

1 BEFORE THE ALPA ARBITRATION BOARD

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4 THE CREW MEMBERS OF :

5 US AIRWAYS :

6 Plaintiff, :

7 vs. :

8 THE CREW MEMBERS OF :

9 AMERICA WEST AIRLINES :

10 Defendant. :

11 - - - - -X

12

13 HEARING

14

15 GEORGE NICOLAU, Chairman

16 CAPTAIN STEVE GILLEN, Pilot Neutral

17 CAPTAIN JIM BRUCIA, Pilot Neutral

18

19 Washington, D. C.

20 Monday, December 4, 2006

21 REPORTED BY:

22 DONALD R. THACKER

1 Hearing before the ALPA Arbitration Board, on
2 Monday, December 4, 2006, in Washington, D.C. at the

3 Marri ott Wardman Park, 2660 Woodl ey Road, Northwest,
4 at 10:00 a.m. before DONALD R. THACKER, a Notary
5 Public wi thin and for the Di strict of Columbi a, when
6 were present on behal f of the respective parties:

7

8 DANIEL M. KATZ, ESQ.

9 JASON WHITEMAN, ESQ.

10 Katz & Ranzman

11 5028 Wi sconsi n Avenue, Northwest, Sui te 250

12 Washi ngton, D. C. 22036

13 On behal f of US Ai rways

14

15 JEFFREY R. FREUND, ESQ.

16 Bredhoff & Kai ser, PLLC

17 805 15th Street, Northwest, Sui te 1000

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19 On behal f of Ameri ca West Ai rlines

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1 P R O C E E D I N G S

2 CHAIRMAN NICOLAU: If we are all ready to
3 proceed, Iet me open the hearings, pursuant to the
4 ALPA regulati ons regarding seni ority i ntegrati on i n
5 the Matter of the Pi lots of US Ai rways and the
6 Pi lots of Ameri ca West, before a panel consi sting of
7 George Ni col au, Chai rman, Captai n Steve Gi llen and
8 Captai n Jim Bruci a representi ng each of the

9 contending forces.

10 I welcome all. I told the story to some
11 folks about one of the big ones that we did way back
12 when that Dan was involved in, in which the first
13 day there were 300 people the ballroom, anxious to
14 listen to what was going on, and I predicted that
15 the second day there would be three. And it was
16 about that number.

17 MR. KATZ: Yes.

18 CHAIRMAN NICOLAU: There are three or four
19 preliminary matters that I want to deal with this
20 morning, unless both of you have anything further to
21 say about them. There has been an exchange of
22 e-mails regarding a few America West pilots that

4

1 were on long-term medical leave, but still belonged
2 to the list, according to the America West side.

3 MR. FREUND: I don't think anybody has
4 taken a contrary position.

5 CHAIRMAN NICOLAU: I don't think so
6 either. I wanted to ask how many, because there was
7 some confusion in the e-mails as to whether there
8 was 13, 10 or 11, but in any he event if you don't
9 know that just make sure to agree on the names and
10 put them where they belong.

11 MR. FREUND: Actually they are on the
12 certified list.

13 CHAIRMAN NICOLAU: Any problem with that,
14 Dan?

15 MR. KATZ: No, I think that one of our
16 preliminary matters was we did want to see the May
17 19th, 2005 America West list, including those people
18 and including or excluding anybody else who had been
19 moved in or out, and we were still awaiting that.

20 MR. FREUND: I apologize for that. About
21 10:00 last night I remembered that we wanted to do
22 that and it was too late to put it together so you

5

1 will have it first thing in the morning.

2 MR. KATZ: Okay.

3 CHAIRMAN NICOLAU: There was also an
4 e-mail exchange regarding USAir's complaint, I guess
5 it was, that America West's position wasn't
6 sufficient, according to the ground rules.

7 I find it sufficient enough but I want to
8 make sure that the details be presented to the board
9 at some point before the last witness.

10 MR. FREUND: Absolutely, I can give you my
11 --

12 CHAIRMAN NICOLAU: We know what the
13 concept is, but obviously everybody including the
14 other side wants to see the details.

15 MR. FREUND: I wouldn't have it any other
16 way.

17 CHAIRMAN NICOLAU: And there was also a
18 request that, from America West, that the details of
19 the computer model which USAir was using in
20 mediation pay be provided to America West so that

21 they could be certain that all of the elements used
22 in the, assertedly used in the computer model were

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1 actually the elements, and so forth, that is
2 including the code and everything else that might be
3 needed to do that.

4 My view is that if the model is going to
5 be used all of those details should be turned over.
6 The parties should talk about what restrictions in
7 any that you want to make sure that America West is
8 bound by, and in treating the details of that model.

9 So at some point confer, and come back on
10 that because if those details and the ability of
11 America West's attempt the model and it were not
12 verified then it would be very difficult for the
13 board to put much weight in what that model shows.

14 The other item is one that is not decided
15 yet, that has to do with the CEL pilots, the board
16 is going to confer on that you know, thinks the
17 first time that the three of us have had a chance to
18 meet and there is some massive detail in that, so at
19 some point I doubt by this week because it is a
20 shortened week but I think by next week we will have
21 a decision on that score.

22 MR. FREUND: That is fine.

7

1 This is the massive detail, and in light
Page 5

2 of that I am going to just put this note back over
3 here.

4 CHAIRMAN NICOLAU: You know, I don't know
5 whether your folks have had a chance to go through
6 all of that yet, but --

7 MR. FREUND: Most of it is ours, as I
8 recall.

9 CHAIRMAN NICOLAU: It is, but I would like
10 to have the other board members thoroughly briefed
11 on that before it is decided.

12 So if there are no other preliminary
13 matters, I believe under the ground rules that US
14 Airways is to go first.

15 MR. KATZ: Thank you, George.

16 MR. FREUND: Why don't we talk about a
17 little, just a couple of things we talked about off
18 the record a moment ago, just so we them on the
19 record, in addition to the ground rule that we had
20 previously sent you, Dan and I or our respective
21 groups had agreed to an additional ground rule and
22 unhappily I didn't bring the draft of it with me,

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1 but it relates to the respective pilot groups,
2 merger committees ability to engage in ex parte
3 conversations with our respective pilot neutrals
4 during the course of the proceeding. And Dan, if
5 you --

6 MR. KATZ: I think I have it here.

7 MR. FREUND: If you have it that would be
Page 6

8 great.

9 CHAIRMAN NICOLAU: My recollection is I
10 said we didn't need to amend the ground rules,
11 but --

12 MR. FREUND: Yes, just put it on the
13 record.

14 MR. KATZ: Yes, here it is.
15 We actually have several agreements.

16 CHAIRMAN NICOLAU: You didn't tell me
17 about that.

18 MR. KATZ: Well, we have been working very
19 hard since you last saw us. This one says prior to,
20 during and subsequent to the hearings the merger
21 committee shall be free to engage in ex parte
22 communications with their respective pilot neutrals,

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1 notwithstanding such ex parte communications, the
2 arbitrator shall base his decision only on the facts
3 developed at the hearings on the record. Period,
4 over and out.

5 CHAIRMAN NICOLAU: I take it that is
6 agreed.

7 MR. FREUND: That is agreed to.

8 CHAIRMAN NICOLAU: Okay.

9 MR. FREUND: In addition I can't remember
10 if I said this before we went on the record. If I
11 did it will be on the record twice. If not it will
12 just be on it once. Dan and I also agreed that in
13 addition to the various folks who under the ground

14 rules are entitled to be present at these
15 proceedings that either group can have experts, if
16 it chooses, to be present to hear the testimony, or
17 any portion of the testimony, and as I noted we have
18 one here today.

19 CHAIRMAN NICOLAU: That was agreed to as
20 well, Dan.

21 MR. KATZ: Yes, it was.

22 Let me just mention the other agreements,

10

1 well copy them up so that the board will have the
2 official copies of them, I don't think we brought
3 copies enough today, but I will mention them, just
4 so to that we could agree on something more than
5 business casual attire.

6 The first one is actually from March
7 of 2006, and was signed by all of the merger
8 representatives and by Captain Woerth as well, and
9 basically deals with the process of certifying and
10 verifying the employment data and everyone agrees,
11 if I can paraphrase it, that that was done in a
12 satisfactory manner in accordance with the
13 requirements of ALPA merger policy.

14 MR. FREUND: That's right.

15 MR. KATZ: The letter of agreement was
16 also signed by both sets of merger representatives,
17 this one wasn't signed by Duane Woerth but I think
18 he wouldn't have any objection to it, it is dated
19 October 4, 2005, and I will just read the full text

20 of the letter of agreement. "America West and US
21 Airways pilot merger committees agree not to include
22 personal leave data in their respective certified

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1 lists and agree that personal leaves will have no
2 bearing in the seniority integration." That is the
3 end of that one.

4 MR. FREUND: Also correct.

5 MR. KATZ: We have four conditions and
6 restrictions that were worked out during the
7 mediation phase and signed by the representatives of
8 both committees and the arbitrator on October 20,
9 2006.

10 CHAIRMAN NICOLAU: Right.

11 MR. KATZ: We have an agreement, I don't
12 have a signed copy of it, but it relates to certain
13 profit sharing data, information about the profit
14 sharing plan that is not going to be admissible or
15 offered in evidence.

16 MR. FREUND: Correct. Did you not get a
17 signed copy of that from me, because I asked someone
18 to send it to you?

19 MR. KATZ: The copy I have got here is not
20 signed, but I think you may have sent me an e-mail
21 version of that I just haven't printed it out,
22 maybe.

12

1 If you print it out you could bring that
2 one in.

3 Then the other agreement is the ground
4 rules themselves which were finalized in the
5 mediation.

6 CHAIRMAN NICOLAU: Very good.

7 MR. FREUND: Then we had in addition just
8 one kind of scheduling discussion between Dan and
9 me; as you know we have got three days this week,
10 five days next week and then which adjourn until the
11 next year.

12 CHAIRMAN NICOLAU: 6th of January --

13 MR. FREUND: Eight of January, I think.

14 MR. KATZ: Right.

15 MR. FREUND: Dan is -- I don't want to --
16 you can correct me if I am misstating this, but Dan
17 is hoping to get his case in the 8th days that we
18 have scheduled over the course of this month, on the
19 off chance that he actually gets his case in less
20 than eight days during the course of this month,
21 nevertheless we won't start our case until we come
22 back in January.

13

1 CHAIRMAN NICOLAU: Okay.

2 MR. KATZ: It is sort of an axiom that
3 says that evidence always expands to fill the amount
4 of hearing time allotted for it. But, we do hope
5 that we'll finish our case-in-chief prior to the

6 eight days and in that event we have no objection to
7 the America West pilots waiting until next year to
8 put their case-in-chief on.

9 CHAIRMAN NICOLAU: I believe I advised you
10 both that Wednesday would be a relatively shorter
11 day.

12 MR. KATZ: Yes.

13 CHAIRMAN NICOLAU: Because I have to be in
14 Dallas for an airline that will remain nameless, and
15 so I have forgotten what I said, maybe, 4 o'clock or
16 something like that.

17 MR. FREUND: Whatever.

18 CHAIRMAN NICOLAU: We can deal with that.

19 MR. KATZ: Fine, we'll work around that.

20 I guess I have one scheduling issue, I
21 would like to start at 10:00 tomorrow, I have a
22 court appearance I have to make on the phone at

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1 9:30, but it should be over by 10:00.

2 CHAIRMAN NICOLAU: Very good.

3 MR. FREUND: That is fine.

4 I have some -- I am in the midst of some
5 ongoing negotiations in an entirely different
6 industry that may have to yank me out from time to
7 time over the course of this week, hopefully by the
8 end of this week they will be done.

9 MR. KATZ: That is fine, we will just go
10 on without you.

11 MR. FREUND: I thought you might say

12 something like that.

13 CHAIRMAN NICOLAU: That makes life a
14 little easier, doesn't it?

15 MR. KATZ: We'll beat that eight days.

16 CHAIRMAN NICOLAU: So let us begin.

17 MR. KATZ: Let me start by introducing the
18 people who are here with me today, my associate
19 Jason Whiteman is on my left, merger committee
20 Captain Bob Kirch, Philip Carey, and George -- in
21 between is Rick Salamat, who is our computer guru
22 and has been helping us with the case and will

15

1 continue to.

2 I do want to start by expressing my
3 appreciation to the panel for agreeing to serve in
4 this very important project.

5 CHAIRMAN NICOLAU: They are already having
6 misgivings.

7 MR. KATZ: We are hoping that they feel it
8 is too late to back out, it is a very important job
9 to the 7000 pilots who are involved in this case.

10 There are 5000 in '98 on the US Airways
11 certified seniority list from May 19, 2005, the day
12 the merger was announced, 1894 from America West,
13 and they have a lot at stake here, and we appreciate
14 your willingness to participate, and we know it is
15 not an easy task. There are literally thousands of
16 promotions that are going to be at stake here to the
17 pilots from these lists, promotions to wide body

18 international captain and promotions to narrow body
19 captain that are going to make a huge difference in
20 their careers and in their personal lives. And the
21 decisions that you make are going to determine their
22 ability to achieve those promotions, or the need for

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1 them to wait until later to get there.

2 So if added up all the money that was at
3 stake it would be a very large sum of money indeed
4 that is riding in the balance on this case.

5 And we entrust to your discretion to find
6 a fair and equitable way to do that. It is not an
7 easy task, I don't envy you for it, but it is
8 something that we appreciate your willingness to
9 take on.

10 It goes without saying that each case is
11 unique, in this area, and that each merger is
12 different, and so while there is some benefit one
13 can secure from the decisions of prior arbitrators
14 in prior mergers and even the decisions of prior
15 sets of merger representatives in the earlier
16 mergers, it will be up to you to tackle this in its
17 own unique terms.

18 One principle that I think has emerged and
19 is clear from what is going on in prior cases,
20 though, is that if the panel determines that future
21 promotional opportunities can be fairly meted out by
22 a date base list, that is the way to do it, that is

1 the preferred method.

2 If it can't be done fairly that way then
3 obviously it is necessary to look at imposing
4 conditions and restrictions to do part or all of the
5 list in a slotted fashion, with ratios, but we feel
6 that whatever the merger policy has said over the
7 years, the pilots and arbitrators have been drawn to
8 first examine whether the integration of lists can
9 be accomplished in a fair and equitable manner using
10 a date based methodology.

11 Here we feel that can be done, and that is
12 what we propose the arbitration panel should do. Is
13 to integrate the two seniority lists on the basis of
14 date of hire, adjusted for furlough time that any
15 pilot had through May 19, 2005, the date of the
16 announcement of the merger, subject to temporary
17 conditions and restrictions.

18 We submit that the pilots at these two
19 airlines will understand and accept the P merge list
20 that has been days had on the date of hire that has
21 been developed that way and that they will recognize
22 the fairness of that methodology for integrating the

1 separate list into one list. And we, therefore, ask
2 you that do it that way.

3 Part of the reason that we believe that is
4 that we submit that the two airlines involved in

5 this case are comparable airlines, and they are far
6 more comparable, for example, than northwest and
7 Republic were, when they merged starting in 1986.

8 There you had an international wide body
9 operation with northwest, and another airline that
10 while it operated some other airplanes was mainly
11 operating DC-9s domestically. The date of hire list
12 was used there but it was subjected to 20 years of
13 conditions and restrictions from 1986 through
14 January 1, 2006. And I understand that Northwest
15 representatives are still kicking about wanting to
16 extend the conditions even longer than that. So
17 there are some outside issues about that.

18 But that was a case where there were great
19 differences in the operations of the two carriers,
20 one was a wide body international carrier and one
21 was not. Here US Airways was operating 224 aircraft
22 on July 1, 2006. And America West I think the

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1 number is 135, well cover that in our evidence.

2 Of all of these aircraft in the fleets of
3 these two merging airlines, only 19 of them were
4 wide body international aircraft, the others were
5 737s, A320s and Boeing 757s.

6 Please note that I have shifted from
7 May 19th to July 1, 2006, we submit that is a fair
8 date, July 1, 2006, for the panel to use as a
9 starting point for analyzing what each pilot group
10 brought to the merger.

11 There are some complexities and tentacles
12 to that issue and well cover that in our case in
13 chief.

14 For example, US Airways operating Embraer
15 aircraft in its mid Atlantic division on May 19th,
16 2005 and the merged airline last returned and
17 resumed operating Embraer aircraft very recently,
18 but that will expand and be a significant part of
19 the merged airlines operations, the Embraer
20 operation, but for right now, I think, for purposes
21 of oversimplifying the issues from my opening
22 statement, I think it is fair to say that well focus

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1 on July 1, 2006, and there were 19 of the total of
2 350 nine care planes that were in operation at the
3 two companies on that date that were wide body
4 international aircraft flying across the Atlantic
5 ocean to 13 destinations, those 19 aircraft are
6 important, obviously.

7 But I just wanted to emphasize that this
8 shows how much more comparable these two airlines
9 are than Northwest and Republic, for example, were.
10 And from that stand point it is easier for the panel
11 to adopt weighted methodology and to do that in a
12 fair and equitable manner when temporary conditions
13 and restriction and conditions are imposed.

14 And I hasten to pose the question which
15 may be in your minds what about the fact that
16 American west started so much more recently than US

17 Airways did, US Airways began in 1939, America West
18 didn't start until 1983. So what about that.

19 Q And my answer is that the US Airways
20 merger committee submits that it works out
21 perfectly, that the fact that they began in 1983 and
22 when we examined the details of the two seniority

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1 lists the panel will see that the America West
2 pilots who started in 1983 are the very ones who
3 should be on the list exactly where their dates
4 would put them, because the pilots who are senior to
5 those pilots at US Airways are the very ones who can
6 now bid and hold wide body international Captaincies
7 on the 19 airplanes that are flying across the
8 Atlantic to these European destinations.

9 It is almost uncanny how perfectly it
10 works out.

11 I will remind the chairman that in the
12 Shuttle case the integrated Shuttle pilots, so that
13 they would be junior to the junior 757 captain's and
14 in this case, putting the senior America West pilots
15 in on their date of hire, puts them immediately
16 junior to the junior 767.

17 International captain's, so we think that
18 is another reason why the panel should put the list
19 together by date of hire to ensure that the US
20 Airways pilots continue to have access to these
21 premium jobs that were admittedly not in the horizon
22 for the America West pilots, they have admitted that

1 in their prehearing submission.

2 We think that it is important to respect
3 the time that pilots have devoted for working for
4 their pre merger carriers, that is the very basis
5 for integrating the list in that fashion. We think
6 it is important to respect the wide body
7 international flyers that US Airways alone brings to
8 the combined operations.

9 And we submit that the remainder of the
10 case really should be about the attrition of the
11 senior pilots from both lists. We want the list to
12 be put together in a way that allows each group to
13 enjoy the promotions that result from the attrition
14 of the senior pilots on the list ahead of them.

15 We think that it is unsound to project
16 either carrier growing, absent the merger, we think
17 it is unsound to analyze this carrier from the
18 standpoint of projected growth. We hope that it
19 grows, if there is a rising tide it is going to
20 float everybody's both and everyone will do better
21 and date waited lists will allocate promotions in a
22 fair manner, and it will make everybody's lives

1 easier.

2 But I think that from the standpoint of

3 attacking this as a tough case that it is, that it
4 makes sense to assume that there isn't going to be
5 growth and there wasn't going to be growth for
6 either of these two airlines unmerged, and so the
7 way people get promotions is through attrition.

8 And we would submit that attrition ought
9 to be reserved for each group based on whether it
10 came from their group or not. That is the only
11 guarantee of promotions that is around.

12 And what the evidence will show is that
13 virtually all of the attrition is coming from the US
14 Airways side. As far as the I can see for as many
15 years ahead as we can look at, more than 80 percent
16 of the anticipated attrition in each year is going
17 to be from the US Airways side, and that is what is
18 going to provide promotions to people on these
19 lists.

20 We sent you some charts that show that
21 with our prehearing statement. Obviously in real
22 life the age 60 charts are somewhat limited in terms

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1 of analysis because we know there is going to be
2 attrition from other sources. There are going to be
3 people who retire early, there are going to be
4 people who lose their license because of medical
5 disabilities, it happens every year. Unfortunately
6 there are pilots who die before reaching the age of
7 60, they leave the list, as do people who get fired
8 or who resign and walk away to another job.

9 All of these sources of attrition are
10 added to the normal age 60 attrition to see what is
11 going on, and we propose to analyze that attrition
12 in all forms in our case in chief, so that we can
13 see that at least 80 percent of the projected age 60
14 attrition is going to be added again to what happens
15 in the real world, and we will address that in
16 greater depth in our case in chief.

17 That is the way people are going to be
18 promoted, and in a date based list senior America
19 West pilots will ultimately inherit the list and
20 inherit the wide body international flying and the
21 narrow body captaincies that the departing pilots
22 leave behind, that is inevitable, we don't begrudge

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1 that to the junior pilots from America West, but it
2 is a fact of life, nonetheless, and I think the
3 panel should take that into account in allocating
4 future promotions over the very long period of time
5 that this list is going to govern these two pilot
6 groups.

7 We propose conditions and restriction that
8 would allow a transition period of seven years to
9 the operation of the date of hire list and well
10 explain in our evidence why we feel that is an
11 appropriate period of time to allocate the jobs,
12 using conditions and restrictions, rather than the
13 list.

14 The America West prehearing statement of

15 position focuses almost exclusively on their
16 contention that their airline was in better
17 condition financially than US Airways was, we submit
18 as an initial matter that such evidence and
19 arguments are totally irrelevant to the work before
20 you.

21 That argument is frequently made in these
22 cases, but the US Airways merger committee submits

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1 the pilot seniority integrations should focus
2 instead on the nuts and bolts of pilot employment.
3 Not on the financial condition of the employers.

4 Issues like pilots dates of hire, their
5 length of service, whether they have wide body
6 international jobs, other premium flying, what are
7 preferred domiciles, what is the projected
8 attrition, that is the stuff of which the pilot
9 seniority integration should be made.

10 We do not plan to have an economic expert
11 testimony, as part of our case in chief. We reserve
12 the right to bring one in on rebuttal but we do not
13 think it is an issue, in this case, and we do not
14 think it should concern the board.

15 We have no desire to bring in negatives
16 about America West and its operations or its
17 prospects absent the merger, both of these airlines
18 are here, they got here through different routes,
19 but they are here, the pilots are here, and they
20 have merged to make a better airline than either one

21 had before.

