

1                   BEFORE THE ALPA ARBITRATION BOARD  
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3   - - - - -X  
4 THE CREW MEMBERS OF US       :  
5 Airways                       :  
6                   Plaintiff,       :  
7           vs.                       :  
8 THE CREW MEMBERS OF       :  
9 AMERICA WEST AIRLINES       :  
10                   Defendant.       :  
11   - - - - -X

12  
13                                   HEARING, VOLUME V  
14  
15 GEORGE NICOLAU, Chairman  
16 CAPTAIN STEVE GILLEN, Pilot Neutral  
17 CAPTAIN JIM BRUCIA, Pilot Neutral  
18  
19                                   Washington, DC  
20                                   Tuesday, December 12, 2006  
21 REPORTED BY:  
22                                   DONALD R. THACKER

1                   Hearing before the ALPA Arbitration Board,  
2   on Tuesday, December 12, 2006, in Washington, D.C.

3 at the Marriott Wardman Park, 2660 Woodley Road,  
4 Northwest, at 10:00 a.m. before DONALD R. THACKER, a  
5 Notary Public within and for the District of  
6 Columbia, when were present on behalf of the  
7 respective parties:

8

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16 On behalf of US Airways

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-- continued --

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1 APPEARANCES (Continued):

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P R O C E E D I N G S

CHAIRMAN NICOLAU: Are you ready?

MR. KATZ: Were ready to proceed.

CHAIRMAN NICOLAU: Very good.

MR. KATZ: We will call as our next  
witness Captain Robert Kirch.

Whereupon,

ROBERT KIRCH

was called as a witness and, having previously been  
duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KATZ:

Q Welcome back, Bob.

A Thank you.

15 Q I will dispense with my usual preliminary  
16 questions about your background since those are  
17 already in the record, and just ask whether you and  
18 the merger committee and the various consultants to  
19 the merger committee have prepared another volume of  
20 materials to present to the arbitration board?

21 A We have.

22 Q And perhaps while you are giving us the

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1 title we can distribute that to the board and the  
2 representatives of the America West pilots.

3 A This is Volume E covering contracts,  
4 staffing, groupings and seniority integration  
5 methodology.

6 Q It is one volume but it is going to cover  
7 collective bargaining contracts, staffing, job  
8 groupings and seniority integration methodology?

9 A That is correct.

10 Q Very good. In all candor, Captain Kirch,  
11 you are only going to cover part of this volume, is  
12 that; is correct? And that would be the first  
13 section, right?

14 A That is correct.

15 Q Well, let us start at the beginning then,  
16 and please tell us what you have included in the  
17 first half?

18 A Okay. First tab is just a printout of the  
19 current pay rates or actually the current rates and  
20 scheduled increases in the case of the America West

21 pilots. If you look down, the top two boxes are US  
22 Airways, captains and then co-pilots and then the

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1 lower boxes are America West. If you look over to  
2 the right side, 15-year longevity.

3 Q That is an unusual feature of their  
4 contract isn't it, 15 years?

5 A Yes, virtually all ALPA contracts are  
6 12 years but in the case of America West it takes 15  
7 years to get to the maximum longevity pay increment.

8 Q Do so you run out the US Airways rates to  
9 15 years to compare apples to apples and oranges to  
10 oranges.

11 A Yes, of course.

12 Q What comments did you have about the  
13 rates?

14 A Just looking at the rates, if you start at  
15 the bottom of the captains 15 years all the right --  
16 on the right side of the page there you can see our  
17 rate for 737s and Airbus 320s is \$124.88 an hour.  
18 For the 757-767 it is \$144.02 an hour, for 76  
19 international that includes the override, bringing  
20 it to \$149.35, and then for the Airbus 330s which  
21 again includes override it is \$164.89.

22 Looking down at the America West rates

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1 down at the bottom the current pay rates are \$137.72

2 for all the equipment, they just have captain rate  
3 and a co-pilot rate, and if you notice here the  
4 \$137.72 is a little bit above ours, and it is closer  
5 to the \$144.02 set by domestic rate.

6 And of course as you can see there the  
7 America West pilots are scheduled for a pay raise on  
8 January 1st, of '07.

9 Q And the co-pilot rates are structured the  
10 same so that the America West 737 and A 320 co-pilot  
11 rate is higher at the top of scale than the US  
12 Airways 737-A320 co-pilot rates?

13 A That is correct.

14 Q But the 757 co-pilot rate is less than the  
15 top of scale US Airways 757 domestic co-pilot rate?

16 A I am sorry, say that one again.

17 Q The America West 757 co-pilot rate at the  
18 top of scale is less than the US Airways co-pilot  
19 rate at the top of scale?

20 A That is right.

21 Q Okay. And then the next, after the blue  
22 divider, do you have anything else you want to say

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1 about this?

2 A No.

3 Q Okay, after the blue divider we have  
4 called the Exhibit E-1(b), and please tell us what  
5 this document is?

6 A This is just the computer printout from  
7 the ALPA web site, pay rates basically, it is

8 showing the same information.

9 Q This is from the contractual library in  
10 the ALPA web site?

11 A That is correct.

12 Q Okay, and it has the same figures except  
13 that in the first exhibit E-1(a) we have added in  
14 the international override, I believe?

15 A That is right. Here it just talks about  
16 330 captain rate without override. Then it has  
17 Group 1, which by our contract is 75-76 pay rates,  
18 which Group 1 would cover international and  
19 domestic, in this document. So the difference, of  
20 course, is the international override.

21 Q Okay, and flipping to 1(c), in order to  
22 make a handy, easy to use and easy to carry

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1 compendium of all important information, we have  
2 included a page from the transition agreement, is  
3 that right?

4 A That is correct. And this just states the  
5 Embraer 190 rate that were agreed to in the  
6 transition agreement.

7 Q And 1(d)?

8 A These are the current international  
9 override pay rates, and they are applicable to,  
10 right now they are applicable to all transoceanic  
11 flying which means transAtlantic flying.

12 Q Go ahead, did you want to add something to  
13 that?

14           A     Yes.  There is one piece that has changed  
15  previously, at US Airways.  The international pilots  
16  always got override rate no matter what they were  
17  doing, and that same provision has now been agreed  
18  to between the joint negotiating committee and the  
19  company.

20                     They have a TA on that point, where in the  
21  future for the combined group the international pay  
22  rates will apply to all flying done by the

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1  international crew members, regardless of what they  
2  are actually, applies to duty rates, applies to  
3  everything.  So as you will see as we get further  
4  that rate always applies to the international 76 and  
5  the 330.

6           Q     I think a witness who addressed this point  
7  earlier in our case in chief was unsure about the  
8  current status of the international override for  
9  flying in the Caribbean.  Have you clarified that?

10          A     Yes, right now it doesn't apply but with  
11  this TA it will apply.

12          Q     And go back to the --

13          A     Right.

14          Q     And Exhibit E-1(e) is a section from the  
15  US Airways collective bargaining agreement, is it  
16  not?

17          A     Yes, it is, and this is the section that,  
18  we have a specific section that covers the  
19  international flying in our contract, and it deals

20 with a lot of particulars that are unique; primarily  
21 to a transAtlantic operation, covering relief  
22 pilots.

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1           There is a provision in there about rest  
2 seats on the airplane for these long haul flights  
3 for the crew members, which of course you have crew  
4 members actually taking off-duty time or break time  
5 in the air.

6           Talks about specific duty time  
7 restrictions, they are a little bit different, has  
8 to do with international, and some of the rest  
9 requirements that go along with that.

10         Q    Does it require that the international  
11 flying be a separate bid?

12         A    Yes, it does, transAtlantic flying is done  
13 only by pilots that are holding either 76  
14 international bids or 330 international bids.

15         Q    Are there special training requirements  
16 and other requirements for those pilots?

17         A    Yes there are, both initial and recurrent.

18         Q    So someone who is flying out of 767-757  
19 domestic base in Philly can't simply pick up the  
20 trip to Lisbon?

21         A    No.

22         Q    In the same exhibit past the next blue

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1 divider is a two-page excerpt from the Letter of  
2 Agreement '93, and it covers pages 4 and 10 of that  
3 Letter of Agreement. Can you tell us why you have  
4 included that here?

5 A Yes, this is just, there were a few  
6 changes to the international section of the  
7 contract, it came with letter '93, and there was a  
8 reduction in the international override, there was a  
9 couple changes I think on the IRO, but nothing  
10 hugely significant, but just for completeness we  
11 included that.

12 Q Okay. And then the last piece labeled  
13 Exhibit E-1(g) is the portion of the America West  
14 pilot's collective bargaining agreement dealing with  
15 international flying?

16 A That is correct. And in the case of, on  
17 the second page of that you can see where for  
18 America West international, the international  
19 override applies or does not apply for, it is  
20 excluded for anywhere in the United States, Canada  
21 and Mexico. So as far as I understand the only  
22 place they get the international override right now

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1 is for Costa Rica, but I will leave that to the  
2 America West guys.

3 But also it should be noted that the new  
4 international rates will apply, I am not sure about  
5 Mexico, it will apply to Hawaii, which they don't

6 currently get.

7 Q When you say new rates, the negotiating  
8 committee has worked out --

9 A Right.

10 Q -- extends the international override to  
11 Hawaii?

12 A That is true.

13 Q But as you understand Section E of  
14 Section 3 in the America West pilot's contract it  
15 doesn't currently apply to a Hawaii?

16 A No, it does not.

17 Q Another part of the contract which is  
18 frequently important to pilots is in Section 1, and  
19 we have set that out in Tab 2, right?

20 A Yes, we have -- in Tab 2 this is the  
21 comparison of the scope between the a US Airways'  
22 contract on the left on each page and the

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1 corresponding provisions on the America West  
2 contract on the right.

3 Q And through the miracle of word processing  
4 we have managed to have it come out to be exactly  
5 the same number of pages?

6 A Appears so.

7 Q All right. Let's look at the basic scope  
8 provision, and the core of the scope protection is  
9 in section 1(b). Can you highlight for us what the  
10 core provision says for each of these two contracts?

11 A Well, the big one is in B-1 where it says

12 all present and future flying performed, I am  
13 reading on the U.S. Air side.

14 Q Would you read it slowly to the court  
15 reporter can --

16 A Yes, it says all present and future flying  
17 performed by the company or US Airways group  
18 including any carrier controlled, operated or  
19 partially or wholly owned by the company or US  
20 Airways group whether directly or indirectly shall  
21 be performed by pilots on the US Airways system  
22 seniority list.

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1 Q Okay, and how does that compare to the  
2 parallel language in the America West pilot's  
3 collective bargaining contract?

4 A Not nearly as extensive in terms of what  
5 is protected for the pilots of that contract. It  
6 covers flying by the company but doesn't cover, go  
7 as far as to cover the flying, any flying  
8 controlled, owned or virtually in any way connected  
9 with the name, logo.

10 Where this really comes into significance  
11 is when you look at this potential Delta merger  
12 where basically the US Airways scope language  
13 provides the joint pilot group with significant  
14 negotiating leverage because essentially the Delta  
15 deal cannot go forward without addressing the scope  
16 language.

17 US Airways cannot operate Delta without

18 the flying being done by pilots on the US Airways  
19 seniority list without concurrence of the pilots and  
20 of course, you know, that is a piece that could have  
21 significance, a great deal of significance in the  
22 negotiations right now, in terms of getting a

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1 favorable deal for the combined pilot group.

2 Q This could, this could be an opportunity  
3 to complete the negotiations for a joint America  
4 West-US Airways collective bargaining contract as a  
5 result of management's interest in acquiring Delta,  
6 is that what you are saying?

7 A Yes.

8 Q All right and there are other provisions  
9 in B-1 for the US Airways pilots that add to the  
10 protection in the core provision you just read; is  
11 that right?

12 A Yes.

13 Q All right. Let's flip down to another  
14 section that I think you wanted to draw the panel's  
15 attention to. Looking down to, well, it is -- let's  
16 see, let me identify this it is an alter ego side  
17 letter, letter four, which is, if you flip down  
18 through all the pages it is after 1-9, and this  
19 basically bars, says by this agreement the company  
20 can not establish a subsidiary or affiliate air  
21 carrier as an alter ego to US Airways as a result  
22 of, you know, the New York Air situation back then.

1           And of course this is significant. The  
2 company can't own another airline and operate under  
3 a different name, can't own two airlines?

4           There is a provision on the right of that  
5 marked successorship and mergers in the America West  
6 contract. What are the operative provisions of that  
7 subsection?

8           A     Well, here it talks about it in number 2.  
9 Says in the event of a complete merger between the  
10 company and another air carrier, i.e., the  
11 combination of all or substantially all of the  
12 assets of the two carriers, where the surviving  
13 carrier decides to integrate the premerger  
14 operations.

15           Then it talks about if the company is the  
16 surviving carrier. Here you have got a situation  
17 where the company is not required to merge the  
18 airlines. Where on our side they are, they can't --  
19 well, here it says they, you know, they could  
20 essentially run two separate airlines and the alter  
21 ego letter on our side prevents that.

22           Down further in No. 3, it talks about how

1 the -- with the fence agreement the company will  
2 meet to talk about a fence agreement, but then it  
3 goes on to say these discussions shall not be  
4 pursuant to section 6 of the Railway Service Act,

5 and reaching agreement with the association shall  
6 not be a prerequisite to closing or any other aspect  
7 of the transition or operations pursuant to the  
8 transaction.

9 In other words, the company basically can  
10 go on, they are not really required other than just  
11 to meet and talk about a fence agreement. They can  
12 go on and just operate the airlines, nothing to stop  
13 them.

14 Q Going back in the US Airways contract to  
15 page 1-5, you see a section called censorship and  
16 labor protection, and subsection C-2, the second  
17 sentence states the airline operations of the  
18 company and successor shall be merged no later than  
19 24 months following the integration of the pilots  
20 seniority list and negotiation of an integrated  
21 collective bargaining agreement applicable to the  
22 merged operation agreement.

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1 So that while it is not a short period of  
2 time, there is some limit to the period of time that  
3 separate operations can be conduct under C-2?

4 A Right, which of course is different from  
5 America West.

6 Q Okay, and on the last page of Exhibit 2  
7 there are letters, parallel letters with the holding  
8 companies that own the airlines, are there not?

9 A Uh-huh.

10 Q So that to some extent the holding

11 companies are bound to honor the requirements of  
12 section 1 as laid out in these letters?

13 A As it states here, yes.

14 Q Okay. Let's go on to Exhibit 3, which is  
15 on a different subject, staffing comparison. Did  
16 you prepare this, Captain Kirch?

17 A Yes, I did.

18 Q Would you explain to us what information  
19 is displayed here?

20 A At the top is the US Airways information,  
21 on the bottom it is America West. You have got what  
22 the staffing looked like on May 19th, the

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1 announcement of the merger, actually from the  
2 certified list America West list the data based on  
3 what they gave us for 9-27-05, and then compared to  
4 where we are as we talked about it before; what we  
5 consider a fair starting point for the merger of  
6 July 1, 2006.

7 If you look at the top, the top boxes for  
8 us talk about the narrow body flying or the  
9 basically the comparable flying with America West  
10 737, 320s and 757 domestic. You notice on both  
11 sides had airplanes removed from the fleets in this  
12 time, and you notice the staffing crept up a little  
13 bit, 9.7 for us, up to 10.5 and looking at the  
14 bottom went on 12.3 for America West up to 12.6.  
15 Not hugely significant, but it did creep up a little  
16 bit.

17 Q Is that probably as a result of the  
18 elimination of some of the aircraft?

19 A Right. You know, in either case was  
20 anybody furloughed, so to some degree some pilots  
21 are caring, but I think on our side, as was noted in  
22 some prior testimony, we were really getting pretty

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1 short staffed. I think clearly a staffing rate of  
2 9.7 pilots per aircraft is on the low side. And  
3 certainly as compared to anything America West it  
4 is.

5 So, part of it was getting our staffing  
6 back to more what it ought to be. But as Dan said,  
7 there were certainly aircraft going out in both  
8 sides, so to see it go up a little bit is not  
9 unreasonable.

10 Now, if you look down on our side to the  
11 76 international 330 international you see much  
12 higher staffing rates, and of course this is  
13 indicative of extremely high aircraft utilization in  
14 that type of an operation. The airplanes are pretty  
15 much going around the clock.

16 And you also have in the co-pilots you  
17 have got the higher numbers because of the three  
18 pilot crews where you have got a relief pilot that  
19 is reflected in the co-pilot staffing.

20 Q All right, and the other noticeable thing  
21 on the charts in the middle of the page is the  
22 Embraers, which were addressed in testimony

1 yesterday, the pilots flying them on May 19th, 2005  
2 but on July 1, 2006 there aren't?

3 A That is true, yes. This is that window we  
4 talked about where you have the 25 airplanes went  
5 away and then 25 Embraers come back, but this is the  
6 point in time where they were gone between the end  
7 of May and right now, when they are coming back  
8 again.

9 Q All right. Would you explain the box at  
10 the upper right side of the chart?

11 A This is just a kind of a quick and dirty  
12 look at the effect of the different staffing rates  
13 between the airlines. Essentially what is done here  
14 is simply applying the America West staffing rates  
15 for the captains and co-pilots on each piece of  
16 equipment.

17 And that, you see the numbers crunch out,  
18 would require another 430 some jobs on our side, if  
19 it were staffed at that rate. That is -- it is  
20 basically just giving the panel an indication of  
21 what that difference in staffing rate equates to in  
22 jobs.

1 Q And in constructing the staffing  
2 calculation you simply have taken the data from the

3 America West box at the bottom for 737, for example,  
4 and divided the 29 airplanes into the 198 captains  
5 to get a 6.8 staffing figure for the 737 captains?

6 A That is correct.

7 Q And then applied that to the 69 airplanes  
8 of that type in operation on July 1 at US Airways;  
9 is that right?

10 A Correct.

11 Q Thank you. So those, the America West  
12 staffing would increase the US Airways pilot  
13 population by 431 pilots?

14 A That is right.

15 Q Anything else you wanted to say about  
16 Exhibit 3?

17 A No.

18 Q Let's go on to Exhibit 4 then, and this  
19 relates to the staffing in a fairly direct way,  
20 doesn't it?

21 A Yes, this discussion occurred last week  
22 regarding management and supervisor pilots, and I

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1 believe the discussion was on their effect on  
2 attrition. But basically what we are showing here  
3 is just how the management and supervisor pilots  
4 relate in numbers to the line pilots for the two  
5 airlines.

6 Now you will notice that for US Airways we  
7 are using staffing numbers for May 1, 2005, for  
8 America West July 1, 2005.

9                   This was data that was exchanged by the  
10 merger committees early on in the process and  
11 represents the earliest data we have. Actually it  
12 is the only data we have for America West that  
13 actually breaks out the supervisors and management  
14 completely.

15                   So when you look at this you can see the  
16 supervisors for US Airways amounts to 3.5 percent of  
17 the actual line pilots, for America West it is 3.2,  
18 and for management it is 0.5 percent for us and 1.4  
19 percent for America West, and when you add it  
20 together it is 4.1, and 4.5 respectively. So  
21 slightly higher for America West, but my  
22 understanding is that those numbers are pretty

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1 typical numbers for the industry.

2           Q    Okay. Exhibit 5, we have moved on to a  
3 new subject. Please enlighten us about the pockets  
4 of job groupings; why is this significant?

5           A    Well, it is necessary when doing a  
6 seniority integration to determine what jobs from  
7 each side should be considered equivalent, and what  
8 we have done here is given our view of that, and  
9 also showing the pay rates that apply that support  
10 that division.

11          Q    These are top of scale pay rates in effect  
12 as of July 1, 2006?

13          A    That is correct. So going down from the  
14 top here you have got the Airbus 330s and the 76

15 international, the pay rates there including the  
16 overrides are \$164.89 and \$149.35. As we will show  
17 clearly, that flying is flying that the America West  
18 pilots really don't have anything that is equivalent  
19 to.

20 And the next grouping, the 76, we call  
21 76-75 domestic, domestic bids, and these of course  
22 as we have talked about before, are separate bid

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1 positions. You have the 330 international and the  
2 76-75 international. Those are separate bids and  
3 then 76-75 domestic is yet a different bid, and it  
4 pays a slightly lower pay rate.

5 And then the next grouping is all the  
6 Airbus 320 family and 73 family. We treat them  
7 pretty much as they pay the same rate on our side,  
8 America West treats them all the same, and then you  
9 have basically the same arrangement down through the  
10 co-pilot's positions.

11 It should be noted that while America West  
12 combines the 757s with the 320s and 73s in terms of  
13 pay, here we are separating them, and the logic  
14 behind that is that going forward it is extremely  
15 unlikely that we are going to have seat pay for the  
16 combined airline.

17 We are not going to have a 76 pay the same  
18 as a 73, and indeed that is consistent with the  
19 industry. It is consistent with what the -- both  
20 MEC's are seeking with the company and basically it

21 is my understanding that the company has said  
22 nobody's, they are not trying -- they don't intend

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1 anybody to take a pay cut, which of course means  
2 that our 757 pilots, which are paid more than the  
3 America West narrow body pilots or 73-320 pilots,  
4 that would mean it would have to be a separate pay  
5 group. So in anticipation of that, of course, the  
6 America West 757 pilots would be moved up and  
7 considered equivalent to ours.

8 Q Now, let me just back you up a minute,  
9 Captain Kirch, and ask you about the whole topic of  
10 job grouping. Is that an important subject in  
11 developing a yardstick to measure the fairness of  
12 the various seniority methodologies, in your view?

13 A Well, certainly. No pilot is not  
14 concerned with his paycheck. And as the different  
15 airplanes pay different rates that affects --  
16 affects everything, really.

