inferred, I believe, in those questions is 01:34:20
6 that USAPA should also be able to resolve conflicts between the
7 West Pilots and the East Pilots over seniority?

8 MR. SILVERMAN: Objection. Form of the question.

9 THE COURT: Sustained.

10 BY MR. HARPER: 01:34:38

11 Q. Do you believe, Captain Holmes, based upon your
12 experience, that USAPA can resolve seniority disputes fairly
13 between the West Pilots and the East Pilots?

14 A. There's no possible way.

15 Q. Can you explain that, please. 01:34:54

16 A. They are locked on date of hire and that is it and they
17 have squandered many, many years, given up many dollars and
18 refused to accept a contract just to preserve that date of
19 hire. They are not going to give up on that.

20 MR. HARPER: No further questions, Your Honor. 01:35:17

21 THE COURT: You may step down.

22 (Witness excused.)

23 THE COURT: Thank you.

24 Your next witness?

25 MS. AXEL: Your Honor, we're going to call Captain 01:35:23

KENNETH HOLMES - Redirect

1 John Scherff.

01:35:24

2 JOHN SCHERFF,
3 called as a witness herein by the Plaintiffs, having been first
4 duly sworn or affirmed to testify to the truth, was examined
5 and testified as follows:

01:35:42

6 COURTROOM DEPUTY: State your name for the record,
7 and spell your last name for the record, please.

8 THE WITNESS: John Scherff. S-C-H-E-R-F-F.

9 **DIRECT EXAMINATION**

10 BY MS. AXEL:

01:36:07

11 Q. Captain Scherff, where are you currently employed?

12 A. US Airways.

13 Q. And how long have you been an employee of US Airways?

14 A. I started at America West since November 1990 and then
15 maintained my employment.

01:36:18

16 Q. So you've worked for either America West or US Airways
17 continuously since 1990?

18 A. I was furloughed in '91 for a short time and then recalled
19 and then went back out on furlough at the end of '91 until '95.

20 Q. So from 1995 to the present you've either worked for
21 America West Airlines or US Airways?

01:36:34

22 A. That's correct.

23 Q. And how long have you been a commercial airlines pilot?

24 A. Almost 30 years.

25 Q. And are you a member of USAPA?

01:36:43

JOHN SCHERFF - Direct

- 1 A. I am. 01:36:45
- 2 Q. And when did you join USAPA?
- 3 A. I joined USAPA when I left the office, it would have been
4 three, three or four years ago.
- 5 Q. And when you say you left the office, what office are you 01:36:57
6 referring to?
- 7 A. I used to be assistant chief pilot in Phoenix.
- 8 Q. And what were your duties as the assistant chief pilot in
9 Phoenix?
- 10 A. It was managerial. Basically, helped the pilots 01:37:08
11 facilitate their work and helped them out in finding documents
12 or dealing with issues on the airplane or pilot issues or
13 people issues.
- 14 Q. So you joined USAPA you said approximately three years
15 ago? 01:37:22
- 16 A. That's correct. I'm trying to remember what year it was.
17 It was four years ago.
- 18 Q. You are currently a member in good standing?
- 19 A. I am. I've always been in good standing since I left the
20 office. 01:37:38
- 21 Q. And have you held any positions within USAPA?
- 22 A. I am on the Phoenix domicile chairman for the BPR.
- 23 Q. And how many BPR reps are there in USAPA?
- 24 A. There are 11.
- 25 Q. 11. And how many of those are from Phoenix? 01:37:51

United States District Court

JOHN SCHERFF - Direct

- 1 A. Three. 01:37:55
- 2 Q. And how many are from the other three domiciles?
- 3 A. Eight.
- 4 Q. And as the chairman of the Phoenix domicile, do you know
5 how many America West pilots are members of USAPA? 01:38:06
- 6 A. It hovers around a thousand. I think it's almost 1100
7 right now.
- 8 Q. And do you know how many total former America West pilots
9 there are?
- 10 A. On property right now, it's a wag, 1600 about. 01:38:21
- 11 Q. So there are approximately 600 former America West pilots
12 that never joined USAPA; is that correct?
- 13 A. I'm going to say loosely 500, 600, some of those being
14 furloughed.
- 15 Q. And could you explain to the Court what the Board of Pilot 01:38:36
16 Representatives does?
- 17 A. The Board of Pilot Representatives helps run the
18 organization of USAPA. They write or they give recommendations
19 to the committees, support to the committees, direction to the
20 committees, approve budgets, write constitutional amendments or 01:38:53
21 the UOM amendments which are the union operating manual, they
22 make edits to that.
- 23 Q. And I should have asked this question earlier. When were
24 you elected to the Board of Pilot Representatives?
- 25 A. About a year and a half ago, about the same time Gary 01:39:11

United States District Court

JOHN SCHERFF - Direct

1 Hummel became president. 01:39:14

2 Q. Could you explain to the Court what type of decisions
3 within the USAPA need approval of the BPR?

4 A. Everything.

5 Q. So that would include amending the constitution? 01:39:31

6 A. Yes, it does include amending the constitution or UOM or
7 group grievances, that sort of stuff.

8 Q. And how often does the BPR meet?

9 A. Quarterly. Scheduled quarterly but occasionally we'll
10 meet once a month. We'll have an interim phone conferences. 01:39:46

11 Q. And are you familiar with the USAPA constitution?

12 A. I am.

13 MS. AXEL: Could we pull up Exhibit 115, Davina?

14 Q. If we could go to page eight of this document. And I
15 would like to highlight paragraph D. And are you familiar with 01:40:07
16 this provision of the USAPA constitution?

17 A. Painfully, yes, I am.

18 Q. And why do you say painfully?

19 A. Because it's kind of their mantra. They always hide
20 behind this provision of their document, "Oh, we can't do that 01:40:26
21 because we have to maintain the principle of seniority based on
22 date of hire."

23 Q. And when you say "they," who do you mean?

24 A. The other BPR members, the Merger Committee, the former
25 East Pilots and counsel. 01:40:40

United States District Court

JOHN SCHERFF - Direct

- 1 Q. And have you ever, as a member of the BPR, tried to amend 01:40:44
2 the constitution?
- 3 A. I have on several occasions. I've lowered resolutions to
4 amend the constitution or to abide by the Transition Agreement
5 or amend the constitution so they could abide by the Transition 01:40:57
6 Agreement.
- 7 Q. Could you explain to the Court what happened to those
8 proposed resolutions?
- 9 A. On several occasions the resolutions were just voted down
10 out of hand. On at least one occasion it was ruled out of 01:41:10
11 order and then at a challenge to the chair, which requires a
12 two-thirds vote to override the chair's rule, it was upheld
13 that it was out of order.
- 14 Q. You said one time, or at least one time, it was just voted
15 down. So does that mean that the resolution went in front of 01:41:29
16 the entire BPR and there was a vote on that?
- 17 A. That's correct.
- 18 Q. And do you recall what the numbers were for that
19 resolution?
- 20 A. Eight to three. 01:41:40
- 21 Q. Okay.
- 22 A. Three Phoenix votes for it.
- 23 Q. And you said that on one occasion it was ruled out of
24 order by the chair.
- 25 A. Yes. That would have been president Hummel. 01:41:48

United States District Court

JOHN SCHERFF - Direct

- 1 Q. And so president Hummel is the chair of the BPR meetings? 01:41:50
- 2 A. When he's there, yes.
- 3 Q. And when it was ruled out of order, was that explained to
4 you?
- 5 A. It was. 01:42:00
- 6 Q. And what was explained to you?
- 7 A. It was -- does it comport with the constitution. It
8 requires the date of hire seniority list.
- 9 Q. So if I understand that correctly, the resolution could
10 not go forward to amend the constitution because it didn't 01:42:12
11 comply with the constitution?
- 12 A. You got it.
- 13 Q. And can we look at Exhibit 142 and these are -- the top
14 document. Do you recognize this document?
- 15 A. I do recognize this document. 01:42:32
- 16 Q. And could you explain to the Court what this is?
- 17 A. What this is a response from general counsel, Brian
18 O'Dwyer, regarding a domicile update that I was evidently
19 trying to put out. It's dated 12-1-2012 and this is where
20 Brian O'Dwyer is telling me that he doesn't agree that my 01:42:57
21 resolution -- he thinks my resolution is out of order but he
22 recognizes it's my right to publish it I believe. Yeah.
- 23 Q. Your right to publish to the other people in your domicile
24 that you tried to put forward this resolution?
- 25 A. In this case, yes. I've had a difficult time publishing my 01:43:16

United States District Court

JOHN SCHERFF - Direct

- 1 information. 01:43:19
- 2 Q. Could you explain to the Court a little bit about why
3 you've had a difficult time publishing information?
- 4 A. Because I don't always agree with the com chair and I've
5 been told that my updates are an opinion and that they won't 01:43:30
6 publish opinions. So I have a little issue.
- 7 Q. And just so we explain to the Court how this process
8 works, now, as the chairman of each domicile, you can send out
9 an update to your domicile members?
- 10 A. That's right. Hopefully, I will send out an update to our 01:43:49
11 domicile. It will send out to whoever is signed up for the
12 e-mail and then go on to the USAPA server as underneath the
13 Phoenix domicile.
- 14 Q. And if I understand correctly what you're telling us, your
15 updates are often edited by the communications chairman? 01:44:06
- 16 A. They were often edited by the communications chair. I've
17 since then changed how I do my updates sometimes.
- 18 Q. Okay. Just so we point this out for the record, could we
19 look at Exhibit 154 and go to the -- if we could go to the
20 second page of this document. Is this another example of the 01:44:35
21 type of resolution that you often tried to put forward at the
22 BPR meetings?
- 23 A. Yeah. I believe this was -- this would have been in
24 Decemberish, this resolution that we tried to put forward.
- 25 Q. And what happened to this resolution? 01:45:03

United States District Court

JOHN SCHERFF - Direct

- 1 A. I believe this one was the one that was ruled out of 01:45:05
2 order.
- 3 Q. And you previously told us that you were on the BPR in
4 April of 2012; correct?
- 5 A. That's correct. 01:45:14
- 6 Q. When did the BPR become aware of a term sheet between APA
7 and US Airways?
- 8 A. It was right after April of 2012 that it was -- it was
9 within days of being elected.
- 10 Q. How did you become aware of it? 01:45:30
- 11 A. The BPR meeting, the NAC, which was headed by Paul Diorio
12 at the time, brought to it our attention.
- 13 Q. And did the BPR give any instructions to the NAC as to
14 what to do with this document, not this document in front of
15 you, the term sheet? 01:45:50
- 16 A. The term sheet?
- 17 Q. Correct.
- 18 A. The BPR instructed the NAC to try and participate and the
19 BPR was quite upset that somebody else was negotiating a
20 contract that they would end up living under that they didn't 01:46:02
21 have any say in negotiating.
- 22 Q. Could you explain why they were -- why this would be a
23 contract, the APA term sheet, that USAPA would live under?
- 24 A. Well, in airlines that mergers after the POR, that
25 National Mediation Board makes a determination and eventually 01:46:20

JOHN SCHERFF - Direct

- 1 the smaller labor group would be folded in to the larger labor 01:46:24
2 group's contract which they refer to as a green book.
- 3 Q. And I would like to actually take a look at Exhibit 7 and
4 you have been in the courtroom today; correct?
- 5 A. I have. 01:46:46
- 6 Q. So you understand that this has been identified as MOU I?
7 A. That's correct. I do understand that.
- 8 Q. And when was the BPR presented with this document?
9 A. It would have been in August of 2012.
- 10 Q. And who presented it? 01:46:59
11 A. The NAC. And when I say the NAC, in addition to that,
12 Roland Wilder, who was the negotiating advisor.
- 13 Q. And what was the reaction of the BPR?
14 A. We each had different issues with this understanding and
15 different concerns and we put them all together in a list and 01:47:19
16 sent the NAC back to take another bite of the apple or try to
17 address the concerns we had.
- 18 MS. AXEL: Davina, could we take a look at
19 Exhibit 106, please.
- 20 BY MS. AXEL: 01:47:36
- 21 Q. If we go to page four of this document, if we could
22 highlight the section under the MOU and pull that out. Does
23 this look like the list of items that you sent to the NAC to
24 negotiate?
- 25 A. It does. 01:47:56

United States District Court

JOHN SCHERFF - Direct

- 1 Q. And seniority is not an issue; is that correct? 01:47:59
- 2 A. That's right.
- 3 Q. When the MOU I was presented to the BPR, was there any
4 discussion about the seniority integration process?
- 5 A. McCaskill-Bond process was explained to us but, no. And 01:48:11
6 the McCaskill-Bond process was explained about US Airways and
7 APA pilots, not us.
- 8 Q. So the McCaskill-Bond process would apply to US Airways
9 pilots and American pilots; correct?
- 10 A. That's right. 01:48:31
- 11 Q. Okay. And were you aware of the declaratory judgment
12 action pending in front of this court last year?
- 13 A. I was.
- 14 Q. And were you aware of the order that came out last
15 October? 01:48:48
- 16 A. I read the order, yes.
- 17 Q. Do you recall what USAPA's general reaction to the order
18 was?
- 19 A. Euphoric.
- 20 Q. And did you understand why they were euphoric? 01:48:55
- 21 A. I didn't understand it. I didn't read that in the order.
- 22 Q. And I would like to show you what's been marked as
23 Exhibit 20. This was an update published by USAPA on or around
24 October 17 of 2012; is that correct?
- 25 A. Yes. 01:49:18

United States District Court

JOHN SCHERFF - Direct

- 1 Q. Okay. And could we pull that out? 01:49:19
- 2 A. Thanks. I couldn't quite read it.
- 3 Q. And in the paragraph under the indenting, it says USAPA is
4 free to pursue any seniority position it wishes.
- 5 Did you understand that was USAPA's position after 01:49:33
6 the October 2012 order came out?
- 7 A. That's what I understood they believed, yes.
- 8 Q. Did you voice your disagreement with that position?
- 9 A. I did.
- 10 Q. How did you do that? 01:49:45
- 11 A. In this case I came out with an update that only quoted
12 Judge Silver's statements that I just cut and pasted from her
13 order and I put that out as an update. I think there were only
14 twelve that I put in there.
- 15 Q. Could we look at Exhibit 45. 01:50:03
- 16 A. Something like that.
- 17 Q. And is this the update that you put out?
- 18 A. It is. There are more than twelve.
- 19 Q. And you said that you took -- you actually put in quotes
20 from the judge; is that correct? 01:50:25
- 21 A. That's correct.
- 22 Q. Were you free to put anything else in there about what you
23 interpreted the order to mean?
- 24 A. I was not.
- 25 Q. And why was that? 01:50:33

United States District Court

JOHN SCHERFF - Direct

- 1 A. Because I was told that that was my opinion and that is 01:50:35
2 not what . . .
- 3 Q. And who told you that?
- 4 A. At that time, it was James Ray.
- 5 Q. And who is James Ray? 01:50:45
- 6 A. He's the communications chairman.
- 7 Q. Okay. And I would like to also take a look at
8 Exhibit 152.
- 9 And are you familiar with this document, once you can
10 see it? 01:51:01
- 11 A. Yes, I am familiar with that.
- 12 Q. Okay. And this document is actually a PHL, which is
13 Philadelphia; correct?
- 14 A. Yes.
- 15 Q. Domicile update dated October 30, 2012, and it is actually 01:51:16
16 just cutting and pasting a Charlotte domicile update from the
17 day before; is that correct?
- 18 A. Yes.
- 19 Q. And I would like to go to page two of this document. And
20 if we could go to that last paragraph that is pulled out here, 01:51:38
21 it says, "Common sense would dictate that Judge Silver
22 obviously believes there are legitimate union purposes for
23 setting aside the Nicolau Award."
- 24 Is that anywhere in the October 2012 order?
- 25 A. Not that I recall, no, ma'am. 01:51:52

JOHN SCHERFF - Direct

- 1 Q. So whoever wrote this update was allowed to give their
2 opinion? 01:51:54
- 3 A. Yes, ma'am.
- 4 Q. And you were not?
- 5 A. Not generally, no. 01:51:59
- 6 Q. And then I think that below this paragraph, if we could
7 pull out the next one, it says, "There is no question that
8 USAPA has a legitimate union purpose. In fact, many good
9 reasons for a seniority proposal differ from the Nicolau."
10 And, again, was this the opinion of the Charlotte reps as far
11 as you understood it? 01:52:20
- 12 A. As far as I understood it, yes.
- 13 Q. Now, we all know that after MOU I, when the BPR sent the
14 NAC back to negotiate further items, something happened and
15 they were unable to continue negotiating with the company; is
16 that correct? 01:52:44
- 17 A. That's correct.
- 18 Q. And at some point did you understand that those
19 negotiations began again?
- 20 A. And. 01:52:55
- 21 Q. And what was the BPR's role, if any?
- 22 A. Supportive of the NAC. They already had our list of
23 things that concerned us.
- 24 Q. So did you change -- and by "you," I mean did the BPR
25 change the instructions given to the NAC back in August? 01:53:06

United States District Court

JOHN SCHERFF - Direct

- 1 A. Not that I recall, no. 01:53:10
- 2 Q. Did the BPR tell the NAC to include anything in there
3 about seniority?
- 4 A. No.
- 5 Q. And you heard Captain Holmes talk about the daily 01:53:21
6 briefings to the BPR. Do you recall those during this time
7 frame?
- 8 A. I recall several briefings from the NAC. I don't know
9 that they were every day.
- 10 Q. Was there anything said regarding seniority? 01:53:34
- 11 A. No. The only thing that was ever mentioned was the MOU
12 was seniority neutral.
- 13 Q. It was seniority neutral?
- 14 A. But no specifics, no.
- 15 Q. And was that with respect to Section 10H of the MOU? 01:53:46
- 16 A. I didn't even know about 10H at the time.
- 17 Q. Do you recall who said that the document was seniority
18 neutral?
- 19 A. Pat Szymanski always said that.
- 20 Q. So Pat Szymanski was on briefings to the BPR? 01:54:00
- 21 A. "Pat Szymanski spoke regarding the merger. And when I say
22 "merger," I mean merger of seniority lists, not merger of
23 airlines.
- 24 Q. And when was the first time that you saw the MOU II?
- 25 A. It would have been the first week of January. 01:54:17

United States District Court

JOHN SCHERFF - Direct

- 1 Q. Of 2013? 01:54:22
- 2 A. Of 2013, yes.
- 3 Q. And how did you see that document?
- 4 A. It was passed around to us at the BPR in Charlotte.
- 5 Q. Was there a presentation made about that? 01:54:33
- 6 A. There was. The NAC gave us a presentation on the changes.
- 7 Q. Did the NAC brief you on the changes to the provision
8 regarding seniority?
- 9 A. As I stated, Pat Szymanski said that the MOU was seniority
10 neutral. It was differently worded but it was purported to be 01:54:55
11 seniority neutral.
- 12 Q. Do you recall what the attitude was of the other
13 representatives about the MOU II?
- 14 MR. SILVERMAN: Objection.
- 15 THE COURT: And? 01:55:07
- 16 MR. SILVERMAN: Attitude.
- 17 THE COURT: Attitude?
- 18 MR. SILVERMAN: I'm objecting to the attitude,
19 objecting to the form of the question, Judge.
- 20 THE COURT: Overruled. 01:55:14
- 21 THE WITNESS: I don't know what that means. Do I
22 answer?
- 23 BY MS. AXEL:
- 24 Q. You answer the question.
- 25 A. And the question was? Did I remember the other attitudes 01:55:20

United States District Court

JOHN SCHERFF - Direct

1 of the BPR reps? 01:55:24

2 Q. Yes.

3 A. Yes. Some of them were quite unhappy with the lack of
4 funding of their retirements and some of them were quite
5 unhappy about the lack of retro pay to their two bankruptcies 01:55:30
6 that they went through.