22 I am going to quote the CEO Doug Parker,

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1 as I did in the prehearing statement, where he said
2 we needed each other, those are the simple facts, we
3 are much stronger together than either was
4 individually and that is all there is to it.
5 Despite our reluctance to get into this issue well
6 need to respond to the main contention of the
7 America West merger committee to the effect that its
8 pilot employer was in better financial condition
9 than ours. We intend to dispose of that issue with
10 the minimum evidence necessary, and with that
11 accomplished we submit that the date of hire
12 proposal that we are offering the panel should be
13 accepted.

14 We appreciate your attention, and thank
15 you.

16 CHAIRMAN NICOLAU: I take it you are
17 reserving your opening statement.

18 MR. FREUND: No, no, I am absolutely ready
19 to give you an opening statement.

20 CHAIRMAN NICOLAU: Okay, Jeff, go ahead.

21 MR. FREUND: I want to thank the three of
22 you as well for what you are going to have to put up

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1 with over the course of the next couple of months,
Page 22

2 and I want to thank you on behalf of our crew as
3 well, I am going to introduce the folks from my
4 office, Roger Pollock is sitting to my right, Lisa
5 Powell with her leg up on the chair is sitting
6 behind me.

7 I am going to just tell you in advance
8 that the two of them are for different reasons are
9 going to be moving targets during the course of the
10 next couple of weeks of hearings, I am going to be
11 the one constant that you are going to see
12 unfortunately every day.

13 And I am going to ask my merger committee
14 just to introduce themselves down the side from this
15 side of the table.

16 MR. STRAVERS: Ken Stravers, to my right
17 is Captain Russ Payne and at the end of the table is
18 Captain Matt Packard. For those of you who are used
19 to seeing Kevin Horner, our first officer, right now
20 he is unable to make it for health reasons and we
21 are hoping to have him back in the proceedings in
22 the very near future.

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1 MR. FREUND: So with those introductions,
2 let me just dive right in.

3 I am not going to spend a lot of time in
4 the first instance talking to you about the
5 principals or standards that are applicable under
6 ALPA merger policy for the merger of two seniority
7 lists.

8 You all know them, Mr. Arbitrator, you in
 9 particular have had a great deal of experience,
 10 perhaps more than any other single arbitrator in
 11 this business. And we will have plenty of time in
 12 brief to write about those more if we think they are
 13 important.

14 But I do want to sort of start with kind
 15 of one fundamental principle which really
 16 amalgamates the entire approach to merger policy,
 17 and that fundamental principle is that a fair and
 18 equitable list has to preserve to the fullest extent
 19 possible the pre merger career expectations, the
 20 legitimate premerger career expectations of the
 21 respective pilot groups. I don't think there is
 22 anybody that would dispute that fundamental under

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1 pinning.

2 You know, there are probably 75 or more
 3 decisions that have been issued over the years
 4 merging pilot groups of different airlines, most of
 5 them under ALPA merger policy, some of them not
 6 under ALPA merger policy, but they all center around
 7 that fundamental principle.

8 Notwithstanding that, as you said in one
 9 of your decisions, each case turns on its own facts,
 10 and there are facts in this case that are unique to
 11 this case, and that we think are controlling in the
 12 case.

13 And I want to stop here for a moment, and
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14 jump right to the end of Dan's opening, and talk
15 about one of those sets of facts. And that is the
16 financial condition of the airlines.

17 Dan, I think, with all respect, is dead
18 wrong about what the cases show on that question.
19 There are numerous arbitration awards that talk
20 precisely about the financial condition of the
21 airlines, not in some abstract principle, not for
22 some theoretical approach to the problem, but

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1 because it goes back to the very first and
2 underlying principle of seniority integration and
3 that is what were the legitimate pre merger career
4 expectations of the respective pilot groups.

5 Even in the case of yours, Mr. Arbitrator,
6 that Dan cited in his opening position statement for
7 what he contended was the opposite proposition, that
8 is Flying Tiger or Fed-Ex, even after you said the
9 words that you said you then proceeded to actually
10 look at and take into account the relative strength
11 of the respective carriers in terms of deciding what
12 the legitimate pre merger career expectations were
13 of the pilot groups.

14 And, so I couldn't disagree with Dan any
15 more about the importance of that issue in this
16 case. And I want to say one more thing about that
17 particular issue in this case; this is not a case
18 about the fact that US Airways was in bankruptcy,
19 you know, looking around this room I don't think

20 there is a pilot from airline that is represented
21 right in this room that hasn't had its airline
22 either be in bankruptcy, come out of bankruptcy or

32

1 literally as we say to it today being in bankruptcy.
2 Being in bankruptcy is a fact of life in the airline
3 industry.

4 So we are not sitting here saying to you
5 that because US Airways was in bankruptcy, and by
6 the way I want to stop for a second before I finish
7 that sentence, the fact that US Airways was in
8 bankruptcy and in the financial condition it was in
9 is not the fault of our colleagues who sit across
10 the table from us, we are not blaming them for that
11 we are not saying they should be punished because
12 they drove US Airways into bankruptcy, that is not
13 the point.

14 The point is that -- and the point is not
15 that they were in bankruptcy. The point is that
16 they were a failed carrier. They were not a failing
17 carrier, they were a failed carrier. And that with
18 respect, makes the financial condition a critical
19 component of the case, because it defines in very
20 clear and unambiguous terms, we submit to you, the
21 legitimate career expectations of our colleagues.

22 This was not a company that was coming out

33

1 of -- that was going to be coming out of bankruptcy
2 and was going to be providing jobs for its pilots,
3 quite to the contrary.

4 So let's talk with the facts for a moment.
5 As I said, US Airways was a failed carrier as of
6 May 18th, the day before the merger announcement,
7 May 18th, 2005. You can trace that circumstance
8 back to the unsuccessful effort that US Airways had
9 in 2000 to merge with United. When that merger was
10 being considered, as we set out clearly in our
11 opening position statement, the then CEO of the
12 company Steven Wolf said in no uncertain terms that
13 if that transaction was not approved by the
14 Department of Justice, this was in the context of
15 the congressional hearings that had been called for
16 the purpose of evaluating that merger, if that
17 merger was not approved by the Department of Justice
18 US Airways had no other options available to it.

19 It could not become a low cost carrier no
20 matter how many bankruptcies it went through, and it
21 could not become a network carrier.

22 Mr. Wolf made it clear that absent

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1 approval of that merger the jobs that that company
2 provided to its employees and the service it
3 provided to its customers could not be sustained.

4 As we all know, for reasons only the
5 Department of Justice can explain to us, that merger

6 was not approved and it did not take place.

7 It wasn't long after the failure of that
8 merger that US Airways entered into its first
9 bankruptcy. The first bankruptcy was intended to
10 and would have transformed the company, it would
11 have transformed the company into a much smaller
12 main line carrier that was fundamentally original
13 jet regional jet operation, it was predicated on the
14 acquisition of literally hundreds of small and
15 larger regional jets, some of which were going to be
16 operated by the, what had formerly been the main
17 line many of which would be operated either by
18 wholly owned regional carriers or not wholly owned
19 regional carriers with whom the company had business
20 relations.

21 But that first bankruptcy was a hurried
22 bankruptcy, it did not achieve what it had intended

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1 to achieve, and again, harkening back to Steve
2 Wolf's observations in 2000, bankruptcies weren't
3 going to convert the carrier.

4 And so although it emerged from bankruptcy
5 not much longer, not much later after its emergence
6 it found itself in the second bankruptcy. When it
7 found itself in the second bankruptcy it lost its
8 financing for the entire packet of regional Jets
9 that was intended to form the basis of the company,
10 and it was heading nowhere fast.

11 At the time of the merger announcement it

12 had 26 days of cash available, and I might add that
13 as of the day of the closing it had five days of
14 cash available to it.

15 It found itself in that circumstance, that
16 cash circumstance notwithstanding the fact that it
17 had sold off a significant chunk of its assets to
18 East Shore, otherwise known as Republic, for
19 \$125 million. As we said in our opening statement,
20 we can all think back to the days of Pan Am when Pan
21 Am was busily selling off its real estate including
22 its building in Manhattan, we were involved in

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1 negotiations during that time, we remember it well,
2 I am sure everybody in this room remembers it well,
3 it was burning its furniture in order to keep heat,
4 and it didn't -- it didn't succeed, burning the
5 furniture never works, it didn't work in Pan Am and
6 it wasn't going to work here.

7 So notwithstanding the infusion of
8 \$125 million of cash as a result of that transaction
9 the cash situation that I described was in place.

10 During the course of bankruptcy two it
11 returned huge numbers of aircraft and had more
12 aircraft scheduled to be returned and when I say
13 returned, they were -- they were yanked, the company
14 hadn't hired a single pilot since the year 2000
15 notwithstanding retirement, notwithstanding the
16 attrition they had not hired a single pilot since
17 the year 2000, and a pilot's who had been hired as

18 far back as 2000 were on furlough. The early 2000
19 pilots were in on furlough.

20 Critically, US Airways had no plan of
21 reorganization, they had no plan of reorganization,
22 they had missed several dates for the filing of a

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1 plan of reorganization, and there was none there.
2 There was no viable plan of reorganization for US
3 Airways prior to the merger, and its only future,
4 absent this transaction was a controlled liquidation
5 of its assets.

6 America West was an entirely different
7 operation, and was in an entirely different position
8 as of May 18th, 2005.

9 In 1994 it had -- we will let me back up,
10 it began its operation in 1983, as Dan pointed out.
11 In 1994 it went through its own Chapter 11
12 reorganization, and came out of that reorganization
13 as a viable competitive low cost carrier. It was a
14 profitable airline as of the day prior to the
15 merger, it had on order, on firm order 22 A320
16 aircraft that were to be delivered through the year
17 2007, and in fact three of that order of 22 had
18 already been delivered and were flying on the
19 property.

20 The US Airways pilots will undoubtedly say
21 that things weren't quite that rosy, that there were
22 liquidity problems at America West, as a consequence

1 of the ATSB loans, I will say the following to you,
2 and the evidence will show without question we
3 believe that first, prior to the merger and prior to
4 the merger announcement, in statements to the
5 investor community which are statements regulated by
6 law, the company through Doug Parker said in very
7 plain terms I am not losing any sleep over liquidity
8 issues, there is plenty of financing out there
9 available and we have no question but that we will
10 be able to restructure our ATSB loans, I am not
11 losing any sleep over liquidity issues.

12 In contrast to US Airways on the day prior
13 to the merger, there were no America West pilots on
14 furlough, America West of course like every other
15 carrier in the country had if you are lows following
16 September 11th, but those if you are lows didn't
17 last very long. Most of them, as I look back onto
18 the list, most of them lasted a couple of months,
19 none of them lasted for longer than a year.
20 Everybody was recalled by September of 2002, and
21 following the recall of the last furloughed pilot,
22 9-11 furloughed pilot America West had hired some

1 360 additional pilots.

2 In short, the airline was a functioning,
3 viable, competitive company that provided secure
4 jobs for its pilots and that was slated to provide

5 promotional opportunities as a result of the
6 delivery of the remainder of that order of 22 A320s
7 that had been partially delivered prior to the
8 merger announcement.

9 Those are about as stark a set of airlines
10 as one could imagine, in this airline environment.
11 You had one airline that was growing and was stable
12 and one airline that was, again with respect to our
13 colleagues, was a failed business, failed carrier,
14 and did not offer the prospect of any career
15 enhancement, let alone career stability to its
16 employees. Not just its pilots but to its employees
17 as a whole.

18 So what are the consequences of the
19 merger.

20 Q Because I think that is something else
21 that has to be taken into account, when assessing
22 how these lists should be put together.

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1 First of all, let's not be deceived by the
2 fact that the name of the company is US Airways.
3 America West and, outside investors, acquired US
4 Airways, there is no two ways about that.

5 I think the best place to look to
6 understand what the consequences for the merger was
7 on the US Airways pilots is the words of US Airways
8 own CEO, Mr. Lakefield said, quoted it in our brief,
9 I am going to short quote, I am going to read it
10 again here, he said "there were times when we felt

11 we would not be able to stay in business for more
12 than a few weeks. But we did, and what we have now
13 is far more than we could have hoped for."

14 As we sit here today US Airways pilots are
15 being recalled to fly aircraft they couldn't
16 possibly have acquired without this transaction.

17 As we sit here today US Airways pilots are
18 on the verge of obtaining literally hundreds of
19 millions of dollars in economic benefit just from
20 coming to parity with the America West collective
21 bargaining agreement. And that is the case
22 notwithstanding the fact that the US Airways pilots

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1 collective bargaining agreement on a stand alone
2 basis, if you want to assume that they could have
3 stood alone, we don't assume it but if you want to
4 assume it for purposes of thinking about what I am
5 saying, the US Airways pilots collective bargaining
6 agreement was not amendable until 2010,
7 notwithstanding that, they will be the inheritors of
8 hundreds of millions of dollars of pay and benefit
9 increases as a consequence literally just of coming
10 to parity, putting to one side the question of what
11 additional increases may be negotiated as a
12 consequence of the merger. I am not making any
13 predictions obviously about what those negotiations
14 might produce, all I can say is that they are, the
15 parties are in negotiations and that proposing wage
16 increases over and above what it takes to bring the

17 US Airways pilots to parity.

18 The consequence to America West was really
19 exactly the opposite of the consequence, the
20 consequence to the America West pilots is the exact
21 opposite of the consequences to the US Airways
22 pilots.

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1 America West, notwithstanding that it was
2 slated to grow to 161 aircraft by the end of 2007,
3 as a consequence of the order of the 22 A320
4 aircraft stopped growing, and the promotional
5 opportunities that would have been there had those
6 aircraft been delivered as scheduled disappeared.

7 Additionally on the economic front, again
8 I am not going to try to predict what the America
9 West pilots would have been able to negotiate on
10 their own. The only thing I can say is, and I think
11 this really goes without saying, there are scarce
12 dollars that are available for bargaining over
13 wages, and it is going to take a huge number of
14 those dollars in order to bring the you US Airways
15 pilots to parity with the America West pilots and
16 the use of those scarce dollars to bring the US
17 Airways pilots to parity with the America West
18 pilots will mean just in the normal course of
19 things, we are all big boys and girls, we have all
20 been through these situations before, it will mean
21 nothing more and nothing less than the fact that
22 there will be less dollars available for wage

1 increases and benefit improvements for the America
2 West pilots than there would have been under
3 alternative scenarios.

4 Those are the facts, those are critical
5 facts, those are the facts on which we say and we
6 believe one has to base an assessment of what the
7 pre merger career expectations of the two pilots
8 were and what the consequences of the merger were
9 for the two pilot groups.

10 So with that we turn a moment to the
11 America West pilots methodology for integrating the
12 lists, and as we told you we would, there will come
13 a time when we'll spell this out in precise detail,
14 but for now let me just say simply that it is based
15 on the jobs that are associated with aircraft
16 planned at each carrier on a stand alone scenario.

17 Now there is obviously a caveat that I
18 have to add to that there is no stand alone scenario
19 for the US Airways pilots. You have to sort of
20 invent a stand alone scenario for the US Airways
21 pilots because US Airways couldn't stand alone. But
22 we have done that. We have accepted for purposes of

1 this proceeding that reality isn't reality and that
2 they could have stood alone and we are proposing to

3 integrate the working pilots, the working pilots of
4 the two airlines based on ratios that recognize that
5 the America West fleet was to have been 161 aircraft
6 by the end of 2007, with the requisite number of
7 additional pilots hired, and even though, as I said,
8 it is a myth to believe that US Airways would have
9 been a stand alone carrier absent the merger, it is
10 predicated on the notion that US Airways was at 236
11 aircraft as a director was to be at 236 aircraft as
12 a direct result of its financial condition, 236
13 aircraft at best, and was planned to head down to
14 211 aircraft to get to the merger.

15 Those are the fundamental linchpins of our
16 integration methodology, as a set of ratios that
17 take the working pilots, predicated on those --
18 that -- airlines of that size, and ratio them
19 together in an appropriate way.

20 In addition, as we have said, we do
21 recognize the fact that US Airways had wide body
22 aircraft that America West pilots, America West did

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1 not have and America West pilots did not have the
2 prospect of flying, we quarrel with the number 19.
3 Rather we focus our attention on the 9 A330s that US
4 Airways brought to the transaction, US Airways 767s
5 are the -- are in a single aircraft type under its
6 collective bargaining agreement witnesses 757s, and
7 as a consequence our proposal treats the 76 and the
8 75 as the same aircraft but it recognizes the nine

9 A330s as flying opportunities that the America West
10 pilots did not have and as flying opportunities that
11 had US Airways been able to stand alone would have
12 been available only to the US Airways pilots, and as
13 a consequence we have a condition and restriction
14 that protects captain vacancies in the A330 for a
15 period of time after the effective date of the
16 seniority list.

17 In addition we are proposing other
18 conditions and restriction which, most of which, in
19 fact I think all of which have been agreed to during
20 the course of mediation as well as the condition
21 conditions and restrictions related to the new 767s
22 and the new 190s which we attached to our position

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1 statement, and which by the parties agreement are to
2 be engrafted on any seniority list that this panel
3 establishes.

4 So with that I want to turn for a moment
5 to the you US Airways methodology, which as Dan
6 said, is the date of hire list adjusted for length
7 of service. I want to just say flat out that,
8 before I go any further that is a completely
9 unjustified and a completely unjustifiable
10 methodology. The only basis, the only basis that
11 the US Airways pilots have a certain had for the --
12 for a list constructed on that basis is that it has
13 worked well at US Airways in the past and that there
14 is a degree of attrition at US Airways and that the

15 US Airways pilots ought to get the benefit of their
16 own attrition.

17 Well, let's take the first one first. To
18 say that it has worked well at US Airways in the
19 past implies but doesn't quite say that the US
20 Airways list as we see it here today is in fact a
21 date of hire list. It is decidedly not a date of
22 hire list.

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1 As you know, at least as well as if not
2 better than anybody else, the most recent seniority
3 integration affecting US Airways was the Shuttle
4 integration, that was not a date of hire
5 integration, and insofar as the Shuttle pilots
6 placement on the list is concerned, they are not in
7 date of hire order and the list, once that happened
8 it was just simply not a date of hire list anymore.

9 But beyond that some of the pieces that
10 made up US Airways weren't date of hire as they were
11 getting put together, Piedmont-Empire which was not
12 in the recent past but is nevertheless part of the
13 company that we now know as US Airways, was not a
14 date of hire integration; if I am correct in my
15 memory, the Empire pilots were all put at the bottom
16 of the Piedmont list. Piedmont then ultimately
17 found itself integrated into US Airways.

18 Beyond that, beyond that I have got to
19 take issue with another one of Dan's statements
20 about kind of the fundamental way in which

21 arbitrators go about looking at putting seniority
22 lists together and that is his assertion that the

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1 first place one looks to, the first touch stone is
2 date of hire, and if a list can be put together on
3 the basis of date of hire then it ought to be put
4 together on date of hire.

5 With respect, I think if you look at the
6 cases, if you look at the entire body of cases, you
7 will not find that to be so but for the era under
8 ALPA merger policy when ALPA merger policy by its
9 terms expressly said that the arbitrators were to
10 first look at date of hire and if, but only if date
11 of hire coupled with conditions and restrictions
12 didn't work then the parties were to try to look for
13 other methods of interest integration.

14 Even in that era, I have to say, that if
15 you canvass the cases you will find that a
16 significant number of both decisions and agreements
17 were not date of hire lists.

18 So I think it is entirely incorrect to say
19 that that is the starting point. I don't think that
20 is any more the starting point than any other
21 particular methodology. I think the methodology has
22 to fit the facts. And the facts simply don't

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1 justify date of hire under these circumstances.

2 It is always tempting to quote back to an
3 arbitrator who is sitting in your case, words that
4 he wrote in an earlier decision, and I can't resist
5 the temptation, in this case, to quote to you your
6 words in Fed-Ex-Flying Tiger, and I think, I think
7 what you said was correct, and I mean no disrespect
8 when I say what you said wasn't all that profound, I
9 think it was just simply correct, and that is, and I
10 am going to quote you, "I have decided because of
11 the difference in the age of the carriers, the
12 disparity of hiring patterns, the differences in the
13 stability of the companies and the pre merger career
14 expectations of the two pilot groups as well as the
15 1981 Flying Tiger see board status and category
16 merger that it makes little sense to place emphasis
17 on date of hire as a determinant for such as
18 previously stated would unfairly advantage Flying
19 Tiger pilots."

20 Again I think you were absolutely correct
21 and you think you stated a proposition that just
22 follows logically from looking at the universe of

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1 different kinds of companies, different ages of
2 companies, different conditions of companies, when
3 you are trying to put two of them together.

4 Date of hire has no particular
5 significance, it has no meaning, when you are
6 dealing with companies that are significantly
7 different in the critical respects as they were, as

8 they are in this case.

9 So the second predicate for the US Airways
10 pilots position is that there is going to be
11 attrition on the US Airways side to a greater degree
12 than attrition on the America West side. I want to
13 say two things. First, as we showed you during the
14 course of mediation we think that the attrition that
15 the US Airways pilots point to is not in large
16 measure meaningful attrition since, and there will
17 be plenty of time to work through the facts on that
18 but significant amounts of there attrition would not
19 come from captain positions, but rather will come
20 from first officer positions, from folks who are
21 already out on long term disability, from basically
22 from positions that don't provide any growth

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1 opportunity, career growth opportunity for pilots.

2 So if attrition was meaningful and we
3 don't believe it is, then we don't think the facts
4 here would justify it. But, more to point, and
5 again, you will forgive me if I quote you, I won't
6 quote you back to you this time I will just remind
7 you of the, and Captain Brucia may actually remember
8 this as well, I will remind you about
9 Frontier-Continental, you were the arbitrator in
10 Frontier-Continental and I have the decision, I
11 won't quote it, but you made it plain that in
12 Frontier-Continental the Frontier pilots argument
13 that they ought to benefit from there, the attrition

14 that they were going to have which was greater
15 attrition than the continental pilots were
16 expecting, simply was of no moment in that case
17 because, given their condition, given the condition
18 of their company, they had no legitimate career
19 expectations to protect through attrition or
20 otherwise.