17 So when you look forward and try and make  
18 any analysis to the fairness of how job  
19 opportunities are allocated going forward, you have  
20 to take into account the monetary effects of that,  
21 and obviously somebody's ability to move up into the  
22 premium jobs that pay better is something that has

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1 to be quantified in terms of whether somebody is  
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2 gaining or losing, particularly if the other group's  
3 expense.

4 Q This may sound more like a  
5 cross-examination question than a direct examination  
6 question, but since you have given that answer let  
7 me ask you about the difference between groups 1 and  
8 2. It appears that the difference in the pay rates,  
9 which you say is an important factor, is the \$5.33  
10 international override.

11 So I let me ask you, given that is the  
12 only monetary difference between the 757 domestic  
13 and the 767 international rate, why you separated  
14 out Group 1 from Group 2 in that fashion?

15 A Well, obviously there is more to it than  
16 just the money. And I think the best way to assess  
17 that is look at what the pilots say. The pilots  
18 tell us the relative value of the jobs by how they  
19 bid, how they spend their currency, their seniority.

20 And that gives you a measure of what that  
21 package of flying is worth, which of course includes  
22 a small pay difference, but it also includes some

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1 quality of life factors, of, you know, that go with  
2 the international flying, things we talked about  
3 before about how you know, being able to go to work  
4 at dinnertime and be home from work two days later,  
5 spend the night in, you know, a city in Europe, and  
6 you are only flying two legs.

7 It is a pretty nice lifestyle and it is

8 certainly something that, you know, is valued by  
9 airline pilots across the industry.

10 Q All right, and have you done some analysis  
11 to see how the US Airways pilots actually value the  
12 75 domestic versus the 76 and A330 international  
13 body?

14 A I have.

15 Q Where would we find that analysis, Captain  
16 Kirch?

17 A Start on the next exhibit, tab 6. What we  
18 have done here, is looked at Philadelphia.  
19 Philadelphia is a good example because it has got  
20 all the jobs. So, if we look at how the pilots have  
21 valued these jobs, and of course the point in the  
22 discussion here is what we have refer to as we are

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1 talking about as the premium flying; the 330  
2 international and 76 international flying.

3 So what we have done here is shown the  
4 distribution of them among the seniority in  
5 Philadelphia. Each bar coming down contains 50  
6 pilots, so the top box in the left bar in the most  
7 senior pilot in Philadelphia, and the bottom pilot  
8 in there would be No. 50 in that first bar.

9 And then it continues off across the page  
10 the same way No. 51 through 100 in Philadelphia, 100  
11 one through 150. And what we have done is simply  
12 colored in or marked the locations on the relative  
13 seniority in Philadelphia of those 330 and 76

14 international pilots. And as you can see they  
15 absolutely dominate the top of the list. There is  
16 no comparison.

17 Q So the 45 pilots, 90 percent indicate that  
18 45 pilots out of the top 50, or 90 percent, are  
19 bidding international positions?

20 A Right, these are pilots that of course  
21 could have bid anything, and that is what they  
22 chose. And as you see the percentages fall off very

854

1 fast as you get out of the top of the seniority  
2 list.

3 Q And essentially the pilots at the top bid  
4 international and the ones at the bottom bid  
5 whatever is left over?

6 A Essentially.

7 MR. GILLEN: Is there a data associated  
8 with this?

9 THE WITNESS: Yes.

10 MR. KATZ: There is.

11 THE WITNESS: All the data we have got  
12 here is based on July 1, '06, what you have in the  
13 other exhibit books. And this of course, for this  
14 example, non-flying pilots are not displayed on  
15 here, anybody who is medical or leave of absence or  
16 military leave or any of those sorts of things.

17 BY MR. KATZ:

18 Q All right. The second page in this  
19 exhibit takes another look at the same data doesn't

20 it?

21 A Yes, and a little confusing to look at  
22 first, but let me just take you through it. This

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1 again is looking at just Philadelphia, there is a  
2 bar there for each of the positions in Philadelphia,  
3 330 international, 76 international, 75 domestic,  
4 320 which includes 737's, and then the co-pilot's  
5 positions in the same order.

6 The blue box is the vertical dimension of  
7 that blue box is, if you look on the left scale, it  
8 is just an indication of how many pilots are in that  
9 bracket.

10 Q So the A 320 is the fattest box because  
11 there is more A 320 captains in Philly than anything  
12 else?

13 A Right, 320 and 73 captains in Philly.

14 And if you look at the bar, let's look at  
15 the 330 international captain positions in Philly.  
16 There that first bar, the top little dash, black  
17 dash there represents the number one pilot. The  
18 next line represents the pilot who is in the 75th  
19 percentile of that group. The black dot is the  
20 middle pilot.

21 The next blue line going down is the 25th  
22 percentile pilot in that range, and the bottom black

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1 line is the bottom pilot in the range.

2           So, you get a picture of where the pilots  
3 spread. And it is the same layout for each of the  
4 bars. And as you can see, you know, they spread out  
5 quite a bit sometimes, but if you look at the median  
6 pilot you get a pretty good indication of the  
7 relative value of these jobs as indicated by the  
8 pilots, as we say, voting with their feet. And you  
9 can see that the 767 international is very close to  
10 the 330 international and is quite a bit senior to  
11 the 757 domestic, so --

12         Q    You are looking at the median dot now?

13         A    Right, which are connected with the line  
14 there. You can see that, you know, where Dan  
15 mentioned, there is only the difference in pay of  
16 the international overrides, but clearly the pilots  
17 indicate that there is more value in the  
18 international flying than just the difference in the  
19 pay rates.

20         Q    So, you are saying that the black dot for  
21 the 767 is almost as high as the A330 but the black  
22 dot for the 757 is substantially lower?

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1         A    Yes, and you can carry that same analysis  
2 across looking at the 25th percentile. The blue  
3 line that is just below the box there, the 75th  
4 percentile point for the 76 international, is a lot  
5 closer to the 330 than it is to the 75 domestic.

6                   If you were to draw a line and connect  
7 them together you would see the same relationship  
8 carries there, too.

9           Q    It appears that the 75 percentile line on  
10 the 767 captains is senior to the 757 median?

11          A    Yes, that is correct.

12          Q    Meaning more than three-quarters of the 76  
13 captains have better seniority than the median 757  
14 captains?

15          A    Right. You know, as I think, what it  
16 takes to be able to hold 75 domestic is, you know,  
17 as you can see, it doesn't take near as much  
18 seniority to hold that as it does to get into the  
19 international world. It is a completely different  
20 league.

21          Q    So that corroborates your testimony about  
22 what the pilots prefer?

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1           A    That is what they have indicated.

2           Q    All right, Exhibit 7, how does that relate  
3 to this issue, Captain Kirch?

4           A    As we go forward into the analysis of the  
5 fairness of any seniority integration we spoke  
6 earlier about the relative valuations of the jobs,  
7 and obviously dollars is a big piece of it. So the  
8 analysis is affected by the valuation of the premium  
9 flying or, yes, the different types of flying  
10 brought to the merger.

11                   Now, we looked at the industry just, you

12 know, we have basically the same groupings in the  
13 industry, and looking across you have the 320-73s  
14 and you have all the different pay rates of all the  
15 major carriers, basically all the carriers that  
16 operate wide body aircraft and 75s, and the smaller  
17 body narrow body aircraft and you see all their pay  
18 rates.

19           When you look at the 757-767 group it  
20 commands normally a 15 percent, maybe a little bit  
21 more, premium over the smaller narrow bodies. And  
22 then 330, which also would include triple 7's and

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1 the like at the other airlines, would be, well, you  
2 can see the range, 14 to 19 percent, over the 75s  
3 and anywhere from 29 to 38 percent over the smaller  
4 narrow bodies, and of course, the blue line there is  
5 the averages.

6           And below we have looked, we have put in  
7 what US Airways' pay rate is right now, and you can  
8 see that we are running 15 percent premium for the  
9 75-76 and a 32 percent premium for the 330, which  
10 you can see is right in line with the industry.

11           A bit of an anomaly happened there, we  
12 wanted to point out, that in our modeling going  
13 forward we assumed that the America West pay rate  
14 will be applied to the 737-320s and that our pay  
15 rate would be applied to the 757-767, which kind of  
16 is in line with what the company said about nobody  
17 takes a pay cut.

18                   However, there is not a real world  
19   situation where you would go and raise one equipment  
20   pay rate without the whole scale being adjusted.  
21   And the effect of that, as you can see here, is when  
22   you raise just the one rate without the others it

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1   does, it reduces the differential, of course,  
2   between the 320 and the 75. So instead of being  
3   15 percent it drops all the way down to 8, or almost  
4   half, and the, while the increment to the 330 stays  
5   about the same. When you are comparing it back to  
6   the 320, that drops considerably to 23 percent.

7   And --

8           Q    What about the information in the blue  
9   line at the bottom there, what is the difference  
10   between that one and the line you have just been  
11   talking about?

12          A    Well, we are assuming 12-year pays, and  
13   here is what happens if you look at it from 15. In  
14   other words, the rest of the chart is based on  
15   12-year, and when you put in the 15-year pay that  
16   skews it a little bit more.

17          Q    It compresses the rates more 12-year  
18   comparison, right?

19          A    That is correct.

20          Q    So that there you have only got a 5  
21   percent difference from the A320 to the 757?

22          A    Right. And, you know, so we are looking

1 ahead a little bit here, to when we get talking  
2 about some of the analysis that you can see where  
3 the value of the premium flying winds up being  
4 understated a bit because of the assumption that  
5 goes into this.

6           You know, an argument could be made that  
7 you should use the pay scale in an analysis like we  
8 do that reflects the industry, reflects the normal  
9 increments between them, if you are going to value  
10 careers moving up through these jobs.

11         Q    In your review of this, this is an anomaly  
12 that exists at the present time?

13         A    Right, and it is unlikely to be  
14 representative of the world but again, we are trying  
15 to be conservative in what we have assumed.

16         Q    All right. Now we are going to switch to  
17 a different subject, unless somebody wants a break.

18               (10:58 a.m. -- recess -- 11:09 a.m.)

19               CHAIRMAN NICOLAU: Let's go.

20               BY MR. KATZ:

21         Q    All right. Captain Kirch, referring to  
22 the cover of the book, we have talked about the

1 subject of the collective bargaining contracts,  
2 staffing at U.S. Air and America West and the job  
3 groupings, and we are now turning to a section, are  
4 we not, addressing seniority integration

5 methodology.

6 A That is correct.

7 Q And where should we start in that  
8 exercise?

9 A Exhibit 8 is the statement that we are all  
10 familiar with, it is the five goals of ALPA merger  
11 policy. And of course that is the starting point of  
12 any integration and the assessment of fairness of  
13 any integration.

14 MR. FREUND: I am going to jump in and  
15 just make a really mild objection to testimony  
16 regarding the next, well, Exhibit 9 through 12 it  
17 looks like, which appear to be extracts from various  
18 either transcripts of prior seniority integration  
19 arbitrations or pieces of decisions.

20 I can only imagine that what Captain Kirch  
21 is going to testify to is what I would describe as  
22 really the functional equivalent of legal argument,

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1 that I think is best left to the lawyers, and is not  
2 a particularly useful use of our time.

3 I say mild only because it may be that the  
4 objection is going to take longer than his  
5 testimony, although I can't know that until I hear  
6 his testimony. But it just does seem to me that it  
7 is not really a useful and appropriate thing to do.

8 CHAIRMAN NICOLAU: I thought you used the  
9 word mild because a lot of the quotes were mine.

10 I think that Captain Kirch should simply

11 just describe what is here instead of going into any  
12 detail about these --

13 MR. KATZ: Well, let me respond briefly  
14 because I think that is an important point. Captain  
15 Kirch is here on behalf of 5,098 US Airways pilots  
16 to present the proposal that we are proud to present  
17 to this arbitration board. And I think he is  
18 entitled to give his reasons for why that is a fair  
19 and equitable resolution of the seniority  
20 integration dispute that is before the board and to  
21 do it in a fashion that he is comfortable with.

22 CHAIRMAN NICOLAU: I understand what you

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1 said but I do think these exhibits in which there  
2 are quotes from Chairman Block and from me don't  
3 have to, he doesn't have to spend much time on. You  
4 know, I mean he could just simply say I think  
5 everything he said there was fair.

6 Come on, Dan, let's move on.

7 BY MR. KATZ:

8 Q Well, I would like to start by asking  
9 Captain Kirch on Exhibit 8 what he thinks is  
10 significant in terms of this case with regard to the  
11 five goals that are set out in ALPA merger policy?

12 MR. FREUND: See, that is where --

13 CHAIRMAN NICOLAU: You are going to write  
14 the brief aren't you?

15 MR. KATZ: I am sure there will be a lot  
16 of input from the merger committee as well.

17 CHAIRMAN NICOLAU: Okay, but --

18 MR. KATZ: The legal authority resides in  
19 the merger representatives to speak for these 5,098  
20 pilots, and his explanation of the pilots' position  
21 is a worthwhile piece of a small amount of time.

22 MR. FREUND: They can help Dan write the

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1 brief.

2 CHAIRMAN NICOLAU: What did you say?

3 MR. FREUND: They can help Dan write the  
4 brief, when he writes the brief.

5 CHAIRMAN NICOLAU: I just don't think  
6 Captain Kirch should spend a great deal of time on  
7 it. It could be done in a few sentences, but go  
8 ahead.

9 BY MR. KATZ:

10 Q Captain Kirch, particularly with the goal  
11 of avoiding windfalls to either group at the expense  
12 of the other, how does that relate to the issues  
13 before this arbitration board?

14 A I think the big issue here is where you  
15 have got significant promotional opportunities  
16 clearly in front of pilots with respect to their,  
17 the pilots leaving the seniority list above them,  
18 and the distinction here with windfalls, if you have  
19 a situation where a substantial amount of those  
20 opportunities are shifting from one side to the  
21 other, that number one is a windfall gain for one  
22 group, and it is also clearly at the expense of the

1 other group.

2 I think the policy, there is probably  
3 cases where one side or the other may achieve a gain  
4 that is not at the expense of the other group and we  
5 don't have a problem with that.

6 Q All right. Anything else you wanted to  
7 say about these five goals?

8 A I think I would like to reiterate what I  
9 have said before about the premerger pay and  
10 standards of living.

11 This is something that is the center of  
12 everything to pilots. I mean it is what you make  
13 and what you are here for, and it is something that  
14 has to be analyzed and looked at in terms of  
15 assessing the fairness of an integration.

16 Q And have you compared the applicable and  
17 operative provisions of ALPA merger policy involved  
18 in this case to what was in effect when Sam Cagle  
19 arbitrated the U.S. Air-Piedmont case?

20 A Yes, I have. And of course I was on the  
21 merger committee for that integration, so you know,  
22 of course I was there. And there is points made

1 here about well, that is the date of hire merger  
2 policy.

3                   Now, it is not a date of hire merger  
4 policy, but the reality, as you can see here, is  
5 there was a preference for date of hire. But at the  
6 same time there was a statement that said that  
7 equities should not be sacrificed to maintain date  
8 of hire.

9                   So, as the Piedmont representative --  
10 well, basically you could argue either side of that,  
11 and say you are following the policy. So you could  
12 hardly say that was a date of hire policy.

13           Q     All right, arbitrator Cagle did come up  
14 with a date of hire list for the U.S. Air-Piedmont  
15 integration?

16           A     He did.

17           Q     Exhibit 10 is an excerpt from the decision  
18 of Richard Block in the Republic-Hughes Air West  
19 seniority integration?

20           A     Yes. Very quickly, he did a length of  
21 service integration of the Republic and Hughes Air  
22 West pilots and one of his reasons was the

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1 relatively equal position of these carriers, which  
2 we feel is applicable here.

3           Q     Exhibit 11 are three pages, separate items  
4 from arbitrator Nicolau's decision in the US  
5 Airways-US Airways Shuttle case. What did you have  
6 to say about those?

7           A     Just quickly, in the first one is a  
8 recognition of the premium flying, and how the

9 placement of the Shuttle captains below the junior  
10 Group 1 captain position essentially left their  
11 expectations undiminished.

12 Q We agree with that?

13 A Of course.

14 Q The second page?

15 A And that talked about the Shuttle pilots,  
16 the recognition of the Shuttle pilots being older  
17 and that they had brought their attrition with them.

18 Q And is that applicable here too?

19 A Very much so.

20 Q And the last page of Exhibit 11?

21 A And again, recognition here of -- here we  
22 are talking about the junior pilots just above the

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1 constructive notice point, and a recognition of  
2 relatively similar service.

3 Q All right. And we feel that is applicable  
4 here as well?

5 A Yes, it is.

6 Q Exhibit 12?

7 A This is Richard Block's, an expert,  
8 regarding the Republic-Hughes Air West integration  
9 and here we are talking about furloughed pilots and  
10 a laid off pilot being integrated in a relatively  
11 senior status and a colleague who is working at the  
12 time and in recognition of his more extensive  
13 service than the pilot currently active.

14 Q And we think that is an important

15 consideration to follow?

16 A That will be in this case.

17 Q All right. And then with regard to  
18 furloughed pilots we have an excerpt, I am sorry, it  
19 is not an excerpt, it is a two-page document  
20 consisting of a memo from the then MEC chairman for  
21 U.S. Air base, Bob Garioso to me, passing along an  
22 executive board resolution that was unanimously

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1 adopted by the ALPA executive board in 1996. Why is  
2 that relevant here?

3 CHAIRMAN NICOLAU: There isn't any  
4 indication in this case that furloughed pilots  
5 aren't going to be part of the merger process, is  
6 there?

7 MR. KATZ: Well, we have a request that is  
8 still pending before the panel to exclude some of  
9 them from the process.

10 CHAIRMAN NICOLAU: No, I don't think that  
11 is --

12 MR. FREUND: No, no, not at all.

13 CHAIRMAN NICOLAU: You don't have to talk  
14 about that. No, no, I have read this.

15 BY MR. KATZ:

16 Q Okay. Exhibit 14 deals with furloughed  
17 pilots as well, doesn't it?

18 A Yes, it does.

19 Q What is the significance of the first  
20 page?

21           A     This is just a reminder that where we  
22 stand right now on our recall is the last pilot

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1     being recalled, pilot Peppers, who is 321 pilots  
2     down the list of pilots who were furloughed, or who  
3     were furloughed from the main line on May 19th, and  
4     you know, that is how far down we had to go to get  
5     108 recalls.

6           Q     So, Peppers has accepted recall and we  
7     have picked out a pilot who is actually going to  
8     testify tomorrow, Jim Hershey, and shown where he is  
9     in relation to pilot Peppers on the next page?

10          A     Right. And as you can see, we have put a  
11     count down the left side of the page, it just  
12     indicates that he is 52 numbers junior to Peppers.

13                     And as we showed last week, that number of  
14     pilots, if we continue the experience that we have  
15     been having, will be gobbled up in the next recall  
16     easily.

17          Q     This also shows that Peppers and Hershey  
18     have something like almost 16 years of employment  
19     tenure with US Airways or its predecessor carriers  
20     as of the date of the announcement of the merger; is  
21     that right?

22          A     That is correct, and 13 years of active

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1     service.

2 Q All right. Exhibit 15, Captain Kirck,  
3 this is an exhibit that was previously introduced in  
4 the case, right?

5 A That is correct.

6 Q And the significance for present purposes?

7 A Well, here again you have got, we talk  
8 about the number of jobs that were lost on each  
9 side, which is indicative of how far Jim Hershey was  
10 pushed down, but he is coming back very quickly.

11 And you know, this is a result, of course,  
12 of the aircraft removals, and how quickly he has  
13 rebounded from that, that large number of jobs  
14 coming out of the system. And as we noted before,  
15 if our experience continues we are looking at the  
16 bottom guy on our list, Varini being offered a  
17 recall by the end of next year.

18 Q All right. Exhibit 15-B actually shows  
19 that doesn't it?

20 A That is correct. That is, as you can see,  
21 well, we talked about this before, but --

22 MR. FREUND: We have been through this

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1 exercise.

2 CHAIRMAN NICOLAU: We have been through  
3 this before, we don't have to do it again.

4 THE WITNESS: Yes.

5 BY MR. KATZ:

6 Q All right, and exhibit 15-C is from the  
7 Fleet volume and shows the Embraer deliveries?

8 A That is correct.

9 Q All right, just --

10 A As revised, it contains it, yes.

11 Q On Exhibit 15-D there is one comment of  
12 Doug Parker's from the video we saw that you wanted  
13 to remind us of?

14 MR. FREUND: We have been through this;  
15 objection.

16 CHAIRMAN NICOLAU: Well, just tell me what  
17 portion it is.

18 THE WITNESS: Just the first sentence,  
19 there is no choice as to where the airplanes would  
20 go referring to the M referring to the Embraers,  
21 the 190s, have to go to the east.

22 BY MR. KATZ:

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1 Q Because that is where the certificate is?

2 A Yes.

3 Q All right, and Exhibit 15-E is something  
4 from the 100 --

5 CHAIRMAN NICOLAU: That is already in  
6 evidence.

7 MR. KATZ: It is in evidence. I think  
8 Captain Kirch had an additional comment that is not  
9 in evidence, relating to \$18 million in  
10 nonrefundable progress and deposit payments that are  
11 being used to acquire the 25 Embraer 190s.

12 MR. FREUND: I think that was testified  
13 to.

14 CHAIRMAN NICOLAU: Yes, I thought it was.

15 MR. KATZ: Well, let me simply ask him  
16 whether he has any additional comment on that.

17 CHAIRMAN NICOLAU: Okay, go ahead.

18 THE WITNESS: Just in just in relation to  
19 the recall prospects, you know, these pilots paid a  
20 dear price for that money that brought those  
21 airplanes and it speaks to a greater entitlement,  
22 let's say, to those jobs.