7 Q. When you say some of them were unhappy about the retro
8 pay, the two bankruptcies, are you referring to former US
9 Airways or East Pilots?

10 A. Yes, former East Pilots. 01:55:48

11 Q. And would you explain what the retrospective pay was that
12 they were unhappy about not receiving?

13 A. I called it retro pay. Retro pay not retrospective pay.
14 The retrospective pay is different. The retro pay that they
15 were talking about are their pay cuts that they took in their 01:56:03
16 last contract that they still work under. They wanted their
17 pay rates being retro to when the POR, the new US Airways I
18 guess.

19 Q. So they wanted the --

20 A. They wanted a lot of money. 01:56:20

21 Q. How much money did they want? That's a better question.

22 A. Nobody would ever tell me.

23 Q. So they wanted to pay from the current contract they are
24 operating under, which is from I believe 1998; is that correct?

25 A. Yes, ma'am. 01:56:33

United States District Court

JOHN SCHERFF - Direct

- 1 Q. So they wanted to be paid from 1998 to the present -- 01:56:34
- 2 A. They wanted to be made whole for their retirement.
- 3 Q. Okay.
- 4 A. Some of them, not all of them.
- 5 Q. I would like to look at Exhibit 24 and if we could go to 01:56:48
- 6 paragraph 10H.
- 7 A. They actually wanted -- the American pilots got an equity
- 8 stake, too. They wanted that as well.
- 9 MR. SILVERMAN: Objection, Judge, no question
- 10 pending. 01:57:12
- 11 THE COURT: I can't hear you.
- 12 MR. SILVERMAN: Objection. No question pending.
- 13 THE COURT: Sustained.
- 14 BY MS. AXEL:
- 15 Q. And are you familiar with Section 10H of the MOU which 01:57:19
- 16 we've put up on the screen for you?
- 17 A. Yes.
- 18 Q. And we already talked a little bit about the discussion
- 19 during the BPR presentation in earlier January about this
- 20 document and you said that Pat Szymanski said this document was 01:57:35
- 21 neutral; is that correct?
- 22 A. At the BPR meetings he said it was neutral.
- 23 Q. And let's focus in on those, that BPR meeting. And the
- 24 BPR meeting was over two days in January; is that right?
- 25 A. That's correct. 01:57:51

United States District Court

JOHN SCHERFF - Direct

- 1 Q. Did anybody from the NAC or USAPA Merger Council or Merger 01:57:53
2 Committee tell you that this was an amendment to the Transition
3 Agreement that got rid of the obligation to use the Nicolau
4 Award?
- 5 A. They did not. 01:58:06
- 6 Q. Did anyone on the NAC, Merger Committee, Merger Council,
7 or anyone else from USAPA tell you the reason for the
8 inclusion, of this paragraph?
- 9 A. No.
- 10 Q. Did anybody from the NAC, the officers, the Merger 01:58:19
11 Council, Pat Szymanski, tell you what the effect of this
12 paragraph was going to be?
- 13 A. No.
- 14 Q. During this BPR meeting, was there any discussion about
15 the West Pilots' participation in the seniority integration 01:58:38
16 process with American Airlines?
- 17 A. No, other than USAPA would be participating.
- 18 Q. And as a member of the BPR, did you ultimately vote on
19 whether or not to recommend this document?
- 20 A. I did. 01:58:59
- 21 Q. And did you vote in favor of it?
- 22 A. I did.
- 23 Q. And why did you vote in favor of it?
- 24 A. This is MOU II; right? I voted in favor of it because it
25 did -- it did bring us on par with American Airlines. 01:59:09

United States District Court

JOHN SCHERFF - Direct

- 1 Q. For the pay raise? 01:59:15
- 2 A. Yes.
- 3 Q. And after the BPR voted to approve this document, what
4 happened?
- 5 A. We went on road shows to each of the domiciles and then 01:59:22
6 there was a vote, ratification vote.
- 7 Q. And you mentioned the road shows. Did you attend them?
- 8 A. I did.
- 9 Q. And which ones did you attend?
- 10 A. I attended all of them. 01:59:34
- 11 Q. And I would like to talk about the Charlotte road show and
12 what was the makeup of the audience in the Charlotte road show?
- 13 A. It was almost 100 percent former East based pilots. A few
14 West based pilots would show up but it was the NAC, I believe
15 most of the officers, if not all of the officers were there, 02:00:01
16 and I guess that's about it. Some of the -- some of the
17 Charlotte domicile reps were there.
- 18 Q. And did you recall hearing something different at that
19 road show than what had been explained to you about the
20 seniority process? 02:00:23
- 21 A. I did.
- 22 Q. And what did you hear?
- 23 A. I heard, basically, that Pat Szymanski said that the TA
24 goes away and that the -- from an answer from the galley, that
25 the Nic is dead. 02:00:38

United States District Court

JOHN SCHERFF - Direct

- 1 Q. Did you say anything at that point? 02:00:41
- 2 A. I didn't at the -- at that road show, no.
- 3 Q. Did you say anything subsequent to that?
- 4 A. I said something at the DC road show.
- 5 Q. And what did you say at the DC road show? 02:00:53
- 6 A. I answered a question from the gallery from one of the
- 7 pilots that asked why would a West Pilot vote for this.
- 8 Q. What was your answer?
- 9 A. My answer was that they would argue that the status quo
- 10 was the Nicolau. 02:01:05
- 11 Q. And did you attend the Phoenix road show?
- 12 A. I did.
- 13 Q. And what did -- when the road shows were happening, who
- 14 was responsible for any seniority-related questions?
- 15 A. Any seniority-related questions were referred to Pat 02:01:21
- 16 Szymanski.
- 17 Q. And what did Mr. Szymanski say in the Phoenix road shows
- 18 about the MOU and seniority?
- 19 A. He said that no West Pilots should vote for it because
- 20 they figured it would trigger the Nicolau and nobody should 02:01:32
- 21 vote against it because of how they felt on the seniority which
- 22 I took to mean that's neutral.
- 23 Q. So it was back to being neutral by the Phoenix road show?
- 24 A. Yes, what he said at the Phoenix road show was very
- 25 similar to what he said in that Philly update that you had up 02:01:48

United States District Court

JOHN SCHERFF - Direct

- 1 earlier or somebody had up earlier. 02:01:51
- 2 Q. And I believe you mentioned earlier that the USAPA
3 officers were at the Charlotte road show; is that correct?
- 4 A. Yes.
- 5 Q. Were they also at the Phoenix road show? 02:01:59
- 6 A. Not that I recall, no.
- 7 THE COURT: Let me ask a question. I may have
8 misunderstood. At the Charlotte road show, who was it that
9 said that the Nicolau agreement is dead?
- 10 THE WITNESS: One of the pilots in the audience 02:02:17
11 asked, "Is the Nic dead?"
- 12 And Pat Szymanski said, "The Nic is dead."
- 13 THE COURT: I see. So the answer by Mr. Szymanski
14 was that it is dead?
- 15 THE WITNESS: That's what I recall hearing, yes, 02:02:31
16 ma'am.
- 17 THE COURT: Okay. Go ahead.
- 18 BY MS. AXEL:
- 19 Q. When you were at the Phoenix road show after you heard
20 Mr. Szymanski going back to the neutral language, did you get 02:02:43
21 up and say, "Why didn't you say that in Charlotte"?
- 22 A. I did not.
- 23 Q. And why not?
- 24 A. I didn't think it was the forum to do that.
- 25 Q. Has the BPR discussed the McCaskill-Bond process at all 02:02:57

United States District Court

JOHN SCHERFF - Direct

- 1 since the ratification? 02:03:00
- 2 A. Since the ratification, not -- I don't recall discussing
3 it since then.
- 4 Q. And do you have any understanding about what group or who
5 was in USAPA responsible for coming up with the seniority 02:03:14
6 integration protocol with American?
- 7 A. Seniority integration protocol is spelled out in the
8 constitution of USAPA and they have to follow that according to
9 what they told us.
- 10 Q. And you understand that the USAPA is opposed to the West 02:03:37
11 Pilots participating in McCaskill-Bond; correct?
- 12 A. I do.
- 13 Q. And do you think USAPA can fairly represent the West
14 interests in McCaskill-Bond?
- 15 A. I do not. 02:03:48
- 16 Q. And why not?
- 17 A. I can't even amend the constitution and put out to a vote
18 in order for them to change the part of their constitution. It
19 requires them to do only a date of hire seniority list so I
20 don't see how they could represent the fair interest of the 02:04:02
21 West Pilots under that burden.
- 22 Q. So you can't even amend the USAPA constitution to be
23 neutral; is that right?
- 24 A. That's right.
- 25 Q. And just one quick follow-up question. You said that 02:04:19

United States District Court

JOHN SCHERFF - Direct

1 there were approximately 500 to 600 West Pilots that are not 02:04:21
2 members of USAPA; is that correct?

3 A. It's a very rough guesstimate, yes, ma'am.

4 Q. Were those 500 plus pilots allowed to vote in the
5 ratification of the MOU? 02:04:33

6 A. No.

7 Q. Could you explain to the Court what you think the impact
8 of not obtaining relief in this action would be?

9 A. For the West Pilots?

10 Q. For the West Pilots. 02:04:50

11 MR. SILVERMAN: Objection. Legal conclusion.

12 THE COURT: Sustained.

13 MS. AXEL: One moment, Your Honor.

14 We'll pass the witness.

15 **CROSS - EXAMINATION** 02:05:07

16 BY MR. SILVERMAN:

17 Q. Mr. Scherff, there's been discussion concerning amendment
18 of the USAPA constitution.

19 A. Yes.

20 Q. There are more ways than one to amend the USAPA
21 constitution, aren't there? 02:05:38

22 A. I'm not aware of any other way besides the BPR, rewriting
23 it and then submitting to it membership for ratification.

24 MR. SILVERMAN: Can we have the USAPA constitution,
25 please. 02:05:52

United States District Court

JOHN SCHERFF - Cross

- 1 BY MR. SILVERMAN: 02:05:56
- 2 Q. Before I ask you to look at the constitution, at any time
3 before this either, in your service as a BPR member or
4 otherwise and your review of the constitution, because you've
5 been trying to amend it, are you not aware of the fact that the 02:06:04
6 constitution could be amended by referendum, by getting
7 referendum from the membership and bypassing the BPR?
- 8 A. It requires a two-thirds majority of the membership to
9 amend the constitution, Mr. Silverman.
- 10 Q. Directing your attention to what is being highlighted here 02:06:26
11 amendment initiated by the membership?
- 12 A. Yes.
- 13 Q. So it says 25 percent of the members in good standing may
14 petition the secretary/treasurer to ballot the membership
15 concerning the proposed amendment to the constitution and 02:06:39
16 bylaws.
- 17 Do you see, that sir?
- 18 A. I do see that.
- 19 Q. So that at any time that you testified that you've been
20 trying to get the constitution amended, did you initiate 02:06:49
21 through -- through the BPR, did you initiate or cause to be
22 initiated any attempts to amend the constitution by getting the
23 25 percent of the members in good standing to petition the
24 secretary-treasurer?
- 25 A. The BPR isn't 25 percent of the membership, Mr. Silverman. 02:07:06

JOHN SCHERFF - Cross

1 I'm not trying to be obtuse but the BPR has 11 members. That 02:07:12
2 doesn't hardly come up to 25 percent of the membership.

3 Q. Perhaps it's moot, Mr. Scherff.

4 Under the constitution, would you agree with me that
5 there are two methodologies, there are two pathways to 02:07:26
6 amendment, one by -- with the membership, the other through the
7 BPR? Do you agree with that?

8 A. I do.

9 Q. And you've discussed today in your testimony your attempts
10 to amend the constitution by proposing a resolution through the 02:07:39
11 BPR; is that correct?

12 A. That is correct.

13 Q. And you've been unsuccessful in doing that; is that
14 correct?

15 A. Many times. 02:07:50

16 Q. Did you --

17 A. Several times.

18 Q. Have you ever initiated an attempt to amend the
19 constitution by getting 25 percent of the members in good
20 standing to petition the secretary/treasurer? 02:07:59

21 A. I have not.

22 Q. Were you aware of that methodology prior to our discussion
23 today?

24 A. I read the constitution but the vehicle that I had
25 available to me with the communications that I have with my 02:08:16

JOHN SCHERFF - Cross

1 membership is the BPR level. I'm the BPR rep. So that's the 02:08:20
2 vehicle that I used to try to amend the constitution of USAPA.
3 MR. SILVERMAN: I move to strike os nonresponsive,
4 Judge.
5 THE COURT: I'm going to allow it. 02:08:35
6 Go ahead.
7 BY MR. SILVERMAN:
8 Q. Mr. Scherff, my question was simply, were you aware of the
9 methodology of going to the membership and bypassing the BPR to
10 amend the constitution prior to our conversation today? 02:08:43
11 A. At some point, yes, sir.
12 Q. Okay.
13 By the way, in terms of the numbers, does the West --
14 does the Phoenix-based pilots comprise 25 percent of the USAPA
15 membership in good standing? 02:09:01
16 A. I'm not sure how many. I wouldn't be the person to ask
17 that.
18 Q. Okay.
19 MR. SILVERMAN: Can we bring up Plaintiffs' 24,
20 please. 02:09:26
21 BY MR. SILVERMAN:
22 Q. Bear with me, please, Mr. Scherff.
23 Directing your attention to paragraph 10H of MOU II,
24 is it your testimony, Mr. Scherff, that you have no idea what
25 this provision means? 02:10:00

JOHN SCHERFF - Cross

- 1 A. No, sir. I believe that that paragraph says that it's 02:10:06
2 stats quo and I stated that I believe the status quo is the
3 Nicolau.
- 4 Q. Okay. So to unpack this a little bit, this provision
5 says, the words, US Airways agrees that neither this memorandum 02:10:18
6 nor the JCBA shall provide a basis for changing the seniority
7 lists currently in effect at US Airways other than through the
8 process set forth in this Paragraph 10.
- 9 Do you agree?
- 10 A. Yes. 02:10:42
- 11 Q. Now, as of the date of the MOU and in, in fact, today, do
12 you agree with me that there are two seniority lists in effect
13 at governing seniority of US Airways pilots?
- 14 A. I believe there are three seniority lists. There's the
15 East list, the West list, and the Nicolau that is awaiting a 02:11:00
16 single contract to use.
- 17 Q. Okay. For bidding purposes for Phoenix-based pilots, what
18 list is used, sir?
- 19 A. The West list.
- 20 Q. The West list? 02:11:16
- 21 A. Yes.
- 22 Q. And the same question for the East Pilots, what list is
23 used, sir?
- 24 A. I assume the East list.
- 25 Q. Is there any -- in fact, is there any term and condition 02:11:25

JOHN SCHERFF - Cross

- 1 that actually governs what a US Airways pilot does in his or
2 her flying day or career that is presently governed by the
3 Nicolau list? 02:11:30
- 4 A. The Nicolau list is referenced in the East contract and
5 the West contract and the Transition Agreement. 02:11:46
- 6 MR. SILVERMAN: I move to strike, Judge.
- 7 THE COURT: Sustained.
- 8 BY MR. SILVERMAN:
- 9 Q. Mr. Scherff, we can go through this. For vacation
10 purposes, does a West Pilot use the West list or the Nicolau
11 list? 02:12:00
- 12 A. The West list.
- 13 Q. Okay. What other things -- since this is what we have to
14 do, what other things are there that affects a pilot's career
15 are governed by seniority on one of the two lists, East or
16 West? 02:12:17
- 17 A. Until there is a single contract, it would be the West
18 would be governing the West Pilots.
- 19 Q. I'm saying what other kinds of things. Vacations?
- 20 A. Vacations. 02:12:31
- 21 Q. Bids for different aircraft, what else?
- 22 A. That's correct. Schedule.
- 23 Q. Schedule. Is schedule for a West Pilot governed by the
24 West CBA or the Nicolau list?
- 25 A. It's covered by the West CBA because -- 02:12:41

JOHN SCHERFF - Cross

- 1 Q. I'm sorry? 02:12:43
- 2 A. I'm finished.
- 3 Q. So is there any term or condition of the flying
4 practicality, the flying life of a pilot governed at the
5 present time by the Nicolau list? 02:12:55
- 6 A. Not yet.
- 7 Q. Mr. Scherff, you testified that seniority was not an issue
8 with respect to the negotiation of MOU II; is that correct?
- 9 A. As I understood it, yes.
- 10 Q. Isn't it true that there were -- it was specifically 02:13:18
11 excluded from negotiation because it was already determined
12 that seniority would be governed by the McCaskill-Bond process.
- 13 A. That's interesting. The McCaskill-Bond process applies to
14 the merger of US Airways pilots with American. It's
15 prospective, not retrospective. The McCaskill-Bond process is 02:13:43
16 for the next merger, not the last merger as I understand it.
- 17 Q. Okay. Actually, we'll get back to that.
- 18 A. Does that answer your --
- 19 Q. I disrupted myself. I'm on paragraph H here. I apologize
20 for being disjointed. Directing your attention back to 02:14:00
21 paragraph H which is highlighted here, so that there are --
22 we've established that there are two seniority lists in effect
23 at US Airways at present; right?
- 24 A. One for each contract.
- 25 Q. One for each contract? 02:14:15

JOHN SCHERFF - Cross

- 1 A. Yes. 02:14:16
- 2 Q. And do you agree with me, sir, that this paragraph H is
3 saying that, in sum or substance, that we're not going to
4 change that situation. East follows East; West follows West
5 for the things that we've talked about here until there is a 02:14:37
6 process for merging them, those lists, through the process set
7 forth in paragraph 10 above. Do you agree with that, sir?
- 8 MS. AXEL: Objection, Your Honor. This question has
9 been asked and answered now I think twice.
- 10 THE COURT: Overruled. Let me see if I can get an 02:14:52
11 answer this time.
- 12 THE WITNESS: I don't agree with that statement.
- 13 BY MR. SILVERMAN:
- 14 Q. You don't agree that that is what --
- 15 A. I don't understand that paragraph is stating what you just 02:14:59
16 said, no, sir, I do not agree with that.
- 17 Q. Okay. Are you aware of any reasons why US Airways would
18 not want to put into effect, sort of on an interim basis while
19 a merger is in the works, a merger of the East and West
20 seniority lists? They would only want to do that once there is 02:15:26
21 a merger with American and the American Airlines pilots and all
22 of the US Airways pilots can be merged together.
- 23 A. I don't think I understand the question.
- 24 Q. Isn't it true, sir, that US Airways didn't want to do an
25 interim merger of the East and West seniority lists while the 02:15:50

JOHN SCHERFF - Cross

1 merger was pending? 02:15:54

2 MS. AXEL: Objection. Foundation.

3 THE COURT: Sustained.

4 BY MR. SILVERMAN:

5 Q. Did you ever hear from any US Airways representative that 02:16:00

6 they did not want to, in sum or substance, do a merger of the

7 East and West lists that would be in effect for a short period

8 of time while the merger with American Airlines was proposed

9 and being planned for the future?