21 I want to spend a couple minutes and
22 literally only a couple of minutes on a couple of

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1 points about, I mean actual sort of statistical
2 points about the US Airways date of hire proposal,
3 and I want to be careful, I don't want to spend too
4 much time on it because I don't want you think that
5 we take it seriously, because we don't, with all due
6 respect, we don't take it seriously, but I would be
7 remember police if I didn't make a couple of
8 observations about what its effects would be. On a
9 date of hire adjustment for length of service
10 integrated list America West pilot with the most
11 bidding power at the company, the number one America
12 West pilot would be placed behind 998 US Airways
13 pilots, over a third of their entire working,
14 working pilot work force.

15 Another consequence of the date of hire
16 length of service integration would be that about
17 1500 working America West pilots would be integrated
18 among the 1700 furloughed and CEL US Airways pilots,
19 and indeed, there would be another 100 furloughed US

20 Airways pilots ahead of the America West pilots, on
21 a pure date of hire adjusted for length of service
22 integration.

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1 Accordingly only about 400 working America
2 West pilots would be integrated among the working US
3 Airways pilots, and to put it in stark terms, to
4 take the fundamental point that Dan was making, that
5 is that these cases are about promotional
6 opportunities, I want to hasten they are not only
7 about promotional opportunities, they are also about
8 risks of downsizing, but just staying on the
9 promotional opportunities side of the equation, on a
10 date of hire adjusted for length of service list US
11 Airways pilot No. 3760 has to be able to bid and
12 hold captain before the most senior America West
13 first officer could bid and hold captain. And I
14 want to observe, that US Airways pilot No. 3760 is
15 on furlough, he has been on furlough since November
16 of 2002, and he has 467 additional furloughed US
17 Airways pilots sitting ahead of him, all of whom
18 would be bidding to captain before the most senior
19 America West first officer.

20 To say that the US Airways position is
21 extreme is to put it mildly. Again, with respect,
22 it goes beyond, in our judgment, the unfortunate

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1 circumstances that we often find ourselves in
2 seniority integration cases where pilot groups on
3 one side or the other sometimes poet sides of the
4 table make extreme, take extreme positions in
5 arbitration in order try to have the brackets as far
6 apart as possible, and all that does is leave the
7 arbitrator and the panel struggling to figure out a
8 way to close the brackets.

9 We on our side could not have taken as
10 extreme a position as the US Airways position is.
11 The most extreme position we could have taken, of
12 course, would have been a proposal to staple the US
13 Airways pilots on the bottom of the list: We didn't
14 take that position, we don't take that position, had
15 we taken that position it wouldn't have been as
16 extreme as the US Airways pilots position in this
17 case. Indeed, as I observed, one of the component
18 parts of US Airways was a consequence of a staple of
19 two airlines together.

20 If there ever was a case where a panel
21 could legitimately look at putting one pilot group
22 entirely below pilot group this is it, but we don't

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1 propose that, that is not part of this case, we
2 understand that there is no rationale -- there is no
3 way no way a panel would do that, we are not asking
4 the panel to do that, I am saying this only to
5 observe that we have not engaged in the bracketing

6 game, we have made a proposal that we think is fair,
7 we have made a proposal we think is equitable, we
8 have made a proposal that we think balances fairly
9 the pre merger legitimate career expectations of
10 both pilot groups and we hope and expect that the
11 panel will adopt it.

12 Thank you.

13 CHAIRMAN NICOLAU: Thank you.

14 Shall we take a few minutes, Dan, before
15 you present your first witness?

16 MR. KATZ: Yes, let's do that, I could
17 respond, but I think this is going to go back and
18 forth if we continue these opening statements.

19 It definitely will never get to the
20 evidence in the case. When we get to the evidence I
21 think we will see how confused and mistaken opposing
22 counsel really is, but I think it might be good to

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1 take a five-minute break before we put our first
2 witness on.

3 CHAIRMAN NICOLAU: Before we break let me
4 remind you, if you are going to be keep citing me
5 and citing other cases, all three panel members
6 would like to have copies of those.

7 MR. FREUND: Absolutely.

8 CHAIRMAN NICOLAU: Some of us don't have
9 them except in archives.

10 MR. FREUND: We will provide a CD ROM of
11 all of the hearings that we are relying on.

12 CHAIRMAN NICOLAU: Okay, we will take a
13 break.

14 (11:21 a.m. -- recess -- 11:40 a.m.)

15 CHAIRMAN NICOLAU: Go ahead.

16 MR. FREUND: I said that the last witness,
17 the last of the 22 A320 aircraft orders would be
18 delivered by the end of 2007. The last of them were
19 to have been delivered by January of 2, 2007. That
20 is all.

21 CHAIRMAN NICOLAU: Okay.

22 Your witness again, Dan.

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1 MR. KATZ: His name is Dave Ciabattoni.

2 Whereupon,

3 DAVE CIABATTONI

4 was called as a witness and, having first been duly
5 sworn, was examined and testified as follows:

6 CHAIRMAN NICOLAU: I don't care what Dan
7 said, but would you mind spelling it for the record.

8 THE WITNESS: Sure, I will. It is CIA,
9 like the Central Intelligence Agency,
10 C-i-a-b-a-t-t-o-n-i, first name David.

11 MR. KATZ: I said it was spelled just like
12 it, sounded, though.

13 CHAIRMAN NICOLAU: Yes. Go ahead, Dan.

14 DIRECT EXAMINATION

15 BY MR. KATZ:

16 Q You have been sworn. What is your place
17 of residence?

18 A I currently live just outside of
19 Philadelphia in Wallingford, Pennsylvania about
20 15 minutes from the Philadelphia International
21 Airport.

22 Q Your employment?

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1 A I am a pilot for US Airways.

2 Q How long have you been employed as a pilot
3 for US Airways?

4 A Just over 20 years.

5 Q So you were hired in 1986?

6 A That is correct, October of 1986.

7 Q Were you hired at one of the predecessor
8 carriers of US Airways?

9 A I was, I was hired with Piedmont Airlines,
10 and quite a history before that, but yes, with
11 Piedmont Airlines.

12 Q Well, why don't, before we get into that
13 history of employment, would you tell the panel
14 about your background. Do you come from airline
15 family?

16 A Yes, I do. I was born into an airline
17 family from the early days. My mother was a
18 teletype operator for TWA and dad drove a crew car
19 and loaded cargo for TWA at Midway Airport, and that
20 is where they met. A little later on, my dad was an
21 airplane nut and ended up getting his flying
22 licenses and became a pilot for American Airlines.

1 And he spent 34 years with American.

2 I have four -- three brothers, there are
3 four boys, couple sisters; brother with Northwest
4 Airlines currently flying out of Minneapolis and my
5 oldest brother just retired last summer from Delta,
6 he was a prior Western pilot.

7 Let's see, a younger brother who does fly,
8 but is not employed in the industry, sister was a
9 flight attendant, my wife is a flight attendant for
10 Delta, and she might, I might finally be able to
11 boss her around if we get to fly together someday.
12 She was prior Western.

13 So, my godfather was a United pilot out of
14 Chicago. I was born and raised in the Chicago area.
15 So, yes, quite a history, covers a lot of airlines.

16 Q Do you ever get to see each other?

17 A Well, with the working conditions it has
18 been less, in recent years, so --

19 Q And do you have any role in the activities
20 of the Air Line Pilots Association?

21 A Yes, I do. I am currently the first
22 officer rep in Philadelphia, Council 41, been doing

1 that. Prior to that I was a legislative affairs and
2 did that for a couple of years, or year and a half,
3 during the pension restoration attempt, and prior to
4 that strike prep committee and family awareness so I

5 have been involved in the association for awhile.

6 Q When were you first elected as a member of
7 the US Airways Master Executive Council?

8 A In April of '05.

9 Q You have served on the council straight
10 through since then?

11 A Yes, that is correct.

12 Q What about your airline employment, would
13 you describe that from the start, please?

14 A We have a hangar, my dad has a hangar out
15 in California and each boy has his plates of who
16 they worked for, and I have got to say mine is so
17 long, I started out with the commuter airlines in
18 Omaha, Nebraska and flying across the Midwest.

19 From there went to Pioneer, was an ALPA
20 commuter based in Denver. From there I got a short
21 stint with SkyWest, it was actually Sun Air at the
22 time, merged into SkyWest. And then I got called

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1 right back to Denver to work for the old Frontier
2 Airlines, and after Frontier, at the end of Frontier
3 I was there for the shutdown of Frontier.

4 I got home from a simulator event out in
5 Long Beach and there was a letter from Piedmont
6 Airlines in my mail box, so I was pretty fortunate
7 there. I rolled into Piedmont and have been here
8 ever since.

9 So, I think I have covered them all.

10 Q All right. When you started with Piedmont
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11 I assume you started at the bottom of the job
12 ladder, would you describe your career progression
13 please with Piedmont and US Airways?

14 A Well, I got hired at Piedmont things were
15 moving fast, I had a little different perspective, I
16 was young, I was 27 years old I think at the time,
17 and Piedmont was a progressive airline, great
18 airline to work for and they were doing a lot of
19 hiring, and things looked really good, and exciting,
20 and it went well, it started to slow down maybe
21 after a year and a half of being with Piedmont, I
22 flew a -- started on a 727 as a flight engineer,

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1 went to the right seat after a year and lived close
2 by Charlotte, North Carolina, and then the merger
3 happened and things started to slow down after the
4 merger was announced.

5 There was about a two-year period where
6 you know, Piedmont and the planning phase went on to
7 merge the airlines and things just kind of slowed
8 down a little bit. And shortly after the merger
9 with US Airways I took a bid out west, out to
10 Los Angeles, simply because my wife and I could be
11 co-domiciled for once in our lives, and so we went
12 to the West Coast to LA.

13 Q What were you flying in LA?

14 A I went from the 72 to the 737 out in LA.

15 Q As a co-pilot?

16 A As a co-pilot. That was a good run. That

17 was 1990 and it was interesting because when I went
18 to Los Angeles, right after the merger Los Angeles
19 grew, the base actually doubled in size, and my
20 seniority, I mean, my relative seniority in the base
21 was better than what back on the 727 in Charlotte.
22 So it was a good run.

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1 Shortly after maybe a couple years, the
2 West Coast started to downsize, San Diego closed and
3 that started to go the other way once again, and --

4 Q What job did you hold after your 737 first
5 officer in LA?

6 A In '97 the base closed and I took a bid to
7 Philadelphia and I commuted, and I stayed on the 737
8 for commuting purposes in Philadelphia until my wife
9 decided it was time to move because I was not home
10 too much.

11 Q And at that time you moved the family from
12 Los Angeles to Philadelphia?

13 A That is correct. 1999 moved the whole
14 family, four kids and great school district and we
15 decided to make the move, and I took a captain's bid
16 since I was going to be in base.

17 Q You started flying as a 737 captain in
18 '99?

19 A That is correct.

20 Q How long did that continue?

21 A That was right exactly three years on the
22 captain, on the 737 as a captain, until May of 2002.

1 Q And US Airways was contracting at that
2 point in time?

3 A Yes, it was after 9-11 of course, and
4 things started to contract, and go the wrong
5 direction, you know. I remember, you know,
6 Washington, DC situation with this base being or
7 this operation being shut down for an extended
8 period of time, it took its toll on the USAir
9 operation and things started to go, you know, the
10 other direction, and so I took a bid onto the 757
11 from the 737 captain's seat on the right seat of the
12 757.

13 Q All right, and I assume that was mostly
14 domestic flying?

15 A Initially it was domestic flying, and then
16 I think about a year after I took that bid, I did
17 bid international, I held a 76 international bid out
18 of Philadelphia.

19 Q And how long did you fly as a 767
20 international first officer?

21 A There were some down bids in there. Off
22 and on I think I was a year in the right seat

1 international, got bounced for six weeks and went to
2 the little bus, Airbus and was trained and typed on

3 that and immediately held the 76 international bid
4 back so I went back to the 76 for another year and a
5 half until last March, or in March, of '06.

6 Q What are you flying now?

7 A The Airbus 330 international.

8 Q All right, how do you like that?

9 A Well, it is the queen of the fleet and it
10 is, you know, we call it "land of the giants" there
11 in Philadelphia. It is great duty, it is an easy
12 schedule. You fly one leg over to Europe, one leg
13 back, the working conditions are great, it almost
14 all the flying except for a day trip to San Juan is
15 three man crew, and you have an IR0 position, so
16 duty time is great, going to Europe we have Rome,
17 Frankfurt, some great destinations, Munich, Madrid,
18 it is good duty, it is what everyone is striving
19 for, and I enjoy it.

20 Q What is a typical monthly schedule for
21 your flying now?

22 A Well, the longer destination trips like

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1 Rome and Frankfurt you can do four a month and maybe
2 a San Juan turn mixed into your line or maybe two
3 San Juan turns mixed into your line. So you are
4 working four European trips and one San Juan trip.

5 If you get Manchester or London they pay a
6 little bit less, you might have to do five trips,
7 but we have flexibility. You can get on the bid
8 sheet and try to pick up your favorite destinations

9 over there.

10 Q And for a trip to Rome for example, you
11 fly over and then you have a day in Rome and then
12 you fly back?

13 A That is correct. Everything leaves
14 Philadelphia in the evening, 6:00, 7:00, 8:00 and
15 you arrive in Rome on your clock somewhere around
16 1:00 or 2:00 in the morning, and by the time you get
17 to the hotel you hit the sack, and you get about
18 four or five hours sleep and then you have the whole
19 day to wander around Rome and find some pasta and
20 return for a sleep before you get up and come back
21 to Philadelphia.

22 You are only gone away from home for about

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1 48 to 50 hours, and this year the international
2 departures were moved up, at the hour of the day, so
3 it is not -- it used to be like red eye flying but
4 now it is much easier on the body because you land
5 go over there at, you know, 2:00, 3:00, first it was
6 landing at 6:00 on your clock or 7:00 in the
7 morning. So, it is good duty, it is very enjoyable.
8 They feed you, so --

9 Q Have you done red-eye flying before in
10 your airline career?

11 A Oh, yes, often, in different places, when
12 I was based in Charlotte was the toughest, I was the
13 youngest, but it was tougher flying for me flying
14 from Charlotte to the West Coast, and we had some

15 trips that you would go out in the morning, have
16 12 hours and have to return that night, and you were
17 flying all night, and landing on your clock at 7:00
18 or 8:00 in the morning looking at the sun.

19 When I lived in LA it was much easier
20 flying the red-eyes because you just get a nap at
21 home and hit the red-eye, you know, you would be
22 landing in, we had Indianapolis was the favorite

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1 because you would be in bed by 1:00 on your clock
2 and the sun wasn't up, a lot easier on the body.
3 The European flying is more like that. You are
4 getting over there at a decent time of day.

5 Q So you are saying it is easier on the body
6 clock to fly west to east at night; is that correct?

7 A That is correct, especially if you are
8 domiciled in that west end, your body clock and your
9 clock, your watch, you are not -- it is not an all
10 night event for you, it is just a late night event
11 for you. Makes a big difference.

12 Q You said that sometimes you have to fill
13 out say four trips to Rome with a San Juan trip what
14 is that --

15 A San Juan trip is really a desirable 9:00
16 departure out of Philadelphia and a return at 6:30,
17 so it is a day trip, two man crew it is right at 8
18 hours a day, I think it is clocked at 7:53. And it
19 is a great filler trip and for me living in base, it
20 is just a great filler, and it is easily done.

21 Q And the 767 flying, you did that to Europe
22 as well?

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1 A Yes, the 76 actually has more European
2 destinations than the 330 does. Just the mere fact
3 that we have more of them, and some of the
4 destinations are actually, you know, more desirable,
5 Barcelona, I can think of and now they are going to
6 Venice and Milan and some spots that the airplane
7 didn't go to when I was on it.

8 So there is a great variety on the 76 of
9 European destinations, and it is equally a very
10 sought after position.

11 Q So is it your view that the international
12 flying, whether it is 76 or A330 go senior?

13 A Absolutely.

14 Q You told me yesterday when we were talking
15 about the hearing, about some recurrent training you
16 had at Piedmont in the spring of 1988. Would you
17 share that story with the arbitration panel, please?

18 A Yes, it was -- we were going through a
19 recurrent training and it was right before the
20 arbitration hearings for the Piedmont and USAir
21 merger, and I was surrounded by a Braniff captain
22 and another first officer and another captain and

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1 they were all, we were discussing our strategy and
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2 what our merger committee was going to do and this
3 and how they were adamant that we were going to
4 prevail because it was the fairest and most
5 equitable process, which we were promoting a
6 slotting process, because we were just a little bit
7 junior or younger than the US Airways pilots.

8 And I sat there and I was listening to it
9 and being the perspective that I have, and maybe the
10 history from my dad being in the industry and what
11 happened at Frontier, I sat there and I listened for
12 a while and finally, I think I upset a few of them,
13 because I said, do you think they are having a
14 recurrent class over at USAir in Pittsburgh today
15 and they kind of looked at me and said, I don't
16 know, I said well, you think they are all sitting
17 around saying that it has got to go date of hire,
18 that is the only fair and most equitable way and
19 they will actually -- one of them took offense and I
20 said, well, I am not saying that I don't want our
21 integration, but just because you perceive that is
22 fair and equitable, there is another opposing side,

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1 and you know, the date of hire is something that is
2 understandable, by everyone in this industry, and it
3 is a number that we all get and we live by.

4 So they, you know -- I am not sure they
5 appreciated my comments, but it was what it was.

6 Q That was your view at that time?

7 A Yes.

8 Q And is it your view still?

9 A It is. It is.

10 Q What about the pilots you represent, do
11 you have an approximate number of the people you
12 represent as the co-pilot rep from Philly?

13 A Well, Philadelphia we have a little over a
14 thousand pilots based in Philadelphia, of that I any
15 the last roster of pilots in good standing that I
16 vote, in fact that I voted at the board of directors
17 meeting for our new ALPA national president was 506
18 in good standing that I vote for.

19 Q Do you stay in communication with these
20 506 pilots you represent?

21 A We try our best, we have a fast read
22 program and I have a phone number that is on every

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1 one of those fast reads that they can call, e-mail
2 today, I average 34 to 40 e-mails a day, and about
3 six to eight calls a day. On the average.

4 Q And what is the view of your constituents
5 about the fairest way to put these seniorities
6 together?

7 A Well, the first thing I hear from the
8 pilots that call me, and I do get calls from
9 captains and I do get calls in from furloughed
10 pilots because a lot of pilots were furloughed out
11 of Philadelphia. The first statement I get is they
12 remind me that they were captains at one time and
13 that there is a great sacrifice that has been paid

14 by those pilots and where they are now.

15 The second issue they usually talk about
16 is their age, and the fact that they have very
17 little time to recover going forward, just the mere
18 fact of how old we are at this time.

19 Think also seem to realize, they feel,
20 they understand that this industry cycles and that
21 they feel that we have we are on the verge of an
22 upswing and that naturally they are in the position

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1 where they were going to be advantaged by this
2 upswing in the industry, and that if we don't see a
3 date of hire integration they cannot, the negative
4 impact on their career is something they don't think
5 they will be able to recover from, and they are very
6 concerned about it.

7 So they expressed to me, you know, do what
8 ever I can to ride roughshod on our merger committee
9 and, you know, impress on them how important this
10 is. And like I say, I hear it from captains also
11 and furloughed pilots, and quite a bit of
12 correspondence over the last year.

13 Q Are they aware that the America West
14 pilots are proposing to integrate by ratio?

15 A Yes, most of them have understand that
16 that is their position.

17 Q And does their age relate to their
18 objections to that methodology?

19 A Absolutely.

20 Q In what way?

21 A Well, if there was integration that was
22 other than date of hire, there is almost a double

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1 penalty that is applied to an older pilot.

2 Q Would you explain that please?

3 A Well, if the -- if a vacancy happens that
4 was based on date of hire and that doesn't come to
5 that person, it goes to another pilot from a
6 slotting integration, the problem is that they just
7 missed that, that is the penalty number one, they
8 missed that slot that should have been theirs by
9 date of hire.

10 The second problem is with a younger pilot
11 group you have a younger pilot now that is taking
12 that position therefore, there won't be an attrition
13 of that individual for that pilot to move into. So
14 you end up with a situation that overtime gets
15 worse, because the younger pilots will block any,
16 you know, more and more movement for these people to
17 attain their expectations.

18 Q So, the USAir pilots in this situation
19 wouldn't get the benefit of the attrition of the
20 older USAir pilots senior to them?

21 A That is correct.

22 Q And they would be blocked by the younger

75

1 America West pilots who get into those jobs?

2 A That is correct.

3 Q We have a collection of exhibits, if you
4 would like to we would like to distribute the first
5 volume, Volume A of our exhibits at this time.

6 MR. FREUND: While that is being
7 distributed let me just observe that Dan has been
8 asking lots of leading questions. I don't have any
9 objection to leading questions, when they are in
10 nonsensitive areas. I just don't want my silence in
11 face of leading questions to suggest that I am
12 always going to be silent when there are leading
13 questions.

14 CHAIRMAN NICOLAU: You haven't objected.

15 MR. FREUND: I do now, I guess.

16 CHAIRMAN NICOLAU: Okay.

17 BY MR. KATZ:

18 Q What is the first exhibit in this volume
19 of materials?

20 A No. 1 is 50 Years Flying High.

21 Q Was this prepared by the company for its
22 50th anniversary?

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1 A That is correct. It is dated May 1989, at
2 that time the US Airways was celebrating its 50th
3 birthday which would make it about what, 67 years
4 old now.

5 Q So this was 1989?

6 A 1989.

7 Q And about 17, plus 17 is 67?

8 MR. FREUND: I am sorry, can we just take
9 a time out?

10 I just want to make sure we have got
11 enough books on our side.

12 (Discussion off the record.)

13 BY MR. KATZ:

14 Q As the cover on this Exhibit 1 or A-1
15 there is a picture of an airplane. Could you
16 describe what is going on there, what kind of
17 airplane this is?

18 A It is a great story by the way, this will
19 be the best part of this whole, the whole -- all the
20 exhibits because for pilots anyway, it is the most
21 interesting it is the history about old airplanes
22 and some really neat things that are our history has

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1 done for this industry, but this US Airways which
2 was really started out as All American Airways,
3 sorry, All American Aviation, 1939, was very unique,
4 they bid mail. They were mail operations and this
5 is a Stinson, Gullwing Stinson, SR 9, picture of one
6 picking up a mail bag.

7 The founder, du Pont, you know, came up
8 with this idea of mail service, without having to
9 land the airplane, and it would drop a bag, pick up
10 a bag at the same time. There was a winch, bungees
11 on the line, and they would winch in the bag into

12 the cockpit and go on to the next stop.