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1 BY MR. KATZ:

2 Q All right. And just for the easy  
3 reference to the panel we have included the entire  
4 Embraer time line as Exhibit 15-F.

5 Exhibit 16, Captain Kirch, would you  
6 describe what we have here?

7 MR. FREUND: I think we have seen this  
8 before too, haven't we.

9 MR. KATZ: No.

10 CHAIRMAN NICOLAU: Not 16 -- well, we have  
11 seen Hershey's name.

12 MR. KATZ: We have seen Mr. Hershey's  
13 name.

14 MR. FREUND: I am sorry, I thought you  
15 were on 15.

16 CHAIRMAN NICOLAU: No, no, that is 15 we  
17 have seen before.

18 MR. FREUND: That is what I thought.

19 MR. KATZ: Okay, 15 we skipped over but  
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20 you have seen that, and Captain Kirch in fact  
21 testified about it in connection with the Employment  
22 A volume showing the tremendous proportion of the

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1 attrition coming from the US Airways side, but I was  
2 asking about Exhibit 16, not Exhibit 15.

3 CHAIRMAN NICOLAU: Yes.

4 THE WITNESS: Okay, now what we have done  
5 here is simply taken the US Airways list and removed  
6 all pilots and shown basically all the pilots who  
7 are younger than Jim Hershey and senior to him on  
8 the list, which is a common calculation pilots do to  
9 figure out their retirement prospects, where they  
10 would anticipate being on the list, because  
11 obviously at the point you retire everybody who is  
12 older than you is gone and these will be the people  
13 that will be ahead of you that, you know, take the  
14 number of guys that are younger than you ahead of  
15 you on the list, add one and that is your seniority  
16 number at retirement.

17 BY MR. KATZ:

18 Q You do this calculation on your laptop  
19 computer did you?

20 A Yes.

21 Q What did you learn about Mr. Hershey's  
22 prospects for the future?

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1           A     Well, he will retire, he would retire at  
2 no less than number 19, which of course is clearly,  
3 he will clearly have access to the best paying job  
4 in the airline.

5           Q     He will have years of premium service  
6 available to him?

7           A     Sure.

8           Q     And flipping to Exhibit 16-B, what  
9 analysis have you performed here?

10          A     Well, what we did here, since the America  
11 West pilots have stated that this is just a  
12 reference, that the America West pilots have stated  
13 that they would integrate Mr. Hershey below all the  
14 pilots on at America West list, this is just a list  
15 listing of, basically it is another date of birth  
16 sort. But, it is all the pilots on the America West  
17 list who are younger than Jim Hershey, so who would  
18 still be on the list at the point Jim Hershey would  
19 retire.

20          Q     And they would impede his ability to  
21 access the premium flying that he would have at US  
22 Airways?

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1           A     That is correct. So you have pages and  
2 pages of them, but basically it comes down on the  
3 last page, well, if you take Jim Hershey's birthday,  
4 you see all these guys are younger than him so 644  
5 pilots would be placed ahead of him which would

6 obviously have a big impact on the promotional  
7 opportunities for Jim Hershey.

8 Q And you have marked the 644th pilot in  
9 yellow at the end and he is the one who is about the  
10 same age as Jim Hershey but slightly younger?

11 A Just slightly younger.

12 Q Okay. Exhibit 17, did you prepare this  
13 chart, Captain Kirch?

14 A I did.

15 Q Would you explain to us what information  
16 is displayed here?

17 A Yes, it is our view that when assessing  
18 the fairness of the seniority integration, that  
19 certainly the benefits that the pilot groups receive  
20 and the costs they bear is a consideration to  
21 whether the list is fair or not. And so, here we  
22 just laid out the benefits that each pilot has

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1 received and the costs.

2 At the top of the list of course is job  
3 security. We were in bankruptcy, America West as we  
4 heard from the CEO was facing bankruptcy, the board,  
5 the incident in the boardroom they were talking  
6 merge or file, and in our wildest dreams at America  
7 West pilots or the US Airways pilots could never  
8 have dreamed of having \$3 billion in the bank and  
9 the job security and certainty of a future that  
10 brings. And that is clearly a product of the merger  
11 and something that nothing -- or that could never

12 have occurred otherwise.

13           Looking, coming down to the next line,  
14 looking at the America West side, we have also heard  
15 Mr. Parker talk about how the America West pilots,  
16 absent the merger -- well, we talked about how the  
17 America West business plan depended on lower costs  
18 because they didn't have the revenue advantage of  
19 other carriers, and that that cost advantage was  
20 going away, and that had the merger not happened  
21 then you were looking at them having to secure that  
22 cost advantage or having a serious problem with the

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1 business plan.

2           So, absent the merger if America West, you  
3 know, according to Mr. Parker they were looking at  
4 bankruptcy or restructuring to avoid bankruptcy.  
5 But either way, the net effect is the same. You are  
6 looking at pay cuts and benefit cuts and the merger  
7 avoided that, and you know, while the America West  
8 pilots have a higher pay rate on the, on the 737's  
9 and 320s, that pay rate was certainly saved by the  
10 merger, and that will be a benefit for all of us,  
11 for both sides that pay rate is still there.

12           And, you know, that speaks to the next  
13 line where we talked about the stronger bargaining  
14 position that the merger has brought to both sides,  
15 to the pilots in the east, that pay rate I just  
16 mentioned, there are some better vacation provisions  
17 in the America West and then some of the duty rates

18 are a little better on the east side.

19           You have got the 757 pay rate or higher  
20 differential pay and the scope protection which was  
21 the leverage we talked about that will be  
22 significant with the Delta transaction on the

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1 horizon and there are certain retirement benefits  
2 that are more advantageous.

3           You have the attrition factor in the next  
4 line, and speaking from the US Airways, the  
5 attrition that US Airways brings, I would like to  
6 perhaps put that in perspective. If you, you know,  
7 yesterday we were talking about I believe it was 19  
8 airplanes on order with America West, 20 some  
9 airplanes on order with us, and that is way out into  
10 the future.

11           When you are talking about over 200 pilots  
12 a year leaving the list for attrition that is the  
13 same thing as a net fleet increase of around 20  
14 airplanes a year. And of course, the big difference  
15 in that is there is no uncertainty about that  
16 airplane, you don't know whether it is going to be a  
17 replacement airplane, you don't know whether it is  
18 actually going to come to some degree, where the  
19 attrition you know that is going to happen.

20           I mean, imagine an order with an order  
21 book of a net increase of 20 airplanes in every year  
22 as far as you want to look out in the future, that

1 is almost unprecedented in a merger and is a huge  
2 effect on the promotional opportunities.

3 And I believe the number, if I remember  
4 right from a previous exhibit, in 15 years we are  
5 looking at something like 3800 retirements from US  
6 Airways; just an enormous number.

7 Now, out of fairness looking at the other  
8 side, the benefits to the US Airways pilots, you  
9 have got, you know, clearly the furloughees are  
10 going to benefit from the America West attrition  
11 being added in to the factor there. This of course  
12 moves you very, everybody moves up one number every  
13 time somebody above them goes off the list, and  
14 doesn't matter whether there is a U or an A next to  
15 the name, and we have to recognize that factor for  
16 the furloughees.

17 Q The furloughees actually benefit whether  
18 the person who retires is above them or below them  
19 he doesn't, the furloughee would get recalled when  
20 everybody anybody lives and provides a job?

21 A Well, of course, that is true.

22 Now, obviously there is access to the wide

1 body international flying to the America West  
2 pilots. There is US Airways comes with a growing  
3 European route network. America West is bringing  
4 some Hawaii route groups where on US Airways there

5 is the large Caribbean group for those who like the  
6 beaches for their layovers. But all of this again  
7 came with a cost. That had to be paid to get these  
8 benefits that we are all going to enjoy.

9 Now, we have talked about it a lot. The  
10 company took 15 airplanes out of our fleet, took 10  
11 airplanes out of the America West fleet. We feel  
12 that was a proportional sharing of that cost and are  
13 content that represents an equity.

14 For the US Airways side, promotional  
15 opportunities will be reduced almost any way you put  
16 a seniority integration together, because like I  
17 said before, every time you put -- well, you move up  
18 the list one number every time somebody above you  
19 goes off the list, regardless of where the person  
20 came from.

21 So that attrition, once we are all on the  
22 same list, is going to be shared. So obviously that

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1 will have an impact on the US Airways pilots no  
2 matter how you put the list together.

3 Q All right. And in view of that summary of  
4 the merger benefits and costs have we included in  
5 Tab 18 the proposed adjusted date of hire integrated  
6 seniority list that the US Airways merger  
7 representatives have as the base of their proposal?

8 A We have.

9 Q Would you explain how the document is set  
10 up and any comments you care to make about it?

11           A     Let me just go over the columns. First of  
12 all, this list is again based on the jobs and all  
13 the job information you see there is reflective of  
14 July 1, '06.

15                     The first column indicates the premerger  
16 airline of the pilot U or A. The seniority number is  
17 the merged seniority number, previous is the  
18 premerger seniority number. Looking across the  
19 status information, status position, equipment and  
20 domicile, again is that which the pilot held on  
21 July 1, 2006.

22                     And then the rest of the information is

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1 the same as the other charts that we have shown,  
2 birthday, dates of hire. The tenure again is from  
3 the date of hire through May 19th, 2005, and length  
4 of service is date of hire to May 19th less furlough  
5 time but does include any time at the MBA division.

6           Q     That is the methodology for integrating  
7 the list, is the last column on the right?

8           A     That is correct.

9           Q     I think you wanted to show the panel the  
10 junior wide body international captain. Where can  
11 we find him, Captain Kirch?

12          A     We looked at him before, flip to page 16,  
13 and he is at number, merged seniority number 830.

14          Q     830?

15          A     830 correct, Captain Lavoie.

16          Q     He has 22 1/2 years of service as of the  
Page 50

17 date of the announcement of the merger?

18 A That is right. And now in we look across  
19 just as a reference point that we have talked about  
20 before, the number, you can see the number one  
21 America West pilot Captain McNerlin with his  
22 22 years of service, which is in sequence of course

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1 with the length of service list.

2 But, you can also see that there is not a  
3 big distance between those two pilots. And as we  
4 showed last week, with the attrition we are talking  
5 about, Captain McNerlin will be in 767 captain  
6 territory in almost, well, before we even get the  
7 seniority integration implemented.

8 Q As will the five pilots immediately below  
9 him who were also hired in June 1983 when America  
10 West started up?

11 A That is correct.

12 Q All right. You mentioned Jim Hershey in  
13 your testimony this morning, can you show us where  
14 he is?

15 A Certainly. And just on the way by here  
16 let me point out one thing. Jeff had pointed this  
17 out, on page 34 merged seniority No. 1790, that is  
18 the first of the Empire pilots, and you can see that  
19 by their length of service. Of course that reflects  
20 their length of service including their time at  
21 Empire and that continues through, they continue  
22 through to page 36 down to merged seniority 1918,

1 Hendrickson who is the junior of that group.

2 Q All right, just above Hendrickson about 15  
3 numbers you see Tom Babi arz who Mr. Freund asked  
4 about when I think you were on the stand --

5 A Oh, there it is, yes.

6 MR. FREUND: Where is he, I am sorry, I  
7 lost it?

8 MR. KATZ: He is at 1904.

9 THE WITNESS: Page 36.

10 BY MR. KATZ:

11 Q And he was a U.S. Air Shuttle pilot and  
12 came from Eastern Airlines?

13 A Right. And you will notice through the  
14 list that the, the payroll numbers beginning in 88  
15 are the Shuttle pilots and you will notice they will  
16 have length of service usually exceeding the pilots  
17 around them. You will see them sprinkled through  
18 the list as a result of that integration.

19 Q Okay, and now to Mr. Hershey?

20 A Yes. And Jim Hershey, he can be found on  
21 page 76, and of course he was hired in -- page 76,  
22 he was hired on July 19, 1989. He has got 15,

1 almost 16 years of service. However, due to  
2 furloughs he has got 13 years of active service, and

3 he is one that we referred to before.

4 Q If you compare Mr. Hershey to the red  
5 pilot next above him, Huey, and the red pilot  
6 immediately below him Mr. Duncan, you see that they  
7 also have some similar amount of furlough time as  
8 does Mr. Hershey?

9 A Yes, if you look at the difference between  
10 the tenure and the length of service you can see  
11 that all these pilots in here on both sides have  
12 furloughed time, and are integrated weighted on  
13 that, on their active service time.

14 Q They all have 13.2 years of service?

15 A Right.

16 Q Okay. We go to the bottom of the list,  
17 the junior pilot in terms of length of service, page  
18 124?

19 A And that is Dave O'Dell, of America West,  
20 who as we had mentioned before, was hired a month  
21 prior to seniority integration, and has 0.1 years of  
22 service, or just basically still in ground school.

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1 Just as a reference you can flip back to  
2 page 122 and see Ettore Varini who was the junior  
3 pilot on our list --

4 Q What number is he?

5 A I am sorry, page 122, he is 6576 on page  
6 122.

7 Q And he has 0.7 of a year of length of  
8 service as of May 19th, 2005?

9           A     Right.  And he is integrated with pilots  
10  hired on the same day, same length of service, and  
11  junior of course to many pilots who have a lot more  
12  invested in the company.

13          Q     And do you think it is appropriate  
14  placement for Mr. Varini to be senior to Mr. O'Dell?

15          A     I think so.  When you are talking about  
16  pilots who were hired then, you have got very  
17  minimal contribution to the company at that point  
18  and pilots in very like circumstances.

19          Q     So why not do it by length of service?

20          A     Treats them equally.

21          Q     All right.  Unless there are further  
22  comments on the list right now do you think that

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1  this is a fair integration of the list?

2          A     I do.

3          Q     All right.  Exhibit 19 is a, deals with an  
4  issue that is important?

5          A     This is -- we are addressing -- we are  
6  doing a length of service integration here, so there  
7  are just some points we need to touch on.

8                     Richard Block did integration of the  
9  Republic and Hughes Air West pilots which was a  
10 length of service integration.  He made the point  
11 that circumstances did not warrant seniority credit  
12 for furlough time, and within that merger you had,  
13 because of a prior merger at Hughes Air West, you  
14 had some pilots who were integrated who were not in

15 length of service order.

16 Q Bonanza blockers?

17 A They were referred to as Bonanza blockers,  
18 and also within the Hughes Air West pilot group  
19 there were pilots who had worked for Hughes Air West  
20 under a contract with Saudi a, and had length of  
21 services higher than the people around them.

22 And if we flip ahead to the next, just

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1 pass the next divider to 19-B, Mr. Block addressed  
2 the issue of these oddballs, as he refers to them,  
3 and the methodology used to address them where you  
4 have got these people that are out of sequence in  
5 the list in terms of length of service.

6 And because of the requirement and ALPA  
7 merger policy, of course, that you don't resequence  
8 a premerger list, how to address them, and that is  
9 what we have done in this integration.

10 These oddballs, these pilots that are out  
11 of place by their length of service for reasons  
12 nothing to do with this merger, are identified on  
13 the merged list with an asterisk next to their  
14 length of service.

15 Q Let's go back to Exhibit 18 then and maybe  
16 you can show us one?

17 A Go to page 12, is the first one, page 12,  
18 seniority number -- merged seniority number 613,  
19 Captain Beekman. Now you notice there is a pen  
20 correction there. Despite our best efforts we still

21 made a mistake on this. But he has 21.9 years of  
22 service compared to people around him with 23.

892

1 Q And the asterisk is hanging out there to  
2 the right of his length of service?

3 A Yes, a little small there, but that is  
4 what this means. These are people who were not  
5 sequenced by their length of service. Essentially  
6 following Mr. Blocks methodology they are  
7 essentially pulled out and put back in when it is  
8 done. They are basically disregarded, and the list  
9 sequencing is not based on them.

10 Now, the effect of that or the reason that  
11 needs to be done in a length of service integration,  
12 is that if when you are coming down the list  
13 essentially looking at the top person on each side,  
14 you are saying, okay who has more length of service?  
15 All right that is the next person.

16 Now, if you flip over to page 17 you will  
17 see Captain McNerlin who is the number one person  
18 with America West, has 22 years of service. So the  
19 pilots above Captain Beekman on page 12 all have  
20 more than that, so they would come out senior.

21 But when you hit Captain Beekman with his  
22 21.9 years he would end up going junior to Captain

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1 McNerlin. But because you can't resequence the  
Page 56

2 list, he would take every pilot below him with him.  
3 And you would effectively have all those pilots  
4 of 23.8 years down there put below Captain McNerlin.

5 Another way to look at it is clearly  
6 the 21.9 years is not indicative of the longevity of  
7 this part of the list, and that is the reason I  
8 think, well, I should say it is the reason that  
9 Mr. Block used that methodology, which is actually  
10 common even when you are doing a date of hire  
11 integration, to ignore these oddballs.

12 And again if you look over on the next  
13 page you will see another series of them. There are  
14 five of them that again are out of sequence --

15 Q What numbers are they at?

16 A Excuse me, ones with the asterisk,  
17 number 647 through 651 on page 13. These five  
18 pilots, as you can see, don't have the length of  
19 service of the people around them. This is due to  
20 furlough time.

21 But it is clearly not indicative of the  
22 pilots around them. So if the lists were to be

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1 sequenced based on these pilots it would take  
2 everybody below them who has more length of service  
3 and put them among the America West pilots with that  
4 length of service, which clearly would not be an  
5 equitable way to do the integration.

6 Q Were these five from PSA?

7 A Yes, some of these PSA guys had some

8 furlough time.

9 Q And are there America West pilots who were  
10 treated in a similar fashion?

11 A Yes, let's go down to page 73, and we get  
12 a little more complicated example, but the principle  
13 is the same. Look on page 73, starting with just  
14 with the block of red pilots that are there.

15 You will see a number of pilots that were  
16 marked with asterisk. Now, if you look down here  
17 you will see a whole bunch of pilots basically  
18 between the asterisks, a lot of pilots with 13.5  
19 years of service, without, if you consider the first  
20 red pilots there with 13.1 or even more specifically  
21 the next one with 11.4, if the integration were done  
22 based on those pilots you would take all, everybody

895

1 below them would end up being integrated with US  
2 Airways at a point of 11.4 years in longevity, which  
3 of course would not be right, you know, in that,  
4 looking at from the America West side.

5 If you look down just below there in the  
6 band of blue right below that band of red, seniority  
7 No. 3908 through 3924, you see some examples where  
8 there is a couple pilots with 14.1, 14.5, some  
9 higher length of services.

10 But if you look at that you can clearly  
11 see that is the exception. So there was no effort  
12 to keep them from being blocked. They are basically  
13 trapped between the US Airways pilots where they

14 are, and if you look down there you can see that is  
15 obviously equitable. You are not going to move all  
16 those other pilots to accommodate those few America  
17 West -- the new guys with 14 years.

18 Q Looking at page 72, Captain Kirch, we see  
19 three America West pilots who are also an example of  
20 this Blocker methodology?

21 A Yes, the same thing would happen there the  
22 first pilot their number 3857 who has only got 11.4

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1 years of length of service, obviously for whatever  
2 reason has more furlough time than the guys below  
3 him, he would then end up pushing down the pilots  
4 below him.

5 And actually, you have to continue down  
6 looking at the read pilots here, that 14 -- you have  
7 to, every pilot below him until you hit somebody  
8 with 11.4 years would get pushed down, so it would  
9 be all of those three plus the ones on the next  
10 page, and it would keep going. Actually, you would  
11 be moving a lot of pilots because of that 11.4  
12 years. So, clearly it is a case where that when you  
13 are doing an integration like this that oddball  
14 needs to be disregarded.

15 Q And you have figured out who the oddball  
16 was by looking above and below and the people around  
17 him and seeing what was the dominant date?

18 A Correct. And you know the total picture  
19 here, I believe if you count up all the asterisks in

20 there is 81 America West won't and 74 -- or 65 maybe  
21 US Airways ones.

22 So there is more of this favoring the

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1 America West pilots, but it is a tiny number when  
2 you consider that there is over 6600 pilots on the  
3 seniority list that you have a few adjustments that  
4 have to be made just to preserve equity when you are  
5 doing this kind of an integration.

6 Q Maybe 2percent?

7 A Maybe.

8 Q Okay. Captain Kirch, does the US Airways  
9 merger committee propose temporary restrictions that  
10 would serve as a transition to the full operation of  
11 the merged list we have just been talking about?

12 A Definitely.

13 Q And where can we find those?

14 A On No. 20.

15 Q Tab 20?

16 A Tab 20, I am sorry. Clearly we recognize  
17 we are integrating pilots with very different jobs  
18 and we have got captains with co-pilots and even in  
19 with furloughs, but the justification for that is  
20 the extreme disparity that we are dealing with in  
21 this integration with the promotional opportunities  
22 brought to the merger by the two groups.

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1           So, over time it sorts itself out, but  
2 clearly the America West pilots need to be protected  
3 in the early years of this integration, and we are  
4 proposing seven years, and then these conditions and  
5 restrictions are laid out in Tab 20 here.

6           Q     Now, let me ask you, was there a source  
7 that was used as a model for Exhibit 20?

8           A     If you just flip momentarily to 21, is  
9 seniority integration done by arbitrator Theodore  
10 Voss for the Southern-North Central integration  
11 which created Republic airlines, these are patterned  
12 after what he did in there.

13          Q     Okay. And we have included those just for  
14 reference purposes?

15          A     Yes.

16          Q     All right. Let's look at condition number  
17 one. This is for the premium wide body  
18 international flying, and would you describe that  
19 protection, please?