10 A. No, sir. 02:16:22

11 Q. Thank you. I'm done with paragraph 10H.

12 THE COURT: Redirect?

13 MS. AXEL: Short one, Your Honor.

14 THE COURT: You're finished?

15 MR. SILVERMAN: I said I'm done with paragraph 10H, 02:16:33

16 Your Honor. I'm sorry. I won't be much longer.

17 Thank you, Judge.

18 THE COURT: That means that you're really done.

19 Redirect?

20 MS. AXEL: Yes, still a short one. 02:17:04

21 **REDIRECT EXAMINATION**

22 BY MS. AXEL:

23 Q. Could we look at Exhibit 142, please and I believe earlier

24 you identified Brian O'Dwyer as the general counsel of USAPA;

25 is that correct? 02:17:23

JOHN SCHERFF - Redirect

- 1 A. That's correct. 02:17:23
- 2 Q. Okay. And if we could look at Exhibit 117, page 37.
- 3 Mr. O'Dwyer knew that you were attempting to amend the
- 4 constitution of USAPA to be neutral; is that correct?
- 5 A. That's correct, from that e-mail, yes. 02:17:45
- 6 Q. Did he ever explain to you that there was another process
- 7 under the USAPA constitution that you could use?
- 8 A. No.
- 9 MS. AXEL: Thank you. No further questions.
- 10 THE COURT: All right. You may step down. 02:17:57
- 11 THE WITNESS: Thank you.
- 12 (Witness excused.)
- 13 THE COURT: Your next witness?
- 14 MR. JACOB: The plaintiffs call Captain Brian
- 15 Stockdell, please. 02:18:08
- 16 BRIAN STOCKDELL,
- 17 called as a witness herein by the Plaintiffs, having been first
- 18 duly sworn or affirmed to testify to the truth, was examined
- 19 and testified as follows:
- 20 COURTROOM DEPUTY: State your name for the record and 02:18:21
- 21 spell your last name, please.
- 22 THE WITNESS: Brian Stockdell, S-T-O-C-K-D-E-L-L.
- 23 MR. JACOB: I have two demonstrative exhibits, Your
- 24 Honor, and I want to make sure that you are seeing them.
- 25 THE COURT: And whoever is cross-examining this 02:18:51

JOHN SCHERFF - Redirect

1 witness, make sure you can position yourself so that you can 02:18:53
2 see them.

3 MR. JACOB: Does this work for you?

4 THE COURT: It works for me.

5 **DIRECT EXAMINATION** 02:19:00

6 BY MR. JACOB:

7 Q. Mr. Stockdell, do you currently work at US Airways?

8 A. I do.

9 Q. And how long have you been a major airline pilot for?

10 A. Proximally 20 years. 02:19:11

11 Q. What's your position at US Airways?

12 A. I'm an Airbus 320 captain.

13 Q. And you have a technical background?

14 A. I do.

15 Q. Could you tell us what that is? 02:19:25

16 A. I have -- I earned a master's degree in electrical
17 engineering and a master's degree in business administration
18 from Arizona State University.

19 Q. And you used Excel spreadsheets and the like?

20 A. Yeah. I have extensive background working at Motorola 02:19:40

21 Government Electronics Division as the project manager or
22 project leader. I have been involved in bidding and
23 estimating, budgeting of multimillion dollar defense contracts.

24 Q. I would like to call your attention to the two exhibits
25 that we have blown up over here which are Exhibits 118 and 119. 02:20:10

BRIAN STOCKDELL - Direct

- 1 Have you seen these before? 02:20:16
- 2 A. I have.
- 3 Q. Can you explain to us what these are?
- 4 A. I created them to illustrate the disparity between the
5 arbitrated Nicolau Award and USAPA date of hire seniority 02:20:26
6 scheme.
- 7 Q. And when were those used?
- 8 A. From -- in 2009 before the trial before Judge Wake.
- 9 Q. Okay. Can you give us a brief idea how you made those
10 graphics? 02:20:46
- 11 A. After importing the seniority lists into the Excel
12 spreadsheet, I colored the rows such that red for the East
13 Pilots, blue for the West Pilots and black was for the East
14 Pilots on furlough at the time of the merger.
- 15 I then compressed and squished the spreadsheets so 02:21:05
16 that I could get it into a single column that would fit on one
17 page.
- 18 Q. Okay. Thank you.
- 19 And those names that we see alongside those two
20 graphs, what do those names represent? 02:21:24
- 21 A. I believe that those are approximate placement of the
22 plaintiffs where -- their position on those lists.
- 23 Q. So just to look at a few things, both of these lists show
24 that the top is all red; is that correct?
- 25 A. Correct. 02:21:41

United States District Court

BRIAN STOCKDELL - Direct

- 1 Q. So that represents that on both of those two ways of 02:21:42
2 ordering the lists, the top are all East Pilots?
- 3 A. Correct.
- 4 Q. Okay. If you look at the chart on the left side here, the
5 chart that is closest to you, that is the -- that is the pilots 02:21:56
6 in the date of hire order; is that correct?
- 7 A. Correct.
- 8 Q. And what color is the predominant color at the bottom of
9 that chart?
- 10 A. The bottom of the chart is predominantly blue. 02:22:13
- 11 Q. And that represents which of the two pilot groups?
- 12 A. West Pilots.
- 13 Q. If you look at the chart on my right, which is the
14 farthest from you, that represents the order of the Nicolau
15 list; is that correct? 02:22:29
- 16 A. Correct.
- 17 Q. And what color is at the bottom of chart?
- 18 A. That is black representing the East Pilots that did not
19 have a job at the time of the merger.
- 20 Q. Pilots that were on furlough in 2005? 02:22:44
- 21 A. Correct.
- 22 Q. Your understanding is that when airlines furlough pilots
23 and the way that these contracts work, they would take pilots
24 from the bottom of these lists; is that correct?
- 25 A. It's standard practice to be in inverse seniority order, 02:22:59

United States District Court

BRIAN STOCKDELL - Direct

1 correct. 02:23:03

2 Q. So if several hundreds pilots were to be furloughed off
3 the date of hire order, which pilots would those be?

4 A. Predominantly West Pilots.

5 Q. And some black lines there; right? 02:23:13

6 A. Yes. Some pre-merger furloughed pilots.

7 Q. And if several hundred pilots were to be taken off the
8 Nicolau order, who would that be?

9 A. It would be predominantly the East Pilots that were on
10 furlough at the time of the merger. 02:23:30

11 Q. Okay. Thank you.

12 Now, four years have passed since you made these
13 graphics; right?

14 A. Yes.

15 Q. And has there been some change to the pilot roster at the 02:23:36
16 airline?

17 A. There has. There has been a number of people that have
18 been removed due to a few retirements, deaf, terminations, et
19 cetera.

20 Q. Okay. So I'll call your attention, then, to a third 02:23:53
21 graphic. Do you recognize this?

22 A. I do.

23 MR. SZYMANSKI: Your Honor, are these being offered
24 at this time? I'm just trying to figure out when the right
25 time is to make an objection. 02:24:08

United States District Court

BRIAN STOCKDELL - Direct

- 1 THE COURT: Well, are you -- they are being offered 02:24:10
2 for demonstrative purposes; right?
- 3 MR. JACOB: Right, Your Honor.
- 4 THE COURT: I'm going to admit them for demonstrative
5 purposes. You can make your objection at an appropriate time. 02:24:20
6 Are you going to be able to cross-examine the witness?
- 7 MR. SZYMANSKI: Okay, Your Honor. Thank you.
- 8 BY MR. JACOB:
- 9 Q. Okay. This is Exhibit 150. You recognize this?
- 10 A. I do. 02:24:36
- 11 Q. Just looking at the two taller columns, what do those two
12 represent?
- 13 A. Well, as far as the colored portion of it, it's, again,
14 the Nicolau list and the date of hire list that has been
15 updated with the current roster. 02:24:51
- 16 Q. Okay. And you did the coloring the same that you used in
17 2009?
- 18 A. Correct.
- 19 Q. So the red represents East Pilots; the black represents
20 West Pilots; is that correct? I'm sorry. The blue represents 02:25:05
21 West Pilots?
- 22 A. Correct.
- 23 Q. And the black represents the East Pilots that were on
24 furlough in 2005?
- 25 A. Correct. 02:25:17

United States District Court

BRIAN STOCKDELL - Direct

- 1 Q. Okay. Now, I see that you also have, and I'm pointing to 02:25:19
2 where it says A330 CA and then there's other letters like that,
3 what do those represent?
- 4 A. Those represent the current positions at US Airways.
- 5 Q. For both East and West sides? 02:25:39
- 6 A. Total East and West, yes.
- 7 Q. And you've got the same on the far side of the date of
8 hire list?
- 9 A. Correct.
- 10 Q. Just so that you can see it; is that correct? 02:25:48
- 11 A. Correct.
- 12 Q. Now, these different brackets have different sizes. What
13 do those sizes represent?
- 14 A. They reflect the number of positions in each one of those
15 categories ranked from top to bottom in terms of pay rate. 02:26:03
- 16 Q. So I see that there's a broad category span for the A320
17 because the airline has more of that type of aircraft?
- 18 A. Many more, yes.
- 19 Q. Okay. Is there a reason why you have those job positions
20 in that order from bottom to top? 02:26:22
- 21 A. They are ranked from bottom to top from the lowest pay
22 rate to the highest pay rate according to the terms of the MOU.
- 23 Q. Okay. And where did you get the information as to how
24 many pilot spots there are for each of those aircraft types?
- 25 A. From the current equipment bids on the East and West side. 02:26:39

United States District Court

BRIAN STOCKDELL - Direct

- 1 Q. Now, on the far side of these columns there are dollar 02:26:43
2 figures.
- 3 A. Yes.
- 4 Q. What do those represent?
- 5 A. That represents, for the West Pilots, the amount of pay 02:26:52
6 and 401(k) that they would get for the life of the MOU assuming
7 that the -- or based on the seniority list that would be in
8 effect during that time.
- 9 Q. Okay. But you've got several different numbers, one for
10 each of the categories. What does the number for each category 02:27:12
11 mean?
- 12 A. The number for each category is the amount of money that
13 the West Pilots would be able to receive in that position using
14 that seniority list.
- 15 Q. Okay. So if we look at the date of hire column and the 02:27:27
16 category of the A330 captain, we see that is all red and
17 there's a zero dollar figure?
- 18 A. Correct.
- 19 Q. Does that indicate that under the date of hire there would
20 be no West Pilots that would be in that job category? There 02:27:44
21 would be no income to West Pilots from that job category?
- 22 A. Correct, and that's assuming that each pilot bids for the
23 highest-paying position that they can hold on that seniority
24 list.
- 25 Q. Okay. Let's back up and talk about that again. 02:28:04

United States District Court

BRIAN STOCKDELL - Direct

- 1 You have an assumption here that you're putting the 02:28:08
2 pilots with the highest seniority into the best-paying job?
3 A. Correct.
4 Q. In reality, it might not work that way.
5 A. Pilots often, for personal reasons, bid into lower-paying 02:28:24
6 positions.
7 Q. But this shows the opportunity that a pilot would have if
8 every other pilot bid for the best spot they could get?
9 A. It shows the opportunity or the right, yes.
10 Q. I see at the bottom of these columns there is a larger 02:28:40
11 dollar figure under the Nicolau column, it says total, 1,610M,
12 what does that stand for?
13 A. That is the sum of pay and 401(k) that the West Pilots
14 would receive for the life of the MOU, assuming that they are
15 able to hold the best-paying position, and that total is 1,610 02:29:05
16 million.
17 Q. And I see next to the date of hire column it says 1,329M,
18 what does that represent?
19 A. That would be the total that the West Pilots would receive
20 using USAPA's date of hire seniority scheme. 02:29:26
21 Q. Over the life of the MOU?
22 A. Over the life of the MOU.
23 Q. Six years?
24 A. Six years.
25 Q. And what's the difference between those two? 02:29:33

United States District Court

BRIAN STOCKDELL - Direct

- 1 A. The difference is 281 million. 02:29:37
- 2 Q. So under the life of the MOU, how much less income would
3 accrue to the West Pilots if they got to choose jobs according
4 to the Nicolau if they had to choose jobs according to the date
5 of hire compared to the Nicolau? 02:29:55
- 6 A. It's \$281 million less.
- 7 Q. And we heard before there's approximately 1500, 1600 West
8 Pilots. What does that turn out to be as income loss on
9 average per pilot?
- 10 A. Roughly \$187,000 per pilot. 02:30:10
- 11 Q. Okay.
- 12 Now, the very bottom of both of those columns is
13 colored gray. What does that represent?
- 14 A. I used that color to represent the new-hire pilots, the
15 pilots hired since the merger. 02:30:25
- 16 Q. Okay. I understand that the MOU has a no-furlough clause;
17 is that correct?
- 18 A. Correct.
- 19 Q. Are there exceptions to that clause?
- 20 A. Yes. 02:30:36
- 21 Q. Do you understand what they say are?
- 22 A. They are generally kind of related to force majeure but I
23 think it's also specified in the MOU.
- 24 Q. So in your mind, is it possible, even though there's a
25 no-furlough clause, that events could occur that would have 02:30:57

United States District Court

BRIAN STOCKDELL - Direct

1 this airline put pilots onto furlough? 02:31:00

2 A. Yes.

3 Q. Is it common in pilot contracts that they have a

4 no-furlough clause as far as you know?

5 A. Generally, no. 02:31:13

6 Q. Have you heard of no-furlough clauses in some of the ALPA

7 contracts?

8 A. I think I've heard of them but I don't know any specifics.

9 Q. Okay. If there were furloughs from these pilot groups, is

10 it fair to say that whichever order was used, the first pilots 02:31:33

11 that would be furloughed would be the gray pilots that got

12 hired after 2005?

13 A. Yes, in reverse seniority order.

14 Q. If there were hundreds of furloughs beyond that and

15 furloughs were taken off the Nic list, which pilots would be 02:31:48

16 taken?

17 A. The next ones would be the East Pilots that were on

18 furlough at the time of our merger.

19 Q. So that hasn't changed since 2009?

20 A. No. 02:32:03

21 Q. And the date of hire list, if there were hundreds of

22 pilots that would be furloughed after the new hire since 2005,

23 who would those be?

24 A. Again, it would be starting with the pilots that had been

25 hired since and then it's predominantly the West Pilots that 02:32:19

United States District Court

BRIAN STOCKDELL - Direct

1 were active at the time of the merger. 02:32:24

2 Q. With some of the East Pilots that were on furlough?

3 A. Yes.

4 Q. Again, that's not changed since the Nicolau?

5 A. Correct. 02:32:35

6 Q. I'm sorry, that's not changed since the graphs you made
7 for 2009?

8 A. Correct.

9 MR. JACOB: I'll pass the witness. Thank you.

10 MR. HARPER: Before he starts, Your Honor, can I have 02:32:54
11 a point of clarification, because I thought one of the
12 stipulations we had last nights is that we were waiving any
13 objections we had to foundation with respect to demonstratives
14 coming into evidence, Pat.

15 THE COURT: Is that correct? 02:33:18

16 MR. SZYMANSKI: Your Honor, with respect to
17 foundation, yes, but not with respect to relevance as
18 Mr. Harper --

19 THE COURT: Well, as I heard in the beginning, you're
20 going to waive for this hearing objections to relevancy. You 02:33:31
21 can raise them as appropriate should I decide that I'm going to
22 receive any more papers from you in the nature of briefing.

23 MR. SZYMANSKI: Okay, Your Honor.

24 THE COURT: You may proceed.

25 MR. SZYMANSKI: Thank you. 02:33:47

BRIAN STOCKDELL - Cross

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CROSS - EXAMINATION

02:33:55

02:34:03

02:34:22

02:34:41

02:35:07

02:35:25

BY MR. SZYMANSKI:

Q. So Mr. Stockdell, these two charts, you can't see them now where you are, unfortunately, but the first two that you talked about, they were done for the trial in the first Addington case in 2008; is that correct?

A. Correct.

Q. And this other chart here is an updated chart as of what date?

A. Basically, I guess the past month.

Q. The past month. And on the Nicolau chart, it is updated by retirements, terminations and other people, pilots leaving, that's correct. Otherwise, it's the same order as the chart you did in 2008; is that correct?

A. Correct.

MR. SZYMANSKI: Is there an exhibit that is submitted -- maybe I can ask counsel -- that provides that list in the exhibits that you've provided?

MR. JACOB: I don't think we've submitted it for evidence. We just disclosed it during discovery.

MR. SZYMANSKI: Okay. So there is no exhibit that shows the underlying names on that list?

MR. SZYMANSKI: And I suppose there is no exhibit that you've submitted that shows the names on the date of hire list either?

BRIAN STOCKDELL - Cross

1 MR. JACOB: It's the same list. 02:35:27

2 MR. SZYMANSKI: But reordered?

3 MR. JACOB: That's correct.

4 MR. SZYMANSKI: So if there was no list with respect
5 to the Nicolau list, there is no exhibit with respect to the 02:35:43
6 date of hire list?