13 So it was kind of a -- the Piedmont pilots
14 like to say it was the last original idea that US
15 Airways had, but that isn't true. That is not true.

16 But it was a neat thing, and I have a
17 little bit of a fond connection to this, because my
18 dad currently has and flies an SR 7 Stinson, same
19 airplane. And it was in the garage for 12 years, we
20 restored it, when I was in college, college years.
21 So in fact, the wings that he had to put on it were
22 SR 9 wings, so they could have been the wings off of

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1 one of these 5 Stinson Reliants that US Airways
2 started with.

3 Q They just slow and the hook grabs the mail
4 bag --

5 A And there was a winch. They had 3 pilots,
6 they had 2 pilots and a mechanic who would maintain
7 the airplanes, and he was back there winching in the
8 mail bags. And if you read the story it is pretty
9 interesting. A couple Thanksgivings they put a
10 couple turkey dinners in the mail bags and sent them
11 up for the guys when they picked them up.

12 So it is a great story. And I think it
13 shows the tenacity of the founder and the pilots,
14 because the pilots were integral in this operation.
15 In fact, in Pittsburgh in the training, simulator,
16 and now it may be in Charlotte, they used to have
17 pictures, they actually picked up a pilot doing

18 this. And the founder went off to the war and he
19 was a great glider pilot and tried to set up the
20 winches to actually pick up the gliders and operate
21 that for the war effort.

22 But they had experimented with picking up

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1 troops with pilots, and one of the founding, USAir
2 pilots, volunteered for the duty and they have
3 pictures of him at the training center all curled up
4 in the fetal position with the goggles, and they
5 yanked him off and it worked, but the military never
6 took the opportunity.

7 Q I wonder why?

8 A That would be one hell of a reserve duty
9 to have to get called out to do.

10 So yes, you know, it is very interesting.
11 And I think another thing that is unique is Piedmont
12 or slightly after USAir at the time,
13 interestingly enough, was a Stinson dealer and was
14 training --

15 Q So they had Stinson Reliants?

16 A Yes, and they were a Piper-Stinson dealer
17 and the two airlines kind of mirrored each other
18 through the history.

19 Q Then there is a page where they have the
20 old route system and there is a picture of, is that
21 National Airport?

22 A Yes. They kind of bounced around. They

1 were -- in fact the early testing of the mail drops
2 was right in the town Coatesville, Pennsylvania
3 which I live about 10 minutes away. And the first
4 drop of the mail bag they missed the mark and it
5 landed in a junkyard, automobile junkyard. The next
6 two they hit the mark and they picked the bags up,
7 but, you know, the post office was watching this
8 operation and funding it, and moving it forward,
9 but, yes, it -- all the time, you know, the
10 management was looking at getting its certificate to
11 carry people and that took about 10 years until they
12 got the certificate and converted into an airline
13 with DC 3's.

14 And they moved around from Washington
15 National, they were out of Wilmington, Delaware to
16 start with, and went over to hangar 12 here at
17 National when they started carrying passengers.

18 And it is pretty interesting, you know,
19 you hear about Southwest and how original they are.
20 If you read this you read a little bit about Lake
21 Central and they were, the airline with a heart, I
22 think it was and we talk about love, and then they

1 talked about Allegheny running between Pittsburgh
2 and Philadelphia as a low cost, no frills carrier
3 back in the '50s and somehow, you know, we all think
4 that Southwest coined that operation. But Allegheny

5 was doing it between Pitt and Philly, and now, you
6 know, Southwest is in there trying to compete with
7 that.

8 But it was done before. Lake Central or
9 Mohawk, one of them, I think it was Lake Central,
10 actually collected tickets on board and Southwest
11 has attempted that, and PSA did that.

12 Q It was like a Shuttle?

13 A It was like a shuttle and you could buy
14 the ticket after you were on the airplane. So there
15 was a lot of innovation in all of these airlines.

16 Q There is also a reference to Mohawk
17 Airlines?

18 A Correct.

19 Q What were they operating?

20 A They were upstate New York, and in this
21 era in the '50s, there was from my understanding is
22 that, you know, a lot of local service airlines, and

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1 it was might maybe have a similarity to today, that
2 they were either going to have to join forces to
3 become something bigger, as, you know, the funding
4 from the government, from the CAB would go away they
5 would have to join forces. Allegheny took Lake
6 Central and then went to Mohawk and kept building,
7 but all the airlines were unique and fairly
8 successful in their own right.

9 Q There is a picture, there is some, on the
10 right-hand side of the page there is a bar on Empire

11 Airlines and the procurement of an Empire aircraft.

12 Can you tell us what kind of an aircraft that is?

13 A An F-28 and I came on Piedmont right after
14 the Empire integration, just a few months after that
15 integration, but Empire became, actually that was
16 Piedmont's side of the operation, Empire and
17 Piedmont merged.

18 Q That was before the combination with US
19 Airways?

20 A That is correct. So they allude to that
21 history I think in here because in 1989 Piedmont was
22 part of US Airways. So they were giving some of the

83

1 background there.

2 Q Okay, and then there is some stuff on PSA
3 this picture of the flight attendant in hot pants?

4 A Yes, I got to know a lot of the PSA folks
5 when I went to Los Angeles and flew out there for
6 the 7 years, and they were great people, and still
7 are. They are still on the property, very unique
8 airline, very proud, had a lot of fun. It was
9 really, you know, the smile says it all, on the PSA
10 airplane.

11 Q All right and then there is a section on
12 Piedmont Airlines, and that has similar history to
13 USAir, I take it?

14 A Yes, very, very much so. They were
15 probably the two most successful, you know, local
16 service airlines that, you know, they both opposed

17 deregulation and yet they both succeeded and
18 prospered after deregulation. I think, this reminds
19 me of 1987, my dad retired from American, I remember
20 they were going through a contract survey and he
21 showed me what American's union had put out about
22 the highest yielding airlines in the industry, and

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1 number 1 and 2 was US Airways and Piedmont.

2 And the wages corresponded with those
3 yields, and it was, I mean my best description of
4 Piedmont Airlines, the day I showed up for class,
5 every other training event, every other airline
6 event I had had, when we came to the class they had
7 a name you had to write your own name and fold it
8 and put it in front of you.

9 When I showed up at Piedmont my name was
10 already written and put on the desk and there was a
11 stack of travel passes, all the glossies of the
12 airplane, and when I sat down I kicked something
13 under the desk, and I looked and there was a flight
14 case, and I thought man, they want me. They want me
15 to come to work here.

16 So it was great. They grabbed you right
17 at the beginning and you were a dedicated employee
18 to Piedmont Airlines. They treated us very well.

19 Q We commend this whole article and
20 anniversary issue in the beginning to the panel for
21 reading.

22 We will move ahead to Exhibit 2. Perhaps

1 you could tell us what this document is?

2 A This is Allegheny-Lake Central merger, and
3 it is -- the only thing really interesting here, is
4 it was a date of hire integration with some
5 restrictions. It was fairly successful. I was able
6 to fly with a few of the Lake Central pilots, they
7 were based out of Indianapolis and it worked well in
8 the, after the merger. The pilots, there is always
9 a little bit of squabbling and, you know, pilots are
10 pretty notorious at whining. An FO rep hears it
11 quite often, but in the long haul it worked pretty
12 well for the company, and it was a date of hire
13 integration. And it talked to that, the fact that
14 it is fairly short, it went off fairly well.

15 Q What about Exhibit 3?

16 A Exhibit 3 is once again the same,
17 Allegheny-Mohawk.

18 Q This is the seniority integration
19 agreement?

20 A Same thing. It was once again another
21 date of hire integration. There was I believe in
22 this one there was some adjustment for furlough

1 time, to the pilots.

2 I just had the pleasure of flying with the

3 last Hawker, we called them. They called them the
4 Hawkers.

5 Q The Mohawk pilots?

6 A Mohawk pilot, I flew to Rome with him in,
7 I think it was June or July, and he had about 2
8 months to go and so he brought me up to speed a
9 little bit on Mohawk and he was, I think in this
10 furloughed group or right around that furlough
11 group, and he was very happy with his career.

12 He was from Iceland. He had very positive
13 things to say about US Airways and the Allegheny
14 days, and he was looking forward to retirement. He
15 was planning some flying maybe over in Europe and
16 going back to Iceland.

17 But he was a great guy, and he was the
18 last Hawker. But he once again, it was a fairly
19 successful integration, and it worked well for
20 Allegheny.

21 Q All right. Exhibit 4, please. This is
22 the agreement between ALPA and Piedmont Aviation,

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1 Inc. Integrating the Empire pilots, will you
2 describe what happened there?

3 A Well, I heard some of the opening
4 statements today and I came in right after this
5 integration at Piedmont Airlines, and I am not, I
6 mean my -- I think there was a lot of misconceptions
7 about stapling and putting the Empire pilots on the
8 bottom of the list.

9 From I think the best way to look at this
10 integration is to say that it was a date of hire
11 integration. The only time date of hire did not
12 play into the integration with the Empire pilots was
13 when they left the F-28 aircraft, but for benefits,
14 and for furloughs, for anything else, they went back
15 to their Empire date of hire and that, you know.

16 So if they stayed on the F-28 and at
17 Syracuse they had a date of hire, their pay.
18 Another remarkable thing is the fact that Piedmont
19 immediately made them whole on their retirement. I
20 think it says in here it was \$2.2 million. They
21 didn't have a pension plan, they didn't even have
22 representation, with the association, so it is a

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1 misconception out there that it was a staple job.
2 And I think --

3 Q Let me just ask a question. If the Empire
4 pilots under this agreement flew the F-28 in
5 Syracuse or elsewhere, because Piedmont also had
6 F-28s?

7 A Uh-huh.

8 Q What was there seniority date for that
9 fly?

10 A It was date of hire.

11 Q It was there Empire date of hire?

12 A Empire date of hire, yes, for that
13 airplane.

14 Q And that is for all purposes for the F 28?

15 A That is correct.

16 Q And then if they were on the Boeing
17 airplane?

18 A Then they received a date of the actual, I
19 believe it was the integration -- January 1st, 1986.

20 Q So that is when they became Piedmont
21 employees, date of hire with Piedmont?

22 A Right, that is correct. And for the FO,

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1 there was such a large amounts of hiring, in fact
2 me, and coming in right behind these guys, and
3 Piedmont was putting through classes of 24 to 32
4 pilots just about every month, so they immediately
5 found themselves in a position that they had a large
6 number of, Piedmont hired through all the way
7 through 1989, I believe, and so they had a lot of
8 pilots put behind them on the list, so from the FO
9 side it was, you know, not much consternation, maybe
10 a little bit from the captain's, if they, you know,
11 found themselves in a Boeing and wanted to go to the
12 Boeing or move out of Syracuse, there was some --

13 Q And on page numbered 11 where it has
14 furlough, furloughs were determined by the Empire
15 date of hire?

16 A Yes. Like I said, I think that the
17 stapling process is a misconception. Seniority, it
18 says right there seniority for the purpose of
19 determining the order of furlough shall be date of
20 hire seniority as defined in Section 2 definition of

21 the letter agreement, if you go back there you will
22 look into that it was they were using their original

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1 Empire date of hire for if you are lows.

2 Q Okay, tab 5, is this a description of the
3 Empire merger that was put out at the time?

4 A Yes, that is correct, it is -- it talks
5 about some of the benefits that the Empire pilots
6 experienced due to the merger with Piedmont Airlines
7 and the fact that they had great opportunities
8 moving forward with Piedmont.

9 Q And tab 6 what is that?

10 A Okay, tab 6, this is a little hard, this
11 is -- I believe there is the PSA, yes, this is the
12 agreement, it was a mediated settlement between US
13 Airways and Piedmont which was right immediately
14 before the Piedmont merger.

15 Q And the PSA and USAir representatives
16 agreed to a date of hire merger?

17 A They did, and I believe remarkable in this
18 one was the fact that there was no adjustment for
19 furlough time, some of the PSA folks that I flew
20 with told me stories about if you are lows that they
21 were actually hired by PSA to go out and solicit the
22 travel agents at San Diego while they were on

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1 furlough but they got credit for all the furlough
Page 73

2 time that way.

3 Q And there is on the third page just above
4 the signatures of the two merger committees there is
5 a provision for a resolution of disputes before the
6 mediator who mediated the settlement, Larry Seibel?

7 A Uh-huh.

8 Q But in fact there weren't any disputes
9 under this agreement were there?

10 A Not that I am aware of.

11 Q So this was well accepted by the pilots?

12 A It was, yes, the only complaints that I
13 heard while flying out west were more in regards to
14 their retirement, because there was a little bit of
15 a difference in the form on the multiplier and, you
16 know, Piedmont's -- or the PSA guys kind of wanted
17 parity on that and get their formula bumped up and
18 they didn't get it, that was the only thing, the
19 integration was never a complaint by the PSA pilots
20 that I heard.

21 Q Let me just say, Mr. Nicolau, for the
22 record, that Exhibit 7 is an excerpt from the

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1 transcript of the proceedings in the USAir-Piedmont
2 seniority integration before Sam Cagel as the
3 chairman of a three member ALPA merger policy panel,
4 and these same exhibits that Mr. Ciabattone has just
5 taken us through were exhibits there and the
6 witness, including the direct examination and cross
7 examination has been included here, so that the

8 America West representatives and the panel can see
9 what was said about them, by Bob Kierlander who was
10 one of the, I think he was a Lake Central merger
11 representative, and was there at the time.

12 I am not really going to ask this witness
13 any questions about the transcript but it is
14 available, so you can see what was said.

15 MR. FREUND: As long as we stop at
16 Exhibit 7 maybe this is a good time for me to just
17 observe that, because I haven't said anything, about
18 any exhibits, and in particular Exhibit 6 and
19 Exhibit 7, I am sorry, Exhibit 5 -- well -- yes,
20 Exhibit 5 and Exhibit 7, but I really mean there for
21 all of the exhibits, at least potentially just
22 because I haven't said anything in the course of

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1 Dan's direct examination doesn't mean that I am
2 satisfied with the admissibility of the documents,
3 in particular what is actually the transcript of
4 another proceeding to which we weren't parties and
5 in which we didn't cross-examine, as an evidentiary
6 matter I have got some problems with it, but, you
7 know, there is time enough for us to have that
8 conversation later.

9 BY MR. KATZ:

10 Q Okay, Exhibit 8, could you tell us what
11 that is, please?

12 A 8 is the US Airways-Piedmont pilots
13 seniority integration arbitration from the

14 arbitrator Cagle, it was our Piedmont, it was the
15 award from the Piedmont integration, from the
16 Piedmont-US Airways arbitration.

17 Q You talked about your recurrent training
18 session at where your classmates were advocating a
19 different methodology than the date of hire method
20 that Mr. Cagle came up with, what was the reaction
21 to the decision?

22 A You know time whose a way maybe of

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1 softening it but, you know, I don't remember a real
2 out lash or -- I don't remember the pilots being,
3 you know, outraged or having any, you know,
4 everybody whined a little bit we are going to lose
5 positions or we are going to do or going to do that,
6 but in reality the airline was moving in the right
7 direction and overtime, you know, I think it worked
8 well for both parties and both sides of the
9 integration, you know, I gave you the example of me,
10 going out to Los Angeles, I didn't have any -- I
11 lost a little bit maybe in a position, relative
12 position, since, from where I was, but I actually I
13 thought it was, it worked well, it created
14 opportunities, the two combined airlines, and we all
15 moved forward. It really did not bring about a
16 major problem within the pilot group.

17 There was some north and south issues that
18 had more to do with personalities and folks on the
19 MEC and things like that but it didn't point back to

20 this integration, the integration was fairly
21 successful with the date of hire.

22 MR. KATZ: All right, I am not going to

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1 ask this witness questions about the next document,
2 which is your decision in the Shuttle case, in fact
3 we are going to have another witness talk about
4 history of the carriers and the merger who is a
5 former Shuttle pilot, and he may have a few words
6 about the decision.

7 But, I think at this point I would like to
8 make the witness available for cross-examination.
9 Thank you.

10 MR. FREUND: Maybe this is a good time to
11 take our lunch break.

12 CHAIRMAN NICOLAU: What time do you want
13 to reconvene, 12:25, in an hour?

14 MR. FREUND: Yes, 1:30.

15 MR. KATZ: That is fine.

16 CHAIRMAN NICOLAU: One 1:30, okay, very
17 good.

18 MR. KATZ: Thank you.

19 (Whereupon, at 12:25 p.m., the hearing was
20 recessed, to be reconvened at 1:30 p.m. this same
21 day.)

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1 AFTERNOON SESSION (1:35 p.m.)

2 Whereupon,

3 DAVE CIABATTONI

4 resumed the stand and, having been previously duly
5 sworn, was examined and testified further as
6 follows:

7 CHAIRMAN NICOLAU: Jeff, I think we are
8 ready.

9 CROSS EXAMINATION

10 BY MR. FREUND:

11 Q Okay, I am too. So, don't they have good
12 pasta in Philadelphia.

13 A Chicago is better.

14 Q You like to fly to Italy because you can
15 get good pasta?

16 A Yes. The young females are not bad to
17 look at either.

18 Q That is another good reason.

19 Dave, you described a typical schedule on,
20 I am sorry, the 3 --

21 A 30.

22 Q 330?

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1 A Uh-huh.

2 Q What is your status on the 330?

3 A Currently I am a reserve First Officer on
4 it, and that includes the IR0 position, do both.

5 Q You described a typical 330 schedule as

6 four trips to month to a European destination and
7 one trip a month to San Juan?

8 A Yes, that would be typical. It will be
9 either the Frankfurt and to Rome, if you do the math
10 it gets you pretty close to about 80 hours. We have
11 the flexibility to work more up to 95, so obviously
12 you have to put more fillers in or fly a fifth trip
13 in that case.

14 Q The San Juan is a domestic destination?

15 A It is actually it is considered an
16 international destination for us, from a
17 city standpoint and the bidding standpoint.

18 Q But from a pay standpoint is it a domestic
19 or international?

20 A From a pay standpoint because it is on the
21 330 we get an international destination for it.

22 Q Do you fly that on anything other than the

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1 330?

2 A Yes, the 76 goes down there, and to tell
3 you the truth, I can't remember if it is an
4 international pairing or, I think it is an
5 international pairing on the 76 and I believe the
6 little bus may even go down there also.

7 Q You think it is an international on all of
8 those pieces of equipment?

9 A No, on the little bus, we had a change in
10 the contract, I think it was the last contract for
11 the Caribbean they stopped override, but then we had

12 a change about a year ago to where they at that
13 time, it was just on the international side of the
14 operation.

15 But now all the Airbus, every piece of
16 equipment can fly the Caribbean, even the 737 they
17 can do Cancun and things like that, but it is no
18 longer considered an international. You don't get
19 an override for international flying pay, even if it
20 is international like St. Martin, you don't get an
21 override.

22 Q So are you telling us there are pairings

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1 for the 76 that have both international and domestic
2 legs?

3 A On the 76?

4 Q Yes.

5 A Well, let me explain it this way. You
6 could be on the 75 and you can fly the 76 in a
7 domestic operation as a pilot, if you are on the 76
8 international, recently as of last summer we are
9 using the 75 ETOPS now to do Shannon and Dublin and
10 Portugal --

11 CHAIRMAN NICOLAU: Lisbon.

12 THE WITNESS: Lisbon, so the 75 you can
13 actually trigger a 75 trip, you can't say 76 or 75,
14 76 could show up in a domestic line, I think there
15 are 76s used between Charlotte and Philly, so you
16 will see a domestic flight crew on that and it pays
17 domestic.

18 BY MR. FREUND:

19 Q You actually don't have, with respect to
20 the 75 and 76 you don't actually have an
21 international rate, you just have an international
22 override?

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1 A That is correct.

2 Q I have a lot of questions for you, but --

3 A Well, it is a good question on San Juan.
4 It confuses our pilots because we go back and
5 forth between the regs, duty regs, and they are
6 different regs. It is a confusing --

7 Q I would like you to turn if you would,
8 please, to let's start with Exhibit 5, do you have
9 it?

10 A I have it.

11 Q As I look at Exhibit 5 it is two separate
12 documents, there is a two-page back to back document
13 which is the first piece of paper in there and then
14 there is a multiple -- multipage document that is
15 headed, appears to be -- this appears to have been
16 issued by the Department of Transportation?

17 A Okay.

18 Q Have you got the same thing in front of
19 you?

20 A I have it, uh-huh.

21 Q So I think we know what the second of the
22 two documents is, the final order. What is the

1 first document? The one that says Empire merger, do
2 you know what it is?

3 A It is just some bullet points on the
4 integration and the thought process, it is involved
5 with the Empire merger.

6 Q Let me be precise. So you do know who
7 wrote it?

8 A I don't know precisely.

9 Q Do you know when it was written?

10 A No. I do not.

11 Q Do you know other than the fact that it
12 has got USAir pilots USA 5 exhibit stamp on the
13 bottom, I am not sure -- we will do you no what that
14 designation means?

15 A Well, it is parts of the exhibit, it is
16 number 5.

17 Q I see, that is a reference to this set of
18 Exhibits?

19 A Yes.

20 Q Okay. So, you didn't draft it, obviously?

21 A No, I did not.

22 Q And you weren't involved in the

1 Piedmont-Empire merger?

2 A No, it was right before my time.

3 Q So, you have no personal knowledge of
4 anything that is contained in this document,

5 personal knowledge?

6 A I would say I have many personal
7 experience, with pilots that have flown for Empire
8 and pilots in discussion there with them over my
9 era.

10 Q People have to have told you about things?

11 A Yes, and I have seen the application of
12 the integration and how it would affect me.

13 Q But again you don't know what purpose this
14 was written for, do you?

15 A No.

16 Q Okay.

17 We move to strike that -- well, I think
18 Dan hasn't moved to admit anything yet, but in
19 anticipation, we would move to strike this document.

20 CHAIRMAN NICOLAU: Perhaps Mr. Katz can
21 tell us who wrote it and --

22 MR. KATZ: Yes, I would like to address

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1 that after the next break, if I could, and the
2 Motion to Strike as well.

3 MR. FREUND: While we are on the subject
4 of motions to strike, I did not try to read 7 which
5 is about 200 pages of transcript, during the lunch
6 break. I just want to observe that I have no
7 objection to it coming in so long as it is not for
8 the truth of anything that is contained in it. It
9 is classic hearsay. There is no witness here to
10 testify about it, there is nobody I can

11 cross-examine. So again I have no objection to its
12 coming in, but not for the truth of any of the
13 statements in it.