20          A     What we have done here is the first  
21 several items here are all parts of quotas and  
22 ratios, to use Mr. Voss's terminology. And what has

899

1     been said set out in the first one regarding the  
2 international 76 and the 330 is the number of jobs  
3 that US Airways held in those positions effective  
4 July 1, 2006 would be reserved for the US Airways  
5 pilots. However, pilots -- however jobs above that

6 count would be allocated 2 to 1 in favor of course  
7 of US Airways; but 2 US Airways pilots to 1 America  
8 West pilots, and this would apply to both captains  
9 and co-pilots.

10 Q Then if there was a reduction below  
11 the 176 premium captains positions how would that  
12 work?

13 A That would also be done on a 2 to 1  
14 relationship.

15 Q All right, and then taking into account  
16 all of the considerations, we feel that is a fair  
17 method of allocation with those jobs?

18 A We do.

19 Q And similarly with the 767-757 domestic?

20 A Right.

21 Q Have you taken the actual number of jobs  
22 each side brought?

900

1 A That is correct, and of course that  
2 includes jobs brought from America West, 159 jobs.  
3 This is protecting the captain jobs, 87 brought by  
4 America West, for a total of 246, which sets the  
5 base level.

6 And then above that they would again be  
7 allocated to 2 to 1 and if we should go backwards  
8 the reductions would be allocated 2 to 1, and this  
9 one, 2 to 1 is roughly the relationship, but also  
10 you have to consider, you know, we are bringing 31  
11 757's compared to 12 on the America West, side which

12 of course is beyond 2 to 1.

13           And, we feel that the 2 to 1 is reasonable  
14 when you consider the very large staffing  
15 differences that is reflected in the, the staffing  
16 rate difference on the 757's being considerably  
17 different between US Airways and America West, and  
18 that staffing rate of course is reflected in the 159  
19 to 87 relationship. So we feel that 2 to 1 is at  
20 least a reasonable way to allocate these jobs beyond  
21 the base quota.

22           Q     Captain Kirch, towards the end of

901

1 paragraph two there is a reference to appendix A and  
2 if you turn past page 5 in this exhibit there is red  
3 and blue and black document called appendix A?

4           A     Right.

5           Q     And why have we included that?

6           A     This is just the simple mechanism to  
7 accomplish this. All that needs to be done is you  
8 notice started out with 246 and the first chart is  
9 to deal with reductions. If the jobs fall down  
10 to 245 it says that they should be 87 to America  
11 West and 158 to US Airways.

12           And as you follow down there you can pick  
13 any number that may happen to be the number of jobs  
14 that we have at a given point in time and you can  
15 quickly determine the number of pilots from each  
16 premium group that should be allowed to have those  
17 jobs.

18 Q While we didn't think there was any  
19 ambiguity in the arithmetic the worksheet would  
20 resolve that if there were?

21 A Yes, just makes it clear and simple and  
22 the second page covers the growth situation in a

902

1 similar planner.

2 Q So, hopefully for any number of 75-76 jobs  
3 we would have an answer as to how much went to each  
4 side?

5 A That is correct.

6 Q A similar process has been followed in  
7 paragraph three, for --

8 A Actually, three we are dealing with --

9 Q I am sorry. Let's come back to that in a  
10 second. Paragraph four is where I wanted to go to,  
11 is a similar system setup for the 737 and A320 jobs?

12 A Yes. In this one a slight variation in  
13 that the base quota is exactly the way the world  
14 stood on July 2006; 914 captain jobs for US  
15 Airways, 782 captain jobs for America West, for a  
16 total of 1696.

17 However, in this case, considering of  
18 course, that we are fairly close, on the numbers  
19 brought to the merger, the ratio if we are going up  
20 or down would be 5 to 4, which is roughly what those  
21 numbers are.

22 Q If we turn to appendix B there is a

1 worksheet similar to the one we just looked at that,  
2 that gives the split for virtually every number in  
3 sight?

4 A Right, for the first reductions, and then  
5 similar charts for should the numbers go up.

6 Q All right. Going back to paragraph three  
7 what is the importance of that?

8 A Well, this encompasses the growth flying  
9 agreement between the two MECs that is brought  
10 forward here, and we do have the one, you know, that  
11 guarantees seven captain positions and seven  
12 co-pilot positions on the 757s to the America West  
13 pilots and there is a caveat of cures in here that  
14 since we have the prospect of these growth airplanes  
15 going away, in other words that there may not be any  
16 growth airplanes anymore, that is covered as well,  
17 where if it drops to 200 -- if our total fleet count  
18 drops to 223 or 221 -- I am sorry, 223, 222 or 221  
19 one which by the transition agreement 220 one is the  
20 baseline.

21 We are now at 224 which created the growth  
22 of flying situation that this agreement dealt with.

1 We may well be back to 221 in the near future. So  
2 that is just dealt with in terms of whether the  
3 growth flying airplanes exist or not, or whether the  
4 jobs are still owed to the America West pilots.

5 Q And paragraph five accomplishes a similar  
6 treatment going forward for the allocation of  
7 Embraer 190 positions, doesn't it?

8 A Sure, that covers the kind of triuing up of  
9 the initial quota. Obviously US Airways pilots will  
10 be ahead of their captain count by virtue of the  
11 America West pilots not having access to the planes  
12 initially.

13 So the first step is that they get caught  
14 up on their quota and then after that we go forward  
15 with a similar quota. Basically the same structure  
16 that we have everywhere else that was put in place  
17 by arbitrator Dana Eischen.

18 Q We are asking this arbitration board to  
19 implement the earlier ruling of arbitrator Dana  
20 Eischen in this fashion.

21 A That is correct.

22 Q All right, exhibit -- I am sorry,

905

1 paragraph six deals with insufficient bidders?

2 A Yes.

3 Q Does it not?

4 A Yes, two pieces in there. One is that  
5 should there be insufficient bidders, in other words  
6 one side or the other everybody is offered a vacancy  
7 and nobody wanted it, that it would go, that those  
8 vacancies would be available to pilots on the other  
9 side.

10 And then of course if you have in that  
Page 66

11 situation the pilot group, you know, if we run into  
12 the insufficient bidders clearly every pilot has had  
13 the opportunity to avail themselves of that  
14 particular position, so the protection would no  
15 longer be needed and would go away.

16 Q But only with respect to that particular  
17 category of jobs, right?

18 A That specific job, yes.

19 Q So that if for instance the protection for  
20 Embraer 190s went away because none of the America  
21 West pilots wanted Embraer 190 positions, that would  
22 wouldn't affect the continued effectiveness of the

906

1 conditions and restrictions for A320s and A330,  
2 et cetera?

3 A Correct, its position by position.

4 Q Okay. In Ted Voss's decision in North  
5 Central-Southern he had imposed domicile protection  
6 for the benefit of both the North Central and  
7 Southern pilots, didn't he?

8 A That is correct.

9 Q Have we mirrored that in paragraph seven?

10 A Yes, and we feel it is warranted here.  
11 Clearly the America West bases should be protected,  
12 Phoenix and Las Vegas.

13 And it is addressed two ways. One is that  
14 should the situation arise because of the way the  
15 company moves flying around or whatever they do that  
16 an America West pilot should be displaced from

17 Phoenix or Vegas, that they have a right ahead of  
18 any US Airways pilot to get that position back.

19 And in addition, the second point is that  
20 we guarantee a minimum number of captain jobs in the  
21 combined bases in all of the positions there of 969  
22 captain jobs.

907

1 Q 800 --

2 A I am sorry, excuse me, 869, 869 captain  
3 jobs that are reserved for the America West pilots.  
4 And we actually take it a step further than  
5 arbitrator Voss did in that, you know, he had a  
6 reinstatement right, to the specific position, and  
7 we don't feel that there should be some flexibility,  
8 say an America West pilot gets displaced out of  
9 Phoenix.

10 Let's say he was an A320 captain, we don't  
11 feel that the reinstatement right should be limited  
12 to just 320 captain in Phoenix. If a Vegas 320  
13 captain position comes available he should be able  
14 to go to that. If he wants to get back to Phoenix  
15 doing it on a 737 that is fine.

16 We consider all those equivalent  
17 positions, and the pilot should have that  
18 opportunity. And his reinstatement rights should  
19 not be taken away because he might decide that all  
20 he wants is 320 captain in Phoenix.

21 Q So, he would have that option to wait for  
22 the exact job to reappear?

1           A     Yes, or take an equivalent job, either  
2 way.

3           Q     All right. And following the lead of W.  
4 C. Fields, we have not attempted to protect  
5 Philadelphia as a domicile?

6           A     Probably not needed.

7           Q     Paragraph eight deals with replacement  
8 aircraft and new aircraft?

9           A     Yes. It just, we talk about replacement  
10 aircraft in each of the quotas and ratios, and this  
11 just defines what we mean by a replacement aircraft  
12 versus a new aircraft.

13          Q     And in paragraph nine we have dealt with  
14 the issue of seniority governing in other respects  
15 than what is covered here?

16          A     That is correct. It deals with the  
17 furlough issue that -- well, it deals with a number  
18 of things, but specifically that one of the  
19 provisions in there, it says that a furloughed pilot  
20 would, who might be senior to an America West pilot,  
21 should there be a subsequent furlough, would get  
22 furloughed ahead of that America West pilot if he

1 hasn't been back for a year.

2           Q     So, there couldn't be a switching effect

3 where a furloughed pilot got recalled and then  
4 within the space of a few months there was another  
5 furlough and he would stay there working while an  
6 America West pilot got furloughed instead?

7 A Exactly.

8 Q All right. In light of the company's  
9 announced intention to acquire Delta Airlines we  
10 have included paragraph ten to reconfirm that the  
11 conditions and restrictions would remain in effect  
12 regardless of what happens in the future in  
13 accordance with the terms of these conditions and  
14 restrictions?

15 A That is correct. The bidding  
16 restrictions, and I think there is a standard  
17 terminology, bidding restrictions are considered an  
18 integral part of the list and carried forward to any  
19 subsequent transaction.

20 Q And in light of the conditions and  
21 restrictions we feel that this is a fair integration  
22 methodology?

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1 A We do.

2 Q All right, in analyzing the fairness of  
3 the merged list, one more exhibit that you will  
4 cover, as I understand it, and have we utilized the  
5 assistance of computer generated analysis?

6 A Yes, and, you know, it is virtually  
7 impossible to analyze lists of the size they have  
8 become in these mergers without doing it that way,

9 and so we have secured the services of Rikk Salamat.  
10 And this first document in Tab 22 relates to that.  
11 This is actually an audit that was done on the  
12 software that we are using --

13 MR. FREUND: I guess I am going to object  
14 to testimony from this witness about a Deloitte and  
15 Touche audit of sorts, where it is at least triple  
16 hearsay by the time it comes out of his mouth.

17 I am going to ultimately object if Salamat  
18 tries to testify about it as well, but I certainly  
19 think at this point we ought not to burden the  
20 record or our time with triple hearsay.

21 MR. KATZ: This witness is not putting the  
22 testimony forward in order to have Deloitte and

911

1 Touche vouch for the computer methodology. He is  
2 explaining how it was that he happened to, that the  
3 merger committee retained Mr. Salamat and his firm.  
4 And that is what the last two exhibits, 22 A and B  
5 to is explain how it came about, that the merger  
6 committee hired this firm.

7 So they are not offered for the truth of  
8 what Deloitte and Touche said, in the Deloitte and  
9 Touche letter of December 22, 2003.

10 MR. FREUND: If all Captain Kirch wants to  
11 testify about is that they read the Deloitte and  
12 Touche letter, liked it, and that formed part of the  
13 basis for their hiring Mr. Salamat. Then I don't  
14 think he has to even say that. We assume that they

15 read the letter and that was one of the reasons they  
16 hired him.

17 MR. KATZ: Well, if you are trying to save  
18 time your interruptions --

19 CHAIRMAN NICOLAU: All right. Let's be  
20 nice.

21 MR. KATZ: -- deleted them.

22 CHAIRMAN NICOLAU: Captain, can tell us

912

1 why the merger committee decided to hire them.

2 BY MR. KATZ:

3 Q Would you please respond to that question  
4 as posed by the chairman?

5 A This was just part of the package of  
6 information that was brought to us. And if the  
7 next --

8 Q Who provided it, Captain Kirch?

9 A Came through ALPA National.

10 Q All right. And 22-B, as well, came from  
11 ALPA National?

12 A That is correct, 22-B was a letter that  
13 was actually from the technical people about the  
14 national, ALPA National --

15 Q What is 22-B?

16 A 22-B is a letter that was provided to us.

17 CHAIRMAN NICOLAU: What is it? Just tell  
18 me --

19 THE WITNESS: I am sorry, it is a letter  
20 from the technical people at ALPA National.

21 CHAIRMAN NICOLAU: This is the  
22 September 7, 2005?

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1 THE WITNESS: That is right.

2 CHAIRMAN NICOLAU: It is not marked. That  
3 is why I am asking.

4 MR. KATZ: You lost your tab, 22-B.

5 CHAIRMAN NICOLAU: I lost my tab. That is  
6 all I wanted to know.

7 MR. KATZ: I am sorry.

8 THE WITNESS: Anyway, this information was  
9 provided to us from ALPA National, and ultimately  
10 led to our decision to secure the services of Rikk  
11 Salamat.

12 BY MR. KATZ:

13 Q Did the merger committee review this  
14 information in Tab 22-A and 22-B?

15 A Yes, we did.

16 Q Before retaining Mr. Salamat?

17 A Yes.

18 Q Is it your understanding that the same  
19 information was provided to the America West merger  
20 committee?

21 A I understand it was.

22 MR. KATZ: All right. I think that

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1 completes the part of this book that we wanted to  
Page 73

2 have Captain Kirch talk about, and we would make him  
3 available for cross-examination.

4 MR. FREUND: Well, I am going to  
5 cross-examine him; not at this moment. I can assure  
6 the panel that in light of the ridiculous nature of  
7 the proposal my cross-examination of him with  
8 respect to the list proposed will not be extensive,  
9 but I will have cross-examination questions on  
10 components that get there.

11 So, if we could take, I am going to need  
12 probably a couple hours, I think.

13 CHAIRMAN NICOLAU: How about --

14 MR. FREUND: 2:00 I think would probably  
15 do the trick.

16 CHAIRMAN NICOLAU: I just said quarter  
17 to 2:00. Did you hear me say that?

18 MR. FREUND: I didn't hear that. I was  
19 going to suggest 2:00.

20 CHAIRMAN NICOLAU: 1:45.

21 MR. FREUND: All right.

22 MR. KATZ: Thank you, we will see you at

915

1 1:45.

2 (Whereupon, at 12:10 p.m., the hearing was  
3 recessed, to be reconvened at 1:45 p.m. this same  
4 day.)

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1 AFTERNOON SESSION (2:03 p.m.)

2 Whereupon,

3 ROBERT KIRCH

4 resumed the stand and, having been previously duly

5 sworn, was examined and testified further as

6 follows:

7 CHAIRMAN NICOLAU: Are you ready?

8 MR. FREUND: Ready. So we meet again.

9 THE WITNESS: Again.

10 CROSS-EXAMINATION

11 BY MR. FREUND:

12 Q We will play by the same rules this time,

13 okay? You remember what those rules are? I was

14 going to ask you questions and you were going to  
15 answer my questions and not give speeches?

16 A I will answer your questions.

17 Q And not give speeches. I am going to  
18 interrupt you if you give speeches. I just want to  
19 tell you that right now.

20 A All right.

21 Q Let me start with something pretty easy.

22 And I ask it just out of a matter of

917

1 curiosity, because not that I think there is any  
2 significance to it.

3 On your Exhibit 1-A, do you have the  
4 bottom tier of wages colored in turquoise, maybe  
5 that is not turquoise, I don't know what color that  
6 is -- teal, teal I am told.

7 Was there any significance to coloring  
8 that row?

9 A Not that I know of.

10 Q Okay. We spent about an hour at lunch  
11 which is why we were late.

12 MR. KATZ: That is why it is in teal.

13 BY MR. FREUND:

14 Q Okay. But just so we are clear while we  
15 are on this exhibit so it shouldn't go to waste,  
16 these rates, the place to look for the rates that  
17 were known to be in effect starting, that were known  
18 to be in effect on the day before the merger  
19 announcement, for America West pilots starting

20 January 1st, 2007, is the second and fourth tiers;  
21 correct?

22 A Right, the ones indicating January 1st,

918

1 '07.

2 Q Right. And those were known to be in  
3 effect, I mean it is not as though the contract was  
4 negotiated after May 19th, 2005, these were known to  
5 be in effect as of the day prior to the merger  
6 announcement; correct?

7 A That is correct.

8 Q Okay. Conversely, or maybe conversely  
9 isn't the right lead in, similarly, well -- actually  
10 let's stop there.

11 So, the rates that we should be looking at  
12 that were known to be in effect were \$141.85 for  
13 captains and \$93.61 for F0s; correct?

14 A I am not sure what you mean by what we  
15 should be looking at but --

16 Q Top rates for captains and first officers  
17 that were known to be in effect as of January 1st,  
18 2007.

19 A Right. The rates, as the chart shows, the  
20 rates noted as January '07 were known at the time of  
21 the merger announcement.

22 Q Okay. And America West's contract was

919

1 amendable in, do you recall when?

2 A No, I don't.

3 Q 2000, probably 2007, end of 2007?

4 A I don't know.

5 Q You don't know, okay. Well, we will tie  
6 that up.

7 The rates that were known to be in effect  
8 for the top year captain and first officer positions  
9 on the day prior to the merger announcement on the  
10 US Airways' side are those 15-year rates or 12-year  
11 rates, as you pointed out to us, that are reflected  
12 in your chart; correct?

13 A That is correct.

14 Q And the other thing that was known to be  
15 in effect, that was known as of the day prior to the  
16 merger announcement, was that the US Airways  
17 contract was not amendable until 2010; correct?

18 A I can't speak to the 2010, but the U.S.  
19 Air contract was not amendable until some point in  
20 the future. I don't know what the date was.

21 Q You really don't know what the date was?

22 A If someone told me it was 2009 I wouldn't

920

1 quarrel with them. I don't know.

2 Q Well, we will close that.

3 A I mean, it goes out in the future.

4 Q Goes out into the future for some  
5 distance?

6 A For some distance.

7 Q All right. Exhibit 1-B, just so we are  
8 clear, is the published rate table for US Airways  
9 pilots; correct?

10 A Correct.

11 Q You might want to put a little sticky  
12 there because we'll probably want to come back to  
13 that in a bit.

14 Let's just leap forward here to, just so  
15 we are clear, Exhibit 1-D, you described those as  
16 the international pay rates. Those are overrides  
17 that are paid to US Airways pilots when they are  
18 applying international flying; correct?

19 A Currently flying transoceanic flying, and  
20 I spoke before about what it was going to be.

21 Q Yes. So I want to ask you about that a  
22 little bit more to make sure we all understood. I

921

1 think I did but I am not positive.

2 Those rates are presently -- first of all,  
3 it is correct, is it not, that your transoceanic  
4 flying, namely flying to Europe is seasonal;  
5 correct?

6 A Only to a small extent.

7 Q Do you know to what extent it is seasonal,  
8 that is do you know to what extent US Airways has  
9 its rates up in, ramped up in summer and down in  
10 winter?

11 A I am familiar.

12 Q How much has it --

13 A For instance, now all the 75 flights are  
14 not operating, Lisbon, Shannon, Glasgow, Barcelona  
15 and Venice are seasonal, I think; might be gauge  
16 change, I am not sure, but that is the general gist  
17 of it.

18 But all the rest of the cities are either  
19 multiple flights year round, or operate year round,  
20 same gauge.

21 Q At the same frequencies?

22 A Yes.

922

1 Q So the cities that you identified are  
2 seasonal and ramp up in the summer and down in  
3 winter, without being precise about the dates that  
4 they ramp up and ramp down?

5 A Right.

6 Q And without being precise about the dates  
7 that they ramp up and they ramp down, July is within  
8 the band of months in which they are ramped up;  
9 correct?

10 A That is correct.

11 Q And just so everybody remembers, you all  
12 picked July as the date for taking a look at  
13 snapshots; right?

14 A That is correct.

15 Q So that would be the highest peak US  
16 Airways international flying?

17 A Highest peak? Seasonal high in the year,

18 yes. I don't know from one year to the next --

19 Q I am not interested in one year to the  
20 next --

21 A No, it is the seasonal high point of  
22 European flying.

923

1 Q And I think you told us, again I want to  
2 be clear about this, I was confused about it when we  
3 went through it the first time and I am confused  
4 about it now as well.

5 There was a time before the bankruptcy  
6 spirals that US Airways has been in that you  
7 received, that a pilot who bid international  
8 received the overrides for the transoceanic flights  
9 and for any non-transoceanic flights that might be  
10 within his pairings?

11 A Right. When I flew international I got  
12 the international override for everything I did.

13 Q Okay. Prior to the merger announcement  
14 date during the course of bankruptcy that changed;  
15 correct?

16 A That is correct.

17 Q And so certainly up until May 19th, 2005,  
18 or at May 19th, 2005 the rule was somebody who bids  
19 international gets the override only on the  
20 transoceanic flights, not on the domestic, not on  
21 the non-transoceanic flights that are in his  
22 pairings?

1           A     That is correct, and the transoceanic  
2 flying of course was virtually all the flying you  
3 did, I mean you did very little flying that was not  
4 transoceanic.

5           Q     All I want to do is find out what --

6           A     Sure.

7           Q     -- what the rules were.

8           A     Uh-huh.

9           Q     The rules were as you said, you used to  
10 get the override when you had domestic legs in an  
11 international bid line; correct?