7 MR. JACOB: I'm sorry. Exhibit 121 is the updated
8 list.

9 BY MR. SZYMANSKI:

10 Q. And 121, Mr. Stockdell, that's the update the Nicolau 02:36:17
11 list?

12 A. Correct.

13 Q. And as you testified to the time period for this three-bar
14 chart is the term of the MOU?

15 A. Correct. 02:36:29

16 Q. And starting on what date?

17 A. February 8.

18 Q. And with respect to the Nicolau list, when you calculated
19 that, did you take into account the fact that the Nicolau Award
20 provides that pilots cannot bump another pilot if they are in a 02:36:49
21 current position or did you not?

22 A. No. I only took a look at what the rights that were in
23 effect.

24 Q. So this assumes that a pilot who is on the Nicolau list
25 can bid that position even if there is another pilot in that 02:37:04

BRIAN STOCKDELL - Cross

- 1 position already? 02:37:08
- 2 A. It's addressing the bidding rights, if they were able to
3 do it based on their placement on the list.
- 4 Q. Okay. And the same thing one assumes with respect to the
5 date of hire list. That doesn't take into account the fact 02:37:21
6 that there may already be a pilot in a position?
- 7 A. Correct.
- 8 Q. And the separate operations list is the same one, I
9 suppose, that it just assumes that people take the highest
10 position? 02:37:37
- 11 A. Correct.
- 12 Q. And the date of hire is just an illustration of date of
13 hire. It has no relationship to any proposal that may have
14 been made at any point by the US Airline Pilots Association?
- 15 A. No. That's taken from the USAPA's date of hire proposal. 02:37:58
16 That is that order.
- 17 Q. Well, understand, of course, there were a number of
18 conditions and restrictions with that proposal. Yes?
- 19 A. Yes, I do.
- 20 Q. And one of the conditions and restrictions was, as the 02:38:14
21 no-bump, no-flush provision, which you just said that's not
22 included in that list?
- 23 A. Correct.
- 24 Q. And there are other conditions and restrictions in that
25 list that protect pilots in Phoenix on the West from being 02:38:31

BRIAN STOCKDELL - Cross

- 1 invaded or having their positions taken by other pilots on the 02:38:34
2 list. That is not included in that calculation?
- 3 A. Incorrect.
- 4 Q. Well, then, how is it included in the date of hire list?
- 5 A. That's why I have that third bar there. 02:38:48
- 6 Q. That looks like a separate bar to me rather than part of
7 the date of hire list.
- 8 A. Correct.
- 9 Q. Mr. Stockdell, I just don't understand how the separate,
10 operations which deals with West Pilots, which is completely 02:39:06
11 separate on this chart, indicates, or has anything to do with
12 the cost analysis that you did on the date of hire. It
13 doesn't, does it?
- 14 A. It does.
- 15 Q. How? 02:39:24
- 16 A. In USAPA's C and R handout it says that the effect of the
17 conditions and restrictions are -- the practical effect is that
18 West Pilots stay in Phoenix and that East Pilots stay in East
19 bases. In other words, separate operations.
- 20 Q. But that's not taken into account when you do that middle 02:39:46
21 date of hire list.
- 22 A. And that is why I did it with that separate operations, to
23 show how the conditions and restrictions might affect it in
24 this analysis.
- 25 Q. Okay. So just to be clear, and I'm not trying to be 02:40:00

BRIAN STOCKDELL - Cross

- 1 difficult, but just to understand, you're saying that the 02:40:05
2 separate operations takes into account the conditions and
3 restrictions?
4 A. Correct.
5 Q. But that middle column does not? 02:40:12
6 A. No. Because USAPA's C and R handout also says that it is
7 designed to move us towards a truly date of hire seniority
8 list.
9 Q. The conditions and restrictions proposal, when it was made
10 in 2008, indicated that there would be a ten-year period, 02:40:30
11 correct, for the protection for Phoenix pilots?
12 A. They have it for ten years, correct.
13 Q. And, again, this date of hire would be presumably after
14 that ten-year period?
15 A. No. 02:40:54
16 Q. Well, then, how do you take into account the conditions
17 and restrictions in making the cost analysis in that middle
18 date of hire list?
19 A. This was showing the boundary conditions and the rate that
20 it moves from the separate operations or conditions and 02:41:06
21 restrictions today to a full date of hire list is going to be
22 dependent upon unforeseen changes to how the company manages
23 its business.
24 Q. But when I first --
25 A. As well as how each -- how individual pilots bid. 02:41:29

BRIAN STOCKDELL - Cross

- 1 Q. But when I first asked you about the middle bar, the date 02:41:35
2 of hire, you said it just put everybody in the position that
3 they would be able to bid without any consideration with
4 respect to whether or not there was a pilot there and they
5 couldn't displace him. 02:41:52
- 6 A. Correct.
- 7 Q. That indicates to me that that list and that cost analysis
8 really doesn't, by itself, just that list, that bar, take into
9 account conditions and restrictions in the 2008 USAPA proposal.
- 10 A. Which is why I created that third bar. 02:42:08
- 11 Q. Right. All right.
- 12 But the answer on the date of hire is that it does
13 not, by itself, take into account the conditions and
14 restrictions?
- 15 A. No. 02:42:18
- 16 Q. Okay. And the no is that it does not?
- 17 A. No.
- 18 Q. Yes. Okay.
- 19 MR. SZYMANSKI: Sometimes, Your Honor, when you read
20 these transcripts after the fact, the nos look like yeses and 02:42:30
21 the yeses sometimes look like nos and I just wanted to be clear
22 when we're in black and white.
- 23 Q. You mentioned force majeure clauses.
- 24 A. Yes.
- 25 Q. And just so everybody can understand, what kind of 02:42:49

BRIAN STOCKDELL - Cross

1 circumstances would allow -- I mean, and we can certainly look 02:42:52
2 at the force majeure clause in the contracts which are here to
3 take a look at that, but just in general, what kind of things
4 are involved in allowing exceptions from other contractual
5 provisions in a force majeure clause? 02:43:09

6 A. Well, there's a number of them. As I recall, it would be
7 things like a terrorist attack, a disruption in fuel supplies,
8 loss of certification, things like that, bankruptcy.

9 Q. Act of God generally?

10 A. Act of God, bankruptcy. 02:43:30

11 Q. All sorts of extreme situations. Just so we understand.

12 MR. SZYMANSKI: Nothing further, Your Honor.

13 Thank you.

14 **REDIRECT EXAMINATION**

15 BY MR. JACOB: 02:43:45

16 Q. Captain Stockdell, we talked about the no-flush, no-bump
17 if you could think back to 2005, what was your expectation that
18 the no-flush, no-bump rules would have in 2013 from the merger
19 from 2005.

20 A. None because I expect the last several years, at least at 02:44:05
21 that time in the years going forward, that everyone would have
22 been able to bid into positions that they could hold that they
23 wanted so the no-bump/flush provision to date would be of no
24 concern.

25 Q. As an experienced airline pilot, do you think that there 02:44:21

BRIAN STOCKDELL - Redirect

1 were many pilots on the East or West side in April of 2007 who 02:44:25
2 were expecting that whatever the outcome of the Nicolau
3 arbitration, that it would not be fully in effect by 2013?
4 A. I don't think anyone believed that at that time.
5 Q. When we look at the separate operations chart, just to 02:44:48
6 close the loop, what was the dollar figure that you calculated
7 as the total income to the West Pilots if they stayed in the
8 equivalent of separate operations for the length of the MOU?
9 A. I believe, from memory, it's 1,429 million.
10 Q. And the difference between that and what their income 02:45:11
11 would be, if they were able to bid for jobs according to the
12 Nicolau list, would be what?
13 A. Can you say the question again?
14 MR. SZYMANSKI: Do you want to just show it to him?
15 It's actually 1475. 02:45:26
16 THE WITNESS: Okay. So the number's 1,475 million.
17 BY MR. JACOB:
18 Q. And what is the difference?
19 A. The difference is 135 million. That would be lost to the
20 West Pilots and transferred to the East side. 02:45:47
21 Q. And how much does that work out per West Pilot, about?
22 A. About \$90,000 per pilot.
23 Q. And one last question. We talked about conditions and
24 restrictions. Based on your understanding of how airline
25 contracts and mergers work, what is your expectation that any 02:46:08

BRIAN STOCKDELL - Redirect

1 conditions and restrictions agreed to between the East and West 02:46:16
2 Pilots would survive a merger with the American pilots?

3 A. I would be very surprised if they do because they are so
4 specific to this situation. I don't see how they -- they will
5 be obsoleted with a merger with American. It's my 02:46:34
6 understanding that we have already seen some of these type of
7 conditions and restrictions disappear.

8 Q. Do you know of any examples where they have?

9 A. My understanding is that the supplemental C from the TWA
10 pilots has disappeared and I believe that George Nicolau may 02:46:57
11 have modified the Cagle award.

12 Q. And what is the Cagle award?

13 A. It's an award back I believe from 1988 that provides
14 certain, like, time protections to Piedmont 767 pilots.

15 Q. Who were East Pilots? 02:47:15

16 A. Correct.

17 Q. And do you recall what Mr. Nicolau reduced that to?

18 A. It was like four or five years going forward.

19 Q. Okay. Thank you.

20 MR. SZYMANSKI: Your Honor, please. 02:47:29

21 THE COURT: Yes.

22 **RECROSS - EXAMINATION**

23 BY MR. SZYMANSKI:

24 Q. Just one question and I mean really one question.

25 Your three-bar chart here, Mr. Stockdell, doesn't 02:47:41

BRIAN STOCKDELL - Recross

1 take into account anything with respect to what might happen if 02:47:45
2 there were a merger proceeding with the Allied Pilots
3 Association and the American pilots. It's purely a stand-alone
4 analysis?

5 A. Correct. 02:47:59

6 MR. SZYMANSKI: Thank you.

7 THE COURT: You may step down.

8 (Witness excused.)

9 THE COURT: Your next witness?

10 MS. AXEL: Your Honor, we call Johan de Vicq. 02:48:07

11 JOHAN de VICQ,
12 called as a witness herein by the Plaintiffs, having been first
13 duly sworn or affirmed to testify to the truth, was examined
14 and testified as follows:

15 COURTROOM DEPUTY: Please state your name for the 02:48:25
16 record, spell your last name, please.

17 THE WITNESS: It's Johan de Vicq, small d, small e,
18 space, capital V-I-C-Q, as in Quebec.

19 **DIRECT EXAMINATION**

20 BY MS. AXEL: 02:48:56

21 Q. Mr. de Vicq, where are you currently employed?

22 A. US Airways.

23 Q. How long have you been a pilot at US Airways?

24 A. Since 2005.

25 Q. And what is your position? 02:49:07

JOHAN de VICQ - Direct

- 1 A. I'm a First Officer. 02:49:07
- 2 Q. Are you a member of USAPA?
- 3 A. Yes, I am.
- 4 Q. And how long have you been a member of USAPA?
- 5 A. Since January of 2009. 02:49:14
- 6 Q. January of 2009?
- 7 A. 2009.
- 8 Q. Do you hold any positions on any committees within USAPA?
- 9 A. Yes, I do.
- 10 Q. Which ones? 02:49:25
- 11 A. I am a member of the Business and Intelligence Committee.
- 12 Q. And could you explain to the Court what the Business and
- 13 Intelligence does?
- 14 A. They are basically supposed to keep an eye on what's going
- 15 on in the industry and provide an analysis and calculations to 02:49:37
- 16 any committee that asks for the particular NAC or the merger.
- 17 Q. Do you have any other degrees that particularly warrant
- 18 you for the Business Intelligence Committee?
- 19 A. I got a master's in international management and finance
- 20 from the University of Maryland University College as well as a 02:49:50
- 21 certificate from Florida State University in financial
- 22 planning.
- 23 Q. And you've been sitting in the courtroom today; is that
- 24 correct?
- 25 A. Yes, I have. 02:50:04

JOHAN de VICQ - Direct

- 1 Q. And are you familiar with the change of control provision 02:50:05
2 in the East contract?
- 3 A. Yes, I am.
- 4 Q. Okay. And I just want to pull up really quickly
5 Exhibit 87 if we could. And I've pulled up Exhibit 87 which is 02:50:12
6 a legal USAPA date from USAPA about the change of control. Do
7 you have this update?
- 8 A. Yes, I do.
- 9 Q. Okay. And if you go to the second page, there are some
10 different pay rates that would apply if the change of control 02:50:42
11 does apply; is that correct?
- 12 A. That is correct.
- 13 Q. And could you explain to the Court when the change of
14 control provision would apply?
- 15 A. Well, the change of control provision would apply in case 02:50:55
16 there would be a change of control in the company that runs,
17 you know, the airline.
- 18 Q. Do you have any understanding about whether or not US
19 Airways had a position about whether the change of control
20 would apply to this merger? 02:51:14
- 21 A. Yes, they did.
- 22 Q. And what was that position?
- 23 A. US Airways thought that it did not apply.
- 24 Q. Did not apply?
- 25 A. Or would not apply. 02:51:21

United States District Court

JOHAN de VICQ - Direct

- 1 Q. And did you do any analysis on the change of control 02:51:24
2 numbers?
- 3 A. Yes, I did.
- 4 Q. What kind of analysis did you do?
- 5 A. Well, it's kind of just basic math. You take the rates 02:51:32
6 that were in the update, you take that with the current rates
7 for the East, because it only applies to the East, you take
8 that either by pilot, by -- you come up with a monthly average
9 and that is how much the change of control is worth.
- 10 Q. And what did your analysis come out to by change of 02:51:50
11 control?
- 12 A. It showed approximately \$19 million a month.
- 13 Q. And how long would that apply? Do you know?
- 14 A. It would apply from date of the POR, the plan of
15 reorganization, until the effective date of the joint contract 02:52:03
16 which, by USAPA's estimates, would be approximately 13 to 15
17 months, so 15 times 19 is a little bit under \$300 million.
- 18 Q. And the effective date of the joint contract, is the joint
19 contract referring to the new contract that APA would get with
20 the post-merger American; is that correct? 02:52:30
- 21 A. That's correct. It would be the joint contract.
- 22 Q. And did you do any discounting of this \$300 million to
23 account for the fact that US Airways did not believe that this
24 change of control provision applied?
- 25 A. Yes, I did. 02:52:46

United States District Court

JOHAN de VICQ - Direct

- 1 Q. And what kind of discount did you apply? 02:52:47
- 2 A. I favored that since the change of control did not get
3 triggered with America West merger and did not -- and the
4 mechanics who have a similar clause lost their arbitration in
5 regard to the change in control. I figured it to be in the 40 02:53:06
6 to 50 percent range and it turned out that USAPA also put the
7 discount at 40 percent.
- 8 Q. Where did USAPA discount at 40 percent?
- 9 A. In one of their documents that they gave us.
- 10 Q. So if you discount the 300 million with 40 percent, that 02:53:25
11 would be approximately?
- 12 A. Approximately 120 million.
- 13 Q. So in your opinion, that's really, more appropriately, the
14 value of change of control?
- 15 A. That's correct. 02:53:37
- 16 Q. And I just want to make clear, the change of control
17 provision was in effect in the East contract when US Airways
18 merged with America West in 2005; is that correct?
- 19 A. That is correct.
- 20 Q. And the change of control provision was not triggered 02:53:48
21 then; is that correct?
- 22 A. Yes, that's correct.
- 23 Q. Okay. I also want to talk quickly about the 1.6 billion
24 number that you have heard. Is that your understanding of the
25 value of the MOU that USAPA has provided? 02:54:03

United States District Court

JOHAN de VICQ - Direct

- 1 A. It's the value of the complete contract over a six-year 02:54:06
2 period. It's not the value of the MOU.
- 3 Q. Do you have a different opinion about what the value of
4 the MOU is?
- 5 A. Yes, I do. 02:54:14
- 6 Q. And what is that opinion?
- 7 A. I think it's closer to about 296 million.
- 8 Q. And where did you come up with that number?
- 9 A. It basically comes down to the fact that, one way or the
10 other, if we would not have -- if we would have voted against 02:54:25
11 the MOU, the merger would have gone ahead and when the
12 JCBA would become effective, about 13 to 15 months after the
13 POR date, we would go to the green book and we would get the
14 benefits off the American CBA from that point forward which
15 would be approximately late 2014 at the time that we were doing 02:54:47
16 these calculations.
- 17 So the value from the contract from December of 2014
18 forward is approximately 1.3 billion. Therefore, the money
19 that is left is approximately 300 million, a little bit less
20 than. 02:55:06
- 21 Q. So the 1.3 billion is derived from the agreement that APA
22 negotiated with US Airways and AMR; is that correct?
- 23 A. That is correct.
- 24 Q. And we've heard some talk today about the retrospective
25 pay. 02:55:17

United States District Court

JOHAN de VICQ - Direct

1 A. M'hum. 02:55:18

2 Q. And is this \$300 million the retrospective pay that we
3 have been discussing?

4 A. Partially.

5 Q. Partially? 02:55:24

6 A. Yeah.

7 Q. Could you explain to us that last comment about how the
8 296 million is only partially the retrospective pay?

9 A. The retrospective pay is from the date that we voted in
10 the -- the MOU, which is February 8, until the POR date, which 02:55:48
11 at the time that we -- it was voted on was approximately
12 estimated to be about mid-September. So the retrospective pay
13 applies to that period and that is about, off the top of my
14 head, about \$65 million. Then we would get from the POR date
15 until the JCBA, we would get the rates that are in the new pay 02:56:12
16 rates which are approximately 240 million, something like that,
17 from the top of my head.

18 Q. Okay.

19 MS. AXEL: Pass the witness, Your Honor.

20 THE COURT: We're going to take a break at this time 02:56:35
21 for 20 minutes, a little more.

22 (Recess at 2:57; resumed at 3:20.)

