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1                   BEFORE THE ALPA ARBITRATION BOARD

2   - - - - -X

3 THE CREW MEMBERS OF US       :

4 AIRWAYS,                       :

5                   Plaintiff,       :

6                   vs.               :

7 THE CREW MEMBERS OF       :

8 AMERICA WEST AIRLINES,       :

9                   Defendant.           :

10 - - - - -X

11

12                                   HEARING, VOLUME 14

13

14                   GEORGE NICOLAU, Chairman

15                   CAPTAIN STEVE GILLEN, Pilot Neutral

16                   CAPTAIN JIM BRUCIA, Pilot Neutral

17

18                                   Washington, D. C.

19                                   Monday, January 22, 2007

20

21 REPORTED BY:

22                   DONALD R. THACKER

2327

1                   Hearing before the ALPA Arbitration Board, on  
2 Monday, January 22, 2007, in Washington, D.C. at the  
3 Mayflower Hotel, 1127 Connecticut Avenue, Northwest,  
4 at 10:00 a.m. before DONALD R. THACKER, a Notary  
5 Public within and for the District of Columbia, when  
6 were present on behalf of the respective parties:

7

8 DANIEL M. KATZ, ESQ.

9 JASON WHITEMAN, ESQ.  
10 Katz & Ranzman  
11 5028 Wisconsin Avenue, Northwest, Suite 250  
12 Washington, D.C. 22036  
13 On behalf of U.S. Airways

14  
15 JEFFREY R. FREUND, ESQ.  
16 LISA POWELL, ESQ.  
17 ROGER POLLAK, ESQ.  
18 Bredhoff & Kaiser, PLLC  
19 805 15th Street, Northwest, Suite 1000  
20 Washington, D.C. 20005  
21 On behalf of America West Airlines

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

2 MR. KATZ: We are going to call Don  
3 Hollerbach as our next witness, rebuttal witness.  
4 Whereupon,

5 DON M. HOLLERBACH  
6 was called as a witness and, having first been duly  
7 sworn, was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. KATZ:

10 Q Would you state your name for the record,  
11 Captain Hollerbach?

12 A Don Michael Hollerbach.

13 Q And your employment, sir?

14 A I am with US Airways as an A320 captain.

15 Q How long have you been employed by US  
16 Airways or its predecessor carriers?

17 A Hired with Piedmont 1982, May 24th, so  
18 this will be my 25th year.

19 Q And you have been employed continuously as  
20 a pilot during that period of time by Piedmont and  
21 then US Airways?

22 A Yes.

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1 Q Would you state your educational  
2 background for the panel, please?

3 A I went to the United States Air Force  
4 Academy, graduated in 1974. Subsequently went into  
5 the Air Force until 1982, whereupon I transferred  
6 into the reserves.

7 And then other education I received after  
8 that was, starting in 1989 I went back to complete  
9 the requirements to receive a designation as a  
10 certified public accountant at the College of  
11 Charleston.

12 Q When did you receive that certification,  
13 Captain?

14 A I passed the CPA exam in 1992 and I  
15 received the CPA certification in 1996.

16 Q Any related credentials that you have  
17 earned in the accounting area?

18 A Well, several. Subsequent to that I  
19 received a designation as certified fraud examiner,  
20 forensic certified public accountant, I have been  
21 certified as a business valuation analyst, I have  
22 also been certified by the ASCPA as accredited in

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1 business valuation, and unfortunately for some  
2 people I have also been certified as a divorce

3 financial analyst.

4 Q During this busy period of time have you  
5 also been involved in ALPA activities?

6 A Yes, my first foray into the ALPA world  
7 was to join the negotiating committee in the June  
8 time frame of 2004.

9 Q That was before the second US Airways  
10 bankruptcy?

11 A That is correct.

12 Q And what was the activity that the  
13 negotiating committee was involved in at that point?

14 A At that particular point in time the  
15 management of US Airways had approached all of the  
16 employee groups seeking concessions to contracts,  
17 not just the pilots but all employee groups. And  
18 given my background in forensic accounting and  
19 auditing I was asked to come on board to actually  
20 look at the financial documents that the company  
21 were providing us at the time and to try to verify  
22 whether they were accurate at that particular point

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1 in time, based on the purpose of which they were  
2 being presented to the negotiating committee.