12          A     That is correct.

13          Q     And then you stopped getting it; correct?

14          A     Uh-huh.

15          Q     And you then told us that in the TA that  
16 was part of some ongoing negotiations, that is the  
17 override for the domestic portion of an  
18 international bid line is going to be paid; is that  
19 correct?

20          A     Well, it will be like it was before, I  
21 mean, they don't really fly, virtually no domestic  
22 flying. What you are talking about is when they fly

1     to the Caribbean or Mexico, whether that counts.

2           Q     I am only asking about this because you  
3 told us about it.

4           A     No, I am just being clear about it. So my

5 understanding is the TA members, I was advised by  
6 one of our JNC members that it is back the way it  
7 used to be that we knew before.

8 Q So let's be clear. It is not back to  
9 where it used to be now?

10 A That is correct.

11 Q It's part of a tentative agreement in the  
12 context of the joint contract negotiations that are  
13 going on as a consequence of and subsequent to the  
14 merger; right?

15 A That is correct.

16 Q And if, but only if there is a complete  
17 agreement will the US Airways pilots, and for that  
18 matter the America West pilots, get the benefit of  
19 the TA that you just described; correct? Right?

20 A Correct.

21 Q And was this a different point or the same  
22 point, that is the applicability of the override to

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1 Caribbean flying? That is, I think we understand  
2 each other. I certainly understand you with respect  
3 to non-transoceanic flying, that is part 6, an  
4 international bid line, and the applicability of the  
5 override to those circumstances.

6 Was it the case at US Airways that in the  
7 domestic, in a domestic bid line if you flew to the  
8 Caribbean or Mexico you got the international  
9 override?

10 A You are talking about just prior to the

11 merger?

12 Q No, I am talking about historically.

13 A Oh, no, the international rate applied to  
14 everything. There was a couple exceptions, I don't  
15 remember exactly what it was, but for  
16 international -- the whole Caribbean was  
17 international, I don't know, what areas are you  
18 questioning?

19 Q Well, stay with the Caribbean for the  
20 moment, that the Caribbean at some point in history  
21 prior to May 19th, 2005 the Caribbean was treated  
22 as -- the international override was applicable to

927

1 the Caribbean even when the Caribbean flights were  
2 not bid as international flights. Am I  
3 understanding that correctly or is it more accurate  
4 to say there was a time when all Caribbean flying  
5 was part of the international operation and was  
6 included within international bid lines?

7 MR. KATZ: Which question do you want to  
8 ask?

9 MR. FREUND: I am asking which one it was.

10 THE WITNESS: I think perhaps you are  
11 mixing up, the Caribbean flying is done -- it is  
12 done by a mixture of airplanes, and that is not just  
13 done by transAtlantic crews, in fact, the lion's  
14 share is not done by transAtlantic crews, but the  
15 way it had been before is that the Caribbean for  
16 whoever flew it got international overrides.

17 Q Okay, and that would be the case whether  
18 it was a 767, 757, A320; didn't matter?

19 A That is correct.

20 Q Okay. Now, in the spiral towards, into  
21 bankruptcy, that component was changed at US  
22 Airways; correct?

928

1 A Yes. We showed you the exhibit there  
2 that, I believe it was LOA 93 excerpt that showed  
3 the difference between the international section as  
4 it stood before. Both those exhibits are in the  
5 book.

6 Q And I am describing correctly in the  
7 spiral towards bankruptcy the international override  
8 that was applicable to Caribbean flying was  
9 eliminated; correct?

10 A Yes.

11 Q And when I say Caribbean, same thing is  
12 true with respect to Mexico?

13 A I believe so. The only -- I believe the  
14 only transAtlantic, excuse me, the only time you got  
15 international override was transoceanic flights  
16 which as you said is flying to Europe.

17 Q Okay.

18 A That is the by-product of LOA 93.

19 Q Okay. You also talked about a tentative  
20 agreement with respect to that Caribbean flying as  
21 well, and I think you said that you have been  
22 advised that there is a tentative agreement that the

1 Caribbean flying will be, that the international  
2 override will be applicable to the Caribbean flying  
3 irrespective of how it is bid and what equipment is  
4 flown?

5 A That is correct.

6 Q Again that is the same tentative agreement  
7 that we talked about a few moments ago; correct?

8 A Correct.

9 Q Okay. So those two benefits which are the  
10 subject of the tentative agreement were not  
11 available to US Airways pilots prior to, on  
12 May 18th, 2000 --

13 A Not under LOA 93.

14 Q America West I think you told us has the  
15 international override as well; correct?

16 A They do, although its application is  
17 extremely minimal.

18 Q Excuse me?

19 A Although it appears the application is  
20 extremely minimal but it is there.

21 Q The application is what it is, they have  
22 an international override?

1 A Okay.

2 Q All right.

3 I think while we are on that subject I  
4 want to skip ahead, although we will come back to  
5 some of these other exhibits in a bit, but I think I  
6 want to skip ahead to Exhibit 5.

7 Exhibit 5 is what you told us are the way  
8 in which the America West -- the US Airways pilots  
9 view the job groupings; correct?

10 A That is correct.

11 Q Now, there is a lot of information that is  
12 scattered on a lot of pieces of paper, but this  
13 would be a nice piece of paper to kind of get  
14 everything so that it applies to apples.

15 Remember I asked you to put a tab in  
16 Exhibit 1-B?

17 A Uh-huh.

18 Q So why don't you put your hand there and  
19 stay with Exhibit 5 for the moment, but just keep  
20 your hand at 1-B so we can flip back to that nice  
21 and easily.

22 So looking at 5 first, you have in your

931

1 grouping No. 1 the A330, B767- 757 international  
2 captain position, and in your grouping No. 2 you  
3 have B767- 757 domestic captain; correct?

4 A That is correct.

5 Q Okay. Now flipping back to the exhibit  
6 that I asked you to put a tab on which is 1-B, the  
7 structure of your pay scale and the groupings of  
8 your aircraft in your collective bargaining

9 agreement puts the A330 in a single category by  
10 itself, and then it has Group 1, and I am correct,  
11 am I not, that Group 1 is 757 and 767 aircraft?

12 A That is correct.

13 Q So the way in which you have broken up the  
14 job groupings in Exhibit 5 differs structurally from  
15 the way your collective bargaining agreement  
16 differentiates between pieces of equipment; correct?

17 A I don't think so. The contract talks  
18 about domestic- international, they are separate  
19 bids in the contract and that is how we have grouped  
20 them.

21 Q You put in a single -- you put in the same  
22 category 767 and 757 aircraft along with A330

932

1 aircraft. When looking at the structure of your pay  
2 rates, A330 aircraft are in one category and 757  
3 and 767 are in, together in another category;  
4 correct?

5 A That is correct.

6 Q Okay. Now, let's just make, again I know  
7 this information is scattered throughout various  
8 other documents, but just so we have it all in one  
9 place, you are showing the pay rate for the 767-757  
10 international captain as \$149.35; correct?

11 A That is correct.

12 Q The actual pay rate from the prior exhibit  
13 we looked at is \$144.02; correct?

14 A Well, as I explained and as we all

15 understand the difference between those two is the  
16 international override which they, is vastly  
17 represented by the pay rate that they get when they  
18 fly that position.

19 Q Is it a pay rate in your collective  
20 bargaining agreement for pilots on the hourly rate  
21 for pilots who are flying 757's and 767's as  
22 reflected in the collective bargaining agreement

933

1 \$144.02 or \$149.35?

2 A I think we are clear here, the base rate  
3 is \$144.02 and the difference is the international  
4 override.

5 Q All right. I just thought we ought to  
6 have that on the same page.

7 MR. KATZ: We covered that on direct,  
8 Jeff.

9 BY MR. FREUND:

10 Q I understand. This is cross-examination.  
11 And the same math applies with respect to  
12 your job grouping No. 4 that includes the 767  
13 and 757 first officer positions along with the A330  
14 first officer positions, the actual hourly wage rate  
15 for 757-767 first officers is \$98.37; correct?

16 A Well, it is just as we said before.  
17 Assume I have done my math right, the difference  
18 between \$101.90 and \$98.37 is the F0 international  
19 override.

20 Q So the hourly wage rate for that piece of

21 equipment is \$98.37, and there is an override that  
22 is put on in there in certain circumstances;

934

1 correct?

2 A Yes. I think I have answered that.

3 CHAIRMAN NICOLAU: Yes.

4 BY MR. FREUND:

5 Q Now, again, just so everything is on the  
6 same piece of paper, over on the America West side  
7 you show the B-757 captain wage rate at 100 -- and  
8 all the captain wage rates for that matter at  
9 \$137.72; correct?

10 A Correct.

11 Q But that does not reflect the January 1st,  
12 2007 pay increase which we looked at earlier that  
13 brings it up to \$141.85?

14 A No. It says at the top July 1, '06.

15 Q Correct, I understand that. All I am  
16 wanting to do is get all the numbers on the same  
17 piece of paper so when somebody looks at them they  
18 can understand what the numbers are.

19 A Okay.

20 Q The same thing is true with respect to the  
21 first officer position, that the January 1st, 2007  
22 first officer wage rate at America West is \$93.61;

935

1 correct?

2 A Whatever it says for January 1, '07, that  
3 is what it is in January 1, '07.

4 Q So I am looking back at Exhibit 1-A and it  
5 says \$93.61, so you would agree with me?

6 A Whatever it says, that is what it says.

7 Q And I think you told us, you have an  
8 exhibit that shows that there is a \$4 international  
9 override for captains and a \$3 international  
10 override for first officers?

11 A Oh, for America West, whatever it says  
12 there, but, yes.

13 Q You put in an exhibit, did you not --

14 A That is right. I can look it up if you  
15 like but it is a slightly less number than U.S. Air  
16 for whatever that means.

17 Q Sure. So now we have all of that on the  
18 same page, but this is a good page to ask you about  
19 your degree of certainty that there is going to be  
20 differential pay in the new collective bargaining  
21 agreement, you said that with a very significant  
22 degree of certainty in your voice; do you recall

936

1 that?

2 A Uh-huh, yes.

3 Q That is because both the America West  
4 pilots and the US Airways pilots are proposing  
5 collectively together that is the kind of pay  
6 approach that they would like to have in their  
7 collective bargaining agreement; correct?

8 A Well, it is more than that.

9 Q Well, what do you mean it is more than  
10 that?

11 A Well, it is also the company has said that  
12 nobody would be taking a pay cut, so just by that  
13 very nature, you know, I can't say exactly where  
14 that came from but the sentiment was that nobody  
15 will be taking a pay cut, so for that to be the case  
16 that would be one indication, plus it would be  
17 extremely unlikely in the airline world, I am hard  
18 pressed to even think of a single case where you  
19 would have a 767 being paid the same as a 737, so I  
20 think it is a far more likely assumption that the  
21 pay rates will be more like every other carrier that  
22 operates all of these airplanes without exception as

937

1 far as I know.

2 Q But the important word in your sentence  
3 was its an assumption; correct?

4 A Well, I think what we have to do here is  
5 say what is the most likely scenario, and that by  
6 far is the most likely scenario.

7 Q You can decide what you want to about what  
8 is a likely or not likely scenario, but the fact of  
9 the matter is unlike the international override  
10 piece there is no tentative agreement with respect  
11 to the structure of the pay scale at the combined  
12 airline as we sit here today; correct?

13 A There is no -- oh, that is correct, we

14 don't have an agreed contract on pay raise.

15 Q Or on the structure of the pay scale?

16 A No, that is true, we don't.

17 Q Okay. So I skipped over some exhibits  
18 that I now want to go back to.

19 Exhibit 2 was your, was the comparative  
20 scope clauses in the two collective bargaining  
21 agreements?

22 A Uh-huh.

938

1 Q And I think what you were trying to tell  
2 us was that your belief was that the US Airways  
3 scope clause was a more rigid, less forgiving scope  
4 clause than the America West scope clause; correct?

5 A Well, I don't think -- I am not going to  
6 necessarily agree with your characterization, but  
7 certainly the U.S. Air scope clause provides  
8 significantly greater leverage to the combined pilot  
9 group, especially with respect to any kind of a  
10 corporate transaction involving other airlines.

11 Q So by leverage you mean without waiver of  
12 the scope clause various kinds of transactions  
13 couldn't take place?

14 A That is correct.

15 Q US Airways pilots have had a history over  
16 the past five years of repeatedly waiving their  
17 scope clause; correct?

18 A I am not sure I can characterize or make  
19 any characterization that certainly -- well, I don't

20 think I can make any --

21 Q Let me ask you precisely. Letter

22 agreement 79 included a waiver of the scope clause

939

1 in various respects, didn't it?

2 A There were various waivers of scope  
3 provisions.

4 Q Did letter 79 --

5 A If you would show me 79, I am not familiar  
6 with what number is what.

7 Q Did the restructuring agreement in 2002  
8 contain certain waivers of the U.S. Air scope  
9 clause?

10 A Certainly, through the bankruptcy process  
11 we have had a number of concepts in the scope areas.

12 Q Did letter 91 include waivers of the scope  
13 provisions?

14 A I believe it did, although again --

15 Q Did letter 93 contain waivers of the scope  
16 provisions?

17 A Again I believe it did but I certainly  
18 can't speak with any authority regarding the  
19 contract issues. I have not been on the negotiating  
20 committee or in any way been involved with contract  
21 negotiating.

22 Q Have you read our CEL brief?

940

1 A I don't know that I have read it all.

2 Q Well, if I told you that we recited in the  
3 CEL brief all of the places and all of the times and  
4 all of the circumstances in which US Airways pilots  
5 have waived their scope clause I guess sitting here  
6 today you wouldn't be able to say whether we had  
7 described it correctly or incorrectly, would you,  
8 since you haven't read the brief?

9 A No.

10 Q Okay. So what you are saying about the  
11 scope clause on the east collective bargaining  
12 agreement is that you are speculating that the scope  
13 clause protections and the limitations that scope  
14 clause puts on the company would give the combined  
15 pilot group certain bargaining leverage in order to  
16 obtain benefits in other parts of the collective  
17 bargaining agreement?

18 A It certainly would.

19 Q Okay. It is one of a giant mix of things  
20 that would go into bargaining for a new contract;  
21 correct?

22 A Certainly one among many factors.

941

1 Q And sitting here today, you don't know  
2 whether that leverage is going to produce anything,  
3 do you?

4 A Be more specific. What are you asking?

5 Q Well, you don't know, you can't tell us

6 what the company is going to trade for relaxation of  
7 scope coverage, can you?

8 CHAIRMAN NICOLAU: That is obvious that he  
9 can't.

10 MR. FREUND: Well --

11 CHAIRMAN NICOLAU: He is hoping for the  
12 best like everybody else.

13 MR. FREUND: He is hoping for the best,  
14 hoping for the best, right.

15 CHAIRMAN NICOLAU: Am I right?

16 THE WITNESS: I think that is absolutely,  
17 obviously we want all the chips we can going into  
18 the game.

19 CHAIRMAN NICOLAU: Okay.

20 BY MR. FREUND:

21 Q Okay. Look at Exhibit 3.

22 So the top part of Exhibit 3, putting to

942

1 one side the little box on the upper right-hand  
2 corner, reflects the staffing ratios at two  
3 different points in time, if I am understanding it  
4 correctly, one is the day of or the day of the  
5 merger announcement and the next is on the -- on  
6 July 1st, '06; correct?

7 A Sure, this is our -- we just wanted to  
8 take a look at what the staffing rates compared at  
9 the two points in time and between the two airlines.

10 Q Okay, as of -- well, it is certainly the  
11 case that as of -- before I go there again, July 1st

12 of '06 is during the period of the calendar year  
13 when the international flying is flexed up; correct?

14 A Yes, that is the seasonal high point of  
15 transAtlantic flying.

16 Q TransAtlantic flying, okay.

17 Certainly for the staffing ratios that  
18 were the formulas that were in effect as of  
19 May 19th, 2005, those were driven in large measure,  
20 were they not, by concessions that were made during  
21 the bankruptcy spiral that eliminated, essentially  
22 eliminated regs and had pilots flying essentially at

943

1 FAR; correct?

2 A No, I can't agree with that.

3 Q You can't?

4 A I think certainly it is a factor but I  
5 think you have got, for those of us who are out  
6 there flying planes, the -- we were short, I mean,  
7 we were running bare bones staff, and the amount of  
8 what we call PODO, where they are trying to get  
9 people to fly trips, priority trip assignment was  
10 rampant, many more than normal.

11 Q But I am correct that during the course of  
12 the various negotiations in U.S. Airway's spiral  
13 into bankruptcy, the US Airways pilots wound up  
14 negotiating concessions that allowed the company to  
15 build flying that were fundamentally to the FARs;  
16 correct?

17 A I don't know if I could agree to that

18 either. I have never looked at comparing anything  
19 to the FAR to see how exactly the duty regs or any  
20 of that compared. I couldn't tell you.

21 Q So you think we need to call another  
22 witness to put on the obvious?

944

1 A I mean, I can't tell you how it compares  
2 to the FAR per se. Obviously as I said there were  
3 some, there were contract concessions that certainly  
4 happened, nobody is denying that, and that certainly  
5 has an impact in staffing, but I would not  
6 characterize that as, by any reasons, the only  
7 impact on staffing, and other decisions go into that  
8 factor.

9 Q No question about that.

10 Since the merger announcement, that is in  
11 particular looking at this document, between  
12 May 19th, 2005 and July 1, 2006, the staffing  
13 rigidity at the US Airways operation has loosened up  
14 some, has it not? That is to say --

15 A Yes.

16 Q -- that is to say they are, the company is  
17 not building lines as close to, we will just stay  
18 with that, as close to the FARs as they were prior  
19 to May 19th?

20 A As I said, I can't characterize how close  
21 to FARs we are operating, I mean if we operate by  
22 the contract which as I said, does have some

1 concessions in it.

2 Q Well, the contract has concessions in it,  
3 the company doesn't have to utilize all of those  
4 concessions in order to build their lines, do they,  
5 that is they can build softer lines if they choose?

6 A What do you mean by softer lines? I am  
7 not familiar with the term.

8 Q They can build lines that have -- let's  
9 assume for the sake of discussion that your  
10 collective bargaining agreement essentially allows  
11 the company to fly pilots to the FARs, let's just  
12 assume that for the next question.

13 The company doesn't have to do that, if it  
14 chooses not to, that is to say they don't have to  
15 build lines that have pilots flying to the FARs, do  
16 they?

17 A The contract, you know, again I am not a  
18 contract expert, but my understanding is, there is  
19 pretty set parameters that the company has to stay  
20 in their line construction and pairing construction  
21 and where exactly that fits the FARs, I am not the  
22 witness to testify to that.

1 Q Okay. Let's go to Exhibit 4, please.

2 Again, this is just picking up something  
3 you and I talked about the last time you were on the  
4 witness stand, and I am not sure where we ended up

5 then, and I am not sure where we will end up now.  
6 But, if I understand the chart, what this says is  
7 that there are 97 US Airways supervisors and 15 US  
8 Airways management pilots out of the 2670 line  
9 pilots, correct?

10 A In addition to.

11 Q In addition to, okay, fine, in addition  
12 to. And then structurally it is the same way for  
13 America West?

14 A Exactly.

15 Q These are in addition to the 1679. And  
16 you and I, I was asking you questions last time you  
17 were on the stand about whether either the pilots  
18 who are designated as supervisors or the pilots who  
19 are designated as management on the US Airways side  
20 bid lines, monthly lines of flying, and I am not  
21 sure we ever got --

22 A I am not sure we know the answer to that

947

1 one.

2 Q And sitting here today are you in the same  
3 position that you were when you were last on the  
4 stand?

5 A I have been in the hotel, so I don't know,  
6 I am afraid.

7 Q They actually not long ago invented  
8 telephones and e-mail, so in the hotel one could  
9 have found out the answer to that question. But  
10 sitting here today you don't know the answer to that

11 question?

12 A No more than I did before, no.

13 Q Let's look at Exhibit 6, please.

14 A Uh-huh.

15 Q And I guess looking at 6, kind of flip  
16 back and forth between 6-A and 6-B.

17 A Sure.

18 Q If I am understanding these two charts  
19 correctly, 6-A is kind of a snapshot of a little  
20 tiny piece of, I don't mean to trivialize it when I  
21 say that, but it is a piece of the seniority list  
22 with respect to the Philadelphia base, attempting to

948

1 show that pilots tend to bid for dollars; but they  
2 don't all; correct?

3 A Well, no, I think what it is showing is  
4 that the Airbus 330 international and 76  
5 international bids command seniority unlike anything  
6 else.

7 Q Okay. When you say unlike anything else,  
8 do you mean because looking at Exhibit 6-B, the  
9 median is near the top of the bar and whisker, is  
10 closer to the top of the bar and whisker chart? You  
11 know what I mean by bar and whisker chart?

12 A Sure.

13 Q It is closer to the top of the bar and  
14 whisker chart than it is to the various other pieces  
15 of equipment?

16 A No, it is not where the dot, the bars

17 really are discounts. They don't play in the  
18 analysis particularly, I mean the blue boxes, but it  
19 is not where the dot or one of those points is up  
20 and down the line. It is how they compared to each  
21 other laterally.

22 Q Tell me what you mean?

949

1 A They both basically paint the same  
2 picture.

3 Q Tell me what you mean by that.

4 A Well, if you look, obviously you are  
5 looking at an aggregate here, there is always the  
6 odd pilot that for whatever reason does whatever  
7 they do, and -- but this gives you the picture of  
8 the broad trend, the clear weightings that the  
9 pilots give to the international jobs as compared to  
10 the other jobs; 75 domestic or A330 in Philadelphia,  
11 the various captain jobs that are there in  
12 Philadelphia, clearly it takes a lot more seniority  
13 to hold international than it does to hold either 75  
14 or 320.