23 THE COURT: Please be seated.

24 **CROSS - EXAMINATION**

25

JOHAN de VICQ - Cross

- 1 BY MR. SZYMANSKI: 03:20:18
- 2 Q. So Mr. de Vicq, you don't have any responsibilities that
3 show a spreadsheet of how you made these calculations; correct?
- 4 A. Not with me.
- 5 Q. Not with you. And we haven't any in the record exhibits. 03:20:26
- 6 A. You have Exhibit K that came from you that showed USAPA's
7 valuations of it.
- 8 Q. But that's not your valuation?
- 9 A. No, it's not.
- 10 Q. And in terms of the retrospective pay, what's your 03:20:46
11 estimate of how much per month that is?
- 12 A. Let's see. The retrospective pay from --
- 13 Q. Right, from February 8 forward?
- 14 A. From February 8 forward, I calculated it to be, and I
15 thought it was somewhere around 64 million from February 8 to 03:21:00
16 September 15. So it's about seven months, so it would be right
17 around 10, 11 million I would say.
- 18 Q. Okay. All right.
- 19 And you said the change in control was not triggered
20 in the America West/US Airways merger and that's correct but do 03:21:16
21 you know why it was not triggered?
- 22 A. I think that in the merger, ALPA waived it, the mechanics
23 did not, and they lost in arbitration.
- 24 Q. No. I'm talking about with respect to the pilots.
- 25 A. I think ALPA decided not to pursue it. 03:21:36

JOHAN de VICQ - Cross

- 1 Q. Are you aware of the 2002 restructuring agreement which 03:21:39
2 was an agreement between US Airways, prior to the merger, and
3 ALPA?
- 4 A. I'm aware of it but I do not know much about the contents.
- 5 Q. So you wouldn't be able to say, one way or the other, if I 03:21:52
6 told you there was a provision in the 2002 restructuring
7 agreement that waived the change of control provisions in the
8 event that there was a future transaction in bankruptcy, you
9 couldn't say whether that was true or false?
- 10 A. I would not at this point, no. 03:22:08
- 11 Q. Okay. All right. Thank you.
- 12 And can I have Exhibit 87 I think up, please, and the
13 last page, which is the change in control document that you
14 testified to.
- 15 This document includes on the last page the actual 03:22:30
16 provisions from the contract and includes a definition of what
17 control is. Entity A shall be deemed to control entity B if
18 entity A, whether directly or indirectly, owns 50 percent of
19 the securities; B, maintains power, right, and privilege to
20 direct, manage, or direct the management or substantial or 03:22:55
21 greater portion of the entity B's operations; and, C,
22 maintains, the power, right, or authority to appoint or prevent
23 the appointment of a majority of entity B's board of directors.
- 24 So let me ask you, have you looked at the plan of
25 reorganization that has been approved by the bankruptcy court 03:23:16

JOHAN de VICQ - Cross

- 1 to see whether any of these three conditions are satisfied by 03:23:19
2 that plan?
- 3 A. Yes, I have.
- 4 Q. And your opinion is that none of these are?
- 5 A. My opinion that an argument could be made like the company 03:23:28
6 is making, that it would not trigger the change of control.
- 7 Q. Well, we don't even know what the board of directors is
8 yet, do we --
- 9 A. That is correct.
- 10 Q. -- of the new corporation? 03:23:42
- 11 A. Of the new corporation.
- 12 Q. So that we couldn't even address?
- 13 A. So it's ambiguous.
- 14 Q. Right.
- 15 A. Right. 03:23:49
- 16 Q. And with respect to the last paragraph on that page, if I
17 can, which is out of the 2002 restructuring agreement, it talks
18 about that in certain circumstances there can be added to the
19 change in control book rates for one, two, or three years, at
20 the association's option, a four and a half percent increase. 03:24:15
21 Did you include that in your calculations?
- 22 A. I included it for one year because like I said, the period
23 that the COC would be effective is only 15 months so it would
24 be one four and a half percent raise.
- 25 Q. So after a 12-month period, you included a four and a half 03:24:33

JOHAN de VICQ - Cross

1 percent -- 03:24:38

2 A. I used May 1 because I think that was the date on the

3 contract.

4 Q. You used May 1. Okay.

5 MR. SZYMANSKI: No further questions, Your Honor. 03:24:43

6 THE COURT: Redirect?

7 MS. AXEL: I don't think we have any further

8 questions, Your Honor.

9 THE COURT: Thank you.

10 You may step down. 03:24:55

11 THE WITNESS: Thank you, Your Honor.

12 (Witness excused.)

13 THE COURT: Your next witness?

14 MR. HARPER: We call First Officer Iranpour.

15 AFSHIN IRANPOUR, 03:25:04

16 called as a witness herein by the Plaintiffs, having been first

17 duly sworn or affirmed to testify to the truth, was examined

18 and testified as follows:

19 COURTROOM DEPUTY: Please state your name and spell

20 your last name please. 03:25:18

21 THE WITNESS: Afshin Iranpour. I-R-A-N-P-O-U-R.

22 A-F-S-H-I-N.

23 **DIRECT EXAMINATION**

24 BY MR. HARPER:

25 Q. Good afternoon, AC. 03:25:46

AFSHIN IRANPOUR - Direct

1 A. Good afternoon. 03:25:48

2 Q. Are you a member of USAPA?

3 A. I am.

4 Q. And how long have you been a member of USAPA?

5 A. Probably a little bit over four years. That includes the 03:25:54

6 16 months that I was on furlough as well.

7 Q. Are you currently employed by -- who are you currently

8 employed by?

9 A. US Airways.

10 Q. And how long have you been employed by US Airways? 03:26:07

11 A. Since 2005 since the merger.

12 Q. And you work for America West at some point in time?

13 A. I did.

14 Q. And what period of time -- when did you start at America

15 West? 03:26:21

16 A. I started in July of 2004.

17 Q. And what position did you hold at that particular point in

18 time?

19 A. First Officer on the Airbus in Phoenix.

20 Q. And has your position changed since -- is it 2004? 03:26:31

21 A. Correct. And, no, it has not.

22 Q. Okay. Did you previously work for US Airways at some

23 point in time?

24 A. I did. I worked for US Airways as we call the East prior

25 to the merger. 03:26:49

AFSHIN IRANPOUR - Direct

- 1 Q. And when did you start working there? 03:26:50
- 2 A. In late 1999.
- 3 Q. And how long were you employed there?
- 4 A. Just over two years.
- 5 Q. Over how many years? 03:26:58
- 6 A. Just over two years.
- 7 Q. And what happened then?
- 8 A. I was furloughed shortly after 9-11 and I was out of
- 9 aviation for about two and a half years until I was employed by
- 10 America West Airlines in 2004. 03:27:12
- 11 Q. Okay. Where were you born?
- 12 A. I was born in Teheran in Iran.
- 13 Q. Okay. And when did you leave there?
- 14 A. In 1986.
- 15 Q. And where did you go upon leaving Iran? 03:27:23
- 16 A. I'm sorry?
- 17 Q. Where did you go when you left Iran?
- 18 A. Well, kind of a long story but I was smuggled into
- 19 Pakistan and eventually to Thailand and I ended up in Europe in
- 20 Norway where I lived for about four years. 03:27:39
- 21 Q. And when did you get to the United States?
- 22 A. In June of 1990.
- 23 Q. And how did you get into the aviation business?
- 24 A. I came to the U.S. in 1990 to attend flight school from
- 25 Norway and I met my wife while I was in flight school and we 03:27:54

AFSHIN IRANPOUR - Direct

1 ended up getting married and I stayed here. 03:27:58

2 Q. Okay. You're aware of the Nicolau Award as we had shown
3 it on the board here today; correct?

4 A. Yes.

5 Q. What happened to you after the Nicolau Award was published 03:28:10
6 in May of 2007?

7 A. Well, as far as my position on the list?

8 Q. Yes. Yes.

9 A. Well, what happened was that at the time that the
10 arbitration took place, I still had a seniority number with the 03:28:30
11 East, on the US Airways list, as a furloughed pilot. I was
12 also an active pilot on the America West side on the West. And
13 when the list was put together, my name appeared on the list
14 twice, once based on my America West seniority and then once
15 based on my US Airways seniority. 03:28:53

16 Q. Did that cause any issues or eventual problems for you,
17 AC?

18 A. Well, the issue was at that some point I had to choose
19 which position I was going to stay with. Since the two
20 companies merged after America West acquired US Airways, the US 03:29:08
21 Airways began to recall some of their furloughed pilots of
22 which I was one. There comes a point when they get to the
23 bottom of the list and they start calling everybody back and at
24 that point, I've to make a decision whether you're going to go
25 back to the company or not. 03:29:33

United States District Court

AFSHIN IRANPOUR - Direct

1 So I believe in July or August of 2007 shortly after 03:29:34
2 the Nicolau Award was issued, I was received a letter from US
3 Airways directing me to choose whether I was going to go back
4 to the East and exercise my East seniority or stay on the West.
5 And, naturally, based on my position on the Nicolau Award -- 03:29:52
6 Q. Did you make an election after that point in time?
7 A. I did, I did.
8 Q. What was the election?
9 A. I chose to stay on the West and exercise my seniority from
10 America West. 03:30:07
11 Q. And why did you make that election?
12 A. Based on my West seniority, I'm somewhere around 13 or
13 1400 numbers senior to myself on the Nicolau Award, basically;
14 so it was natural that I would choose the better position. But
15 I was -- but it happened as it did, rightfully so, that I 03:30:25
16 didn't contribute anything to the mergers, a furloughed US
17 Airways pilot.
18 Q. And when you made that election to stay on the Nicolau
19 award on the West side, did you have to give up your seniority
20 number on the East? 03:30:44
21 A. I did. I received the letter from -- it must have been
22 either Captain Hogue or Captain Bellar, some of our upper
23 management in the flight department, directing myself and
24 several other similarly situated former US Airways pilots that
25 were at America West sometime in July of 2007 or August, 03:31:04

AFSHIN IRANPOUR - Direct

- 1 somewhere thereabouts to make an election, we either are to 03:31:08
2 resign our seniority on the West and go back to the East or
3 resign the East seniority and stay on the West.
- 4 Q. So when you resigned the East number and stayed on the
5 West, what happened to you professionally at America West or US 03:31:21
6 Airways after that?
- 7 A. Well, USAPA happened. They basically -- once USAPA took
8 over, well, we have been in this fight now for over five years
9 of them abrogating the Nicolau Award list based on which I made
10 a life decision to stay here on the West. I was furloughed in 03:31:45
11 April of 2009 for about 16 months as a result of it. Had the
12 Nicolau been in effect, the furlough wouldn't have happened,
13 not just to myself but the other 140-so West Pilots that were
14 furloughed.
- 15 Q. And would you tell the Court, so we all understand it, how 03:32:06
16 long were you furloughed then after you elected to exercise
17 your America West -- or the former America West seniority
18 number?
- 19 A. For 16 months is how long my furlough lasted.
- 20 Q. And you were called back to flying approximately when? 03:32:22
- 21 A. It was in September of 2010.
- 22 Q. And you have been flying consistently ever since?
- 23 A. I have.
- 24 Q. Okay.
- 25 MR. HARPER: I'll pass the witness, Your Honor. 03:32:32

United States District Court

AFSHIN IRANPOUR - Cross

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CROSS - EXAMINATION

03:32:33

03:32:58

03:33:17

03:33:29

03:33:41

03:33:50

BY MR. SILVERMAN:

Q. Mr. Iranpour, when exactly were you furloughed?

A. From which company?

Q. From America West.

A. I believe it was in April of 2009.

Q. And prior to that time, sir, had you had you been offered recall to the East?

A. Yes, I had.

Q. When were you first offered recall to the East?

A. I do not recall. There were numerous recalls back then. I don't recall the dates.

Q. Do you recall that it was sometime in 2006 for the first time?

A. That may be possible. I believe the company would have those records.

Q. As you sit here now, is it your best recollection that you were first offered recall sometime in 2006?

A. I have no idea.

Q. Do you recall when the Nicolau Award was issued, sir?

A. I do.

Q. And when was that?

A. That was in May of 2007.

Q. Would you agree with me that you were first offered recall to the East prior to the time the Nicolau Award was issued?

AFSHIN IRANPOUR - Cross

- 1 A. I don't agree with you. As I mentioned before, I do not 03:33:57
2 recall the dates.
- 3 Q. You have no idea?
- 4 A. I have no idea. I do know that I was recalled and I
5 turned those down. 03:34:03
- 6 Q. I'm sorry?
- 7 A. I said I do know that there were recalls but I do not know
8 the dates.
- 9 Q. Isn't it true, sir, that you were offered recall more than
10 once? 03:34:20
- 11 A. Perhaps. Again, the company would have those records.
- 12 Q. I understand that but this is something that you are here
13 testifying in court saying that these decisions affected your
14 life.
- 15 A. They did. 03:34:33
- 16 Q. And I'm asking you aside from what you think the company
17 has, isn't it true that you were offered recall more than once
18 to the East?
- 19 A. That is quite possible, Mr. Silverman.
- 20 Q. When you were working on the West, were you making more 03:34:51
21 money than when you were working on the East?
- 22 A. During what period?
- 23 Q. Well, side-by-side comparison, are the rates of pay better
24 on the West than the East?
- 25 A. Not currently, no. 03:35:11

AFSHIN IRANPOUR - Cross

- 1 Q. I'm talking about at the time -- at the time you made 03:35:12
2 these decisions.
- 3 A. At the time I made the decisions --
- 4 Q. Yes.
- 5 A. -- because the East was in LOA '93 and we had our contract 03:35:19
6 so, yes, we were making more money.
- 7 Q. And all things being equal, you prefer to make more money;
8 right?
- 9 A. Not really. That is not what it's all about, no, not to
10 me. 03:35:33
- 11 Q. Mr. Iranpour, you are a named plaintiff in this action; is
12 that correct?
- 13 A. I am.
- 14 Q. As a named plaintiff in this action, you represent the
15 interests of other people, of other individuals; is that 03:35:50
16 correct?
- 17 A. As a class representative, I believe so, yes.
- 18 Q. You understand that as a class representative, you have
19 certain responsibilities; is that correct?
- 20 A. That is correct. 03:36:01
- 21 MR. HARPER: Your Honor, beyond the scope and I'm not
22 too sure why we're going into this.
- 23 THE COURT: Well, I guess it's an issue of
24 credibility. I'll allow to it some extent. Overruled.
25

AFSHIN IRANPOUR - Cross

- 1 BY MR. SILVERMAN: 03:36:12
- 2 Q. And is one of those responsibilities to represent the
3 class fairly, sir?
- 4 A. Yes, it is.
- 5 Q. And are you also seeking, that is to say, the plaintiffs 03:36:19
6 in this action, also seeking to represent certain individuals
7 in relation to the McCaskill-Bond process, sir?
- 8 A. I believe that is part of what we are seeking, yes.
- 9 Q. And is it your understanding, sir, that you will be one of
10 the representatives who will represent the West Pilot Class if 03:36:35
11 the Court grants the relief that the plaintiffs are seeking
12 with respect to the McCaskill-Bond process?
- 13 A. I have no idea. I really -- I don't believe we have
14 crossed that bridge yet.
- 15 Q. Well, isn't it true that the plaintiffs have sought the 03:36:49
16 right but not the obligation to represent the West Pilot Class
17 in the McCaskill-Bond?
- 18 A. I believe that's correct.
- 19 Q. Sir, would you agree with me that not all members of the
20 class of West Pilots share the same views about every issue? 03:37:03
21 Would you agree with that?
- 22 A. Well, no. I disagree with you. I'm not sure what issues
23 you're talking about but there are certainly differences of
24 opinion.
- 25 Q. Differences of opinion. Sometimes there are differences 03:37:17

AFSHIN IRANPOUR - Cross

- 1 of opinion amongst the West Pilot class as to legal strategies 03:37:19
2 to take for example with the Addington litigations, would you
3 say that's fair?
- 4 A. That may be, yes.
- 5 Q. And as a class representative, both in terms of this Count 03:37:30
6 One in this case and the McCaskill-Bond, would it be your
7 responsibility to represent all of the individuals regardless
8 of differences of opinion?
- 9 A. That is correct.
- 10 Q. Sir, do you know a man by the name of Mitch Vasin? 03:37:47
- 11 A. How could I not? Of course.
- 12 Q. Isn't it true that Mr. Vasin has, from time to time,
13 expressed views that are at issue or divergent witness
14 issues --
- 15 THE COURT: Sustained. We're not going there. 03:38:02
- 16 BY MR. SILVERMAN:
- 17 Q. Sir, in an e-mail exchange in October of 2012, did you say
18 that Mr. Vasin should be subject to extraordinary rendition?
- 19 A. I believe I did, yes.
- 20 MR. SILVERMAN: Could we have Exhibit 302, please. 03:38:28
- 21 BY MR. SILVERMAN:
- 22 Q. Do you see this e-mail, sir?
- 23 A. I sure do.
- 24 Q. Is it from you?
- 25 A. Yes, it is. 03:38:42

AFSHIN IRANPOUR - Cross

- 1 Q. Okay. Do you see where it says I believe an extraordinary 03:38:43
2 rendition is appropriate in this case.
- 3 A. I sure do. I wrote it.
- 4 Q. And who are you saying should be extraordinarily
5 renditioned, sir? 03:38:56
- 6 A. I believe, according to the subject of the e-mail, that
7 would be Mitch Vasin.
- 8 Q. And was that because Mitch Vasin expressed views divergent
9 from views that you believed?
- 10 A. I would have to read the entire e-mail to see exactly what 03:39:12
11 that threat was possible.
- 12 Q. Okay.
- 13 MR. SILVERMAN: Okay. With the Court's permission --
- 14 THE COURT: Sure. Go ahead.
- 15 COURTROOM DEPUTY: Do you need to see the exhibit? 03:39:41
- 16 THE WITNESS: Perhaps, yes, because I would like to
17 see the last page.
- 18 MR. SILVERMAN: It's up on the screen now.
- 19 THE WITNESS: Okay. I think I know what the subject
20 of the e-mail is. 03:40:09
- 21 BY MR. SILVERMAN:
- 22 Q. And are you suggesting that he be subject to extraordinary
23 rendition because he expressed views that were different than
24 views that you held, sir?
- 25 THE WITNESS: Pardon me, Your Honor. 03:40:18

AFSHIN IRANPOUR - Cross

1 Mr. Silverman, it's disingenuous of you to try and 03:40:18
2 pull something out --

3 THE COURT: Let me stop you for a moment. Either
4 answer the questions yes or no or give him the answer that
5 he -- that you believe you can -- that is accurate. But don't 03:40:32
6 argue with the question.

7 THE WITNESS: My apologies.

8 It was a joke.

9 THE COURT: We're not here for jokes either.
10 Go ahead. 03:40:46

11 BY MR. SILVERMAN:

12 Q. What had Mr. Vasin done to elicit this kind of response
13 from you, sir?

14 A. I believe what he had done was to suggest that we go to a
15 three-way arbitration or a to perhaps retain a different 03:41:00
16 attorney to try and reach some kind of a -- or participate in a
17 three-way arbitration basically I think is I recall it.