14 MR. KATZ: Maybe I can address that at the
15 same time we talk about that. I think it
16 technically falls within the exception to the
17 hearsay rule.

18 MR. FREUND: I don't think so, but we can
19 talk about that later.

20 BY MR. FREUND:

21 Can you pull out -- let's go to Exhibit 4,
22 please: Four is the Piedmont, the letter of

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1 agreement that reflects the Piedmont-Empire merger,
2 correct?

3 A Correct.

4 Q So you characterized this, I don't have
5 your exact testimony, but you characterized this as
6 essentially a date of hire merger; is that correct?

7 A I said it could be viewed as that I was
8 correcting your comment that it was a staple, and I
9 just said I think there is a lot of misconceptions
10 about this integration, and that you could perceive,
11 you could explain it by a date of hire integration,
12 minus the fact of the piloting go off of the F 28
13 aircraft onto a Boeing or another piece of equipment
14 that Piedmont had.

15 Q Let's turn to page, the hand there are
16 handwritten page numbers at the bottom of the page

17 and it looks like it is handwritten page ten?

18 A Ten.

19 Q Do you see that?

20 A Uh-huh.

21 Q Do you see Section 19, seniority?

22 A Got it.

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1 Q Okay.

2 That reads, tell me if I am reading
3 correctly seniority shall continue to be governed by
4 the provisions of the Section 19 of the basic
5 agreement, did you understand Section 19 of the
6 basic agreement to be the fundamental seniority
7 agreed in the Piedmont collective bargaining
8 agreement?

9 A That is correct.

10 Q Then it goes on to say except as follows,
11 and tell me if I am reading this correctly, former
12 Empire pilots shall be placed on the Piedmont pilot
13 system seniority list on January 3rd, 1986,
14 following the most junior Piedmont pilot in the same
15 order that they appear on the Empire pilot seniority
16 list dated January 15th, 1986, did I read that
17 correctly?

18 A That is correct.

19 Q So am I correct that putting to one side
20 what we now call constructive notice pilots, about
21 Piedmont pilots -- I am sorry the Empire pilots
22 insofar as their placement on the seniority list,

1 Piedmont seniority list was concerned, were placed
2 in a single block below the most junior Piedmont
3 pilot, right?

4 A That is correct.

5 Q Okay. So the list that was created, I am
6 going to put conditions and restrictions to the side
7 for a moment, the list that was created was not a
8 date of hire list but rather was a stapled list,
9 correct?

10 A Absence of conditions and restrictions.

11 Q Yes, I want --

12 A In its strictest terms, yes.

13 Q I couldn't -- strict or unstrict --

14 A I mean semantics, yes, it would be they
15 were in a block directly under the pilot that was
16 hired at Piedmont on the date January 2, 1986, yes
17 that would be putting aside conditions and
18 restrictions, that is correct.

19 Q And one of the conditions and restriction
20 that you referred to was so long as they remained
21 F-28 captains, so long as the F-28 captains remained
22 F-28 captains they would continue to bid and hold

1 their F-28 captain positions on the basis of their
2 Empire seniority, correct?

3 A That is correct.

4 Q So there was a protection for a period of
5 time for the Empire pilots who are now the lease
6 senior pilots on the combined list, there was a
7 protection for a period of time in connection with
8 their F-28 captain positions, correct?

9 A I believe it went on as long as the
10 aircraft were in service.

11 Q Right, it went on as long as in aircraft
12 were in service, how many F-28's are there at US
13 Airways?

14 A Today.

15 Q Today?

16 A There is none.

17 Q Do you know when the last F-28 left US
18 Airways?

19 A Oh, boy, I would be giving you a guess.

20 Q Give me a guess.

21 A Give you a guess, about 1992, '93,
22 somewhere in there.

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1 Q Okay, so at least from 1992 or '93,
2 assuming your guess is correct, there was no
3 condition and restriction that protected any of the
4 former Empire F-28 captains, correct?

5 A Since 19 --

6 Q At least --

7 A Since the airplanes went away.

8 Q At least since 1992?

9 A That is correct. Well, wait, wait, state
10 the question again. There is no protection for
11 them?

12 Q There is no protection for their former
13 Empire date of hire?

14 A Well, yes, it indicates a furlough. There
15 would be protection.

16 Q In the case of furlough there would be
17 protection?

18 A In furlough and in the case of
19 compensation they would be still using their date of
20 hire.

21 Q Compensation is a longevity question, not
22 a seniority question, correct?

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1 A Repeat it again, please.

2 Q Compensation is a longevity question --

3 A Yes.

4 Q So let's put that aside.

5 A Put it aside, it is one and the same if the
6 person did not suffer any furloughs, the Empire
7 pilot didn't suffer any furloughs I don't know about
8 putting it aside.

9 Q No, I'm putting the compensation issue
10 aside, which is you told us quite correctly that is
11 a longevity issue, not a seniority issue?

12 A Right.

13 Q So putting that aside what you are telling
14 us is that they for furlough purposes the Empire

15 seni ori ty, the Empi re date of hi re seni ori ty
16 remain ed, even after they left F 28 posi ti ons?

17 A Yes, to my understanding that is correct,
18 yes.

19 Q Now, turn to -- oh, no before we turn to
20 any other pages.

21 You said that the Empi re date of hi re
22 conti nued to protect the Empi re pi lots so long as

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1 the F 28 -- Empi re F 28 captain's, it was li mi ted to
2 F 28 captain's, correct?

3 A In practice it was, but the F0 had a
4 windfall in the fact that they came out of the chute
5 and the ai rline was grow ing, they --

6 Q That is not my question. My questi on is
7 that Empi re seni ori ty, the Empi re date of hi re --

8 A Okay.

9 Q -- protection was li mi ted by the terms of
10 thi s agree ment to F 28 captain's, correct?

11 A Okay; correct.

12 Q And in fact they are i den ti fi ed on page
13 No. 14 and 15 of thi s document, correct?

14 A Correct.

15 Q Okay. And you and I previ ously agreed
16 that once the F 28's went away for purposes of, at
17 least for purposes of promoti on, the Empi re pi lots
18 did not have date of hi re seni ori ty, correct?

19 A For promoti on?

20 Q For promoti on?

21 A That is correct.
22 Q Okay, but they also lost their date of

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1 hire, Empire date of hire protection if they left
2 the F 28, correct, even if, let me put it
3 differently, even if the F 28's remained on the
4 property if an Empire pilot wanted to bid off the F
5 28 he could not use list Empire date of hire,
6 correct?

7 A Not for that function, yes.

8 Q Not for getting an upgrade?

9 A That is right.

10 Q And when he got an upgrade by whatever
11 means I was no longer able to exercise seniority on
12 the basis of his Empire date of hire, correct?

13 A That would be correct.

14 Q And just so we are clear about it -- no,
15 we won't be clear about it yet.

16 Look at page 10 -- no let's look at page
17 11, in addition to whatever protection the Empire
18 pilots had by reason of that little provision that
19 we were talking about, they were in fact frozen in
20 their positions for a two-year period; correct?
21 Look at the bottom of page 11.

22 A Filling of vacancies?

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1 Q Yes, please.

2 A Yes, on the captain's list.

3 Q Right?

4 A Only.

5 Q So even assuming that on the basis of
6 their new position on the seniority list they could
7 have moved off of the F 28, in point of fact for two
8 years they weren't permitted to?

9 A That is correct.

10 Q All right. And if you look to the next
11 page, even those who were not on the protected
12 captain list were frozen for one year, correct?

13 A That is correct.

14 Q Now --

15 A I want to make this clear that there was
16 F-28s on the property at Piedmont, in addition to
17 the F-28s that they brought, so they did have
18 flexibility to move. There was a Miami F-28 base
19 and they had certain abilities to capture those.

20 Q But they couldn't move into a bigger piece
21 of equipment?

22 A Right.

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1 Q They couldn't promote in terms that we all
2 like to talk about, right?

3 A Right, well there was opportunities on the
4 Piedmont side on the F 28 side too, so -- you know,
5 they had the freedom to move to the same airplane on
6 the property.

7 Q Yes, but they were frozen in position for

8 a year?

9 A Right.

10 Q All right. Now, just so we can be clear,
11 do you have a copy of the present US Airways
12 seniority handy, maybe Dan give you a copy, that is
13 one of the joint exhibits, it was attached to your
14 position statement?

15 MR. KATZ: I don't know if I have one
16 here.

17 I have just got this book A?

18 BY MR. FREUND:

19 Q Well, let me borrow one of my
20 colleagues -- oh, you have got it?

21 A Yes.

22 Q All right. So the record is clear, you

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1 are looking at tab number -- I think you are looking
2 at tab No. Two on the US Airways pilots arbitration
3 position statement, which purports to be and we may
4 have a problem with it in that it is the US Airways
5 certified seniority list. Dated May 19th, 2005.

6 A Yes, I do.

7 Q And why don't you open it to page 45 of
8 that exhibit?

9 A Okay.

10 Q And now, at the same time take a look at
11 Exhibit 4 in the other book that we were looking at
12 earlier, that is the --

13 A Okay.

14 Q -- Piedmont-Empire integration, and I
15 think we agreed that the protected captain list is
16 the last two pages, 14 and 15?

17 A Correct, Captain's and FO's --

18 Q I think this is just captains. There were
19 no protected FO's, were there?

20 A Well, right.

21 Q So that purports on its face to show the
22 names of the protected F 28 captain's and their

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1 seniority dates which I take it were there dates of
2 hire at Empire, correct?

3 A Correct.

4 Q So take a look at the second fellow on
5 that protected captain list, his name is Peter
6 Whiteman. Do you see him there?

7 A Got it, got it, yes.

8 Q Now he has a date of hire on that list of
9 October 26, 1975?

10 A Correct.

11 Q You see Mr. Whiteman on the US Airways
12 seniority list at Excel position 1803?

13 A I see it.

14 Q Okay, shows him -- shows a date of hire,
15 actually shows a -- shows same date of hire, right?

16 A Sure does, yes.

17 Q October 22, 1975?

18 A Uh-huh.

19 Q And he is directly behind Mr. Santofanti?

20 A Correct.
21 Q Who has a date of hire of December 2nd,
22 1985?

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1 A Correct.
2 Q Some 10 years subsequent to Mr. Whiteman?
3 A That is correct.
4 Q So Mr. Whiteman is 10 years out of date of
5 hire order on the certified US Airways seniority
6 list?
7 A That is correct.
8 Q Okay. And it looks like we have got a
9 fairly big chunk of pilots following Mr. Whiteman on
10 this seniority list, that is on the U.S. air U.S.
11 certified seniority list who have dates of hire
12 prior to 12-2-85, correct?
13 A Correct.
14 Q All of page 45, all of page 46, and looks
15 like all of page 47 as well, correct?
16 A Yes, sir.
17 Q And actually, a chunk of page 48?
18 A Correct.
19 Q Correct?
20 A Correct.
21 Q So those would be in your view likely to
22 be all former Empire pilots, right?

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1 A Mostly, uh-huh.
2 Q Well, don't turn the page a way yet
3 because while we were looking at that we got
4 curious, you may not be the right person to ask but
5 look at position number 1922?
6 A Yes.
7 Q Mr. D' Bai rs?
8 A Yes.
9 Q He shows a dates of hi re of 12-11-72?
10 A Yes.
11 Q He is sprinkled in with some '85 hi res?
12 A That is correct.
13 Q Do you know how it came to be that he was
14 put in that position on that list?
15 A My guess would be he is a Shuttle pilot.
16 Q Uh-huh, okay, we are going to have
17 somebody from Shuttle testifying in a bit?
18 A That is right.
19 Q He would know better on that?
20 A That is right, but that is what makes
21 sense.
22 Q Now, in light of what we have just gone

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1 through, do you still think it is an appropriate to
2 characterize the Piedmont-Empire integration as date
3 of hire integration?
4 A Yes, I do. I mean at the time of this
5 integration with F 28's on the property, with the

6 conditions and restrictions that were in this
7 agreement, it was a date of hire integration, absent
8 the F 28 airplane, if it came outside of the F 28 it
9 no longer was a date of hire integration for those
10 captain's, but looking at it now in hindsight and
11 showing the numbers, sure, the appearance is that it
12 was a, you know, bottom of the list add on, but in
13 practice with the conditions and restrictions, in
14 application, that is not what it was.

15 Q Wasn't it a staple job with conditions and
16 restrictions, I mean -- look in pilot terms, wasn't
17 that exactly what it was?

18 A Yes, and you make a great case for date of
19 hire.

20 Q I am just asking the questions?

21 A Well, yes --

22 Q Isn't that what it was?

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1 A That is --

2 Q Just answer that yes or no, please.

3 A Is that what it was, a staple job --

4 Q In pilot jargon --

5 A Actually in pilot jargon.

6 MR. FREUND: That is all I have got.

7 REDIRECT EXAMINATION

8 BY MR. KATZ:

9 Q Let me just, before I talk with my
10 committee, you started to say you make a great case
11 for date of hire. Do you care to explain what you

12 mean by that?

13 MR. FREUND: I object to that type of
14 question. We need to have lawyers ask questions
15 rather than asking them to make speeches, otherwise
16 we are going to be here forever.

17 MR. KATZ: I think you interrupted his
18 answer.

19 MR. FREUND: I asked him --

20 CHAIRMAN NICOLAU: Let me hear the
21 stipulation so that we won't be here forever.

22 MR. KATZ: We will stipulate to that.

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1 THE WITNESS: The problems that arise that
2 he is pointing to here are indicative of a lot of
3 date of hire integration and in my, when I was
4 talking earlier I talked to the fact that at my view
5 as a Piedmont pilot was that, you know, we thought
6 it had to go with the slot, and I felt that date of
7 hire was more the datum that all pilots understand.

8 You bring up a good point. You look at
9 this list and a guy doesn't understand why a 1976 is
10 with a 1985 or 1979. It creates a problem and in
11 pilot jargon, it is a problem. So date of hire
12 would have fixed this, and I don't profess to say
13 that, you know -- I mean I profess that say that
14 would have been the answer to this integration.

15 CHAIRMAN NICOLAU: But if it had been date
16 of hire then a staple would have fixed it.

17 THE WITNESS: It would have fixed it and

18 the complaint from the pilots would not have come
19 forward and the problems that we had with in
20 integration which we did have with Mohawk and Lake
21 Central and PSA.

22 BY MR. KATZ:

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1 Q Are you saying there were complaints from
2 the pilots about this aspect of the Empire
3 integration.

4 A There were complaints, there are still, we
5 have Empire that I work with on the MEC and I still
6 here some comments and in fact I think there was
7 some litigation over some of these issues, I am not
8 sure how they came out, but, yes, there was problems
9 with this integration at Piedmont.

10 Q I think this was cleared up in the
11 cross-examination but at one point it seemed to be
12 confusing, the do you know what the story was under
13 this agreement for the F-28 co-pilots while they
14 remained on the F-28, what was there seniority?

15 A Their seniority was Empire seniority,
16 entire date Empire date of hire.

17 Q The employees continued to use the date of
18 hire as long as they remained on the F-28s?

19 A That was my understanding, that is
20 correct.

21 Q Let me go to a different subject. On
22 cross-examination you were asked about the trips to

1 the Caribbean, and whether particular flights have,
2 were international or domestic, I forget exactly
3 what the question was, but that is what I want to
4 clarify. Is, is there a separate domicile at US
5 Airways for 767 international pilots from the
6 domestic pilots?

7 A Yes, absolutely.

8 Q In the collective bargaining agreement are
9 the provisions that deal with these international
10 pilots?

11 A Yes, there is, absolutely.

12 Q And do they have different rules for ours
13 of service, for example?

14 A Yes, we do, there is a section 18 of the
15 contract which is the international rules for
16 international flying and there are duty time
17 restrictions, depending on the number -- the crew
18 complement, if it is a two man crew or if it is a
19 three man crew, but all the -- and in fact, I think
20 I misspoke earlier, some of the international -- I
21 believe the international override recently has come
22 back to us. While we are in negotiations for it I

1 get confused because we are in negotiations, that is
2 what it is, in the negotiations that are ongoing I
3 believe the international issued was TA for the
4 Caribbean, only the international flying we lost the

5 offer ride on it.

6 Q So when you are talking about the TA, you
7 are talking about the negotiations for a joint
8 contract?

9 A That are ongoing now, yes.

10 Q That will provide once the TA won't the
11 carry through in an overall agreement for
12 international override for any airplane that flies
13 to the Caribbean?

14 A That is correct, because it would be under
15 section -- or in section 18 of the contract, it
16 would be under the international rules.

17 Q Now, the way I understood your answer on
18 cross-examination, you seemed to be saying that the
19 trips to the Caribbean were international when they
20 were done on the A-330 and the 767 but not when they
21 were done on the A 320, is that right, is that what
22 you were saying?

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1 A For pay purposes. For over ride purposes
2 with LOA '93 we lost the offer ride and after we
3 lost the offer ride the company for productivity
4 reasons have allowed the small Airbus and the 75
5 domestic to take Caribbean trips, because there was
6 no override any more so that was a productive
7 enhancement that we gave them, so in fact they can
8 go to international destinations, requirement are
9 you have to have your past port, you have to be
10 typed in the airplane, some of those Airbus, small

11 Airbus trips are three men crew trips, you need an
12 IRO for that flying because it is greater than 8
13 hours, so it got kind of jumbled and mixed and we
14 are trying to sort it back out and separate some of
15 it, but I don't know if that is --

16 Q I think it is clear clearer now than it
17 was before. I am hopeful that in the next witness
18 or two it will become even clearer, because we do
19 have a section of another exhibit book that will
20 specifically deals with the international.

21 So I think that completes my redirect.

22 RE-CROSS EXAMINATION

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1 BY MR. FREUND:

2 Q Couple questions. Record is going to say
3 whatever the record says about your testimony on
4 direct examination about the Piedmont-Empire merger
5 my recollection is at the time when you were
6 testifying on direct you told us two things. One,
7 that Piedmont-Empire was more properly viewed as a
8 date of hire integration and, two, that
9 Piedmont-Empire because it was more properly viewed
10 as a date of hire integration didn't cause any
11 concern or ruckus among the pilots.

12 On cross-examination, I am sorry, on
13 redirect examination, in response to the questions
14 that Dan asked you, and partly in response to
15 questions I asked you, you said that it could be
16 characterized as a staple integration and that

17 indeed that staple integration created much
18 unhappiness among the Empire pilots. Which is it?
19 Is it -- is it a date of hire -- just very
20 simple, listen to my question then give me an
21 answer. Is it a date of hire integration that
22 didn't cause any unhappiness among the Empire pilots

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1 or is it a staple integration that caused
2 unhappiness among the pilots?

3 A I don't accept those two choices, and your
4 characterization of my original testimony was not
5 correct either. I said that it is a misconception
6 that it was a staple, and I gave the example of the
7 conditions that protected the pilots that were with
8 Empire, with vacation, and furlough and pay, I went
9 through that scenario.

10 Q Yes, you did.

11 A I didn't lead to the fact that there was
12 no consternation or any problem on the property. I
13 talked about knew with Lake Central and Mohawk, I
14 did not say that on Empire. I wasn't asked and I
15 did not indicate that.

16 Now if you are giving me two choices, like
17 I originally said, it is a misconception to say that
18 it is a staple job, and was there consternation,
19 yes, there was, there was a problem because it was
20 not a clean straight date of hire integration.

21 MR. FREUND: That is all I have got.

22 MR. KATZ: Nothing further.
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1 I would just like in terms of those
2 outstanding exhibits to have a short break and then
3 report back.

4 CHAIRMAN NICOLAU: Okay, any questions of
5 the witness?

6 Thank you, sir.

7 THE WITNESS: Thank you.

8 (2:19 p.m. -- recess -- (2:35 P.M.))

9 CHAIRMAN NICOLAU: Dan, did you --

10 MR. KATZ: I have a couple comments about
11 the exhibits, I take I take it from our discussion
12 that there is no objection to our Exhibit 1 through
13 4 and 6, which I offer.

14 MR. FREUND: Right.

15 MR. KATZ: And 7 is okay subject to the
16 objection goes about it not being to the truth of
17 what is asserted.

18 MR. FREUND: Correct.

19 MR. KATZ: I would ask that it be
20 admitted.

21 With Exhibit 5 if the first two pages are
22 of concern to the American America West

1 representatives were prepared by a former Piedmont
2 pilot, we will be happy not to offer those two

3 pages.

4 I would represent that the remainder of
5 Exhibit 5 is an authentic copy of --

6 MR. FREUND: I have no problem with the
7 remainder of Exhibit 5, it was just those first 2
8 pages.

9 MR. KATZ: Okay, so we would offer the DOT
10 order but not the first two pages.

11 CHAIRMAN NICOLAU: So you are withdrawing
12 that?

13 MR. KATZ: Yes.

14 CHAIRMAN NICOLAU: 7 and 8, I mean 8 and
15 9 --

16 MR. KATZ: I am sorry, yes, we should
17 offer 8 as well, but 9 we are going to cover with
18 the next witness.

19 MR. FREUND: 8 is fine, and I think from a
20 procedural standpoint, rather than going, if this
21 works for everybody in the room rather than going
22 through the exercise of moving each document into

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1 evidence, why don't we just assume that they will
2 come into evidence --

3 CHAIRMAN NICOLAU: They are in unless I
4 hear someone jumping up and down.

5 MR. KATZ: I thought that was the normal
6 process and that is perfectly satisfactory.

7 CHAIRMAN NICOLAU: Okay, your next
8 witness.

9 MR. KATZ: Our next witness is Kevin
10 Barry.

11 CHAIRMAN NICOLAU: Once known as the
12 shuttle pilot.

13 Whereupon,

14 KEVIN BARRY

15 was called as a witness and, having first been duly
16 sworn, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. KATZ:

19 Q Would you give your residence for the
20 record, please?

21 A Sure, 55 River Road, Marstons Mills,
22 Massachusetts.

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1 Q Let's go backward then and get your name
2 in the record.