15 Q Right. Those are the jobs which because  
16 of the higher wage rate for the A330 and the  
17 international override for the 76-75 international  
18 operation, which you are combining 76, if I  
19 understand on this chart?

20 A Yes, right.

21 Q Those are the higher paying jobs; correct?

22 A No, it is not the pay, it is --

1 Q Well, with you but, no --

2 CHAIRMAN NICOLAU: But are the higher  
3 paying jobs.

4 THE WITNESS: They are the higher paying  
5 jobs, okay, that is true.

6 BY MR. FREUND:

7 Q And so this chart, whatever else it shows,  
8 shows that in the main pilots at US Airways  
9 gravitate based on their seniority to higher paying  
10 jobs, correct? It may show other things but it  
11 shows that also, correct?

12 A Well --

13 Q Does it show that?

14 A Well, the premise of your question of  
15 which there are many factors, maybe I have got it  
16 backwards.

17 Q You have got it backwards, my question is?

18 A Sorry, okay.

19 Q This chart shows, you can't read it any  
20 other way, this chart shows that the pilots at US  
21 Airways on the basis of their seniority gravitate  
22 towards higher paying jobs.

1 There may be all kinds of reasons that you  
2 want to tell us besides the higher pay that causes

3 them to gravitate to those jobs, but it does show in  
4 fact that pilots at US Airways tend to use their  
5 seniority to gravitate towards higher paying jobs;  
6 correct?

7 A Well, certainly pay is a factor in  
8 bidding, I will certainly give you that.

9 Q At some point in your testimony you said  
10 to us no pilot is not concerned about his paycheck,  
11 that is what it is all about. Do you remember that?

12 A Yes.

13 Q Now, notwithstanding that reality that is  
14 reflected in these exhibits and that you testified  
15 to later on in your testimony, if you look at these  
16 bar charts, really 6-B is probably a better one to  
17 look at than 6-A, there are, appear to be plenty of  
18 pilots who don't exercise their seniority to bid the  
19 highest paying job available, correct?

20 A Well, here you are again characterizing  
21 that this is a picture of pay --

22 Q Excuse me. I am not characterizing that

952

1 at all. I am asking you a question, and the  
2 question I am asking you is, and we agreed you were  
3 going to answer the questions I asked you; it is  
4 correct, in looking at this chart, that not  
5 notwithstanding the general proposition that you told  
6 us about with great emphasis, that a substantial  
7 number -- that some number, I don't even want you to  
8 quarrel with the use of the word substantial, that

9 some number of US Airways pilots do not exercise  
10 their seniority to bid to the maximum pay that they  
11 could bid?

12 A Some pilots do not.

13 Q Okay. And you and I are not going to sit  
14 here and have a debate about how many there are,  
15 whether they are substantial or whether it is not  
16 substantial.

17 Both of these charts are Philadelphia  
18 based, correct?

19 A That is correct.

20 Q Again, I don't want to get in a fight with  
21 you about what the words lots means, but there are a  
22 significant number -- maybe we will fight about

953

1 significant.

2 There are a number of very senior US  
3 Airways pilots who could bid Philadelphia  
4 international flying and who choose not to, correct?

5 A There are certainly pilots that could bid  
6 it that don't. And I think that you mentioned --

7 Q That is, you have answered my question.

8 A Okay, fine.

9 Q You have answered my question, thank you.  
10 You want to I want to turn to Exhibit 7  
11 for a moment?

12 I have had a lot of trouble following your  
13 testimony about Exhibit 7, but the substance, but  
14 what I came away with from your testimony, was that

15 the differential between narrow body pay and wide  
16 body pay at US Airways, either stand alone or  
17 combined or however one looks at it, is below the  
18 differential of various other carriers. Is that  
19 sort of an overall picture?

20 A No, not at all.

21 Q Then maybe you should tell me what this is  
22 all about?

954

1 A Yes, the point of this is when you start  
2 crossing pay systems you create some aberrations, so  
3 to speak, and that is all we are trying to point out  
4 here.

5 If you look at U.S. Air's pay scales  
6 alone, in other words the \$124.88, 320-73 rates,  
7 \$144.02, 75 rate, and 76 rate, and the 330 rate, you  
8 see increments between them that are in the ballpark  
9 with the industry, a little bit -- I mean a tiny bit  
10 lower, but not significantly.

11 Now, what we have assumed in our modeling  
12 is that the pay rates would be, again nobody is  
13 going to take a pay cut, we are not in concessionary  
14 bargaining right now, nobody is going to agree to  
15 take less pay.

16 So the conservative assumption is say,  
17 okay, we will take the higher of the existing pay  
18 rates but that has a, that creates a bit of an  
19 anomaly, that is all we are trying to show here is  
20 that when you raise a single pay rate in a pay

21 scale, which is not real world at all, it is not  
22 likely any pilot group would agree to raise one pay

955

1 rate and leave all the rest of them the same.

2 Normally the relationship stays the same  
3 between them. You create a situation where when you  
4 are looking into the modeling, you are essentially  
5 to some degree understating the value of the premium  
6 flying, because the pay difference is really less  
7 than would probably exist in any good real world  
8 analysis.

9 Q So what you are saying is that even though  
10 those are the numbers that you are using the  
11 modeling, you are using actually the higher of the  
12 two pay rates in the modeling, you think really that  
13 is a conservative approach to life with respect to  
14 the value of the wide body flying because the -- in  
15 order to keep the proper ratios or proper  
16 relationship between narrow body and wide body  
17 flying, you would expect the wide body rate to  
18 increase, correct?

19 A The relationship would be more like it is  
20 at every other carrier that operates the spectrum of  
21 airplanes and as it is at US Airways that operates  
22 that spectrum of planes. We took a conservative

956

1 view on it, but we just wanted to point out that it  
Page 107

2 did have the effect to do that, that is all.

3 Q Sitting here today you are not going to  
4 tell me that in 5 years or 10 years or even 1 year  
5 the international wide body rates at US Airways,  
6 that the relationship between the narrow body and  
7 the wide body rates will mirror the relationship of  
8 the narrow body rates and wide body rates at other  
9 airlines, are you?

10 A We couldn't begin to predict exactly what  
11 is going to come out. However, you can't ignore the  
12 background or the world in which we are negotiating.

13 Q But you are not going to predict?

14 CHAIRMAN NICOLAU: He is not.

15 MR. FREUND: So I am going to skip  
16 Exhibit 8 and I want to look at Exhibit 10 for a  
17 moment. I am going to skip 9. I am violating my  
18 own question about asking questions about  
19 arbitration awards, but I can't help it.

20 CHAIRMAN NICOLAU: You don't have to.

21 BY MR. FREUND:

22 Q No, I don't have to.

957

1 Exhibit 10 is a piece of Rich Block's  
2 award in Republic-Hughes Air West seniority  
3 integration, and the second sentence of that Block  
4 quote begins with the words "neither system," when  
5 he says system he is referring to the seniority  
6 integration proposals I believe. Neither system is  
7 responsive to the relatively equal position of these

8 carriers, and I think you said that one of the  
9 reasons you were looking at Republic-Hughes Air West  
10 was that you believed that the position of each were  
11 relative equal?

12 A Relatively equal, yes.

13 Q If they were not relatively equal then you  
14 wouldn't be looking to Republic-Hughes Air West as a  
15 basis for supporting your integration methodology,  
16 would you?

17 A I mean our view is that they are  
18 relatively equal. You are saying if we --

19 Q If Mr. Nicolau, who is the only person in  
20 the room who counts with respect to this question,  
21 concludes that US Airways and America West were not  
22 relatively equal in the sense that Republic and

958

1 Hughes Air West were relatively equal, then your  
2 reliance on Republic-Hughes Air West would be for  
3 naught, correct?

4 MR. KATZ: I am going to object to that  
5 question. You objected to questions from their  
6 witness about the decision, you put in an excerpt  
7 from the decision and everybody said we should argue  
8 it in the brief --

9 CHAIRMAN NICOLAU: I don't think the  
10 captain has to answer that.

11 MR. FREUND: That is fine, he doesn't have  
12 to answer it.

13 BY MR. FREUND:

14 Q But I will ask you this question. Sort of  
15 thinking back over the last roughly -- no, never  
16 mind, that is legal argument. I don't a need to ask  
17 you that question.

18 Do you remember, turning to Exhibit  
19 Number 11, and I am really treading on thin ice when  
20 I am asking about Mr. Nicolau's opinions or awards,  
21 but thinking back to the Shuttle integration, you  
22 were on the US Airways merger committee for that

959

1 integration.

2 A That is correct.

3 Q Am I correct in understanding that the  
4 position that the US Airways pilots took with  
5 respect to the Shuttle second officers who were  
6 actually flying equipment at the time of the merger  
7 was that they brought no jobs to the merger?

8 A Let's see. What was the argument? I  
9 would have to look back. Certainly we recognized  
10 the 727s were going away and flight engineers jobs  
11 were going away, certainly it was taken into  
12 account.

13 Q You don't remember taking the position  
14 that they brought no jobs to the merger?

15 A Those jobs were going away, certainly, I  
16 would agree, yes, to that or that the jobs were  
17 going away certainly.

18 Q That wasn't my question. But if you don't  
19 remember whether you took that position, you don't

20 remember.

21 A Well, I remember the circumstance.

22 Exactly how we incorporated it in, I don't remember

960

1 exactly how that went at this point.

2 Q Okay, fair enough.

3 I am not going to ask you about Exhibit  
4 13, I am not going to ask you about Exhibit 14, but  
5 let's look at Exhibit 15 for just a moment. If I  
6 understand your testimony, Exhibit 15 reflects just  
7 what the heading says, jobs lost since the merger  
8 announcement, and it is correct, is it not, that the  
9 jobs quote lost are a reflection of the reduction in  
10 the fleets of both carriers since the merger  
11 announcement?

12 A That is correct.

13 Q Now, on the US Airways side, I want to put  
14 to one side the 25 aircraft that we spent so much  
15 time parsing the English language, put those to one  
16 side a moment, we will come back to those.

17 It is correct, is it not, that on the US  
18 Airways side, putting those aside, the jobs that  
19 have been lost since the merger were attributable to  
20 aircraft whose return was announced prior to the  
21 merger; correct?

22 A Well --

961

1 Q Is that right or not?

2 A I lost track of what we are putting aside.

3 Q We are putting aside the 25 that we have  
4 had this big English language debate about.

5 A Okay.

6 Q Putting those to one side, it is correct,  
7 is it not, that putting jobs associated with those  
8 25 aircraft to one side, the jobs lost at US Airways  
9 since the merger were attributable, you have already  
10 told us that they were attributable to aircraft, the  
11 fleet reduction, it is correct, is it not, that the  
12 jobs that were lost were attributable to the  
13 reduction of aircraft whose reduction had been  
14 announced prior to the merger?

15 A Well, the reductions are attributable to  
16 the 15 airplanes that are over here on the side and  
17 the planes that were going away because of the  
18 bankruptcy, that is true.

19 Q I am putting the 15 to one side --

20 A Well, they are in the same numbers.

21 Q They are in the same numbers so some jobs  
22 were associated with those 15. Putting those jobs

962

1 to one side for the moment, just for the moment, the  
2 rest of the jobs that were lost since the merger  
3 were lost as a result of the return of aircraft  
4 whose return had been announced prior to the merger  
5 announcement; correct?

6 A Yes. A portion of this is before, but the  
7 point here that I made --

8 Q I am not asking about the point. I am not  
9 asking about points.

10 Am I correct --

11 CHAIRMAN NICOLAU: Yes, he said you are.

12 BY MR. FREUND:

13 Q Now, on the America West side, every one  
14 of the jobs -- again let's put the 15 and the 10,  
15 those 25 to one side for the moment. Other than the  
16 jobs associated with the 10 at America West, none of  
17 the jobs that were lost were lost because of the  
18 reduction of aircraft whose reduction had been  
19 announced prior to the merger; correct?

20 A I believe all the reductions, I think any  
21 that were scheduled that had staffing they were all  
22 resultant of the reduction concurrent with the

963

1 merger or --

2 Q But none had been announced prior to the  
3 merger?

4 A Prior, no.

5 Q I am not going to ask about the 25  
6 aircraft, we have talked about those enough. I  
7 think the Board understands our position with  
8 respect to those.

9 And if I am right, and I know you are not  
10 ready to agree with me yet, but if I am right that  
11 since the merger US Airways has relaxed its staffing

12 and is not building lines to FAR but is building  
13 them in a more relaxed way, then some jobs have not  
14 gone away or the number of jobs that have gone away  
15 have been less than they would have been if US  
16 Airways continued to build lines to FAR?

17 A I don't think that is what is happening.

18 Q I understand you are not prepared to agree  
19 with me on the proposition that since the merger  
20 announcement US Airways has been building lines less  
21 rigid or less demanding than they were building  
22 before the merger announcement, I understand you are

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1 not agreeing with me on that so I am not asking you  
2 to agree with me on that, but I want you to assume  
3 that as a hypothetical for the moment, okay, for  
4 this question I want you to assume that as the  
5 hypothetical for the moment, if that is in fact true  
6 then fewer jobs have been quote lost at US Airways  
7 than would have been lost had the company continued  
8 to build lines to FAR; correct?

9 A So let me just, if I may let me just state  
10 the question to make sure I understand what you are  
11 saying.

12 Q Sure.

13 A You are saying if effectively our staffing  
14 rate was lower before because we were being more  
15 productive or flying harder, or whatever it is, and  
16 now it is less than it was before, it would take  
17 essentially more pilots to do the same flying if

18 they changed those variables?

19 Q Correct.

20 A In a hypothetical that would be correct.

21 Q Okay, thank you.

22 I hate to ask these rhetorical questions,

965

1 but if you would turn to Exhibit 16 for a moment,  
2 please.

3 MR. KATZ: I am sorry, what number?

4 BY MR. FREUND: 16.

5 Q In what position would Mr. Hershey have  
6 retired, or put another way, left the US Airways  
7 seniority list if US Airways had liquidated in 2005?

8 CHAIRMAN NICOLAU: You don't have to  
9 answer that question.

10 MR. FREUND: I told you I hate to ask  
11 rhetorical questions.

12 CHAIRMAN NICOLAU: Good.

13 MR. FREUND: Sometimes I can't help  
14 myself.

15 I wonder if we could take a break. I am  
16 not taking a break to figure out if I have any more  
17 questions, I know I do, but I have just one more  
18 topic to cover and it may take a little while.

19 CHAIRMAN NICOLAU: Okay. The captain and  
20 I are going to finish his testimony today.

21 MR. FREUND: Oh, we will definitely do  
22 that.

1 CHAIRMAN NICOLAU: Okay, 10 minutes.

2 (3:05 p.m. -- recess -- 3:20 p.m.)

3 CHAIRMAN NICOLAU: If you are ready?

4 BY MR. FREUND:

5 Q Ready. I am going to ask you about  
6 conditions later, but let's look at the conditions  
7 and restrictions on page 20. I don't want to spend  
8 too much time on these five pages, with the  
9 attachments really many more than five pages of  
10 conditions and restrictions, but I just have a  
11 couple of questions.

12 I understand condition and restriction No.  
13 1, the purpose of that or the fact of condition and  
14 restriction No. 1 is to reserve a certain number of  
15 captain positions and first officer positions on the  
16 330 and on the 757-767 international operations for  
17 US Airways pilots, irrespective of where they are on  
18 the seniority list, and that positions in excess of  
19 those positions are going to be allocated.

20 And the words read so that the premerger  
21 US Airways pilot groups ends up holding twice the  
22 number of additional captain positions and twice the

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1 number of additional first officer positions beyond  
2 its respective pilot group.

3 If I understand that correctly, the  
4 first 176 captain and 283 first officer positions

5 are reserved for the east pilots and then  
6 essentially every three positions are allocated;  
7 beyond that are allocated on a 2-to-1 basis; is that  
8 right?

9 A Right. The framework is the same on this,  
10 it is a base quota and then a ratio beyond that.

11 Q Okay.

12 A Or base quota representing where we  
13 started and then beyond that.

14 Q And then you have the same notion with  
15 respect to the 76-75 domestic operation; correct?

16 A Yes.

17 Q And with respect to both of them you have  
18 a of replacement aircraft which you then later  
19 define in paragraph eight; correct?

20 A Uh-huh, yes.

21 Q So that these quotas are not just for the  
22 identified aircraft but they are for the

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1 replacements to the identified aircraft; correct?

2 A Yes.

3 Q And you don't identify those replacement  
4 aircraft by aircraft type, but rather say that a  
5 replacement aircraft is one that is intended to  
6 substitute for them in the missions they are to  
7 perform and are similar in the capability to perform  
8 those missions. Am I reading that correct?

9 A Yes, you are.

10 Q Who is it that decides whether a

11 particular aircraft that comes in is intended to  
12 substitute for those aircraft, that the missions are  
13 similar and their capability is similar? Who  
14 decides that under the conditions and restrictions?

15 A Well, I think under ALPA merger policy,  
16 and it has been my experience in a number of mergers  
17 that any of these, the implementation of this, you  
18 know, if there is a question of what is applicable  
19 or how it is to be applied, the merger committees  
20 work that in them and then there is a dispute  
21 resolution beyond that if it can't be worked out,  
22 but there is no intent to have that be something

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1 that is an obstacle, we are just trying to be  
2 complete.

3 Q It wasn't intended to being an obstacle  
4 Northwest-Republic either, was it?

5 A I am not sure what provision you are  
6 speaking of.

7 Q Never mind.

8 Condition and restriction No. 6, if I  
9 understand it correctly, says that if at any point  
10 of the bidding process one or the other of the pilot  
11 groups doesn't fill the quota that is allocated to  
12 them in the earlier condition and restriction then  
13 that condition and restriction drops away forever;  
14 correct?

15 A If for the particular position, it is  
16 position by position, and once it hits the point

17 that every pilot who wants the job has had an  
18 opportunity to do his job, yes, then it goes away.

19 Q Goes away.

20 A Right.

21 Q So, if in one vacancy bid for whatever  
22 reason the America West pilots don't fill the quota

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1 that has been allocated to them on condition and  
2 restriction No. 1, then condition and restriction  
3 No. 1 drops away forever?

4 A As it is written, yes.

5 Q I just wanted to make sure I understood  
6 it.

7 A Yes.

8 Q And that would be true obviously with  
9 respect to condition and restriction No. 2, the  
10 quotas in condition and restriction No. 2?

11 A Yes, it applies to each of them.

12 Q Now, I don't want to go through the list  
13 in detail just yet except to see if you agree with  
14 me that the, at least the bottom of the list  
15 starting from 6302 which is on page 117 --

16 CHAIRMAN NICOLAU: What page?

17 MR. FREUND: 117 of the list, which is  
18 Exhibit 18.

19 I just want to take a little stroll  
20 through that part of the list for a moment while we  
21 are looking at conditions and restrictions.

22 MR. GILLEN: Are you in Exhibit 18?

1 BY MR. FREUND:

2 Q I am in Exhibit 18, I want to look back  
3 and forth between 18 and 20 for just a moment.

4 Fair to say that from 6302 to 6676 the  
5 dominant color is red?

6 A Yes, it is. Well --

7 Q There is some blue?

8 A There is blue in big sections but, okay.

9 Q Without counting you wouldn't quarrel with  
10 that?

11 A The reds outnumber the blues certainly.

12 Q And that is the very bottom of the list?  
13 I mean I have taken us down to the bottom of the  
14 list?

15 A That is right.

16 Q So now let's look back to condition and  
17 restriction No. 9 for a moment. Now let me see if I  
18 can, that is on page, Exhibit 20, page 4; okay?

19 A Got it.

20 Q Except as specifically stated in these  
21 conditions and restrictions the integrated seniority  
22 list and including promotion, et cetera, et cetera.

1 And then flipping forward to page 5 it  
2 says, provided, however, that any US Airways pilot

3 on furlough on the date of the first merged bid  
4 shall be subject to furlough ahead of America West  
5 pilots junior to him or her for 365 days following  
6 his or her date of recall.

7 Now, if I understand that correctly, the  
8 purpose of that condition and restriction is, I  
9 think you would put it, and you tell me if I am  
10 putting it right or not, to give some protection to  
11 the junior, that bulk of, that sea of red pilots at  
12 the bottom of your proposed list; correct?

13 A Well, it is to prevent the flip-flop  
14 situation where they do a recall and then turn  
15 around and furlough somebody and you would wind up  
16 recalling a U.S. Air guy and furloughing an America  
17 West guy, so that wouldn't be right.

18 Q Okay, so first of all that protection only  
19 relates on the US Airways' side to those pilots who  
20 were furloughed as of the date of the first merged  
21 bid, not those who were furloughed as of the date of  
22 the merger announcement or as of the date of the

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1 merger; correct?

2 A Right, it -- it does not pertain to any --  
3 well, it doesn't pertain to somebody who is in an  
4 active job at the point when you integrate the  
5 airlines.

6 Q Right. And it only lasts in any, for  
7 whoever it is that may trigger it, it only lasts for  
8 a window of 365 days; correct?

9 A Correct.

10 Q And after that if there is a furlough,  
11 tough beans, it goes by seniority?

12 A Uh-huh, by seniority.

13 Q So after that if there is a furlough, a  
14 pilot who was on furlough as of the date of the, US  
15 Airways pilot who was on furlough as of the date of  
16 the first bid would be, would remain in place and  
17 the America West pilot who had never been furloughed  
18 would be furloughed, correct, after the passage of  
19 365 days?