18 Q. He expressed a view that you didn't agree with; is that
19 correct?

20 A. Yes, absolutely. 03:41:20

21 Q. And that was why you made that comment; is that correct?

22 A. Yeah.

23 Q. Directing your attention to Exhibit 301, sir -- I'm sorry,
24 303.

25 Is this an e-mail that you wrote to Mr. Stockdell, 03:41:42

AFSHIN IRANPOUR - Cross

1 among others, on October 31, 2012, sir? 03:41:49

2 A. It is.

3 Q. And do you see there that you -- first line on the
4 subject: The timing of the meet and greet couldn't be any
5 better. This is when we need to hammer home the point that the 03:42:01
6 wanna-be morons, Mitch and cronies -- and, Judge, I apologize
7 for the unredacted offensive language in the rest of this which
8 I won't read.

9 Mr. Iranpour, did you write this e-mail?

10 A. Yes, I did. 03:42:19

11 Q. And did you write this e-mail because, like the prior
12 e-mail we saw, Mr. Vasin had expressed views divergent from
13 yours?

14 A. Yes.

15 Q. Exhibit 304, e-mail dated March 2013. 03:42:32

16 Is this an e-mail that you wrote to Mr. Bollmeier,
17 among others, sir?

18 A. It is.

19 Q. Directing your attention to where it says: Anything but
20 the Nic can be damned whatever the consequence. You know where 03:42:58
21 else you'll find this? Every group that has ever sought to
22 terrorize another group, regardless of what the basis of
23 third-party beliefs may be.

24 Do you see, that sir?

25 A. I do. 03:43:10

AFSHIN IRANPOUR - Cross

1 Q. And you were writing this about Mr. Vasin and others? 03:43:10

2 A. I was writing this about a USAPA update I believe or
3 something or an e-mail from an East pilot. This was not -- I
4 don't believe Mitch Vasin ever said anything about the NIC.

5 MR. SILVERMAN: I have no further questions, Judge. 03:43:36

6 THE COURT: Redirect?

7 MR. HARPER: A couple of questions, Your Honor.

8 **REDIRECT EXAMINATION**

9 BY MR. HARPER:

10 Q. If you had elected the East seniority number, would you 03:43:48
11 have been furloughed in 2009?

12 A. I would not have.

13 Q. Okay. And did -- were you asked these questions about
14 these e-mails in your decision?

15 A. Yes. 03:44:02

16 Q. And did you tell Mr. Silverman anything about these
17 e-mails in the deposition?

18 A. Mr. Silverman wasn't doing my deposition. One of his
19 colleagues was. But, yeah, I'm sure we discussed these
20 e-mails, yes. 03:44:18

21 Q. And did you tell him it was a joke in the deposition?

22 A. Well. I think it was implied. It is to a very selective
23 audience within a group and I just think that it's disingenuous
24 to imply that I actually have the ability to perform an
25 extraordinary rendition on Mr. Vasin and make him disappear. 03:44:38

AFSHIN IRANPOUR - Redirect

1 It was just an inside joke and that's all it was. 03:44:42

2 MR. HARPER: No further questions, Your Honor.

3 THE COURT: You may step down.

4 THE WITNESS: Thank you.

5 (Witness excused.) 03:44:48

6 THE COURT: Your next witness?

7 MR. HARPER: Well, we're at a point now, Your Honor,

8 where we would like to have a conversation with the Court

9 because we are at the end of the live witnesses. So we have as

10 we talked about earlier, we have deposition transcripts that we 03:45:00

11 would like to move into evidence as part of our occasion in

12 chief.

13 THE COURT: You're not calling any other witnesses

14 live?

15 MR. HARPER: Now, I have perhaps one or two 03:45:15

16 exceptions to that. We have a video -- we were going to move

17 Captain Bradford's deposition testimony in to evidence and

18 Mr. Jacob has a list of all of those we want to do. We video

19 taped Captain Bradford's deposition and I just don't know what

20 your pleasure is, whether you want us to simply move it and you 03:45:34

21 have an opportunity to look --

22 THE COURT: How long is it?

23 MR. HARPER: I don't think we've timed it.

24 THE COURT: Well, give me a sense.

25 MR. HARPER: I was going to say 30 minutes. 03:45:51

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1 THE COURT: Okay. Well, let's watch it. 03:45:52
2 MR. HARPER: And then we will then move the other
3 ones and we'll get back up and talk about the other ones after
4 that. Is that okay, Your Honor?
5 THE COURT: The other depositions? 03:46:02
6 MR. HARPER: The other depositions.
7 COURTROOM DEPUTY: Christine?
8 THE COURT: Christine, do you need some time?
9 COURTROOM DEPUTY: A couple of minutes.
10 THE COURT: Sure. We're going to take a break so we 03:47:00
11 get this set up.
12 (Recess at 3:48; resumed at 3:53.)
13 THE COURT: Okay. Please be seated.
14 MR. SZYMANSKI: Your Honor, before we start with
15 this, we have an issue with this particular videotaped 03:53:20
16 deposition. I'm going to have Susan Martin address it, please.
17 THE COURT: Okay.
18 MS. MARTIN: If I may, Your Honor, the parties have
19 exchanged designations and counter designations and USAPA
20 delivered both of USAPA's designations and delivered the 03:53:39
21 counter designations to the Court as we understand the Court
22 requested.
23 The plaintiffs designated parts of a transcript.
24 They didn't mention a videotape.
25 THE COURT: They didn't mention? 03:53:58

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1 MS. MARTIN: They did not mention the videotape. We 03:53:59
2 countered designated parts of this deposition. The plaintiffs
3 have informed us that this video does not contain USAPA's
4 counter designations, so what we would suggest is that the
5 plaintiffs be directed to add those designations that they want 03:54:16
6 to offer this videotape.

7 THE COURT: And you have wanted to counter designate
8 them under the Rule of completion?

9 MS. MARTIN: We have counter designated them, Your
10 Honor. 03:54:30

11 THE COURT: Either the rule of completion or as part
12 of your defense; correct?

13 MS. MARTIN: Yes, under Rule 62.6 that, in fairness,
14 there should be -- it's not offering a complete picture.

15 THE COURT: That's under Rules of Evidence -- 03:54:46

16 MS. MARTIN: It's under Rule 32. It's under Rule 32.

17 THE COURT: Well, that's for depositions but also for
18 a hearing now it's 106?

19 MS. MARTIN: Yes. Correct, Your Honor.

20 So what we would suggest is that to present a fair 03:55:01
21 picture of plaintiffs, that it proceed with videotape that it
22 contain --

23 THE COURT: I understand. Are you prepared to do
24 that?

25 MR. HARPER: To include theirs right now? 03:55:14

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1 THE COURT: Yes. So that we can save a lot of time. 03:55:17
2 We're going to have to bring them back up again.

3 MR. HARPER: I don't think we can do it
4 instantaneously here, your Honor. We did it on the transcript
5 and we didn't pick up -- she's right. We did not pick up their 03:55:30
6 designations or even all of our designations on the video.

7 THE COURT: Well, then, what are you showing me? I
8 mean, you didn't pick up all of your -- why would you want to
9 show me something that doesn't include all of your
10 designations? 03:55:47

11 MR. HARPER: Because we wanted to show you on the
12 video the certain portions of the Bradford testimony that we
13 told everybody that we would -- may use in this hearing. If
14 the Court doesn't want to do that, we can go back and designate
15 it all if you want. 03:56:00

16 THE COURT: Well, designate those portions that each
17 of you wish to offer under the Rules of Evidence that you've
18 agreed to. So that's what I'm prepared to see.

19 MR. HARPER: Okay. Then -- can we do that overnight?
20 We can do that overnight, Your Honor. 03:56:19

21 THE COURT: Okay. Now, what is next?

22 MR. HARPER: What is next is that we have other depositions
23 that we have cross designated that we would like to move as
24 evidence in our case-in-chief in addition to the Bradford one
25 which looks like now tomorrow morning we'll get back to. So we 03:56:34

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1 have those that we would like to designate. Mr. Jacob has a 03:56:39
2 list of those if the Court would like to -- and I would like to
3 read them into the record so that you know the ones that we
4 want to designate and then we will move them --

5 THE COURT: When you say read them into the record, 03:56:51
6 why don't you just provide something in writing?

7 MR. HARPER: We have done that.

8 THE COURT: Okay. You've -- all right. And then
9 it's submitted as a noticed pleading or an exhibit.

10 In what form do you have these designations? First 03:57:08
11 of all, is there an agreement on the designations?

12 MR. HARPER: Yes. There is an agreement. If they
13 are live or not, we can still use the depo designations.

14 THE COURT: Okay. That's fine. Just give me a list
15 of them and I will look at them as I need to. 03:57:20

16 MR. HARPER: Okay.

17 THE COURT: And what else?

18 MR. HARPER: And then we have a list of exhibits that
19 we have identified as the ones that we would like to move into
20 admission as part of our case-in-chief. 03:57:32

21 THE COURT: And those have been shared with counsel?

22 MR. HARPER: Yes.

23 THE COURT: And based upon the stipulation that
24 you've already made, they are admitted?

25 MR. HARPER: Yes. 03:57:45

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1 THE COURT: Okay. Anything else? 03:57:45

2 MR. HARPER: We have one issue with respect to
3 Captain Hummel, because we are going to move -- we are moving
4 to have his deposition testimony, as I took it, moved into
5 evidence. But I am unsure now whether there's going to be more 03:58:04
6 associated with Captain Hummel.

7 THE COURT: You mean whether or not he's going to
8 testify?

9 MR. HARPER: Yes.

10 THE COURT: Why don't we know that? 03:58:14

11 MR. HARPER: Because we were told yesterday that it
12 might not happen as you ordered.

13 MR. SZYMANSKI: Your Honor, the information I have
14 from Captain Hummel's attending physician is he's not able to
15 testify by telephone tomorrow before this Court. I don't know 03:58:30
16 whether or not we've actually gotten a letter from the
17 attending physician.

18 THE COURT: Well, I want to talk to him on the phone
19 as I always do. So if -- is that because Captain Hummel ill or
20 he has suddenly taken a downturn? Is he in critical condition? 03:58:49
21 What has happened since I talked to his surgeon who said he was
22 the one that was responsible for his care?

23 MR. SZYMANSKI: I think, Your Honor, that he
24 misunderstood the length of the call and how long it was going
25 to take, both to talk to Captain Hummel before he testified and 03:59:07

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1 his testimony and his cross-examination. And given that 03:59:12
2 additional information --

3 THE COURT: So what do you anticipate it will take
4 for direct, cross, redirect?

5 MR. SZYMANSKI: I think an hour and a half to two 03:59:26
6 hours, Your Honor.

7 THE COURT: And is that your sense Mr. Harper?

8 MR. HARPER: In all candor, I don't have any sense.
9 As you ordered me to do, I provided and e-mailed to
10 Mr. Szymanski outlining if he doesn't say anything more than 03:59:42
11 this, then I don't have any more questions. If he says more
12 than this, then I'm going to have, but nobody has told me what
13 he's going to testify to.

14 THE COURT: Mr. Szymanski, when did you last speak to
15 the doctor? 03:59:57

16 MR. SZYMANSKI: I have never spoken to the doctor,
17 Your Honor. Mr. O'Dwyer has.

18 THE COURT: How do you know that he has indicated
19 that he cannot testify for this period of time over the fine?

20 MR. SZYMANSKI: Brian O'Dwyer, the general counsel 04:00:10
21 for USAPA, has spoken to his doctor and that's what Brian has
22 communicated to me.

23 THE COURT: Well, let's get the doctor on the phone.

24 MR. SZYMANSKI: We'll figure out when we can do that,
25 Your Honor. 04:00:20

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1 THE COURT: Okay. That is the way we do it in this 04:00:20
2 court.
3 MR. SZYMANSKI: Okay. Got it. Thank you.
4 MR. HARPER: So, I'm sorry, with that, we would --
5 THE COURT: Let me just ask you this: There's a 04:00:32
6 deposition that was taken of Captain Hummel; correct?
7 MR. HARPER: Yes, Your Honor.
8 THE COURT: And that isn't sufficient, as far as
9 you're concerned?
10 MR. HARPER: It's sufficient as far as I'm concerned, 04:00:42
11 yes.
12 THE COURT: Okay. Then what's the problem?
13 MR. SZYMANSKI: It's not sufficient as far as we're
14 concerned, Your Honor. There are other subjects that Captain
15 Hummel wasn't asked about during his deposition. 04:00:53
16 THE COURT: And why wasn't he asked about them in
17 preparation for this hearing? Why -- when a deposition is
18 taken, it's for the purpose of the hearing, not for the purpose
19 of calling the witness at the time of the hearing.
20 MR. SZYMANSKI: Your Honor, just there are subject 04:01:14
21 areas that they didn't go into at the time.
22 THE COURT: But you intend to go into them?
23 MR. SZYMANSKI: Yes, I do.
24 THE COURT: So why didn't you ask him?
25 MR. SZYMANSKI: Because we were intending to use him 04:01:24

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1 as a live witness at this hearing, Your Honor. This was not a
2 deposition that was done for the purpose of preserving
3 testimony and being offered by us. We wanted Captain Hummel to
4 testify as a live witness; and at the time that we did the
5 deposition, we fully expected him to be here.

04:01:26

04:01:39

6 THE COURT: Well, then, let's do this: Then let's
7 have -- where is he located?

8 MR. SZYMANSKI: Pittsburgh, Your Honor.

9 THE COURT: That is about three hours difference;
10 right?

04:01:54

11 MR. SZYMANSKI: Time difference, yes, Your Honor.

12 MR. HARPER: When did you learn this, Mr. Szymanski,
13 that he couldn't --

14 MR. SZYMANSKI: Monday, yesterday, probably Sunday
15 actually.

04:02:08

16 THE COURT: And so here it's Tuesday. Did you inform
17 Mr. Harper of this?

18 MR. SZYMANSKI: Yes, Your Honor.

19 THE COURT: And why didn't counsel make any efforts
20 to take this deposition?

04:02:20

21 MR. SZYMANSKI: Your Honor, the doctors told us that
22 he was not in the position to have his deposition taken now and
23 that he could not do that for a couple of weeks at any rate and
24 that he could --

25 THE COURT: All right. We'll get the doctor on the

04:02:34

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1 phone.

04:02:36

2 MR. SZYMANSKI: Yes.

3 THE COURT: -- and I will ask him the questions about
4 precisely why he cannot. Has his condition changed since I
5 talked to the surgeon who was his attending physician? Is he
6 still in the hospital?

04:02:45

7 MR. SZYMANSKI: No, Your Honor. He's not.

8 THE COURT: All right. That is what I expected.
9 He's not in the hospital and likely he's still under stress,
10 but the doctor said that he was going to be -- the surgeon said
11 that he was under his care while he was in the hospital and
12 even afterwards. And as far as he knew, that his deposition--
13 or his testimony could be given and there was no exception to
14 that. So I'll be interested to hear why this particular doctor
15 has taken a different point of view if his health has not
16 declined because we're not putting off this hearing. So you
17 can well do without Captain Hummel except for information that
18 you want to provide that plaintiffs' counsel agrees to at the
19 time that you're going to file supplemental paper.

04:02:58

04:03:20

20 So either he appears or he doesn't appear.

04:03:44

21 MR. SZYMANSKI: I understand, Your Honor. We'll make
22 arrangements for the physician to be available, then. We'll
23 find out when we can do that.

24 THE COURT: Okay. Thank you.

25 Anything else from the plaintiff?

04:03:55

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1 MR. HARPER: No, I don't think so. So if I
2 understand it, we are going -- you've accepted our deposition
3 designations with the exception of Captain Bradford that we are
4 going to fully designate and play tomorrow. So that will be
5 part of our case-in-chief.

04:03:56

04:04:07

6 If Captain Hummel does not testify, then we have his
7 deposition in the record and that will close that. And then
8 we'll just address -- if there is another deposition, some
9 portion of that perhaps we would like to use as part of our
10 case-in-chief. But that is --

04:04:24

11 THE COURT: We're talking about all sorts of
12 depositions. You're talking about Captain Hummel's deposition?

13 MR. HARPER: The one we were just talking about here.

14 THE COURT: Is that Captain Hummel?

15 MR. HARPER: If it goes forward, we may want some of
16 that could be brought back into our case-in-chief.

04:04:37

17 THE COURT: I'm not sure what I understand what
18 you're saying. Either your case-in-chief is done now, that is
19 you're offering the testimony of Captain Hummel, so you're
20 finished; right?

04:04:54

21 MR. HARPER: I'm finished if he doesn't give another
22 deposition I think. That's what I'm saying.

23 THE COURT: All right. That depends upon the
24 defense?

25 MR. HARPER: That's right.

04:05:07

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1 THE COURT: They have an obligation to call their 04:05:08
2 witnesses. As far as I know, from talking to the surgeon last
3 week, that this witness, or Captain Hummel, was able to
4 testify. And if he is essential to the defense, then he's
5 either going to be testifying or he won't be testifying. 04:05:26

6 All right.

7 MR. HARPER: So with that understanding, we rest,
8 Your Honor on our case-in-chief.

9 THE COURT: Okay.

10 Is there a motion? 04:05:39

11 MR. SZYMANSKI: Yes, Your Honor. We do make a motion
12 for a verdict at this point on the grounds that they have not
13 established that there's a breach of a duty of fair
14 representation.

15 THE COURT: On what basis? 04:05:53

16 MR. SZYMANSKI: On the basis, Your Honor, that the
17 evidence up to this point shows that USAPA did indeed negotiate
18 a Memorandum of Understanding that had substantial benefits for
19 its pilots; that if that -- that that was based on the fact
20 that the company had -- there's a stipulation -- there are 04:06:24
21 stipulations of fact, in addition to the testimony that we've
22 given here today, that has been given up to this point in this
23 case; that at the outset of the negotiations, US Airways, and
24 then later the other parties, made it clear that in their
25 opinion, the dispute concerning seniority would only be treated 04:06:43

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1 through the McCaskill-Bond process that was associated into the
2 Memorandum of Understanding; that that Memorandum of
3 Understanding included substantial benefits for our pilots that
4 would not otherwise be available; that the union informed,
5 through the various materials that are in the record as
6 exhibits and the stipulated facts, all of the pilots concerning
7 the actual situation; that the pilots knew that USAPA opposed
8 the Nicolau Award.

9 They knew that the Nicolau Award was not part of the
10 Memorandum of Understanding. They knew that the Memorandum of
11 Understanding was, in fact, neutral with respect to seniority
12 and, therefore, did not bring the Nicolau Award into effect or
13 change the preexisting positions of any of the parties. And
14 that based on that, the membership voted 75 percent to 25
15 percent to approve the Memorandum of Understanding.