3 A Kevin Barry, B-a-r-r-y.

4 Q Your employment?

5 A US Airways.

6 Q You are employed as a pilot?

7 A Yes, sir.

8 Q When did you begin your employment as a
9 pilot for US Airways or its predecessors?

10 A March 3rd, 1986.

11 Q And what airline was that?

12 A Eastern Airlines.

13 Q From there you became a Shuttle pilot?

14 A That is correct.

15 Q And from there US Airways pilot?

16 A That is correct.

17 Q Did you in fact engage in some ALPA
18 activities when you were a Shuttle pilot?

19 A Yes, I was on the contract team for the US
20 Airways Shuttle, Trump Shuttle, DBA US Airways
21 Shuttle, I also represented the Shuttle pilots in
22 the merger integration with the US Airways pilots

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1 and I also did the joint negotiating committee work
2 after I did the integration, I did the as part of
3 the team to mix the two contracts.

4 Q Fine, so you were also on -- you were part
5 of the shuttle merger committee in the
6 arbitration that led to integration of the seniority
7 list for the shuttle and US Airways?

8 A That is correct.

9 Q And is the decision there in tab 9?

10 A Yes, sir, it is.

11 Q And recognizing that the author is the
12 chairman of the present panel are there comments
13 that you have the decision that you would like to
14 share with the arbitration board?

15 A Well, I don't propose to tell Mr. Nicolau
16 what he said, I think he knows what he said in it, I
17 guess if you are asking about how we proposed to get
18 to this I could probably talk on to that issue.

19 Q All right. What would you say about it?

20 A Well, I would say about it when we sat

21 down and initially looked at the tactics of how we
22 were going to do this integration, we thought about

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1 a date of hire integration and we looked at pursuing
2 that.

3 We then took the advice of counsel who was
4 Rollin Wilder that was handling it is for us said
5 that he thought because of the time that Eastern
6 Airlines ended, due to the strike, and the Trump
7 Shuttle started up. There was a break-in there that
8 it might be a difficult case to make to try to carry
9 date of hire from one airline to the other, even
10 though we did have our date of hire at the Shuttle
11 for longevity and other purposes but not for -- for
12 seniority excuse me, but he thought it would be a
13 difficult case to make to try to make a date of hire
14 case because there was no continuous service from
15 one airline to the other with the break of the
16 strike, so we stayed away from that.

17 Q Do you have an ID with US Airways that has
18 a date of hire on it?

19 A Yes, sir, I do.

20 Q What is the date of hire?

21 A It is my Eastern Airlines date of hire,
22 March 3, 1986.

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1 Q The others came from Eastern, they the
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2 same?

3 A Yes, sir.

4 Q So was there an issue about what was the
5 date of hire of the Shuttle pilots?

6 A No, the -- know the date of hire of the
7 shuttle pilots stayed the same, as we had from the
8 trump shuttle.

9 Q What I am getting at is wasn't there a
10 dispute about whether the Trump Shuttle date of hire
11 or the eastern date of hire was the proper date of
12 hire between the two merger committees?

13 A Yes, there was, negotiations and other
14 methods we talked about the dispute, but as I talked
15 about for the arbitration we didn't, we didn't
16 pursue the date of hire.

17 Q And in fact the US Airways committee
18 didn't propose date of hire either did they?

19 A No, sir, they did not.

20 Q We have some other exhibits, that you have
21 collected, this would be a good time for us to give
22 them out, I think.

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1 A Okay. Phil, do you want to get that box,
2 please?

3 Q Rather than a question about the first
4 exhibit, Number 10, what I would prefer to do is
5 just make a statement about it. Before I ask any
6 questions.

7 And that is that this is the document that
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8 I secured from the communication workers of America
9 and despite the absence of signatures I have been
10 told that this is in fact signed and in effect,
11 whether it is signed or not it is in effect and
12 being used by the company and the two unions that
13 signed it, and it is the seniority integration
14 agreement with regard to the passenger service
15 employees, the 7 or 8000 employees who work as
16 reservations agents and ticket counter agents and
17 gate agents at America West and US Airways.

18 If there is an issue about its
19 authentication I can bring in someone from the CWA
20 to do that, but I think --

21 MR. FREUND: I will call Rick and chat
22 with him, since his name seems to be on it and well

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1 cross that bridge later.

2 BY MR. KATZ:

3 Q Okay. Meantime, let me ask, Mr. Barry,
4 whether he has done any investigation to find out
5 what the other crafts or classes of employees at US
6 Airways and America West have done about seniority
7 integration?

8 A Yes, I have. My first contact was with
9 Mike Flores who heads up the AFA for US Airways.

10 Q Flight attendants union?

11 A Flight attendants union, and asked him how
12 their seniority list went together and he provided
13 me with some documentation which you see here next

14 Exhibit 11.

15 Q All right?

16 A The first document you see is dated
17 October 25th 2005, and this correspondence that has
18 been passed around to the US Airways flight
19 attendants e-mail system and it talks about how they
20 derived or how they stayed at the date of hire
21 policy that they have at AFA, the first letter, as I
22 said dated October 25th, talks about the America

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1 West flight attendants seeking to challenge the AFA
2 date of hire policy.

3 And it goes on to say that it was not
4 adopted, and that the AFA basically agreed that they
5 would look at any method through conditions and
6 restrictions to solve the date of hire issue for the
7 AFA for some of the problems or the bumps in the
8 road that may be there and that is what that
9 basically, that letter explains.

10 Goes on to page two, which is a copy of
11 the letter of agreement, TA, between the flight
12 attendants and the service of America West and US
13 Airways as represented by the association of flight
14 attendants. And I direct your attention to page 3
15 of 4, at the top where it says, "The parties agree
16 that America West and US Airways AFA officers and
17 merger committee representatives shall negotiate
18 solutions that continue to honor the merger
19 policy as contained in Section X of the AFA

20 Constitution and Bylaws, while addressing the merger
21 concerns of America West and US Airways Flight
22 Attendants."

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1 I point out to you again that this exhibit
2 has not, has been signed but the copy of the exhibit
3 that I have is not a signed copy because this is
4 what the person had in their computer to send to me.
5 But again, if we need a signed copy, I can get one.

6 I direct you to the 4th page in the
7 exhibit up in the top right-hand corner where it
8 says page 1 of 7, and it is Section X of the merger
9 policy for the AFA.

10 Q What are the applicable provisions of that
11 merger policy?

12 A Well, the applicable provisions talk about
13 if you go to page 3 of 7 it talks about how they go
14 about deriving their seniority list, in the top it
15 says the merged seniority list will be compiled
16 based on the seniority date of each flight
17 attendant, it is a date of hire system.

18 They go through, they have a verification,
19 the same or similar process that we have under ALPA
20 merger policy to have the two lists verified, they
21 put the parties together to be able to solve the
22 list and if there is any discrepancies in the day of

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1 hire through training or other issues that they may
2 have or leaves or whatever else they have as part of
3 their certification process they attempt to work it
4 out by themselves if not then it goes to arbitration
5 only to determine the difference in the dates but
6 the date of hire policy stands.

7 CHAIRMAN NICOLAU: Their policy as I am
8 recall requires the date of hire.

9 THE WITNESS: That is correct, sir.

10 And that completes what I have on the AFA
11 exhibit.

12 I have made some phone calls to the IAM
13 and they also, I haven't gotten the documents so I
14 probably can't talk on that as to how they have done
15 it.

16 BY MR. KATZ:

17 Q What is your understanding as to how the
18 IAM has done?

19 A They are also doing it a date of hire on
20 as a mechanic.

21 Q Isn't there arbitration going on with the
22 dispatchers?

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1 A Yes I believe the arbitration is complete
2 and they awaiting a decision also.

3 Q Thank you.

4 Exhibit 12, it says US Airways chronology,
5 could you tell us where you got this from?

6 A Yes, I got it from the company Website,
7 and it talks about the history of US Airways
8 starting in 1939 to the present time.

9 Some of the things I would like to point
10 out to you, the last 1987 at the bottom of the page,
11 where it says Piedmont introduces European routes in
12 its system, this is the first start of the
13 Charlotte-London service that Piedmont airlines had.

14 I direct you to the next page, 1990, US
15 Airways expands its international flying between
16 Pittsburgh and Frankfurt.

17 1992, Philadelphia-Paris is added, and
18 London Gatwick are introduced in May.

19 Take you down to 1996, US Airways
20 continues its trans Atlantic expansion winning the
21 right to serve Munich, Rome, Madrid.

22 Into 2000 on the third page of the

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1 exhibit, US Airways begins service in its eighth
2 European destination with the introduction of
3 Philly-Manchester. This is the also the same time
4 period that the A330 comes into service.

5 Q That is under the heading there in 2000 it
6 is highlighted --

7 A Correct US Airways takes delivery in the
8 next to the last line in that paragraph.

9 Q Six A330s by the end of the year?

10 A Correct.

11 Q Okay. 2001 there is even entry, those

12 are --

13 A Yes, US Airways launches its service to
14 Amsterdam and Caribbean destinations.

15 Q Then more in 2002?

16 A In 2002 we add more service and if you
17 notice about halfway through the paragraph there we
18 actually serve more Caribbean destinations than
19 necessary other U.S. carrier in the year 2002.

20 Q 35 destinations?

21 A 35 destinations, 25 main lines.

22 Take you down to 2003, U.S. Airways

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1 launches service in May between Philadelphia and
2 both Dublin and Shannon, the airlines 9th and 10th
3 European destinations.

4 And on the last page you see 2006, these
5 routes were post merger, where we added Lisbon,
6 Stockholm and Milan to our expanding international
7 route network.

8 Q You say they were post merger, you mean
9 they were started up after the merger of US Airways
10 and America West?

11 A After the announcement of merger of
12 America West and US Airways.

13 Q And was there, do you know whether they
14 were applied for before the merger?

15 A Yes these were actually applied for, the
16 planning on these roads goes many years in advance
17 of actually being awarded to serve these European

18 cities. The individual routes actually take many
19 years to go ahead and get approval for, and then the
20 rights to fly in there. So these were applied for
21 and awarded to US Airways, prior to the merger.

22 Q If you look back at 2004, Mr. Barry, there

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1 is an increase under US Airways group files again
2 for reorganization under Chapter 11?

3 A Correct.

4 Q Then the last sentence says America West
5 Airlines mulls restructuring, either through
6 merger/consolidation or a possible Chapter 11
7 filing?

8 A Correct. This was on the company Website
9 under the histories.

10 Q All right so, this is -- this is not
11 something that you wrote up yourself?

12 A No, this came off of the hub which is
13 comparable to the west side's Compass system.

14 Q Do you know whether America West had
15 previously be in Chapter 11 before this?

16 A Yes, they had.

17 Q Exhibit 13, what does this signify?

18 A This signifies our bankruptcy 2002, it is
19 a press release dated March 31, 2003, that we have
20 completed the restructuring, we have secured 1.24
21 billion in new financing and investment as we emerge
22 from Chapter 11.

1 Q All right. Exhibit 14, what is the
2 document first before we get into what it says?

3 A It is a motion to extend the exclusivity
4 period of US Airways to file a plan of
5 reorganization.

6 Q There was filed in the second bankruptcy,
7 right?

8 A Yes, sir, it was.

9 Q And are there portions of the motion that
10 are relevant here?

11 A Yes, there are a few pages in the motion,
12 I'll thumb through it and find it. On page 4, it's
13 interesting, paragraph 6 it says that the debtors
14 generated operating revenues of approximately 7.1
15 billion dollars for the year dates ended
16 December 31, 2004. I think that shows some value to
17 our corporation that any company today that can
18 generate that kind of revenue is a very valuable
19 asset.

20 I take you into page 7 and paragraph 16,
21 it talks about the events for the previous cases.
22 It says primary factors contributing to these

1 losses, and I will paraphrase, were lower yield on
2 revenue and high fuel costs.

3 Q Is that an explanation of why the first
4 bankruptcy didn't solve the problems?

5 A Yes, sir.

6 Q Do you know whether those were
7 industrywide issues?

8 A Well I would assume, most airlines were
9 paying relatively with the exception of southwest
10 that had significant fuel hedging was facing
11 increasing fuel prices, and I am sure the yield was
12 a problem throughout the industry due to the
13 increased capacity that was out in the industry at
14 that time.

15 Q Anything else in the motion that you
16 wanted to point us to?

17 A I have got a few more items, I have got
18 page nine, where it -- paragraph 21 it talks about
19 the significant progress we have made implementing
20 the Transformation Plan, we have new equity to
21 emerge from Chapter 11 as a financially strong and
22 competitive airline.

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1 Paragraph 22 basically explains that the
2 ATSB has signed onto our reorganization plan.

3 Paragraph 23 through 24 talk about the
4 11/13 motions for the five different unions involved
5 and concessionary agreements.

6 Q Actually there are several more paragraphs
7 that relate to the 11/13 motions. It goes clear --

8 A It actually does --

9 Q Clear through paragraph 28 on page 12 and
10 13 doesn't it?

11 A Right, paragraph 29 explains the distress
12 termination of our main line defined benefit pension
13 plan.

14 Q The pilots plan had already been
15 terminated but this terminated the other plans,
16 didn't it?

17 A Yes, it did, excuse me of certain other
18 main line defined benefits.

19 Q And what else?

20 A I have got paragraph 23 talks about the
21 new deal with GE that we had on aircraft, and also
22 if you will read the last paragraph there before the

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1 footnote, that the debtors have also negotiated
2 similar agreements with other key aircraft creditors
3 including Airbus, Bombardier and Embraer.

4 Q That is paragraph 31 on page 14?

5 A Yes, at the bottom of the page and
6 continues onto the top of page 15.

7 Paragraph 33 talks about an agreement that
8 we had worked out with the credit card processors,
9 the debtors have enhanced their liquidity position
10 and improved the stability of there ongoing
11 operations, talking about our credit card
12 processors.

13 I then direct you to paragraph 34 --

14 Q Let me stop you here for a minute, because
15 we listened to opposing counsel and his opening
16 statement this morning talking about something he

17 called the East Shore/Republic deal that he
18 characterized as being a purchase of some regional
19 jets, selling the furniture to keep warm or
20 something.

21 Can you straighten his confusion out?

22 A Yes --

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1 MR. FREUND: I don't think I said anything
2 about regional jets, but go ahead and straighten out
3 my confusion which I don't think exists.

4 THE WITNESS: There was actually a couple
5 different deals going on at that time. We had a
6 couple different investor groups looking to put \$125
7 million apiece in, in an effort to provide financing
8 for the restructuring of US Airways and they were
9 people that we have done business with.

10 And I think what counsel was referring to
11 was maybe the Air Wisconsin deal where we actually
12 negotiated a deal to sell some Embraer jet routes
13 and slots to Republic Airlines.

14 BY MR. KATZ:

15 Q Is that is the separate transactions?

16 A Two, actually three.

17 Q So paragraph 24 deals with a \$125 million
18 investment by East Shore, correct?

19 A East shore, correct, an affiliate of Air
20 Wisconsin; correct.

21 Q And there's also some discussion about
22 that, it says in paragraph 35 that it was a proofed,

1 right?

2 A That is correct.

3 Q And then there is another in paragraph 36
4 there is another separate deal which is Wexford and
5 Republic?

6 A Correct.

7 Q And that coincidentally is the same amount
8 of money?

9 A It is the same, \$125 million.

10 Q And that was the subject of a separate
11 hearing later in March before the bankruptcy court?

12 A That is correct.

13 Q And that was approved as well?

14 A That is correct, the total of the two
15 actually came up to \$250 million in new equity into
16 the company.

17 Q And what opposing counsel was referring to
18 was a third transaction that involved something to
19 do with regional airplanes?

20 A Right he used 125 million I think but it
21 was actually 110 million for the sale of the
22 Embraers and certain routes.

1 Q Do you know when that arose?

2 A I don't have that offhand, I apologize,

3 but it was after this.

4 Q It was after this?

5 A Yes, it was.

6 Q What about in paragraph 37, anything of
7 significance there?

8 A Yes they talk about we have made a
9 significant number of substantive accomplishments in
10 a relatively short period of time, resulting in a
11 cost savings in excess of \$1 billion of new
12 liquidity.

13 Q Do you know whether the exclusivity period
14 was extended as the company was asking in its
15 motion?

16 A Yes the plan was approved, yes, or the
17 request was approved.

18 Q Right, and I don't think there was a
19 specific plan of reorganization that was part of it
20 but they were extending the period why the debtor
21 has the opportunity to present the planned
22 reorganization?

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1 A That is correct, making these
2 accomplishments.

3 Q What happened in the interim before the
4 plan arrived and the exclusivity period expired?

5 A Well what happened at that time is the
6 America West-US Airways merger became the top news
7 story.

8 Q And that is Exhibit 15?

9 A Yes, sir, it is.

10 Q And this exhibit --

11 A Actually this exhibit goes back to, talks
12 about the transformation plan.

13 Q From April 15, 2005, this is kind of a
14 newsletter that the company puts out?

15 A Yes, sir. It does, yes.

16 Q And they summarize these transactions we
17 have been talking about the two \$125,000,000
18 investments?

19 A Right if you read in paragraph three it
20 talks about the issue of Holding financing arm for
21 \$125 million and Republic airways for \$125 million,
22 that is the total of 250 million. Also down on the

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1 bottom they talk about, you know, people that are
2 investing money in the company, CEO Charlie Byron
3 Wexford it is no secret that US Airways has a great
4 franchise on the east coast has obtained low cost
5 carrier-type labor and restructured its debt a
6 couple of analysts have weighed in on the bottom.

7 Q What did they?

8 A We moved a step closer to a near
9 miraculous remember the emergence from bankruptcy,
10 and then below that another analyst, Bill Lauer from
11 the Post-Gazette, that we are turning commuter
12 airlines -- excuse me, turning to commuter airlines
13 for investment was a brilliant tactical move by US
14 Airways, and on the right side you see 2005 landmark

15 achievements at a glance, that is some of the things
16 that we have done and gone through and that
17 continues onto page three of their document.

18 Q All right, Exhibit 16 does talk about a
19 few days later April 20th, the US Air-America West
20 merger negotiations, right?

21 A Correct, this is from the Arizona Central
22 newspaper, April 20th, 2005, it talks a little bit

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1 of history about America West and that the, in the
2 fourth paragraph down it talks about the merger
3 discussions have been going on for a couple months
4 but recently picked up steam, down third paragraph
5 from the bottom US Airways chairman David Brauner
6 told the associated press that talks with several
7 carriers started several months ago but had
8 progressed the fullest, excuse me the if you are
9 chest with America West, no deal is imminent he
10 said. Then he goes on to say that we will do
11 whatever we need to survive.

12 I take it to page two of three there is a
13 mention of aircraft lessor General Electric has a
14 vested interest in seeing both carriers survive and
15 is mentioned as a key player.

16 Q Both of those carriers are America West
17 and US Airways?

18 A Yes, sir.

19 Q Anything else in this piece?

20 A Nothing else in that piece.

21 Q Exhibit 17, please?

22 A 17, is U.S. -- it is a news story dated

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1 April 22, 2005, US Airways confirms discussions with
2 America West.

3 Q And that is an official confirmation from
4 the company?

5 A Yes, sir. It is a press release from the
6 company talking about a merger with America West;
7 correct.

8 Q Exhibit 18, this is May 22, 2005 from the
9 Pittsburgh Post-Gazette, and it actually is after
10 the announcement of the merger on May 19, why did
11 you include this in here?

12 A Well when I was doing some history on the
13 merger I basically did a Google search and I came up
14 with this news story and it talks, it is a little
15 history on how the merger started and how long ago
16 they had talked about it and it talks in the first
17 paragraph about the on and off 18-month courtship,
18 and how it all came together in the MCI center while
19 they were sitting in the US Airways sky box watching
20 a basketball game, and it talks about John Luth who
21 was an advisor for US Airways how he had gotten the
22 final piece of the packaging from Air Canada while

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1 he was there on his Blackberry and it goes on to say
Page 124

2 that the merger was on.

3 Further on down it talks, third paragraph
4 from the bottom there were several twists along the
5 way, according to people familiar with events was
6 not the only carrier to express interest in U.S.
7 Airways nor was America West the only partner US
8 Airways pursued.

9 So there were other carriers looking at us
10 and we were looking at alliances with other
11 carriers. Interesting statement at the bottom of
12 page two, where they talk about the financing, and
13 it said that America West did not have enough cash
14 to lift US Airways out of bankruptcy, it what up to
15 John Luth who we mentioned previously was the one
16 that had gotten the final piece of financing from
17 air Canada to find enough investment to bring the
18 two companies together.

19 Q Do you know whether America West put any
20 money to this merger?

21 A I don't believe they put a penny in. It
22 was all from outside investments.

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1 Q Anything else in this particular article?

2 A Again it just talks on the last page how
3 Luth went to companies that something to gain from
4 U.S. Airways and America West and they got a deal
5 from Airbus for 250 million and Air Wisconsin for
6 125 million. Talks about the regional jet
7 partnership and then it goes on to say about the

8 credit card companies, we had, once this deal was
9 announced we had numerous credit card companies
10 rushing use an effort to sign a deal, and they talk
11 here in the preliminary stages that it may provide
12 \$300 million in new equity to the company.

13 Q All right, Exhibit 19 is the actual
14 announcement of the merger, isn't it?

15 A Right, America West and Holdings
16 corporation and US Airways to merge. Talks about
17 the transaction, about 1.5 billion in new capital,
18 350 million from new equity planners, more than 650
19 million from partners and suppliers, 250 from
20 aircraft related sales and financing, basically \$2
21 billion in cash among, and we will have about among
22 the lowest debt of all the major airlines after this

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1 deal is completed. This was put out on May 19th.

2 On the second page, under the financing
3 portion of it as they broke this announcement down,
4 they mentioned the mergers expected to create one of
5 the -- carriers, with over ten billion in annual
6 revenues, and \$2 billion in cash. Balance sheet
7 that probably most carriers would like to have
8 today.

9 The next paragraph below that talks about
10 the 350 million of new equity is expected to be
11 provided by four separate investors group, talks
12 about is an aviation, PAR investment, Peninsula
13 Investment and Eastshore Holdings. Eastshore

14 Holdings, you remember that \$125 million commitment
15 was mentioned previously in that filing that we had
16 as part of our new equity that we had already
17 established on our stand alone plan.

18 Q That was just flipped over into the
19 merger?

20 A Correct.

21 Q What about the next page?

22 A Next page under synergies they talk about,

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1 next to the last paragraph -- excuse me, next to the
2 last line in the first paragraph, US Airways
3 bankruptcy is a key synergy, then I will paraphrase
4 it uses bankruptcy to reduce the US Airways fleet to
5 write size the networks.

6 And then down in the fleet route system,
7 you will see that US Airways projects returning 25
8 additional aircraft by the end of 2006, in addition
9 to the 46.