20 A After the furlougee has been back for a  
21 year then if the America West has less longevity he  
22 would be furloughed.

974

1 Q So now let's take a look at the list, and  
2 I promised I wouldn't spend a lot of time on the  
3 list and I am not going to spend a lot of time on  
4 the list, but let's look at Exhibit 18.

5 By my reckoning we have to turn 17 pages  
6 before you see any red; is that right?

7 A If you referring to Captain McNerlin on  
8 page 17.

9 Q Correct. So we have ascertained that we  
10 go through 17 pages of US Airways pilots before we  
11 get to the first America West pilot.

12 Let's turn to new position 3443, I think  
13 he is going to be on -- let's see where he is, 3443,  
14 looks like he is on page 64. Right?

15 A 34 -- I am sorry, say the number again.  
16 Q New position 3443.  
17 A 34 --  
18 Q 3443, Mr. Pullman.  
19 A Okay.  
20 Q Now, while we are on page 64, as of the  
21 day the merger was announced if memory serves me  
22 correctly, pilot 3405, on the new No. 3405,

975

1 Mr. Monda, was the last or the most junior working  
2 US Airways pilot; correct?  
3 A That is correct.  
4 Q And since then obviously, if we were  
5 looking at a list that was constructed based on the  
6 certified seniority list, namely May 19th, 2005,  
7 that is where we would see the end of the active  
8 pilots, active US Airways pilots; correct?  
9 A That is correct.  
10 Q So since that time there have been some  
11 recalls, and it looks like Mr. Colello who we saw  
12 here earlier, and Mr. Gebhart, Mr. Simmons, I don't  
13 know if it is mister or Ms., Wilkinson and Mr. Catey  
14 were all recalled from furlough; correct?  
15 A That is correct.  
16 Q And then there is old Mr. Pullman who  
17 still seems to be on furlough, although it looks  
18 like maybe he could have been called; correct?  
19 A Uh-huh, correct.  
20 Q But it is right around there that the

21 furlough, they is kind of a cutoff where the  
22 furlough list begins, doesn't it?

976

1 A Well, you are pointing out Mr. Pullman as  
2 the senior pilot currently on furlough?

3 Q Yes.

4 A That appears to be correct.

5 Q And your list puts the senior most US  
6 Airways pilot on furlough inter-meshed with what  
7 looks to be America West captains; correct?

8 A Oh, yes, I am sorry.

9 Q Is that right?

10 A Yes.

11 Q Let's keep our finger there and let's go  
12 to position No. -- new position No. 4198, it is on  
13 page 78.

14 A Okay, got it.

15 Q Or you can look at 4197 because it is an  
16 Airways pilot.

17 A Okay.

18 Q The reason that I picked that is that if  
19 you look at 4198 and beyond you get a big sea of red  
20 pilots, and just taking a look at the US Airways, I  
21 am sorry, the America West pilots before 4198,  
22 between Mr. Pullman on page 64 and Mr. Mueller on

977

1 page 78, those all -- all those America West pilots  
Page 124

2 appear to me to be captains; correct?

3 A Correct.

4 Q And so if I understand the list correctly,  
5 interspersed within the group of America West  
6 captains, all of these blue numbers, all of whom are  
7 US Airways pilots whom as he we sit here today, or  
8 at least as we sat here on July 1st, 2006, are  
9 pilots on furlough; correct?

10 A Wait a minute, I am sorry, I let my  
11 finger --

12 Q We are looking between 3443, Pullman --

13 A Okay.

14 Q -- and 4197, Mueller.

15 A Okay.

16 Q Now, I grant you that there have been  
17 some, there have been a few, must have been some  
18 furlough bypasses and there are a few blue pilots in  
19 there who have been recalled, but in the main US  
20 Airways pilots that we are looking at, in that range  
21 of pilots are all pilots who are at least as of  
22 July 1st, 2006 on furlough; correct?

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1 A As of July 1, '06, if this information, if  
2 their information is current like you said, of  
3 course there has been quite a few recalled since  
4 then.

5 Q Recalled since then? I am just looking at  
6 your list. You gave us the list, I can only look at  
7 your list.

8 A Yes.

9 Q In the main, the blue pilots, the east  
10 pilots who are in that range between Mr. Pullman and  
11 Mr. Mueller are all US Airways pilots on furlough;  
12 correct?

13 A Correct.

14 Q And throughout that entire range,  
15 virtually every America West pilot that is, if not  
16 every America West pilot, probably every America  
17 West pilot that is on that list is a captain;  
18 correct?

19 A Correct.

20 Q So I am not going to sit here and count  
21 how many furloughed US Airways pilots you have  
22 interspersed with America West captains, we and the

979

1 panel can do that at our leisure. But, below  
2 Mr. Mueller, a furloughed US Airways pilot, continue  
3 another one, two, three, four, you know, five, six  
4 pages --

5 A What page are you on?

6 Q -- through page 85 that consists primarily  
7 of America West captains; correct?

8 A From 85 on back --

9 CHAIRMAN NICOLAU: To 78.

10 MR. FREUND: To 78.

11 THE WITNESS: To 78, thank you.

12 It appears the majority are captains.

13 BY MR. FREUND:

14 Q Captain Kirch, this isn't a seniority list  
15 is it? It is an abomination?

16 MR. KATZ: I object.

17 CHAIRMAN NICOLAU: Yes.

18 BY MR. FREUND:

19 Q I have just a couple more questions. I  
20 have a couple more then a couple more, actually.  
21 Let's look at page 122 for a moment. We have heard  
22 Mr. Varini's name mentioned from time to time and he

980

1 appears to be at position 6576; correct?

2 A Correct.

3 Q Mr. Varini is a CEL pilot; correct?

4 A That is correct.

5 Q And I am not here to ask you questions to  
6 set up an argument about whether the CEL pilots  
7 belong in the seniority integration or don't belong  
8 in the seniority integration, that is a matter that  
9 is before Mr. Nicolau that has been fully briefed,  
10 but it is correct, is it not, that Mr. Varini and,  
11 what, about 106 folks on this list senior to  
12 Mr. Varini, is that the rough number of CEL pilots?

13 A That is correct.

14 Q It is correct that Mr. Varini and I guess  
15 105 above him before they started flying at US  
16 Airways they were flying for, they were flying  
17 regional aircraft for wholly-owned commuter carriers  
18 of US Airways; correct?

19 A Yes. Prior to moving up to the mid-

20 Atlantic division they were at one of Piedmont's  
21 wholly-owned commuters.

22 Q And they moved up to the mid-Atlantic

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1 division to fly Embraer 170s; correct?

2 A That is correct.

3 Q And they flew those EMB 170s at the  
4 mid-Atlantic division for however long it was that  
5 the mid-Atlantic division operated at US Airways;  
6 correct?

7 A Correct.

8 Q They never touched the stick of a 737 or  
9 an A320 in any capacity; correct?

10 A That is correct.

11 Q They were never in one other than perhaps  
12 as a passenger; correct? They didn't fly --

13 A They did not fly on the US Airways main  
14 line division.

15 Q And so as they sit here today they are  
16 presently on furlough; correct?

17 A That is correct.

18 Q And your list has them integrated among  
19 working A320 and 737 America West first officers;  
20 correct?

21 A That is correct.

22 Q Who have never seen, so far as you know --

982

1 let's just take a quick peak -- doesn't look to me  
2 as though they have seen a day of furlough in their  
3 career; correct?

4 A If you are referring to Varini or --

5 Q No, I am talking about the America West  
6 pilots.

7 A America West, I believe that is true --  
8 well, at the point those America West pilots were  
9 hired -- of course they were just hired -- they  
10 didn't get furloughed in the first .7 fraction of a  
11 year they were working there any more than Varini  
12 was furloughed in the time span he was at the  
13 mid-Atlantic division prior to the merger  
14 announcement.

15 Q By the way, not that this is the only  
16 thing wrong with picking July 1st, 2006 as a date to  
17 look at this list, but by picking July --- this may  
18 not be right, so let me just find out the answer to  
19 the question this way.

20 Where was Mr. Colello? Where did we  
21 figure out Mr. Colello was?

22 MR. KATZ: Page 64.

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1 BY MR. FREUND:

2 Q So Mr. Colello shows a tenure of 16.8  
3 years and a length of service of 16.4 years;  
4 correct?

5 A That is correct.

6 Q Is that his length of service through  
7 July 1st, 2006?

8 A No. The length of the service, there is a  
9 footnote, not a footnote, a top note, whatever you  
10 call it, at the beginning of the list, these are  
11 calculated as of the merger announcement.

12 Q Okay. Now, since the day of the merger  
13 announcement no US Airways pilot who was on furlough  
14 at the time -- well, let me ask the question a  
15 different way.

16 Since the date of the merger announcement  
17 and July 1, 2006, any US Airways pilot who was on  
18 furlough and who remained on furlough didn't get any  
19 additional length of service under this calculation;  
20 correct?

21 A You are talking about since the merger  
22 announcement?

984

1 Q Yes.

2 A Yes, the length of service shown here  
3 calculated through, up to May 19th, so there is no  
4 accounting at all for time after the merger  
5 announcement.

6 Q But there wouldn't have been any time to  
7 count -- even if you wanted to count additional time  
8 between the date of the merger announcement and  
9 July 1, 2006, for US Airways pilots who were on  
10 furlough on May 19th and who remained on furlough on  
11 July 1, 2006, the sum total of the addition would

12 have been zero; correct?

13 A Yes, the pilot that was on furlough since  
14 the announcement to whatever point you wanted to  
15 count wouldn't accumulate any additional length of  
16 service.

17 Q But America West pilots, since none were  
18 on furlough either May 19th, 2006 or July 1st, 2006,  
19 every America West pilot in fact gained additional  
20 months of length of service between May 19th and  
21 July 1st; correct?

22 A Yes. If you picked a later date to

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1 calculate it of course that would add additional  
2 service for those who were working and would not for  
3 those who were not.

4 Q You said in your testimony that everything  
5 was -- that retirements are the only thing you can  
6 count on, correct? You said that you can't  
7 necessarily count on airplanes that are in the order  
8 book but you can count on retirements; correct?

9 A Retirements are certainly much more  
10 certain.

11 Q And everything that is included in your  
12 analysis is premised on age 60 retirement; correct?

13 A Yes. Our models or our analysis does  
14 assume an age 60 retirement age, yes.

15 Q I will pass out our next exhibit.

16 Did you see the Wall Street journal  
17 yesterday?

18 A We did.

19 CHAIRMAN NICOLAU: Is this a  
20 cross-examination exhibit?

21 MR. FREUND: I don't have my book with me  
22 but I think we are at C --

986

1 CHAIRMAN NICOLAU: D.

2 BY MR. FREUND:

3 Q It is an article -- do you recognize this  
4 article as yesterday's Wall Street Journal article?

5 A Yes, I do.

6 Q Do you see that the FAA, according to this  
7 article, wants to move the age 60 retirement date up  
8 to age 65; correct?

9 A It is considering it, yes.

10 Q Well, doesn't it say specifically it wants  
11 to let them work in the cockpit for as many as five  
12 years longer according to industry and government  
13 officials?

14 A Where are you looking at?

15 Q The first paragraph.

16 A Oh, I am sorry, I thought you were--that  
17 is correct.

18 Q And that it reports that the -- that in  
19 the absence of Congress legislating that result in  
20 the next several months that the FAA intends to  
21 issue a Notice of Proposed Rule Making that would  
22 take approximately 18 months to generate the new

1 rule?

2 A Yes, it says that.

3 Q And if in fact age 65 were to come to pass  
4 then while there would surely continue to be  
5 retirements because people would have to retire,  
6 they wouldn't be retiring on the basis of anything  
7 that is contained in your model; correct?

8 A That would not be correct. The vast, vast  
9 majority of the attritions that are in there, I mean  
10 you are talking magnitudes here that are just light  
11 years apart, and the magnitude of attrition is not  
12 going to be significantly affected.

13 Q You are going to tack on another five  
14 years to those pilots who retire, who otherwise are  
15 retirement age 60?

16 A Well, you can't even come close to  
17 assuming that all pilots will work five more years.

18 Q You can't make any assumption once age 65  
19 comes in, can you?

20 A You can't make any assumptions?

21 Q Well, you have no basis for making any  
22 assumptions about what the pilot retirement rate is

1 going to be if and when age 60 is moved to age 65;  
2 correct?

3 A It would be very hard to predict what the  
4 effect of that would be, that is true.

5 Q In fact, as your actuary testified the  
6 other day when I asked him the following question,  
7 question, isn't it a fact that if age 60 is raised  
8 to age 65 that your entire report will be consigned  
9 to the ash heap of history, and he agreed with me;  
10 correct? Do you remember him agreeing to that?

11 A I think he said that.

12 Q I have no further questions.

13 MR. KATZ: Well, I have some questions, I  
14 have a few.

15 REDIRECT EXAMINATION

16 BY MR. KATZ:

17 Q The first one is where is the rest of the  
18 article because we had a longer version --

19 A This is the one that was on the web site.

20 Q What web site?

21 A It was the one that, the blast e-mail from  
22 the Wall Street Journal web site. If you have a

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1 longer article --

2 Q I have a longer version which I printed up  
3 from the Wall Street Journal.

4 MR. FREUND: I don't have any problem  
5 substituting that.

6 BY MR. KATZ:

7 Q I will get it. I will ask some other  
8 questions and then come back to that?

9 Why don't we go back to the first  
10 questions that Jeff was asking you about back in

11 Exhibit 1, and he asked you a whole series of  
12 questions based on the rates in the collective  
13 bargaining agreement that increased before the  
14 amendable date and pointed you to the January 1,  
15 2007 rate, which is spelled out here for the America  
16 West pilots.

17 Let me ask you whether you are aware of  
18 the airline pilot contracts that have been modified  
19 by the agreement of the pilots downward prior to the  
20 amendable date in recent years?

21 A Far, far too prevalent.

22 Q United, Northwest, Delta, American.

990

1 Do you know that all those pilot groups  
2 modified their agreements downward prior to the  
3 amendable date?

4 A Yes, that is correct.

5 Q And I take it that you feel that the  
6 America West pay rates, absent the merger, were far  
7 from a certainty?

8 A Absolutely.

9 Q He asked you about the international  
10 override for the America West pilots, which is the  
11 last page in Exhibit 1, where it shows \$4 and \$3,  
12 and when you got to preparing the chart on Exhibit 5  
13 showing job groupings, why didn't you use the  
14 America West \$5 -- \$4 override for captains  
15 anywhere?

16 A It wouldn't be applicable in a significant

17 enough percentage of the flying within the group to  
18 be a factor.

19 Q Do you know how many flights a week  
20 America West performs to Costa Rica?

21 A I do not.

22 Q But you feel it is a small percentage of

991

1 their overall flying?

2 A I know it certainly is, that route.

3 Q Jeff asked you about July being the  
4 seasonal high level for European flying. Do you  
5 recall those questions and answers?

6 A Yes, I do.

7 Q Do you know whether between May 19th, 2005  
8 and July 1, 2006 the number of airplanes in the A330  
9 and 767 international categories remained the same?

10 A Yes, they remained the same.

11 Q There were a total of 19 of those  
12 airplanes; correct?

13 A That is right.

14 Q And do you know whether the number of  
15 captains on those two airplanes increased or  
16 decreased from May 19th, 2005, to July 1, 2006?

17 A Very little.

18 Q Let's look at Exhibit 3, your staffing  
19 exhibit. A330 captains went from 87 in May to 81 in  
20 July; correct?

21 A Yes, they went down.

22 Q Same for 767s, they went from 98 to 95?

1 A Correct.

2 Q So the seasonal impact of July had no  
3 effect on the left seat on those wide body  
4 international airplanes?

5 A No, it did not.

6 Q And in fact there doesn't seem to be any  
7 effect from the looser staffing under the new  
8 management either, at least not in those two  
9 categories?

10 A No.

11 Q So looking at exhibit -- let's turn to  
12 Exhibit 6, the two Philadelphia base analyses. The  
13 pay difference from 75 to 76 international, as Jeff  
14 was emphatically pointing out, is only the \$5.33  
15 international override; correct?

16 A That is correct.

17 Q And on the base of \$144.02 that is about 3  
18 1/2 percent, isn't it?

19 A Sounds about right.

20 Q Now, in your judgment is that what is  
21 causing the display of colors on this Exhibit  
22 E-6(a)?

1 A E-6(a), certainly not. And I think when  
2 you look at the next chart in particular it

3 highlights that pay clearly is not the reason, the  
4 primary factor people are bidding international.

5 The pay rate difference, as Jeff pointed  
6 out, between the 75 domestic and 76 international,  
7 is significantly smaller than the difference between  
8 the 76 international and the 330.

9 So if what Jeff was saying is you are  
10 bidding for pay, then you would expect to see the 76  
11 international very close to the 75 domestic but in  
12 fact it is the other way?

13 Q The 76 is closer to the A330?

14 A Right.

15 Q Than it is to the 757, isn't it?

16 A That is correct.

17 Q And if you look at the distance vertically  
18 between the median dot on the A330 and the 767, you  
19 see it is like a centimeter or something?

20 A Yes, very close.

21 Q Whereas the distance between the median  
22 dot for the 767 and 757 is more like three-quarters

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1 of an inch?

2 A It is larger as is the same with, you  
3 know, pick any of the points, the same thing  
4 happens.

5 Q So turning to Exhibit 5, is it your view  
6 that these are satisfactory job groupings?

7 A I think they are.

8 Q On Exhibit 3 I think Jeff was asking you

9 about staffing being better now than -- he was  
10 asking about contracting sessions and staffing.  
11 Isn't it true that the pilots made a deal with US  
12 Airways in terms of the transformation plan  
13 agreement, I think it is letter 93, in the summer  
14 of 2004 before US Airways entered bankruptcy; do you  
15 recall?

16 A I believe that is correct.

17 Q The staffing comparisons between May 19th,  
18 2005 and July 1, 2006 would not be affected by any  
19 provisions in the transformation agreement?

20 A The work rules were the same for the whole  
21 time period.

22 Q As far as you know the work rules were the

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1 same for the America West pilots during that same  
2 time --

3 A As far as I know there have been no  
4 contract changes for either side during the time  
5 period.

6 Q He asked you some questions about scope.  
7 I am going to ask you about the letters of agreement  
8 that he asked you about scope waivers on, and taking  
9 your advice that you were not the contract expert, I  
10 am just going to show you the basic agreement here  
11 for some of the ones that he mentioned, and just  
12 read the title if you would of letter 91, please?

13 A 91, consolidated small jet agreement.

14 Q So if there were any waivers of scope in

15 this agreement they would not have related to the  
16 acquisition of another airline like Delta, would  
17 they?

18 A No.

19 Q He asked you about letter 93, that is the  
20 transformation plan agreement.

21 A The transformation plan was decided.

22 Q So the one that was signed October 21,

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1 2004 after the members had ratified it?

2 A Correct.

3 Q Do you see anything indicating a waiver of  
4 an agreement related to buying another airline?

5 A I don't believe any -- well, I don't see  
6 any at a quick look here.

7 Q He asked you about number 79, what is the  
8 title of that one?

9 A Interim small jet agreement.

10 Q And was that when management wanted to  
11 bring in additional small jets?

12 A That is correct.

13 Q And what is the date on that one?

14 A April 7th, 2000.

15 Q As far as you know does that have anything  
16 to do with scope protections in the event of the  
17 acquisition of another airline?

18 A No.

19 Q On cross-examination you were asked about  
20 Exhibit 15-A, the jobs lost since the merger

21 announcement; correct?

22 A Uh-huh, yes.

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1 Q And he inquired about the portion of the  
2 jobs that don't relate to the 25 airplanes that were  
3 announced to be reduced in the May 19th, 2005 merger  
4 announcement.

5 Do you know of any way to separate out the  
6 jobs that were lost as a result of those airplanes  
7 from the jobs that were lost as a result of other  
8 airplanes?

9 A There would be no way to separate the  
10 numbers there, but I think if you look at the pilots  
11 per airplane and see that you need fewer to make a  
12 prorated judgment there, you would see that the pain  
13 much higher on any kind of relative measure than it  
14 was with America West.

15 Q And then Jeff was very careful on  
16 cross-examination to ask you about the 44 jobs that  
17 America West lost relating to airplanes, the  
18 reduction of which was announced after May 19th,  
19 2005. Is that the way you recall his questions?

20 A Say it again.

21 Q The 44 jobs that are shown as lost at  
22 America West between these two dates, he asked you

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1 whether they were related to the loss of airplanes,  
Page 141

2 the retirement of which was announced after  
3 May 19th, 2005; correct?

4 A Yes.

5 Q Right?

6 A I think so.

7 Q But is it true, nonetheless, that America  
8 West would have kept all those airplanes, absent the  
9 merger?

10 A We would certainly say it is highly  
11 improbable, listening to the remarks of the CEO of  
12 the company and looking at the flexibility they  
13 designed into their aircraft delivery stream and  
14 considering the events that occurred.

15 Q Specifically looking at Exhibit C-9, which  
16 was an SEC filing by America West Holdings Company,  
17 June 6, 2005, that Captain Cary testified about  
18 yesterday, didn't the company say in this SEC filing  
19 that it would plan to return seven aircraft without  
20 the merger?

21 A It does.

22 Q And in C-10 another SEC filing dated

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1 August 8, 2005 --

2 CHAIRMAN NICOLAU: Didn't Captain Cary  
3 testify about this?

4 MR. KATZ: He did.

5 CHAIRMAN NICOLAU: So why repeat it?

6 MR. KATZ: To respond to the  
7 cross-examination suggested that they wouldn't

8 have --

9 CHAIRMAN NICOLAU: Yes, but the board  
10 knows his testimony. You don't have to beat it.

11 BY MR. KATZ:

12 Q All right. Would you turn to Exhibit 18,  
13 please, the merged list. I just wanted to clarify a  
14 couple of points that I think may have gotten  
15 confused in the cross-examination.