16 In that situation, the union's decision to go
17 forward, not to put the Nicolau Award into the Memorandum of
18 Understanding was not a breach of the duty of fair
19 representation. It was a reasonable decision that the union
20 made in that situation to go forward and to do that. On that
21 basis, Your Honor, we would move.

22 THE COURT: Response?

23 MR. HARPER: Mr. Jacob will handle that for us, Your
24 Honor.

25 MR. JACOB: Perhaps had the airline dealt with any

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1 union other than this one, it would not have asked them to put
2 into their contract that the federal law would apply. All that
3 the first draft of the MOU said was that the parties would
4 comply with the McCaskill-Bond statute. We do not take issue
5 that there's an MOU. We take issue that USAPA put language
6 into the MOU that served no purpose other than to negate the
7 seniority integration provisions in the 2005 Transition
8 Agreement. There was no reason for the MOU to address that at
9 all.

04:08:28

04:08:57

10 All that federal law required was that the
11 integration of the US Airways pilots and the American pilots
12 would comply with McCaskill-Bond. That is true whether the
13 contract says that or not. Airways did not condition any of
14 the benefits in MOU II on USAPA agreeing to in some way change
15 the existing seniority integration provision for East and West
16 in the 2005 Transition Agreement.

04:09:23

04:09:52

17 THE COURT: Let me stop you. There were -- in the
18 second MOU, there were no additional benefits as a consequence
19 of that new MOU that had been negotiated in response to the
20 objections that were made by the board?

04:10:18

21 MR. JACOB: No. There were.

22 THE COURT: There were additional ones?

23 MR. JACOB: There were benefits.

24 THE COURT: Let me go on and ask you one other
25 question about all of this.

04:10:25

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1 I think Captain Holmes testifies that at least he
2 voted for it because of the pay raise.

04:10:28

3 MR. JACOB: Absolutely. There were improvements.

4 THE COURT: And despite the fact that he was aware of
5 the change in the seniority provision; is that right?

04:10:55

6 MR. JACOB: That's right. MOU II is a stew. There
7 were a lot of things in it. None of the beneficial things that
8 were put into it after MOU I were conditioned by the airline
9 saying we'll give you this only if you put paragraph 10H in.

10 They said the \$40 million if you ratify. They said the
11 retrospective pay if the entire BPR votes in favor of the MOU.
12 Those were quid pro quo exchanges.

04:11:18

13 MOU II is better than MOU I. But none of the
14 benefits in MOU II were there in exchange for paragraph 10H.
15 We've heard no evidence that everything wouldn't have gone
16 through the same if paragraph 10H was not there. Paragraph 10H
17 does not even say what they say today it says. It did not say
18 we will resolve the East/West seniority dispute according to
19 McCaskill-Bond. It says seniority will be integrated according
20 to McCaskill-Bond.

04:11:44

04:12:11

21 If they wanted to make it clear, and they owe a duty
22 to their pilots to make it clear that we're all agreeing now
23 that the 2005 Transition Agreement, seniority integration no
24 longer applies, they could have said that. But even if the MOU
25 said that, it would have been wrong because who gets the right

04:12:35

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1 to agree to that? You heard that there are 600 pilots who
2 don't belong to USAPA, who don't have a vote. Each of those
3 pilots has a right to be fairly represented. Each of those
4 pilots has a right to have the Nicolau Award be implemented
5 unless USAPA changed the contract obligation in the TA and had
6 a rationally related legitimate union purpose to do so.

7 The fact that hundreds of thousands of pilots voted
8 in favor of the MOU can't possibly waive the claim of 600
9 pilots who didn't even have a vote. The fact that they didn't
10 make clear what --

11 THE COURT: Let me ask you this. It hasn't come
12 through to me as unequivocal that without the change in the
13 seniority provision, 10H, I believe, that that was not
14 something that was negotiated. In other words, if that had not
15 been changed, then the company would not have agreed to the
16 benefits that were provided.

17 MR. JACOB: No. The company had made no issue of
18 that. The company didn't write 10H. USAPA wrote 10H. We
19 spent a week in Charlotte taking depositions trying to get
20 someone to explain to us who asked for 10H? Why was it
21 written? What were you trying to accomplish when you wrote
22 10H? Everybody said, "I don't know. I don't know where it
23 came from. I don't know who wrote it."

24 Well, who would know? Pat Szymanski would know.
25 Mr. Hummel didn't know. Mr. Bradford didn't know. The

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1 chairman of the NAC didn't know. The chairman of the Merger
2 Committee didn't know. 10H was put there, the language was
3 abstruse at best. The West Pilots who had a vote, which is not
4 all of the West Pilots, were led to believe that they would
5 still have a DFR claim --

04:14:44

04:15:01

6 THE COURT: Okay. So let's stop there. The West
7 Pilots, you mean the road trip to Phoenix? Is that when they
8 were expressly or impliedly told by Mr. Szymanski that this was
9 neutral in contrast to what he said by the testimony of the
10 witnesses that you've offered, that the Nicolau agreement was
11 dead or the arbitration agreement is dead, decision?

04:15:28

12 MR. JACOB: Not just the road trip. I mean, there
13 are thousands of pilots. They work. They are all over the
14 country. Mr. Scherff, who you heard, lives in Alabama. I
15 don't know how many pilots went but not everybody went.

04:15:53

16 THE COURT: What you're saying is that that indicates
17 an intent by USAPA through Mr. Szymanski that there was no
18 intent to, in any way, comply with the Court's order that
19 required that they go to the bargaining table with at least a
20 consideration of the Nicolau agreement. Is that what you're
21 saying that I have to draw from all of this?

04:16:19

22 MR. JACOB: That plus more. They have just been
23 focused on how can we get the date of hire list in? How can we
24 keep the Nicolau list out? That has been the only question.

25 THE COURT: The last -- the timing has to be from the

04:16:40

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1 time of my order and my order said that they were -- and it was
2 expressed that it was a powerful decision and they could not
3 ignore it in negotiations in going forward during the merger
4 agreements or the merger negotiations.

04:16:45

5 So now, that is where we start.

04:17:10

6 What do we have?

7 MR. JACOB: They did just the opposite. The starting
8 point, prior to your order, was MOU I where they said
9 McCaskill-Bond will be followed. Big deal. They have to
10 follow it. There was no language in MOU I that impacted the
11 2005 transition agreement and that is because they knew that if
12 they made a contract that abrogated the obligations in the 2005
13 TA, we would have a definite ripe claim against them.

04:17:29

14 When your order came out, they heard it saying we
15 don't have to worry about a ripe claim. We can make a contract
16 to change the 2005 TA because the judge said we have a
17 legitimate purpose. We're free to change the contract. We
18 won. It's over.

04:18:01

19 So all they had to do was say, "How can we put the
20 language into the MOU that we can entice the West Pilots to
21 vote for it, that we can get rid of the TA, be done with it
22 because the judge said we can do that?"

04:18:21

23 Yeah, at some point the West pilots are going to sue
24 us but we're going to win because the judge said we can do it.
25 They didn't hear from you that they had to do anything

04:18:44

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1 affirmative. What they heard from you was now they are free to 04:18:49
2 do what they want.

3 They have never tried to stand back and say, "Let's
4 do something that is a neutral fair process."

5 Now, I'm not saying that they would even be allowed 04:19:05
6 to do this, but they could have said, "Let's give this to a
7 neutral arbitrator with no preconditions, hear the equities of
8 the arguments on both sides and we'll stick by what that
9 arbitrator says." They have never offered anything like that.

10 They have just from the start said with a predefined 04:19:32
11 outcome, it's going to be the date of hire. What is neutral
12 about the language, what they tried to accomplish, what they
13 call neutral is that there were no longer constraints on the
14 BPR. They can do what they want.

15 Our depositions, witness after witness said the 04:19:55
16 purpose of 10H, looking back at it now -- we don't know who
17 wrote it. We don't know why they wrote it but we read it as
18 saying the TA seniority provisions no longer apply. The BPR
19 decides by majority rule and the BPR is going to put in the
20 date of hire list because the constitution says that they have 04:20:20
21 to because they had a campaign after your order came out to
22 raise the expectations of the East Pilots that you said they
23 can ignore the Nicolau and put date of hire in. We just showed
24 you a fraction of what they wrote. If it was impossible for
25 the East Pilots to vote to ratify MOU II unless they put 04:20:42

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1 language in that they could tell them the Nic is dead. It's 04:20:46
2 because for two, three months before then, they told them that
3 you ruled that, in essence, the Nic is dead. So how could
4 they, after telling them that, not tell them that the MOU makes
5 the Nicolau dead? 04:21:08

6 This was not a referendum on the Nicolau. Even if it
7 was, that's not how you decide something like this. You heard
8 them say they are worried that they are going to merge with the
9 APA pilots and they outnumber them two to one. Well, the East
10 pilots outnumber the West Pilots two to one. 04:21:26

11 They don't want seniority with the APA pilots decided
12 by majority rule. McCaskill-Bond says it shouldn't be. They
13 were part of an organization that said it shouldn't be. It
14 wasn't decided that way. They need a legitimate purpose to
15 deviate from that. 04:21:51

16 The *Rakestraw* case handles this very nicely. When
17 you take an action like this, they say a rational person has to
18 be able to see that it has a relationship to a legitimate union
19 purpose. They talk about rationality defining the scope of
20 what they can do like it's a psychiatric dipstick, that all you 04:22:13
21 have to do is show that they are sane and they can do whatever
22 they want. That is not the test.

23 Rationality has an element of it's an objective
24 standard and it has to relate to a legitimate union purpose. A
25 legitimate union purpose, the purpose of the union is to get 04:22:38

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1 more for the group as a whole. You can either get more pay or
2 benefits or leverage in a future contract. You can agree to
3 something if that keeps the company from shutting down, but
4 it's not a legitimate purpose just to favor a politically
5 powerful faction over a weaker faction.

04:22:41

04:23:02

6 You heard them say, "We've done our job by giving
7 equal representation to the West side." Democracy controls
8 union affairs subject to the duty of fair representation. It
9 doesn't trump it. The fact that West Pilots get votes if they
10 join. The fact that the West BPR has got three members doesn't
11 mean that the BPR can do whatever majority rule says to do.
12 There's no examples where an internal seniority dispute is
13 settled by the vote of the majority.

04:23:25

14 And this whole business of saying that the MOU vote
15 settled, this is just taking it a step down that even if 70
16 percent of the West Pilots voted for the MOU, there's still 30
17 percent of the West Pilots who were so disgusted that they pay
18 the equivalent of dues but they won't belong to the union.
19 They don't get a vote. Nobody gets to vote their rights away.

04:23:52

20 If every single West Pilot said, "We give up the
21 Nicolau," then there's no DFR claim. But if one pilot says,
22 "I've got the right to the Nicolau," the others can't vote that
23 pilot's right away.

04:24:19

24 Those graphs that we showed were shown just to give
25 you an idea of the magnitude of this, that this isn't the

04:24:40

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1 problem that an individual pilot can come up and say, "Well, I
2 was harmed X number of dollars if we don't use the Nicolau."

04:24:44

3 It's too complicated. How do you figure out which
4 pilot was harmed? How do you figure out how much they were
5 harmed? You can't fix this with damages. The problem is too
6 great.

04:25:01

7 The only fair way to deal with this, the only way to
8 give pilots their right to be fairly represented is to say the
9 union can't change the 2005 TA without a legitimate purpose.
10 They did not have a legitimate purpose to put 10H into the MOU.
11 They had a legitimate reason to make the MOU as a whole but it
12 doesn't mean that every provision in it has a legitimate
13 purpose.

04:25:22

14 If it did, every time you have a new contract you
15 could put all of the bad things you wanted into it and say,
16 "Well, there's more pay so we can make short people get paid
17 less." Well, no, you can't because unless the more pay comes
18 in because the company insists for some reason that shorter
19 people get paid less, you've got no business putting that in.

04:25:45

20 We've heard no evidence that any of the positive
21 aspects MOU II were given by the company in exchange for 10H.
22 There's no reason to put 10H in there. McCaskill-Bond says how
23 you integrate US Airways and American. They can't change that.
24 The only reason that 10H was put in there was trickery.

04:26:08

25 THE COURT: Okay. Nonetheless, whether it was the

04:26:35

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1 company or whether it was USAPA or whether it was the -- I 04:26:37
2 think it's the NAC group or the board that managed to get these
3 benefits, still, those who could vote who were members of USAPA
4 who were West Pilots voted in favor of it?

5 MR. JACOB: Absolutely. And we're not saying that 04:27:00
6 the MOU is void and we're not even saying what would we do if
7 10H said, by voting to ratify this, I hereby give up my DFR
8 rights to the Nicolau. That would be a different question.

9 We're saying what does 10H do, worded the way it is,
10 to the DFR rights? Should we let them twist a meaning out of 04:27:32
11 10H, which is not, obviously, there to function as a waiver of
12 DFR rights even for the pilots that did vote. Surely it can't
13 waive the rights of pilots who didn't have the right to vote.
14 But should it be treated as a waiver when waiver has to be
15 knowing and voluntary? 04:27:57

16 And then bear in mind this isn't waiver between two
17 parties at arm's length. This is waiver where one party owes a
18 duty of fairness to the other party. If they are asking the
19 West Pilots to waive something, shouldn't they present it to
20 them in a way that is fair and clear? Shouldn't they write and 04:28:21
21 shouldn't they go to the West side and say, "We want to make
22 clear -- this is a good contract but if you vote for this
23 contract, we've just put something in it which means you don't
24 have a claim to implement the Nicolau."

25 Vote for it that way or don't vote for it but 04:28:42

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1 understand that is what it's going to be. 04:28:46

2 We have evidence in our deposition transcripts. We
3 have several witnesses where any instructions given to West
4 Pilots how they should vote if they want to protect their right
5 to the Nicolau and the answer was no. We gave no instruction 04:29:02
6 to a West Pilot how do they vote to protect their rights.

7 This was trickery. This was put in for no reason
8 other than to meet the demands of the East pilot majority.
9 They thought they were being cute that the Ninth Circuit says,
10 "You don't have a ripe claim until you ratify a contract," and 04:29:25
11 they want to have it so that the act of ratification defeats
12 the claim on the merits. It's their argument they have had.
13 You are too early. You too late.

14 Surely there should be a time that the West Pilots
15 can come into court, hold the union accountable and say, "Did 04:29:46
16 you have a legitimate reason to walk away from the 2005 TA?"
17 They have not shown a legitimate reason at any point in time.
18 They did not have a legitimate reason for the last thing that
19 they did which was putting that language into the MOU that
20 served no purpose other than to take away the West Pilot 04:30:11
21 rights.

22 THE COURT: Thank you.

23 All right. I'll take the matter under advisement.

24 Let's -- we've got a half an hour. Let's put on the
25 evidence for the defense. 04:30:21

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1 MR. SZYMANSKI: Your Honor, the first witness, Dean
2 Colello.

04:30:23

3 DEAN COLELLO,

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

04:30:33

7 COURTROOM DEPUTY: Please state your name for the
8 record and spell your last name, please.

9 THE WITNESS: Dean Colello. C-O-L-E-L-L-O.

10 **DIRECT EXAMINATION**

04:30:44

11 BY MR. SZYMANSKI:

12 Q. Mr. Colello, you're a pilot at US Airways?

13 A. Yes.

14 Q. How long have you been a pilot there?

15 A. A little over 25 years.

04:31:11

16 Q. And what was your previous experience flying?

17 A. Started out flying in the Air Force and was in the Air
18 Force for 13 years prior to coming to US Airways, and then I
19 continued in the reserves until retirement.

20 Q. So you were at the US Airways when the US Air Lines Pilots
21 Association was the representative and before the 2005 merger
22 with America West?

04:31:31

23 A. Yes.

24 Q. And were you a member of the Airline Pilots Association?

25 A. Yes.

04:31:42

DEAN COLELLO - Direct

- 1 Q. And did you have any positions with the Airlines Pilots Association? 04:31:45
- 2
- 3 A. I served as the furloughed administrator and also on the
- 4 Negotiating Committee.
- 5 Q. Are you a member of the US Airlines Pilots Association? 04:31:54
- 6 A. Yes.
- 7 Q. And what position or positions do you hold with the US
- 8 Airline Pilots Association?
- 9 A. I have been on the Negotiating Committee since the
- 10 inception of USAPA and the chairman of the Negotiating 04:32:07
- 11 Committee since July of 2012.
- 12 Q. We've heard about what the Negotiating Advisory Committee
- 13 is. Would you just tell me as the current chair -- you're the
- 14 current chair; correct?
- 15 A. Yes. 04:32:22
- 16 Q. As the current chair, what are the current
- 17 responsibilities of the Negotiating Advisory Committee?
- 18 A. The overall role is dealing with management in any areas
- 19 that deal with the pay and in terms and conditions of
- 20 employment for the US Airways pilots. 04:32:40
- 21 Q. So any agreement with the employer concerning terms and
- 22 conditions has to be done by the Negotiating Advisory
- 23 Committee?
- 24 A. Yes.
- 25 Q. And we've heard about a professional negotiator. Who is 04:32:49

United States District Court

DEAN COLELLO - Direct

- 1 that and what is that position? 04:32:52
- 2 A. Presently, it's Roland Wilder is our professional
3 negotiator and the USAPA constitution states that we have to
4 have a professional negotiator at the table anytime we're
5 dealing with company management. 04:33:09
- 6 Q. Okay.
- 7 A. So he's our advisor in that role.
- 8 Q. In April of 2012, did you learn about a term sheet between
9 US Airways and the Allied Pilots Association?
- 10 A. Yes. 04:33:23
- 11 Q. And subsequent to learning about that, what discussion or
12 action did the Negotiating Advisory Committee take?
- 13 A. Well, at that time Paul Diorio was the chairman of the
14 committee and Paul and I looked at the agreement and went
15 through it line by line to see how it affected the US Airways 04:33:41
16 pilots.
- 17 Q. And what was your conclusion?
- 18 A. The conclusion was there was a number of areas in there
19 that did affect us negatively and also there were a lot of
20 areas in there that provided benefits to the American Airlines 04:33:56
21 pilots that did not carry over to the US Airways pilots in the
22 event that a merger was completed.
- 23 Q. Who were the parties to the term sheet?
- 24 A. US Airways management and the Allied Pilots Association.
- 25 Q. And did USAPA have any involvement in negotiating that 04:34:15

United States District Court

DEAN COLELLO - Direct

- 1 agreement? 04:34:18
- 2 A. No.
- 3 Q. After reviewing the term sheet and coming to those
4 conclusions, what did you do?
- 5 A. We briefed the board of representatives on what our 04:34:28
6 conclusions were, what our concerns were and then we traveled
7 down to APA headquarters in Dallas to speak with the members of
8 the APA Negotiating Committee who negotiated the agreement to
9 address our -- to relay our concerns to them and also to kind
10 of see why they decided to do some of the things they did. 04:34:52
- 11 Q. And if I understand correctly, you also had a number of
12 questions about the term sheet and what the various provisions
13 might be?
- 14 A. Yes. The questions of why they made the decisions they
15 did. 04:35:06
- 16 Q. And after you had that session down in Dallas with the
17 Allied Pilots Association, did you come to any further
18 conclusion about the concerns that you had previously?
- 19 A. It basically reinforced our concerns.
- 20 Q. And what did you do about that? 04:35:25
- 21 A. Then we came and we briefed the board of representatives
22 and I believe it was about mid-May we briefed them. And at
23 that point they directed us to attempt to get some protection
24 for the US Airways pilots.
- 25 Q. And at about that time did the president of US Airways, 04:35:42

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DEAN COLELLO - Direct

- 1 Doug Parker, and Scott Kirby come to talk to the Board of Pilot 04:35:47
2 Representatives in Charlotte?
- 3 A. Yes, they did.
- 4 Q. Can you present?
- 5 A. Yes. 04:35:57
- 6 Q. And who is Mr. Kirby?
- 7 A. He's the president of the US Airways.
- 8 Q. And who is Doug Parker?
- 9 A. He is the CEO of US Airways.
- 10 Q. So I had it wrong. I called him the president. 04:36:05
- 11 MR. SZYMANSKI: Excuse me, Doug, wherever you are.
- 12 Q. And at that meeting, they made a presentation?
- 13 A. Yes. They gave short presentation on the benefits of the
14 merger and then they opened it up to questions.
- 15 Q. Okay. 04:36:21
- 16 And at the end of the meeting, did they discuss the
17 role of USAPA in the merger?
- 18 A. Yes. Mr. Parker made the statement that they were -- that
19 they came to brief the board as a courtesy but that they felt
20 that they got everything that they needed with the Allied 04:36:38
21 Pilots Association. They really did not need our input.
- 22 Q. And so what happened next as far as the Negotiating
23 Advisory Committee was concerned?
- 24 A. That's when we had discussions with the board about what
25 we were going to do moving forward. There was concern from the 04:36:55

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DEAN COLELLO - Direct

1 board that we needed to cement some protection for the US
2 Airways pilots and we started to look into how we were going to
3 do that within the committee. And we also, during that time,
4 established a dialogue with the Negotiating Committee at APA
5 and started to meet with them to discuss their items.