10 Now, the way I read this is that when they
11 are talking about US Airways now they are talking
12 about the combined companies, so they are talking
13 about 25 airplanes being returned in addition to the
14 46, so nearly all of the aircraft are being returned
15 to GECAS, it also goes on to say-- the combined
16 airline will take delivery of 13 air bus 320 family
17 aircraft previously ordered by America West airline,
18 air bus has also agreed to reschedule and reconfirm
19 30 narrow body 320 aircraft deliveries from 2006 to

20 2008, 2009 to 10, and then it talks about the new
21 order for the Airbus A350.

22 Q That is beginning in 2011?

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1 A 2011, correct. And that is all I have on
2 that document.

3 Q Okay. Well, Exhibit 20 is an SEC filing
4 from the day after the announcement of the merger,
5 but it appears to be a transcript of a conference
6 call where the merger was announced to the stock
7 analysts and the press; is that right?

8 A Yes. It is a form 425 filing dated
9 May 20th, 2005.

10 Where, and it happened at 1600 Central
11 Time, and it talks about again the equity where the
12 money is coming from, 350 million again from
13 Eastshore, PAR Investment, Peninsula Investment, Ace
14 Holdings, that adds up to 350 million of new equity
15 on top of the approximate 375 million of additional
16 cash that is being secured through partners.

17 And then on the next page, about middle of
18 the first paragraph he talks about we planned to
19 thanks to the bankruptcy process underway at US
20 Airways, we have the ability to return aircraft, we
21 have -- we are working to remove something around 59
22 airplanes that exist today in the combined fleets

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1 and return those, most of those back to GECAS. So
2 this is I think where he is slowing the reductions
3 of the two fleets.

4 Q And you say combined fleets refers you
5 America West and US Airways?

6 A Correct, towards the bottom he talks about
7 costs and contracts are very similar in terms of
8 cost is the paraphrasing of the bottom of the second
9 paragraph.

10 Q That is a reference to collective PAR
11 gaining contracts?

12 A That is correct, sir.

13 Q This part that is highlighted at the
14 bottom of the page referring to the \$850 million
15 a piece?

16 A Yes, well they talk about how they expect
17 the evaluation to work out, 45 percent to America
18 West, excuse me, 45 to America West, 41 to new
19 equity and 14, but it actually is significantly
20 different than that when the deal actually is
21 transferred off, is published with the different
22 investors and the money.

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1 Q You have something else?

2 A Yes I think I have another exhibit further
3 in here that will explain that a little clearer.

4 Q How about the next page of the transcript?

5 A Next page of the transcript there is a

6 mark under bruise lake peeled who was the president
7 of our company talking about the merger and when the
8 merger occurred and how it occurred and when they
9 started talking, and Parker says the talk between
10 the two companies began sometime over a year ago,
11 then he goes on to say at the bottom it started
12 towards earlier this year and so they started talk
13 ago gain earlier that year which means 2005.

14 I take you further down to about the
15 middle of the paragraph where Doug Parker is
16 speaking again and he is talking about the synergy
17 of the merger providing job security for both
18 parties.

19 And here he goes on to say that the fact
20 of the matter is that people have been at this
21 company for 20 years or even longer will tell you
22 that throughout that time the majority of the time

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1 they have spent worried about the long term
2 viability of their airline, and then he goes on to
3 say the job security is not something airline
4 employees generally feel, but in the last paragraph
5 that is highlighted he talks that this, with the
6 synergies that they have, the cash and the revenue
7 that this will give job security for both parties
8 once the transaction is completed.

9 Q Okay.

10 Exhibit 21 is another one of these SEC
11 form 425 filings?

12 A Yes, sir.

13 Q From the same date?

14 A Same date, yes.

15 Q And this is this a letter that was sent to
16 America West employees?

17 A Yes, this is Mr. Parker writing to his
18 employees as you said dated May 19th says today
19 America West took a bold step towards building a
20 more secure future, talks about the merger, further
21 down in about the middle of the paragraph where the
22 holes for the binder is, he talks about seems there

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1 is always something that causes us to question our
2 future.

3 Then he goes on to say that it is provide
4 improved job security and a bright future for its
5 employees and our merger with US Airways will
6 accomplish that. So he is trying to explain to his
7 employees why US Airways merger was needed as part
8 of America West.

9 Q Exhibit 22 is another form 425 SEC filing
10 on May 31 and it seems to have some general
11 statistics about the two merging airlines?

12 A Yes, it is basically statistics charting
13 going through all the different numbers of the two
14 airlines at that time. One interesting stat to look
15 at is about the fourth one down the operating
16 revenues on the America West side about 2.3 billion,
17 on the US Airways side 7.1 billion, about 3 to 1

18 ratio on the revenues there.
19 Q More than doubled the size and revenues?
20 A Oh, yes.
21 Q Exhibit 23?
22 A 23 is another form 425 dated 6-13-2005;

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1 this is where they started off answering questions
2 for employee groups and they would actually publish
3 them, the Form 425 filing because they are official
4 communications.

5 This is one of interest where the second
6 question down where an employee asks, "why not let
7 U.S. just tank and go belly up that way there is no
8 bothering with seniority integration or bickering
9 about the way their employees are being paid, more
10 to do the same jobs than we are."

11 And I will just paraphrase what is said
12 here. You can read it on your own is that basically
13 in the first paragraph the proposed merger makes our
14 company stronger, it is in the best interests of
15 employees and shareholders, AWA they mention in the
16 last paragraph under that first question, that they
17 could also possibly face bankruptcy, and then they
18 go and mention something which is interesting.

19 It says, which kind of answers the
20 original question, if US Airways were to go under
21 their assets would likely go up for sale, America
22 West competitors with stronger cash positions could

1 buy those assets potentially making them stronger.
2 We, on the other hand, don't have the cash to buy
3 assets, meaning we would probably be left out.

4 And we will see more about that in a tape
5 that we have about Mr. Marker where he talks about
6 that may have accelerated their trip to the
7 bankruptcy court.

8 Q Exhibit 24, I ask you to flip over to
9 that, please?

10 A Sure. It is an another form 425 filing
11 date 7-25-2005 and it is the a term sheet for the US
12 Airways and America West ATSB backed loan.

13 Q It has a side by side comparison of the US
14 Airways and America West loan guarantees?

15 A Correct.

16 Q With the ATSB?

17 A Correct, the east is on the left the west
18 is on the right as you transition influence them, I
19 direct your attention to page --

20 Q Page 2 has the amortization schedule, is
21 there anything of interest there?

22 A Here we are, I am sorry, page 2, if you

1 look again the east is on the left side the west is
2 on the right side. The first payment that US
3 Airways would have to make to the ATSB back on our
4 loan will be September 30th of 2007, in that same

5 time period America West would have to make four
6 individual payments of 42.9 million dollars.

7 And that is again where Doug Parker talks
8 about running out of cash because of the ATSB loan
9 that they were going to have to pay.

10 Q Their first payment was September 30th,
11 2005?

12 A Correct.

13 Q Okay.

14 A And I take you through to page seven,
15 where it talks about the warrants, for the stock, as
16 part of this deal, for us we had a secured loan as
17 mentioned on page 5, if you want to flip back to it
18 where it talks about security of the loan so
19 collateral was available at US Airways.

20 But when the ATSB gave America West a loan
21 it was limited collateral at that time so they took
22 warrants back as an effort to get something from the

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1 company.

2 Q So they had warrants for the America West
3 stock basically?

4 A Correct, I think it was \$140 million if I
5 am not mistaken is the value that they could use if
6 they cashed in on those.

7 Q Was ATSB in favor of these mergers?

8 A Yes, they are.

9 Q Exhibit 25 is another SEC filing August 9,
10 2005?

11 A There is an explanation of the credit card
12 agreement, you remember previously they had
13 estimated that the credit card agreement would be
14 worth 300 million dollars, it actually they gave a
15 signing bonus of 130 million at the bottom of the
16 first paragraph, as well as a pre purchased \$325
17 million worth of air miles. So the net on that was
18 a \$455 million deal. So that actually produced more
19 than what they projected it was going to do.

20 Q That was quite an infusion of cash?

21 A Sure was.

22 Q Exhibit 26 this is a new type of

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1 publication we haven't seen before, called plane
2 deal, September 16, 2005, what is this newsletter?

3 A It talks about up in the top right-hand
4 corner, right under September 27th, merger a
5 proofed, date set for September 27th, right under
6 that it says that the stockholders are close to
7 96 percent of the total voting shares cast ballots
8 in favor of the merger, that the stockholders
9 understand the value of this merger also.

10 Q The stockholders were in favor of the
11 deal?

12 A 96 percent.

13 Q There is a publication by America West for
14 its employees, is it not?

15 A Yes it.

16 Q All right, Exhibit 27 is a slight
Page 135

17 modification of the title of the publication?

18 A Right, instead of a Plane Deal they called
19 it Plane Done Deal, and it basically talks about
20 that the merger officially closed, little blush
21 about how Doug Parker and 12 employees from the
22 combined company rank in the new era with the

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1 opening bell at 9:30 on September 27th, and just
2 basically, you know, it is official, we are merged.

3 Q That was September 27th, the transaction
4 was consummated?

5 A Correct.

6 Q Exhibit 28, does this very something to do
7 with why the ATSB was in favor of this transaction?

8 A Yes, the ATSB was in favor, and I
9 apologize, I think I told you it was \$140 million
10 but it is actually 116 million but as part of the
11 deal with the ATSB and the value increased in the
12 stock, the United States government took \$116
13 million dollars profit on loaning America West
14 money. So they received all their money back plus
15 interest as well as an additional 116 million from
16 warrants that were purchased by the airline earlier.
17 This month those warrants were associated with
18 America West loans.

19 Q So the ATSB is out of this airline?

20 A Correct.

21 Q The second page of this document, has an
22 interesting summary?

1 A Yes, this is the pie chart I mentioned
2 earlier, where they were talking about the
3 percentages that they expected to be from different
4 partners and the like, but it ended up being
5 66 percent of the lion's share of the ownership was
6 actually from new investors, and only creditors got
7 11 percent on our side and America West shareholders
8 only got 20 percent.

9 Q Okay, Exhibit 29, first would you describe
10 what this document is, please?

11 A This is a power point presentation that
12 has been photocopied that I got off of the US
13 Airways Website, it was a presentation that Doug
14 Parker gave in December 8, 2005, at the airline
15 conference in New York.

16 Q And the conference was sponsored by the
17 Calyon securities firm?

18 A Correct. And it basically just goes
19 through the show that he was having, explaining the
20 deal, how it was going to work, how we were going to
21 make the deal work. I direct your attention to the
22 first PAR chart, largest nationwide low cost

1 carrier, if you look under the LCC there you will
2 see that there is going to be \$10 billion in

3 revenues and if you look to the right you will see 7
4 billion was previously came under the UAIRQ symbol
5 which was US Airways, 7 billion came from there and
6 3 billion from America West. So again about 2 to 1
7 on the ratio of the amount of revenue that each
8 airline was bringing in.

9 Q The next page has some hubs --

10 A Yes has some interesting information on
11 hubs, whose hub it is, what the seat chair is and
12 the market position.

13 Q These are the hubs that the combined
14 carrier would hopefully dominate?

15 A Yes.

16 Q All right, and the bar chart that follows
17 that is costs?

18 A Costs, yes, year to date excluding
19 charges, again you can see the 10 U.S. at 10.87
20 seven and America West at 8.53.

21 Q And then the next page describes what
22 happens with the fleet being reduced by 59 aircraft?

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1 A Yes, all leaving North America thereby
2 reducing aircraft in this system in the
3 United States, talks about the total fleet plan at
4 the end of 2006 estimate.

5 Next page is the 600 million of
6 anticipated annual synergies of which this deal is
7 going to transact, and pried a better efficiency
8 for both companies.

9 Synergy update basically just talking
10 about additional savings not included, cost
11 reductions are on target basically they are saying
12 that they are moving right along.

13 Q The cash has gone up to \$2.6 billion
14 dollars?

15 A Right, that strong balance sheet now he is
16 talking about equity partner financing and ending
17 the quarter \$2.6 billion in total cash.

18 Q The Barclays, is that 455 million from the
19 credit cards that you were referencing earlier?

20 A Correct, which they originally projected
21 to 300 million.

22 Q So they did better?

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1 A Better than 50 percent. Transition in
2 synergy talking about when they actually expects to
3 capture some of the synergies, the initial cost in
4 the beginning and then when they captured you know
5 the different synergies as the revenue and the
6 routes are rationalized.

7 Q Okay then there is a bar chart total cash
8 as a percentage of LTM revenues?

9 A Correct, that is total cash as percentage
10 of the last 12 months revenue, again you will see a
11 video here with Doug Parker talks about and he even
12 refers to it as his favorite chart.

13 Q Why is this his favorite chart?

14 A Well, because he believes that cash is

15 oxygen in the eye think he used that term in the
16 airline business, and if you look at the chart here
17 this is prior to the merger of LCC, you will see LCC
18 to the left at 26 percent but he makes a comment
19 over here to the right at U.S. air worth 10 percent,
20 America West is at 14, United, Frontier, Delta,
21 Northwest.

22 If you look at the 6 carriers that are

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1 down on the right, and I think he even comes to that
2 conclusion, out of the 4 out of the 6 down there are
3 in bankruptcy, and I think in the tape that we are
4 going to see later on Doug Parker is going to
5 mention that we were down with them in that area and
6 we just hadn't come to that conclusion yet I think
7 it is even a quote, then he goes on to say that we
8 have actually moved into a nicer neighborhood, is
9 his term with meaning more cash as percent of
10 revenues because as we all know in the airline
11 business cash is King for survival.

12 Q Okay.

13 A Let's see just other charts talking about
14 the industry restructures, how the additional up
15 side recent bankruptcy filings, Northwest reduction
16 Delta reduction, Independence Air capacity, reduced,
17 and in summary talks about we are well positioned
18 for future success US Airways Group meaning the
19 combined company, have encouraged by the progress to
20 date, and the industry environment has become much,

21 much better than anticipated.

22 Q Exhibit 30 is another one of these company

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1 publications for the employees, it is now called
2 About Us?

3 A Correct. And in again is a publication
4 that the company put out and it is their usual
5 information about what is hang in all the different
6 bases, and then they also have a frequently asked
7 questions from you, FAQ from you, and I will direct
8 your attention to the middle --

9 Q On page 5?

10 A 5, page 5 I am sorry, where basically he
11 is saying that America West did need this merger
12 they were facing Chapter 11 in is two months after
13 the merger had actually taken place as to when they
14 are still answering their question.

15 Q And the employees asking why did America
16 West do this merger?

17 A I will ride just a couple. "I am an
18 America West employee and as we integrate seniority
19 lists the America West employees are going to be
20 worse off. Why does this have to be when clearly it
21 wasn't AWA that needed the merger in order to
22 survive?"

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1 And the answer is we have not said this as
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2 direct as we are about to say here, but the reality
3 for the AWA side is we did need this merger, I won't
4 read you the whole thing further down it is possible
5 that AWA could have been facing its own Chapter 11
6 at some point, employees may like to think we saved
7 U.S. but the fact is we saved each other. We are
8 stronger together than either would have been a
9 part.

10 And that concludes that portion of that.

11 Q Now Exhibit 31, is part of the 2005 annual
12 report for the combined company, US Airways, the
13 part at the front where the CEO has a letter to the
14 shareholders?

15 A Correct, starts off with Mr. Parker says
16 2005 was quite a year for US Airways and America
17 West, began as two separate airlines struggling
18 through a difficult airline environment and ended up
19 the year as one merged airline, dramatically
20 improved financial strength and a bright outlook for
21 our future.

22 And then in the bottom he makes a comment

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1 that US Airways made a terrific potential merger
2 partner.

3 Q On the next page which is numbered page
4 five, because that is the way it was numbered in the
5 annual report, there is their big bold print in the
6 right side where they talk an excerpt out of
7 particulars and quote it, and he says with new

8 equity of 867 million from a strong slate of
9 investors, and another 830 million in partners and
10 other support we closed our merger with US Airways
11 in late September. By the end of October we had
12 over \$2.5 billion in total cash.

13 Is that pretty much the highlight of that
14 page?

15 A That pretty much sums it up.

16 Q I questions that is why they pulled it out
17 and put it in bold print there?

18 A In bold and that is why you read it
19 slowly.

20 Q What about the rest of the letter?

21 A The rest of the letter continues where
22 they talk about now that they are bringing back 55

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1 pilots, as we add new international flying this
2 summer from our Philadelphia hub as mentioned before
3 when I talked about the international routes, that
4 was after the merger announcement where we had
5 routes to Lisbon, Milan and Stockholm, and lastly,
6 we reached an agreement with our pilots and flight
7 attendants that helped facilitate a recent amendment
8 to our Embraer 190 jet order, the reason I
9 emphasized the word amendment because US Airways had
10 the order for the Embraer 170 family order and it
11 has been since amended to include the 190 aircraft
12 which US Airways I believe is taking delivery of
13 this month.

14 Q Right.

15 A Also goes on that he mentioned that they
16 are recalling 400 flight attendants to help might
17 the June schedule.

18 Q On the last page he refers to the
19 performance of the America West stock, how did it do
20 that year?

21 A Well, it did wonderful, America West
22 stock, the stockholders of America West received

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1 1302 percent increase on the return on their
2 investment in 2005, and those that purchased the
3 stock or received it as part of the transaction in
4 the get-go of September 27th received a 92 percent
5 gain in just over three months, shows a significant
6 approval of Wall Street.

7 Q And the Exhibit 32 updates that through
8 the middle of this year does it not?

9 A Yes, it does. This Exhibit 32 is a
10 highlight from the second quarter report where US
11 Airways combined reports a \$305 million profit, of
12 \$325 per share, and it talks about a breakdown of
13 where the money came from, America West reported a
14 net profit of 68 million for the second quarter as
15 compared with a net loss of 2 million for the same
16 period and US Airways reported a profit of 246
17 million as compared with a net loss of 44 million,
18 about an 80-20 split on the profit there. And it
19 goes on to say that the company had a 3.2 billion

20 dollars total cash of which 2.2 was unrestricted as
21 of June 30th.

22 Q All right. So they are up to 3.2 billion

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1 in cash?

2 A Correct.

3 Q And then on the second page of this it
4 does have more detail on liquidity?

5 A It talks about the refinancing of loans,
6 they completed a 1.24 billion dollar refinancing
7 which replaced a 1.1 billion and think actually got
8 better terms and a lower rate, further evidence
9 showing that the investors believe there is value in
10 the merged carrier.

11 Q Exhibit 33 did you prepare this chart of
12 the America West -- or there is the US Airways
13 stock?

14 A This is LCC stock right starting
15 September 27th up until just recently when I
16 published a chart of October, excuse me
17 November 19th, you can see the progression of the
18 stock from a low of I believe 17 to a high of 60, I
19 don't know about you but I would like to have a few
20 of those stocks in my portfolio doing that kind of
21 performance.

22 Q So the merged company has done pretty

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1 well?

2 A Has done very well, and that just
3 substantiates what was mentioned back on the
4 previous exhibit where they talked about the
5 percentage of return from investment from both
6 America West stockholders and from new investors.

7 Q You know, the next exhibit is transcript
8 of a pilot meeting and what I would like to do is
9 come back and finish that last, so that we can cover
10 the other exhibits that are in this volume, and then
11 end up with the video that goes with this
12 transcript?

13 A All right.

14 Q So why don't we just flip over to 35,
15 thick 36 is really kind of similar, but it is a
16 transcript of phone and hotline so there is no video
17 that goes with that.

18 And on that we have a transcript of the
19 video, of the audio, I am sorry, and there is a
20 quote that we used in our opening statement, not the
21 oral opening statement but the written prehearing
22 statement that was submitted last week, that comes

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1 from the bottom of this page, can you help me out,
2 Kevin, where is that?

3 A It starts in the second line of the last
4 paragraph, this happened 19 months after the merger,
5 it is Doug Parker talking "so if you are an employee

6 and trying to leverage the former America west we
7 didn't need to merge, we are just fine on our own in
8 quotes point of view I would ask you to rethink your
9 philosophy because it is simply not true, we did
10 need this merger, and although our situation wasn't
11 as dire or as immediate as US Airways, continues to
12 the next page, this merger was important to America
13 West's future, and indeed I think extremely
14 important.

15 Next paragraph, he goes on to say in an
16 effort to try to wrap it up quite frankly nine
17 months after this merger is closed who needed whom
18 more really doesn't matter, we needed each other,
19 those are the simple facts, we are much stronger
20 today, than we were, than either was individually,
21 and that is all there is to it."

22 Q Okay. Exhibit 36, what does this document

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1 come from?

2 A This came out of the Airbus CQT guide
3 talking about the merger and when this came out in
4 July of 2006, excuse me, in March of 2006 it talks
5 about the plan is well underway now will lead to an
6 integrated operation on a singling operating
7 certificate in May 1 of 2007.

8 Q Do you know whether the company has
9 revised that date?

10 A It has moved back I believe a couple
11 months due to some training issues.

12 Q All right.

13 MR. FREUND: Excuse me, Dan. I want to
14 know if you ---I know you want to take a break
15 before you put on the video I wonder if we could
16 take just a short break now.

17 MR. KATZ: Sure.

18 (Recess.)

19 BY MR. KATZ:

20 Q We are up to Exhibit 37, I hadn't really
21 intended to ask you any questions about their one,
22 Kevin.

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1 A That is correct.

2 Q I think what we are going to say we wanted
3 to put in something since we had spent some time on
4 the history of a US Airways we wanted to put in
5 something on the history of America West but by and
6 large we thought we would let the America West put
7 in their own history.

8 We did find this academic publication from
9 a couple years ago from the Garvin School of
10 International Management in Phoenix, that had sort
11 of a case study on America West Airlines, and so we
12 are putting that in for what it is worth, it has
13 some good stuff and it has some bad stuff about
14 America West. I don't know how people would react
15 to it but it also has some basic facts about the
16 history of the airline, and for that reason I think
17 it is appropriate to include it.

18 Kevin, unless you had some particular
19 comment you wanted to make about it I am going to
20 move on to Exhibit 38?

21 A I have no comments.

22 Q Okay, exhibit --

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1 CHAIRMAN NICOLAU: Are we taking it with
2 footnote, says for the purpose of classroom
3 discussion only and not to indicate either he
4 effective or ineffective management.