16 With regard to Mr. Vari ni, for instance,  
17 the classification of furlough next to his name does  
18 not mean that he was on furlough at the time of the  
19 announcement of the merger, does it.

20 A No, he was not.

21 Q So he had worked his .7 of a year just as  
22 first officer O'Dell had worked his one-tenth of a

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1 year at of May 19th, 2005, right?

2 A That is correct.

3 Q And in terms of the airplane he was  
4 flying, is the airplane bigger or smaller than the  
5 Dash 8 that America West service had been calculated  
6 on for pilots who were on the America West list?

7 A Dash 8 is about 37 seats, the 170 I think  
8 is 70 some.

9 Q And is part of the length of some that is  
10 calculated for U.S. Air pilots on this list related  
11 to time flown on Fokker F-28's?

12 A That is correct, we had quite a few 62  
13 and 72 seat F 28's in the main line fleet. Well, in

14 Piedmont and after the merger of Piedmont.

15 Q So they were about the same size as these  
16 Embraers?

17 A Even smaller.

18 Q On page 75 I think you pointed us to this  
19 pilot, if not I will point to him, at number 4021,  
20 is Mr. Peppers?

21 A Yes.

22 Q And he is scheduled to return to ground

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1 school January 8th, according to the testimony of  
2 earlier witnesses, correct?

3 A That is correct, he is the junior pilot  
4 that just received recall.

5 Q So when Mr. Freund asked you to look from  
6 page 64 where Mr. Pullman is, over to page 78 where  
7 Mr. Mueller is, at least through page 75 everybody  
8 has had an opportunity to come back to work from  
9 furlough through Peppers, if they want to, right?

10 A That is correct.

11 Q And in terms of integrating people who  
12 were on furlough at the time of the announcement of  
13 the merger, Captain, you addressed that earlier in  
14 your testimony this morning, didn't you?

15 A Yes, I did. First of all they are  
16 integrated based on selected service, not by the  
17 fact that it is furlough or captain. But it is also  
18 justified by the promotional opportunities that come  
19 with those pilots.

20 MR. KATZ: Thank you, that is all I have,  
21 other than the Wall Street Journal article which you  
22 will put in the full text of it in an exhibit it?

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1 CHAIRMAN NICOLAU: Any recross?

2 MR. FREUND: I have a couple and then if  
3 we could just take a short break to see if I have a  
4 couple more or we could take the break now.

5 CHAIRMAN NICOLAU: Take it now.

6 MR. KATZ: I will get that article.

7 (4:12 p.m. -- recess --4:25 p.m.)

8 CHAIRMAN NICOLAU: Have you got the  
9 article, Dan?

10 MR. KATZ: Yes.

11 CHAIRMAN NICOLAU: Why don't you just  
12 substitute it.

13 MR. KATZ: It is one of our exhibits.

14 MR. FREUND: You can cite it, I don't  
15 care.

16 BY MR. KATZ:

17 Q I guess I have got enough then.

18 If you look at the very end of Exhibit D  
19 where it says the last part is about good old Hoot  
20 Gibson, the former astronaut, who talked about  
21 pilots being required to pass an FAA sanctioned  
22 medical exam every six months, and if you look at

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1 the substitute, and I hope this is right, because it  
2 is what I remember from reading this before, Hoot  
3 Gibson is on the second page here.

4 And it is the 5th paragraph up from the  
5 bottom, he is still talking about the FAA sanctioned  
6 medical exams, and then after that paragraph there  
7 are four more paragraphs on the second page and  
8 three and a fraction on the third page. So that is  
9 what I thought was missing was some stuff after  
10 Hoot.

11 CHAIRMAN NICOLAU: Well, that is fine. I  
12 don't know that Jeff knew it because he picked it up  
13 out a different source, but he has agreed to  
14 substitute it.

15 MR. KATZ: Thank you, we will call this  
16 one Exhibit D.

17 CHAIRMAN NICOLAU: Yes.

18 MR. KATZ: Call it D prime.

19 CHAIRMAN NICOLAU: Any further questions  
20 of Captain Kirch.

21 MR. FREUND: I have just couple. I  
22 literally mean it this time. Just a few, a couple

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1 means two, so --

2 RE-CROSS EXAMINATION

3 BY MR. FREUND:

4 Q I think it is self evident but just so  
5 there isn't any misunderstanding in anybody's mind,

6 you told us about, we were looking at Exhibit 18,  
7 yes, were looking at Exhibit 18 on page 75 where we  
8 were talking about Dr. Pepper, Mr. Peppers, before,  
9 and the questions that Dan asked you were in  
10 response to the questions that I asked you. And the  
11 answer you gave about the integration of a whole lot  
12 of furloughed pilots in the midst of a whole lot of  
13 furloughed US Airways pilots in the midst of America  
14 West captains, and Dan asked you if it was not the  
15 case that if in fact Mr. Peppers were recalled,  
16 Mr. Peppers were recalled and scheduled to go to  
17 ground school, and you said he was, that he was the  
18 last pilot that was recalled and the last recall.  
19 That is reflected on Exhibit 14, I believe, correct?

20 A That is correct.

21 Q You weren't trying to say to us and Dan  
22 wasn't trying to suggest to us through his questions

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1 that everyone of the furloughed US Airways pilots  
2 from Mr. Peppers on up to the top of the furlough  
3 list had been, are now off of furlough are you?

4 CHAIRMAN NICOLAU: No. The number is in  
5 14. You know, it took X to get to Y, right.

6 MR. FREUND: That is all I.

7 MR. KATZ: Offered recall.

8 BY MR. FREUND:

9 Q I thought that was the case, I just wanted  
10 to make sure we weren't mixing apples and oranges.

11 You said that with respect to the America

12 West January 1st, 2007 wage increases, that it was  
13 far from certain that those wage increases would  
14 have gone into effect. And you gave us a litany of  
15 other airlines in which scheduled wage increases had  
16 been negotiated, wound up not being in effect, not  
17 being put into effect for a variety of reasons,  
18 correct?

19 A I think so.

20 Q Okay. And you said the reason that you  
21 thought that it was far from certain was because of  
22 that history as well as Mr. Parker's statements, I

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1 believe. I am assuming the statements you are  
2 referring to were the statements that you had the  
3 lovely CD movie that we saw correct?

4 A Certainly the statements we have heard and  
5 a lot of evidence that has been entered as well.

6 Q But on direct you referred specifically to  
7 his statements, correct?

8 A When I referred, yes, to Mr. Parker, and  
9 those statements and, yes.

10 Q Well, again we will have testimony about  
11 the legal significance of those statements at an  
12 appropriate point in time. I just wanted to make  
13 sure what you were linking that observation to.

14 But did you know that in fact -- well, you  
15 know, that America West received an ATSB loan,  
16 correct?

17 A Sure.

18 Q And do you know that in spite of the ATSB  
19 loan America West pilot wages increased from the  
20 time of that loan forward, correct?

21 A I don't know that they did or didn't. I  
22 just don't know.

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1 Q You don't know one way or the other on  
2 that question?

3 A No. I don't know when the last pay  
4 increase was prior to the current pay raise.

5 Q You don't know whether, as we sit here  
6 today, whether the current wages at America West  
7 were the same as in place at the time the merger was  
8 announced?

9 A I do not of the ATSB loan.

10 Q A condition of the US Airways ATSB loan  
11 was a reduction of wages, is that correct?

12 A There was testimony to that effect, I  
13 believe.

14 MR. FREUND: That is all the questions I  
15 have.

16 REDI RECT EXAMI NATION

17 BY MR. KATZ:

18 Q Captain, any reason that you are know of  
19 that America West would have been immune from the  
20 market forces and gas increases that affects United  
21 Northwest and Del ta?

22 A Absol utely not, and our CEO certai nly

1 indicated as much.

2 Q In America West pilots' cross-examination  
3 Exhibit D, the paragraph after the Hoot Gibson quote  
4 that ends the version you have got, I want to make  
5 this easy without running back and forth.

6 I am just going to read you one sentence  
7 to you from the revised version that is now exhibit  
8 D, it quotes Richard Heeling, who is said to be an  
9 aviation consultant and former member of the  
10 National Transportation Safety Board, as saying to  
11 diffuse safety worries there is one possible  
12 compromise would be increasing retirement age to 65  
13 and an increased level of scrutiny, as soon as  
14 pilots turn 60. Do you have any comment as to the  
15 impact of a change like that if accompanied a  
16 lifting of the mandatory age from 60 to 65?

17 A No. Of course if you increase the medical  
18 scrutiny or make the tests tougher you are probably  
19 going to have more people not pass it, and of course  
20 you have got an older age group to start with and  
21 that kind of attrition or disability is heavily age  
22 correlated.

1 Q And if the change was extended to people  
2 who were 50 and older what would, is it possible we  
3 would have more attrition after the lifting of the  
4 mandatory retirement age than before?

5           A     I think that would be the reasonable  
6     assumpti on.

7                   CHAIRMAN NICOLAU: You are making a  
8     passenger very uneasy with that.

9                   BY MR. KATZ:

10          Q     Let's stay away from the safety issues  
11     altogether. Let me put there in economic terms.

12                   You as the merger committee, this is going  
13     to be a serious questi on --

14                   MR. FREUND: I doubt it.

15                   BY MR. KATZ:

16          Q     You are developing a proposal here for the  
17     panel, and you were aware of the possibility that  
18     the age 60 rule could be raised to age 62 or 65 or  
19     something else.

20                   Why is it that the U.S. Air pilots merger  
21     commi ttee, despite this possibility of an increase  
22     in the mandatory retirement age, nevertheless

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1     adhered to an age 60 analysis for the proposal that  
2     we have submi tted?

3           A     Well, first, I mean as long as I have been  
4     around there has been talk about changing the  
5     retirement age. There was even one of our pilots, I  
6     don't know him, if he is in here, talking about, oh  
7     yes, the FAA would enact against Congress.

8                   I have heard comments like that. The same  
9     folks were saying, oh, it is an absolute certainty,  
10    it is a done deal, it is going to happen in

11 November, Congress is going to -- well, Congress is  
12 not here and nothing happened.

13           You know, it is completely unknown, age 60  
14 is the law right now, and you know, to try -- the  
15 effects of changing it are extremely nebulous and I  
16 think that the, in terms of accurately assessing,  
17 you know, what will likely happen going forward, it  
18 is more correct to assume the current law.

19           MR. KATZ: Thank you, Captain Kirch. That  
20 is all I have.

21                               RE CROSS EXAMINATION

22           BY MR. FREUND:

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1           Q    So you are telling us, sitting here today,  
2 you think it is more likely than not that age 60  
3 will remain at age 60, is that what I are telling  
4 us?

5           A    I am saying it is unknown. This has been  
6 an issue that is anything but a new issue, and it  
7 has yet to change. And you know, predictions that  
8 it was going to change have passed once again and,  
9 you know, so are we going to assume a change that  
10 is, you know, at best a maybe.

11          Q    I am just asking you as you sit here  
12 today, you know, having raised your hand and sworn  
13 to tell the truth, are you telling us that you think  
14 it is more likely than not that the age will stay at  
15 age 60?

16          A    I don't see anything that makes me believe

17 that it is going to change or more likely to change.

18 MR. FREUND: That is all I have got.

19 CHAIRMAN NICOLAU: Okay. Anything?

20 MR. KATZ: Before we excuse the witness,  
21 unless there are additional questions, I have an  
22 evidentiary issue that I feel compelled to raise

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1 while he is here. Not that I have any additional  
2 questions for him on the subject, but it relates to  
3 the testimony about two of the conditions and  
4 restrictions, the one the Letter of Agreement  
5 between the two MEC regarding three 757s and the  
6 other Eischen decision, so if you will bear with me  
7 just one minute I will lay out what that is.

8 And I don't want to make this  
9 confrontational, and I don't want to show the panel  
10 any documents that are improper to show the panel,  
11 so let me reassure you about that.

12 First of all, I think that the Letter of  
13 Agreement was attached to Jeff's prehearing  
14 statement, and that since it relates to the  
15 condition and restriction regarding the allocation  
16 of the jobs on those three 757s I feel like we ought  
17 to put that document in, so I brought some copies --

18 MR. FREUND: That is fine, it is already  
19 before the panel.

20 MR. KATZ: Okay. If that is already in  
21 evidence and we don't need to put it in we can  
22 dispense with that. If it is helpful to have it

1 with this volume of materials we can put it in.

2 CHAIRMAN NICOLAU: No, that is not  
3 necessary.

4 MR. KATZ: The difficult part is really  
5 the Eischen decision, and we have stipulated in the  
6 ground rules for this case that the Eischen decision  
7 is to be a joint exhibit, so in a way it is in the  
8 record.

9 I am looking for the exact ground rule --  
10 I guess it is here, but it says the Eischen  
11 decision, and what Jeff interpreted that to mean is  
12 that the last page, the award should be put into  
13 evidence, and it should be evidence, and that the  
14 explanation that goes with that, what arbitrator  
15 Eischen's reasons were for coming to that conclusion  
16 should not be in evidence. And I brought along a  
17 few things that relate to this.

18 MR. FREUND: Before you pass them out why  
19 don't you just describe them so I know what you are  
20 about to pass out.

21 MR. KATZ: This is paragraph 5 of the  
22 June 26, 2006 submission agreement to arbitrator

1 Eischen that deals with the relationship of that  
2 case to this case. And if you like I will read it

3 and then pass it out. I thought it would be easier.  
4 I just have three --

5 MR. FREUND: Why don't you pass me one  
6 before you give it to George let me just read it so  
7 I can refresh myself on it.

8 MR. KATZ: Okay.

9 MR. FREUND: Okay. All right, I have no  
10 problem with it.

11 MR. KATZ: The ground rules, this  
12 basically has two rules in it. The first part is  
13 the first sentence says neither evidence adduced in  
14 the arbitration hearing, this is referring to the  
15 Eischen arbitration nor the arguments of the parties  
16 shall be admissible under in any proceeding under  
17 ALPA -- or arguments to the mediator or arbitrator  
18 in the seniority integration proceedings. So that  
19 is rule number one, the evidence and arguments don't  
20 come in.

21 Rule No. 2 is, nor shall the decision of  
22 the arbitrator be disclosed, offered or admitted,

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1 except the decision that of the arbitrator shall be,  
2 as the transition agreement itself is admissible  
3 pursuant to Section 4-D of the transition agreement.

4 And now I have 4-D of the transition  
5 agreement so that we can cross-reference back.

6 This has a basic rule saying that by  
7 entering into the transition agreement neither MEC  
8 is waiving any arguments about what they want to

9 argue in this case, the present case. Nor will this  
10 Letter of Agreement, that is the transition  
11 agreement, be offered or admitted into evidence in  
12 this case, except as specified here.

13 And then it goes on to say that either  
14 side in this case may offer the transition agreement  
15 as background information, and to describe the  
16 actual operations of the separate carriers during  
17 the separate operations.

18 And then it goes on to say that the  
19 allocation of flying and equipment, which we agree  
20 includes the ruling of Mr. Eischen, is not an  
21 admission in this case as to the appropriate  
22 allocation of flying following the transition

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1 agreement, or the manner in which the airline  
2 parties would have operated, or the equities,  
3 et cetera, et cetera.

4 So I am only offering this full Eischen  
5 decision as background information, and to describe  
6 the actual operations of the separate carriers. And  
7 the real reason I am offering the whole decision and  
8 I have copies of it here in case Jeff or George  
9 wants to see it first or, if we want to admit it, is  
10 that I think that when it comes to implementing the  
11 conditions and restrictions that the panel will come  
12 up with that it will be helpful to have the  
13 reasoning of arbitrator Eischen as to what he meant  
14 by what is in the last page.

15                   And the last page is in entitled Award of  
16 the Impartial Arbitrator, but it is really just one  
17 section of a single document that has other headings  
18 like proceedings, pertinent contract provisions,  
19 issues, and of course you have got the positions of  
20 the parties.

21                   So I think to some extent there is a  
22 conflict here, and the conflict is that we said we

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1 would not offer the position to the parties, the  
2 arguments of the parties, or the evidence that was  
3 offered. On the other hand, what we have got is a  
4 ruling according to the arbitrator that is to be  
5 superimposed on the ruling of this arbitration  
6 board, and to handle the Embraer 190 allocation of  
7 positions after the merged list is implemented.

8                   And in order to get that right, if there  
9 is a dispute about how that is to be done, something  
10 other than what we have described here in our  
11 proposed conditions and restrictions, I think it  
12 would be a loss to the arbitration board to not have  
13 arbitrator Eischen's explanation of how he got to  
14 where he got.

15                   CHAIRMAN NICOLAU: Well, let me ask, the  
16 proposed condition and restriction No. 5, Jeff, is,  
17 does what it says comport with your reading of the  
18 Eischen award?

19                   MR. FREUND: Let me go to it. I didn't  
20 parse it with that degree of care.

21 CHAIRMAN NICOLAU: Tab 20, and if you  
22 don't want to do it now, you can tell me tomorrow.

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1 MR. FREUND: Yes. I think I want to tell  
2 you tomorrow. But apart from that whether I say it  
3 does or it doesn't --

4 CHAIRMAN NICOLAU: But if it does --

5 MR. KATZ: If it does then I don't need to  
6 offer the Eischen ruling at all.

7 CHAIRMAN NICOLAU: If you say well, that  
8 is exactly what he said, perhaps the second sentence  
9 or whatever of this condition and restriction is not  
10 what he said, but, you know, you folks can agree as  
11 to what he said and what he didn't say. Take a look  
12 and see what we have to do about it.

13 MR. FREUND: I will do that. My point,  
14 just so I don't want to be accused of coming out of  
15 the barn late tomorrow when I say this, I don't  
16 think the answer to that question is in the least  
17 bit relevant to the evidentiary question that  
18 underlies Dan's point.

19 You have the Eischen award. The award  
20 recites in very plain and clear terms the way in  
21 which he has determined the condition and what the  
22 condition and restriction should be, must be imposed

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1 by this panel.

2                   And with respect, as to the EMB 190, under  
3 the terms of the transition agreement, and under the  
4 terms of the award, that is to be the EMB 190  
5 condition and restriction that must be imposed by  
6 this panel. And how Dana got there and what we said  
7 on the way, doesn't change that fact.

8                   CHAIRMAN NICOLAU: Well, but that is what  
9 I am saying. If condition 5 parrots the award then  
10 I don't need it.

11                  MR. FREUND: What I am saying is on that  
12 point you have the award.

13                  CHAIRMAN NICOLAU: Yes. You folks gave me  
14 the whole thing once, remember.

15                  MR. KATZ: No, I don't think we gave you  
16 the whole Eischen award.

17                  CHAIRMAN NICOLAU: Yes, you did, in  
18 mediation, but I have forgotten it, if that helps  
19 you.

20                  MR. FREUND: No, we didn't. I don't think  
21 we did because we had this same incipient dispute at  
22 the time.

1020

1                   MR. KATZ: Yes, we talked around the edges  
2 of this issue and we agreed in the ground rules, we  
3 actually finessed this issue by saying we will put  
4 in the decision of the arbitrator Eischen without  
5 saying whether the decision meant the award or the  
6 entire document.

7                   I would like to stop talking about this at  
                    Page 159

8 this point and wait to see whether the  
9 representative of the America West pilot group  
10 agrees with our paragraph 5, because if they do then  
11 there is no issue, and we don't have to offer the  
12 Eischen decision in any greater detail.

13 MR. FREUND: I agree. I'm going to do  
14 that. All I am going to say is I just want to be  
15 clear now, that even if I say they don't, the only  
16 thing I am going to say is what this panel needs to  
17 do with respect to the EMB 190 is to say "see  
18 arbitrator Eischen's award."

19 CHAIRMAN NICOLAU: Well, but you could  
20 also take another step. If you disagree that this  
21 reflects the Eischen award then the two of you can  
22 talk to make sure that it does, because all I can

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1 do, all this board can do is follow that award.

2 MR. FREUND: Correct.

3 CHAIRMAN NICOLAU: And somehow or other  
4 you folks may be able to agree as to what he said,  
5 right.

6 MR. KATZ: If there is a disagreement  
7 about what he said then I think rather than simply  
8 being an automaton and saying see attached, this  
9 board would have the flexibility to look at what he  
10 said, and to do justice by implementing it in a  
11 proper way.

12 CHAIRMAN NICOLAU: I would rather not do  
13 that if we can avoid it, okay.

14 MR. KATZ: Okay.

15 CHAIRMAN NICOLAU: Because it does create  
16 a problem between what is permissible and what was  
17 not.

18 MR. KATZ: I understand.

19 CHAIRMAN NICOLAU: All right, your next  
20 witness.

21 MR. KATZ: Our next witness is going to be  
22 Rikk Salamat. I think that we would prefer to start

1022

1 him in the morning.

2 CHAIRMAN NICOLAU: I knew you would say  
3 that. 9:30?

4 MR. KATZ: 9:30 is fine.

5 CHAIRMAN NICOLAU: 9:30.

6 MR. FREUND: Sure.

7 CHAIRMAN NICOLAU: Okay.

8 (Whereupon, at 4:50 p.m., the hearing was  
9 recessed, to be reconvened at 9:30 a.m., on December  
10 13, 2006.)

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C O N T E N T S

WITNESS	DI RECT	CROSS	REDI RECT	RE CROSS
CAPTAIN ROBERT KIRCH				
By Mr. Katz	827		988	
			1007	
By Mr. Freund	916			1003
				1010