04:36:59

04:37:18

6 Q. And were there any particular provisions of your existing
7 contracts that you thought you could use to bring the company
8 to talk to you?

9 A. Well, we knew that the company was concerned. To help
10 make the merger work, they really wanted to have the ability to
11 be code share and there was also some concern about the change
12 in control provisions.

04:37:41

13 Q. Okay. Can you explain to us previously in a merger what
14 code sharing means?

15 A. Basically allowed for seamless travel. Let's say you have
16 a -- okay. American Airlines does not fly to Amsterdam. US
17 Airways flies to Amsterdam. Let's say they -- someone wanted
18 to sell a ticket to somebody from Dallas to Amsterdam; okay?
19 It's easier for somebody to buy that ticket with -- and when
20 they go in the computer, it says American and it whether they
21 fly American from Dallas to Philadelphia and US Airways from
22 Philadelphia to Amsterdam, it says American on it.

04:37:54

04:38:17

23 So it's much easier for the traveling public to say,
24 "Okay, I want to do this and I go to the American website and I
25 buy on American," as opposed to the going to the American

04:38:35

DEAN COLELLO - Direct

1 website and buying a ticket to Philadelphia and then the US 04:38:36
2 Airways website to buy the ticket to Amsterdam. It makes it's
3 easier. It's a more seamless transmission. It allows them to
4 realize some of the synergies from a merger and being able to
5 generate more revenue. 04:38:52

6 Q. And the code sharing, if I understand, would be important
7 between the date when the merger first becomes effective and
8 the date when the airline gets a single operating certificate;
9 is that right?

10 A. Correct. They could -- they wanted the ability to start 04:39:05
11 the code share the day that the merger was officially approved
12 and the day of the merger was effective. And they could do
13 that and they could be generating this revenue all throughout
14 the time that they were still putting the airline -- physically
15 putting the airline together. 04:39:24

16 Q. And when I say "single operating certificate," can you
17 describe for us what a single operating certificate is, where
18 you get it, how long it takes?

19 A. It takes a couple years to get a single operating
20 certificate. It's a -- there's a process you go through with 04:39:35
21 the FAA. You have to have a common training program, a common
22 reservation system. Essentially, it's when the whole airline
23 is together. You don't necessarily have to have the airplanes
24 painted and stuff; but for the operations of the airline, it
25 all has to be one. And so it's quite an involved process to 04:39:53

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1 get that done. It takes a couple of years. 04:39:57

2 Q. And during that time, you would be code sharing; right?

3 A. Right. They would have the ability to code share and

4 generate the extra revenue.

5 Q. All right. And then in what contract was the code sharing 04:40:07

6 restriction that was at issue?

7 A. US Airways East contract.

8 Q. And that contract -- what effect would that have had on

9 the company's ability with respect to code share if USAPA did

10 not give it up? 04:40:30

11 A. It would have affected the revenue they could generate.

12 Like I said, it would have been more difficult for that person

13 to buy the ticket from Dallas to Amsterdam. So if it's easier

14 to buy the ticket, there's more chance that they are going to

15 go ahead and have somebody buy that ticket versus going to 04:40:45

16 another airline.

17 Q. And then we also mentioned another provision in the

18 contract, change in control. Can you very briefly tell us -- I

19 mean, we've had some testimony from Mr. de Vicq about it, but

20 tell us in what contract it resides and what does it provide. 04:41:00

21 A. That is also in the US Airways East contract and what it

22 does is in the event of a change in control, which is a change

23 in more than 50 percent of the controlling interest in the

24 airline, that it would trigger different pay rates for the East

25 Pilots and it would just apply -- in this case, if that was 04:41:19

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1 triggered it would just apply to the East Pilots because it was 04:41:23
2 in their contract. It wouldn't -- it did not carry over to the
3 West contract.

4 Q. And that would be a substantial increase in the wage rates
5 for East Pilots? 04:41:35

6 A. Yes. I mean, as the Airbus 330 as an example, it would
7 have been a pay raise of about \$150,000 a year to a captain.

8 Q. And that would have been only temporary, from the time
9 that the merger took place until there was a negotiation of a
10 joint Collective Bargaining Agreement? 04:41:54

11 A. It would be up until the point that if the merger took
12 place and the change in control was triggered, those rates
13 would continue until such time as a joint Collective Bargaining
14 Agreement was completed. And depending on what the outcome of
15 the pay raise for that was, then those new pay rates would go 04:42:13
16 into effect.

17 Q. I want to ask you very briefly a few questions about what
18 we've been referring to here as the first Memorandum of
19 Understanding.

20 At some point you actually did sit down and start 04:42:26
21 talking with US Airways about a Memorandum of Understanding?

22 A. Yes.

23 Q. And what was the purpose of that agreement?

24 A. Well, after our initial analysis of the MOU, or rather the
25 conditional labor agreement that American, or rather that US 04:42:41

DEAN COLELLO - Direct

- 1 Airways and APA had, then we brought the concerns to the board. 04:42:43
- 2 The board directed us to -- we came up with a list of
- 3 things that -- a list of things that we wanted to explore.
- 4 There were some initial meetings at the lawyer level with US
- 5 Airways and USAPA legal and that resulted in a framework for us 04:43:01
- 6 to sit down at the table, which we began in the end of July of
- 7 2012, to discuss getting these protections implemented for the
- 8 pilots at US Airways.
- 9 Q. Now, who was on the Negotiating Advisory Committee as of
- 10 the end of July of 2012? 04:43:23
- 11 A. It was myself and John Owens from the East and Ken Holmes
- 12 and Rocky Calveri from the West and then Roland Wilder was our
- 13 professional negotiator.
- 14 Q. And I don't remember whether you we cleared this up
- 15 previously but what domicile do you fly out of? 04:43:40
- 16 A. Philadelphia.
- 17 Q. Philadelphia, okay. And you reached a tentative agreement
- 18 on or about August 20; is that correct?
- 19 A. Yes.
- 20 Q. And presented it to the board and we've had discussion 04:43:54
- 21 here that we don't have to rehearse about the board's
- 22 dissatisfaction, sending to you Dallas to do additional terms
- 23 and conditions; correct?
- 24 A. Yes.
- 25 Q. What happened when you went to Dallas? 04:44:07

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1 A. When we went to Dallas, we went there on a Monday morning 04:44:11
2 and we were scheduled to meet with the company and the APA
3 pilots that afternoon. And when we got there, the company
4 representatives informed us that they were in the final stages
5 of negotiating it a nondisclosure agreement with American 04:44:24
6 Airlines that would have resulted in the fact that they would
7 no longer be able to speak to us, either us or the mechanics or
8 the flight attendants or anybody else, any of the employees
9 with regards to the merger.

10 About an hour or so after we arrived in Dallas, they 04:44:42
11 made it official and they said that for at least the next 60 to
12 90 days we're not going to be able to discuss anything relating
13 to the merger.

14 Q. Now, that first Memorandum of Understanding, how many
15 parties were there to that agreement? 04:45:00

16 A. There were two parties at the table. There was us and the
17 US Airways management, but it was actually a three-party
18 agreement. The APA was the third party. They were not
19 involved in the discussions at the time because they were in
20 the midst of negotiating their own contract which had been 04:45:18
21 directed -- they had been directed to do by the bankruptcy
22 judge and we had kept them advised of what was going on in it
23 and then we were going to sit down with them to start
24 discussing the MOU, and that was actually one of the things we
25 were going to discuss at that meeting in Dallas that got 04:45:38

DEAN COLELLO - Direct

- 1 shortened. 04:45:42
- 2 Q. So could there have been changes to the MOU that you
3 brought to Dallas as a result of discussions with the Allied
4 Pilots Association?
- 5 A. Yes, because we were planning to make changes by the 04:45:52
6 direction of the board. And before we went to Dallas, I had a
7 phone conversation with Mr. Kirby and he committed that they
8 would discuss those items. And then also APA was going to be
9 at the table to discuss some concerns that they had also.
- 10 So the end product was going to be different than 04:46:11
11 what was -- had been TA'd.
- 12 Q. So like Charlie Brown and having Lucy pull the football
13 away from you, you never got any further with that agreement?
- 14 A. That's correct.
- 15 Q. And it never did go out for ratification? 04:46:31
- 16 A. No.
- 17 Q. And it was never actually signed by any party?
- 18 A. Signed by who?
- 19 Q. The first Memorandum of Understanding, never actually
20 signed or executed? 04:46:43
- 21 A. No, it wasn't.
- 22 Q. What did the Negotiating Advisory Committee do during the
23 NDA period, and I'll say the nondisclosure agreement period?
- 24 A. We did develop some educational materials about the MOU
25 that even thou the MOU wasn't going out for a vote, we wanted 04:47:04

DEAN COLELLO - Direct

1 to educate the pilots on what the process was, some of the 04:47:10
2 things we agreed on, the concerns that the board had. So we
3 did that. We went around to the different domiciles and spoke
4 to the pilots. Also we were making preparations for possibly
5 getting back into Section 6 negotiations under the auspices of 04:47:26
6 the National Mediation Board.

7 Q. So just so everybody understands, Section 6 negotiations
8 refer to what?

9 A. The single Collective Bargaining Agreement for US Airways
10 pilots and the America West pilots. 04:47:41

11 Q. With US Airways?

12 A. With US Airways management. It had nothing to do with the
13 merger. We were planning for this in the event that the merger
14 didn't happen and so we had -- we were preparing for that and
15 had some discussions with the NMB . 04:47:57

16 Q. Those were the negotiations that had been ongoing for a
17 period of years prior to the spring?

18 A. Yes.

19 Q. And in December of 2012, did you hear from the company
20 about the -- about potentially reopening negotiations? 04:48:13

21 A. Yes.

22 Q. What happened?

23 A. Gary Hummel and myself and the Roland Wilder met with
24 Scott Kirby and Beth Holdren from labor relations and Paul
25 Jones from legal and Chris Hollinger from their outside counsel 04:48:33

DEAN COLELLO - Direct

- 1 in Washington, D.C. 04:48:37
- 2 Q. And what did they say and what did you say during the
3 meeting?
- 4 A. Scott informed us that they were modifying the NDA to
5 allow discussions on taking the MOU that we had developed, 04:48:50
6 turning it into a four-party agreement. And he said he wanted
7 to meet starting -- I believe this meeting was on a Wednesday.
8 He said, "We want to start in Dallas on Monday. We want to
9 knock this out. It's going to be a session that we're not
10 leaving until we get it done," and he said, "This is our chance 04:49:13
11 to move this process forward."
- 12 Q. And was the Unsecured Creditors' Committee with the
13 American bankruptcy, were they involved in this?
- 14 A. They were not at that meeting but Scott informed us that
15 they were fully supporting this. And when we got to Dallas, 04:49:32
16 they were an integral part of the negotiations in Dallas.
- 17 Q. So you went to Dallas on December 10, a Monday?
- 18 A. Yes.
- 19 Q. Who represented the Airline Pilots Association?
- 20 A. We had the four members of the NAC were there. Roland 04:49:54
21 Wilder was there. Gary Hummel, the president; and Steve
22 Smyser, the executive vice president, were there also in a
23 supporting role, along with Brian O'Dwyer, who is USAPA general
24 counsel.
- 25 Q. And can you just generally -- these negotiations went on 04:50:08

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DEAN COLELLO - Direct

- 1 from December 10 until approximately when? 04:50:12
- 2 A. I was there until December 18 and December 18, Gary and
3 Steve and Ken Holmes and myself went up to Charlotte to brief
4 the board on our progress. And John Owens and Rocky Calveri
5 and Roland Wilder stayed back to tie up a few ends, so they 04:50:35
6 were there a couple days.
- 7 Q. So you have got the UCC, American, US Airways, the Allied
8 Pilots Association and USAPA, representatives from all of those
9 parties. Where were the meeting held?
- 10 A. They were held at a law office in downtown Dallas. 04:50:53
- 11 Q. And did everybody meet together all at the same time?
- 12 A. Well, the law office consisted of a couple of big meeting
13 rooms and a number of small break-out rooms. We had -- on the
14 first day we had a big group meeting with probably 30 people in
15 it to just kind of introductions and kind of set the stage for 04:51:16
16 what was going to happen. And then for the next 10 days or so
17 we just had meetings. Sometimes they were group meetings.
18 Sometimes they were smaller meetings. Sometimes they would go
19 to midnight, 1 o'clock in the morning, start up earlier and
20 work late and there was a lot -- pretty involved process to try 04:51:38
21 to get the agreement complete.
- 22 Q. And was there a timeline, a deadline set for the
23 conclusion of negotiations?
- 24 A. The optimistic timeline was when we got there on a Monday
25 everybody said we would be done on Friday, but we all realized 04:51:54

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DEAN COLELLO - Direct

1 that wasn't going to happen.

04:51:58

2 Basically, the intent was to get it done. They
3 wanted it done probably by, you know, late -- late in the third
4 week of December before the holidays. Turned out it wasn't
5 done before the holidays. We continued to work over the
6 holidays and didn't put the final touches on it until New
7 Year's Day.

04:52:14

8 Q. During the course of those negotiations for the US Airline
9 Pilots Association were there other people involved in
10 negotiations aside from those that you already told us about?

04:52:33

11 A. We -- as an organization, we utilized whatever resources
12 we could. When it came to areas that we either didn't have the
13 expertise on or needed advice, we would reach out to other
14 people in the organization, which is normal in a negotiating
15 process.

04:52:53

16 When Negotiating Committee is working, they will call
17 in subject-matter experts, whether it's dealing with retirement
18 insurance issues of, you know, something to do with scheduling
19 or something. We will call other people and ask their advice
20 in help developing proposals.

04:53:11

21 Q. So who were some of the people that you had assistance
22 from?

23 A. When it dealt with the -- with certain areas of the
24 contract we -- on block hour issues we talked to Dave
25 Ciabattoni, who was grievance, talked to Paul Diorio, a couple

04:53:25

DEAN COLELLO - Direct

1 of other people with that.

04:53:29

2 When it came to merger issues, we spoke to our merger
3 counsel, which is yourself, and Jess Pauley, who is the
4 chairman of our Merger Committee. And we would -- there were a
5 couple of other people involved whenever we needed their
6 expertise. But all of those people were not in place. They
7 were generally by a phone contact.

04:53:41

8 Q. Okay. At any of the sessions, were there statements by US
9 Airways, American or the Unsecured Creditors Committee about
10 the negotiation of seniority?

04:54:02

11 A. There were statements made. Essentially, Scott Kirby said
12 that they did not want the seniority to interfere in any way
13 with the merger. They were going to make sure that the
14 timeline for the merger, that the seniority integration process
15 was going to be left to the end because they wanted to make
16 sure that we didn't get in a situation where the contract was
17 holding things up. They wanted everything done, the contract
18 done, so that they knew what their costs were going to be so
19 the UCC could make the decision as to whether they were going
20 to proceed with the merger.

04:54:25

04:54:45

21 So they wanted, basically, all of the economics done
22 prior to making a final decision and they said that as far as
23 the timeline went, that all of the merger-related issues were
24 going to wait until the end.

25 Q. And did anybody say during any of these meetings that

04:55:07

DEAN COLELLO - Direct

1 there actually had to be provisions included in the Memorandum 04:55:08
2 of Understanding concerning seniority?

3 A. Yes. There were comments made that they wanted to make
4 sure that the process for the seniority integration was laid
5 out and it was clear to everybody what it was going to be. 04:55:18

6 Q. All right.

7 THE COURT: We can end up here. We're close to 5
8 o'clock now.

9 We'll see you all here back at 8:30 tomorrow.

10 We're adjourned. 04:55:36

11 MR. SZYMANSKI: Thank you, Your Honor.

12 (Whereupon, these proceedings recessed at 4:55 p.m.)

13 * * * * *

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United States District Court

DEAN COLELLO - Direct

C E R T I F I C A T E

04:55:39

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.

04:55:39

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.

04:55:39

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

04:55:39

s/Elaine M. Cropper

04:55:39

Elaine M. Cropper, RDR, CRR, CCP