5 MR. KATZ: Yes, we are not intending to
6 indicate effective management, actually I think they
7 are kind of high on Doug Parker to tell you the
8 truth, but we are not meaning to bless him or curse
9 him either one.

10 CHAIRMAN NICOLAU: Okay, 38.

11 BY MR. KATZ:

12 Q 38, what have we got here?

13 A What we have is a Bear Stearns report from
14 January 21st 2005, on America West Holdings, they
15 have changed them to an underperform citing
16 liquidity concerns and slower growth.

17 The data for the 52-week range on the
18 stock ranges from 1362 to 391, some of the key
19 points of the report first is the liquidity concern,
20 they talk about having burned through 20010 million
21 in cash in 2004, America West ended fourth quarter
22 with 306 million in unrestricted cash and

1 equivalents, and assuming oil at \$45 a barrel we
2 estimate America West could burn over 200 million in
3 2005 unless the yield slide turns. They go often to
4 say holding all else equal we estimate crude would
5 have to fall to about \$25 a barrel for America west
6 to stem the cash burn.

7 Q Do you know whether oil was \$25 or \$45 a
8 barrel in 2005?

9 A It averaged anywhere between 40 to \$60 a
10 barrel on the spot market.

11 Q It went up as high as \$70 a barrel?

12 A Up at as high 70 I believe.

13 Q What about the fleet, what does Bear
14 Stearns say about that?

15 A They talk about giving the slow in growth
16 plans, just three percent in 2005, they believe
17 America West could choose not renew leases on six
18 737-300s this year and 10 in '06. If there is real
19 liquidity crunch perhaps the carrier work to sell or
20 defer the 23 air bus deliveries slated for over the
21 next two years.

22 New plan, they talk about is the growth

1 strategy is not working, that they pulled out of the
2 tran con routes, the new plan appears to be to pull
3 back the core markets and expand in leisure markets
4 south of the border.

5 Go on to say about the fourth quarter
6 loss, net loss of \$470.8 million, and in the bottom
7 paragraph on under perform, the last sentence we
8 expect liquidity 1 to build and that the shares are
9 likely under perform the peer group. And they
10 reference that unless we sense a reversal of unit
11 revenue trends or oil prices fall.

12 Q On the second page they reiterate the
13 America West fleet update as of January 21, 2005,
14 and you see the numbers, the airplanes going from
15 148 in the fiscal year '05 to 160 and even 160 one
16 as the 23 airplanes are added. Is that subject to
17 that caveat you read us about getting rid of 737's
18 and dealing off the Airbus deliveries?

19 A No, this is an all expansion and no
20 retraction or no reduction in current aircraft or
21 deferring aircraft orders.

22 Q I see. So was Bear Stearns saying this is

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1 how many airplanes they thought America West was
2 going to have?

3 A No, this is just their float plan America
4 West had published 161 not taking into account what
5 may or play happen depending on market forces.

6 Q Okay, anything else in Bear Stearns?

7 A Towards the, I guess it is page three
8 under liquidity talks again about he at the end of
9 the fourth quarter America West had 305 million in
10 unrestricted cash and equivalents down from the

11 third quarter of '04 of 417 million so a difference
12 everyone 112 million, they also said they did a
13 positive 41.3 million of which 30.8 million was
14 raised through the issuance of a senior secured
15 discount note at 10.5 million was cash from
16 operations, we talked about that a little bit.

17 That's all I have on that document.

18 Q Okay. Now that was a rating of the stock,
19 do you know what Fitch rates, turning to Exhibit 39?

20 A Fitch is a debt rating service, they rate
21 the debt, and in this document dated December 21,
22 2004 Fitch Rating, two negative from stable, take

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1 you to the second paragraph rating outlook revision
2 follows a turn for the worse in AWA's revenue
3 profile; difficult fuel price environment, airlines
4 limited cash flow generation.

5 Middle of that paragraph, the airline has
6 failed to make progress in its attempts to enter
7 traditional legacy carrier stronghold markets, third
8 paragraph down since the Air Transportation
9 Stabilization Board approved a \$420 million
10 government guaranteed loan that helped AWA avert a
11 bankruptcy filing the airline has -- riding -- and
12 liquidity, again it talks about 417 million on
13 September 30th versus 517 million at the year end
14 2003.

15 So cash burn of \$100 million in one year.
16 Fitch believes that liquidity could be undermined

17 significantly in 2005, if the crude oil prices
18 remain at or near \$40 a barrel.

19 As we discussed earlier we all know what
20 crude prices were doing, we were buying gas at the
21 pump ourselves. Third, fourth paragraph down
22 principal payments on the ATSB loan of 86 million

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1 annually through 2008 AWA has signed a new agreement
2 with Airbus that calls for the delivery of 22 A320
3 family aircraft. The timing of these commitments is
4 a concern, particularly in light of the challenging
5 growth in 2005, says the carrier still plans to take
6 delivery of as many as 11 new Airbus aircraft next
7 year. This will push back the aircraft lease
8 commitment and off balance sheet obligations, higher
9 at a time when operating cash flow is likely to
10 remain weak.

11 Then there is an interesting comment in
12 the next to the last paragraph where it says a \$0.10
13 change in the price of jet fuel drives approximately
14 470 million in cash flow, then it talks about
15 America West current hedge program provided only
16 limited protection in a prolonged \$40 plus crude oil
17 environment.

18 Q Speaking of the crude oil prices, if you
19 go back to the Bear Stearns article in Exhibit 38,
20 and look at the second page, it does indicate at the
21 top of the page some more information about the
22 impact of fuel prices on America West, doesn't it?

1 A Yes, the same concerns that drove their
2 summer downgrade of the stock still persists only
3 now liquidity is becoming more of an issue with oil
4 at \$45 a barrel in 2005 we estimated may have
5 reached the 250 million unrestricted cash level
6 possibly below the 100 million restricted cash level
7 that the ATSB has set, and we will hear Mr. Parker
8 talk about that.

9 Q Okay, and then in the fleet plan that they
10 have got down there is a note at the bottom of the
11 page that indicates these figures are subject to
12 leases for 16 737-300 aircraft expiring in 2005 and
13 2006?

14 A Correct. As we have seen in many airline
15 business plans, it is important to have deliveries
16 arrive at the same time of termination it gives you
17 flexibility in fleet in the event of a turn of an
18 environment.

19 Q And Fitch also, turning back to 39, Fitch
20 also indicated some yield issues, did it not?

21 A Let's see.

22 Q In the last paragraph?

1 A Passenger unit revenue fell by 9 percent
2 year over year in the quarter, weak showing even by

3 industry standards.

4 Q Thank you. Tell us about Exhibit 40,
5 Kevin, who constructed this chart?

6 A I made this charts up again when I was
7 doing analysis on America West in looking at their
8 profit and loss, and basically what it is, if you
9 look at the bottom of the chart it gives you the
10 years 2000 through 2004, whether the company posted
11 a profit, a net profit or a net loss, and as you
12 can see in 2000 they had a net profit of 7,697,000,
13 only to be followed by a significant loss in 2001,
14 2002, now if you look at 2000 three there is both a
15 red and a black, a profit and a loss, because
16 initially if you look at their annual report it
17 shows a net profit of 57,420,000, but that includes
18 an \$81 million gain from a government subsidy and a
19 13 million gain from the sale of investments, so if
20 you factor that in they actually had a net loss in
21 that year end of 36,680,000. And again in 2004,
22 almost \$90 million net loss.

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1 Q So what does that tell you about the
2 statement of opposing counsel in his opening
3 statement that America West was a profitable
4 airline?

5 A He must be talking about a different
6 airline.

7 Q All right. The transcript we have in tab
8 34 is of a meeting in Phoenix January 25, 2006 can

9 you tell us something about the meeting that we are
10 about to see a portion of?

11 A Right. These are what were started on the
12 west side, on the America West side. Doug Parker,
13 being a good manager of his people, goes out and
14 does these brown bag lunches where he comes into the
15 training center, one day a month, sometimes two days
16 a month and talks to the pilots or flight attendants
17 or combined groups, here is where we are, here is
18 where we are going, a little Q and A.

19 It is kind of good. You get some good
20 information out of him and it is nice to hear from
21 the upper management.

22 Q So he regularly talks to the pilots and

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1 flight attendants as they do recurrent trainings?

2 A Correct.

3 Q And he makes a little speech and then
4 answers questions?

5 A Yes, he does a little bit of here is where
6 we are, here is where we are going, state of the
7 airline, talks a lot about mergers because that is
8 what was on everybody's mind at that time. And then
9 does Q and A from the crowd.

10 Q We have included a transcript of the
11 entire tape of this meeting, in tab 34, and while it
12 is all very fast I nature go and probably will want
13 to go home and read the entire transcript we are
14 just going to show a little excerpt of it that

15 addresses some of the issues that we have been
16 discussing here, is that right?

17 A Correct, starts on page 11 and you can
18 follow along if you want.

19 Q So we are going to show a couple of the
20 questions and answers so you can get the flavor of
21 what is going on.

22 MR. FREUND: I am perfectly happy to see a

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1 movie if Dan buys popcorn, but we have got the
2 transcript and I can't imagine what the movie adds.
3 Having said that, if the panel wants to see it, I
4 have no objection.

5 CHAIRMAN NICOLAU: Let's go off the record
6 a moment. Whether we see the movie or not --

7 (3:58 p.m. - recess)

8 CHAIRMAN NICOLAU: Let's go back on the
9 record.

10 The parties have agreed that there are no
11 more direct questions except for any that may come
12 from the film that you can show tomorrow, and the
13 America West attorney will have some preliminary
14 questions now of the witness and then we would
15 recess for the day. Okay.

16 CROSS EXAMINATION

17 BY MR. FREUND:

18 Q Kevin, good afternoon.

19 A Good afternoon.

20 Q You don't mind if I call you Kevin?

21 A Be my guest.

22 Q Okay. Kevin, you said that you -- you

195

1 told us that you originally went to work for Eastern
2 in 1986, correct?

3 A Correct.

4 Q And at the time that Eastern Shuttle
5 became the Trump Shuttle were you flying on the
6 Eastern Shuttle?

7 A No.

8 Q Did you move from Eastern to Trump at the
9 time of the Trump acquisition of the Shuttle?

10 A Well, there were two acquisitions of the
11 Shuttle, if you remember, I actually was trained to
12 fly at the Shuttle in December of 1988. So while I
13 was still working for Eastern Airlines is
14 when I went through my training to become a Trump
15 pilot.

16 After I completed my training as a Trump
17 pilot I went back to being an Eastern pilot until
18 the strike of March 3rd of 1989 and then I honored
19 the picket lines.

20 Q Then when did you wind up at flying at the
21 Trump Shuttle?

22 A Trump Shuttle started up in June of 1989.

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1 Q So your date of hire at Eastern was March
Page 158

2 of 1986, and you began flying for Trump Shuttle in
3 June of 1989?

4 A Correct. Well, actually completed
5 training for the Trump Shuttle in '88 but actually
6 started flying for Trump Shuttle in 1989; correct.

7 Q And I think you told us that you were on
8 the Shuttle merger committee that ultimately
9 resulted in the seniority integration between the
10 Shuttle pilots and the US Airways pilots, correct?

11 A Correct.

12 Q Before that you were on the Shuttle merger
13 committee in another potential transaction, correct?

14 A Yes.

15 Q You and I met each other before?

16 A Yes.

17 Q You were on the Shuttle merger committee
18 during the time that Northwest was considering a
19 relationship of one kind or another with the -- with
20 Shuttle, correct?

21 A That is correct.

22 Q And I was representing the Northwest

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1 pilots?

2 A You were.

3 Q And your merger committee and the
4 Northwest merger committee negotiated a seniority
5 integration agreement which had the transaction
6 between Northwest and the Shuttle taken place, would
7 have become, would have gone into effect, correct?

8 A Had the transaction been consummated;
9 correct.

10 Q And of course the transaction wasn't
11 consummated?

12 A That is correct.

13 Q And that seniority integration agreement
14 that was negotiated between the, between your merger
15 committee and the Northwest merger committee was not
16 a date of hire integration, was it?

17 A I don't believe it was. I figured you
18 were going to get to that question, but I have
19 purged all those documents, so for me to go back
20 unless you have a document that you could refresh my
21 memory with, I would say I don't believe it was.

22 Q Well, not surprisingly I have a document.

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1 I don't know whether I am going to bother
2 introducing it, but you are pretty confident it
3 wasn't a date of hire?

4 A I'm pretty confident it wasn't a date of
5 hire.

6 Q And you are pretty confident when you say
7 it was not a date of hire that doesn't mean that the
8 Shuttle pilots were going to go on to the Northwest
9 list ahead of any Shuttle date of hire, correct?

10 A Again, I can't speak on, it has been so
11 long. I had to re-read the Nicolau award actually
12 to refresh my mind on that. I apologize.

13 Q The description of the hole Northwest

14 Shuttle agreement was part and parcel of seniority
15 integration arbitration between the Shuttle and US
16 Airways, correct?

17 A It was mentioned in the arbitration
18 hearings; correct.

19 Q It was not only mentioned that was the
20 basis upon which the US Airways pilots proposal was
21 predicated, correct?

22 A No. I would have taken the Northwest

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1 deal, you are talking two different dealings. The
2 Northwest deal was a deal that was going to be you
3 sign it now, you put on the shelf and four or five
4 years. Later when you look at it was a better deal.

5 Q That is correct, and that was not a date
6 of hire?

7 A That was not a date of hire.

8 Q And you are saying that deal was a better
9 deal than the Shuttle-US Airways deal ultimately
10 turned out to be correct?

11 A I would have to go back and look at the
12 seniority list, I am just saying it was better than
13 the opening deal for US Airways pilots brought
14 forward.

15 Q Fair enough, fair enough.

16 Kevin, tell me a little bit about your
17 background, your education and training, that led
18 you ultimately to become an airline pilot.

19 A Well, I went to Embry-Riddle Aeronautical
Page 161

20 out of high school for three years, ran out of money
21 on student loans, took a job flying night freight,
22 finished up my fourth year at college. While flying

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1 for commuters and the like, got hired by the
2 military, Massachusetts Air National Guard, flew
3 fighters for 16 years for them, retired, in between
4 that Eastern Airlines, Trump Shuttle, US Airways.

5 Q What was your area of concentration or
6 your major in college?

7 A Aviation Science and Management.

8 Q You never received agree in, as a, to make
9 you a certified financial analyst, have you?

10 A No, I have not.

11 Q You have never gotten a degree in airline
12 economics, have you?

13 A No, I have not.

14 Q You have never practiced the fine art of
15 airline economics as a professional, have you?

16 A No, but I spent the night at a Holiday Inn
17 Express.

18 Q I thought you were going to tell me -- I
19 thought you were going to tell me you play one on
20 TV.

21 You would not -- strike that.

22 You have not taken any courses -- well, I

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1 will back off from that for a moment.

2 You have not received any degrees in
3 anything in which the ins and outs of corporate
4 reorganizations was at stake, have you?

5 A Other than being an employee at Eastern
6 Airlines and been through that bankruptcy, I guess
7 that qualifies as hard knocks.

8 Q It qualifies as being an employee at
9 Eastern Airlines. I don't know what else it
10 qualifies as.

11 So the answer to my question is you have
12 not received any degrees in anything related to
13 corporate reorganizations through bankruptcy,
14 correct?

15 A No. I ran a very successful business, but
16 no, I have never been through that, no.

17 Q And you said you have been through the
18 Eastern Airlines bankruptcy, you didn't sit on the
19 creditors committee for ALPA in the Eastern Airlines
20 bankruptcy, did you?

21 A No, I did not.

22 Q You didn't sit on that creditors committee

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1 for anybody, did you?

2 A No, I did not.

3 Q And you didn't sit on the creditors
4 committee in either bankruptcy one or bankruptcy two
5 for US Airways, did you?

6 A No, I did not.

7 Q Okay. There was a pilot from US Airways
8 who did sit on the creditors committee during
9 bankruptcy one and bankruptcy two, correct?

10 A I guess so.

11 Q Do you know whether Kim Schneider was a
12 representative of ALPA?

13 A I believe he was.

14 Q Do you know whether Kim is scheduled to
15 testify before this august body during the course of
16 the next several weeks?

17 A I believe the ground rules say you are
18 notified 24 hours in advance, so not as of tomorrow.

19 Q I am not going to ask you whether he is
20 going to testify; I am asking you whether you know
21 if he is going to testify.

22 A I don't know if he is going to testify.

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1 Q If I am right that he was on that, and if
2 you are right that he was on the creditors
3 committee, he would have a better understanding of
4 the ins and outs of the bankruptcy than you, I would
5 gather?

6 A I would say he has a different track on
7 it, yes.

8 Q You can say better, it is okay, it would
9 be better wouldn't it?

10 A I have done a lot of research. I guess
11 the only way we would know is if we had a little

12 pair off and asked questions.

13 Q You have read a lot of pieces of paper
14 that other people have written, correct?

15 A I have read a lot of the of bankruptcy
16 court documents, analyst's reports, SEC filings.

17 Q Public documents?

18 A Yes.

19 Q That anybody in the public could look at?

20 A That is correct.

21 Q Even me?

22 A Even you.

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1 Q But you have not been privy to any inside
2 discussion within the creditors committee that would
3 bear on the US Airways bankruptcy, correct?

4 A I have not been privy to any confidential
5 discussions, I guess is what you are asking,
6 correct.

7 Q Correct. And you would not quarrel with
8 me, would you, that somebody who had been privy to
9 the internal workings of the US Airways bankruptcy
10 would be in a better position than you to describe
11 what the circumstances were leading up to, within
12 the bankruptcy itself, leading up to the transaction
13 between US Airways and America West?

14 A If items that happened inside that were
15 not published as SEC filings, meaning if they had
16 more information, they might be able to shed more
17 light on it.

18 Q For example, an advisor, an actual
19 financial advisor to the creditors committee would
20 in your judgment be in a better position than you to
21 talk about the workings and the events leading up to
22 the bankruptcy, correct, well leading up to the

205

1 transaction, correct?

2 A I would say somebody with a financial
3 degree and does that for a living probably could do
4 a better job, yes.

5 Q I don't mean to be a smart aleck when I
6 ask this question, but aside from Exhibit 40, which
7 was the last exhibit that you introduced, and
8 Exhibit 33 which is the stock performance report, if
9 you would just take a look at those two, refresh
10 yourself?

11 A Okay, I have got them.

12 Q Aside from those two exhibits is there a
13 single exhibit that you introduced which represents
14 your analysis of external facts as opposed to simply
15 putting in public documents?

16 A I am not quite clear on your question.

17 Q Well, I will put it in very concrete
18 terms. Let's just look, just at random at
19 Exhibit 29?

20 A Okay.

21 Q And I literally mean at random. You
22 didn't do any of the analysis that is represented in

1 this document, did you?

2 A I found this document on the Internet. I
3 looked through it, I read it, I thought it pertained
4 to the arbitration, so I put it into a file on my
5 computer to be reviewed by the rest of the
6 committee.

7 Q Right, but I mean you didn't conduct any
8 of the underlying economic analysis and conclusion
9 reaching that is represented in these documents?

10 A The only thing I did in a lot of these
11 documents is tied the documents together. For
12 example, one document may have information in it
13 which pertains to another document that
14 substantiates the previous document. Most of them
15 are SEC filings, but I guess that is what I did.
16 But no, I didn't do any financial analysis. I am
17 not qualified to do that. I am airline pilot.

18 Q Again, I don't mean to be a smart aleck.

19 A That is okay.

20 Q I am not intending to. Aside from the two
21 exhibits that I just pointed to there isn't a shred
22 of your analysis, your analysis --

1 MR. KATZ: I object to that --

2 CHAIRMAN NICOLAU: Look, he may agree with
3 what is in some of the documents, but it is clear
4 that he didn't write them. He has collected them

5 and it is part of US Airways case.

6 MR. KATZ: The selection of items of
7 analysis by others is a form of analysis all in
8 itself.

9 CHAIRMAN NICOLAU: Well, you don't have to
10 go any further on that line, I don't think.

11 MR. FREUND: That is fine, I am not going
12 to.

13 Q One quick question, as long as we are on
14 that subject, on the subject of Exhibit 33, I think
15 you said that represented the stock price in US
16 Airways. From when does it run --

17 A Said at the top 9-26 to 11-19.

18 Q So that is from the closing of the
19 transaction until not too long ago; right?

20 A Actually it is from the day before the
21 closing of the transaction.

22 Q Day before the closing?

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1 A Right.

2 Q And I think you said, as we all might have
3 said, that kind of return that you would have liked
4 to have had some stocks like that in your own port
5 folio. I think you said I would like to have some
6 stocks that performed like that any portfolio?

7 A Right.

8 Q The equityholders of a prior, the
9 shareholders of the prior US Airways, that is the US
10 Airways that existed before the merger, they don't

11 have any of those shares in their portfolio as a
12 result of the merger transaction, do they?

13 A Are you talking the stockholders of US
14 Airways stock?

15 Q That is correct?

16 A No, that was wiped out in the bankruptcy,
17 as is common in most bankruptcies.

18 Q So the shareholders of US Airways didn't
19 get any stock in the new company in contrast to the
20 shareholders of America West, correct?

21 A America West shareholders, yes, received
22 stock. There may have been people that were equity,

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1 that got shares in it, but no, if you were just to
2 look at US Airways stockholders with no other equity
3 position, they were wiped out; correct.

4 Q I think that is about all I am going to
5 ask him right now. I have a feeling I am going to
6 have a relatively short cross-examination tomorrow.

7 CHAIRMAN NICOLAU: Okay, but we had agreed
8 to convene because of what you have to do.

9 MR. KATZ: Yes, I have a 9:30 conference
10 call with the judge and I would like to start at
11 10:00 if we could.

12 CHAIRMAN NICOLAU: That is fine, and we
13 can go late tomorrow, as far as I am concerned then,
14 but we will recess now until tomorrow.

15 MR. FREUND: Okay.

16 (Whereupon, at 4:20 p.m., the hearing was
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17 recessed, to be reconvened at 10:00 a.m., on
18 December 5, 2006.)

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1	C O N T E N T S	
2		
3	WITNESS	EXAMINATION
4	DAVE CIABATTONI	
5	By Mr. Katz	DX 57, RDX 119
6	By Mr. Freund	CX 96, RCX 124
7	KEVIN BARRY	
8	By Mr. Katz	DX 129
9	By Mr. Freund	CX 194

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