3 Q So the USAir MEC designated you as a  
4 member of the negotiating committee at that time?

5 A That is correct.

6 Q Have you continued to work either as  
7 member of the negotiating committee or in support of  
8 the USAir representatives to the joint negotiating  
9 committee in some capacity?

10 A Currently I am the vice chairman of the

11 negotiating committee. I am also adjunct to the  
12 Joint Negotiating Committee, and I deal with  
13 financial matters, calculation of financial matters.  
14 I also was given the ancillary responsibilities of  
15 allocating stock, stock options and profit sharing  
16 to the pilots.

17 Q And so you have continued to play this  
18 supporting role for the joint negotiating committee  
19 to the present?

20 A Yes.

21 Q Okay. I am not really going to ask you  
22 about the Joint Negotiating Committee negotiations,

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1 but I do want to go through some of the basic  
2 documents that relate to pilot pay and compensation,  
3 and I understand that at some point the US Airways  
4 merger committee asked you to perform an assignment  
5 on its behalf; is that correct?

6 A That is correct.

7 Q What was the assignment that you took on?

8 A The assignment was to look at the LOA 93,  
9 the Letter of Agreement 93 and the other methods of  
10 compensation were included in that particular  
11 document that we all live under, under the current  
12 process and operations that we have, and to try to  
13 quantify on some level some sort of value to those  
14 alternative compensation means.

15 Q All right, and the output from your work  
16 is contained in Tab 1 of the rebuttal exhibits of  
17 the US Airways merger committee; is that correct?

18 A That is correct.

19 Q So let's turn to Tab 1 now, if we could,  
Page 5

20 of the rebuttal exhibits, Volume H?

21 MR. FREUND: Why don't you hang on one  
22 second until we get them.

2333

1 BY MR. KATZ:

2 Q Okay. What I can say while they are being  
3 distributed is that in Volume I there are some blue  
4 dividers that separate different documents from each  
5 other. And the first document which is the thickest  
6 one is some analysis and calculations of Captain  
7 Hollerbach.

8 But I think we would like to start behind  
9 that, and the next document after the calculation  
10 spreadsheets is a letter on US Airways stationery.  
11 We are not going to start with that one either. We  
12 are going to go one divider past that to letter No.  
13 93, which is excerpts.

14 So perhaps you could tell us again your  
15 role in the negotiation of letter 93. I believe you  
16 were a signatory to that document, is that right,  
17 Captain Hollerbach.

18 A That is correct, I served on the  
19 negotiating committee that negotiated LOA 93.

20 Q It is a long letter, but we have some  
21 excerpts of it here to look at. Would you tell us  
22 what we should be looking at first, please?

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1 A I think the first page is page 4.

2 Q Okay, that is after the cover letter for  
3 the whole document. And this is page 4 of many  
4 pages; is that true?

5 A Yes, many pages.

6 Q And what does page 4 tell us?

7 A In particular on page 4 we go down to lump  
8 sum section, and what it says is, the following lump  
9 sum shall be paid by the company January 1 of 2010  
10 in the amount of \$35 million, and January 1st of  
11 2011 in the amount of \$35 million.

12 Q And so these are obligations that the  
13 company took on in the transformation plan  
14 negotiations?

15 A Yes.

16 Q And this document was negotiated in the  
17 summer and then approved by the MEC and the  
18 membership at large?

19 A Yes.

20 Q When did it become effective?

21 A Became effective October, I believe  
22 October 22nd of 2004 and the actual pay issues

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1 started November 1st, 2004.

2 Q And immediately above the lump sums that  
3 you pointed to it appears that the pilots agreed to  
4 freeze their pay rates and to reduce them by  
5 18 percent as frozen. Is that an accurate summary  
6 of part of what happened?

7 A That is correct.

8 Q And if you view that as an investment,  
9 what were the returns that the pilots received in  
10 exchange?

11 A In exchange for that there were several  
12 returns that were going to be paid out in the  
13 future, the first one notably on page 4 was two \$35

14 million payments in January of 2010 and January 1 of  
15 2011.

16 In addition they were also going to  
17 receive stock and equity, equity stock in case there  
18 was some kind of transaction in the future, and also  
19 they would be provided with a fairly generous profit  
20 sharing percentage if there were profits in the  
21 future.

22 Q Is that described in the excerpt of letter  
2336

1 93 that we happen to have?

2 A Yes.

3 Q Would you point us to that, please?

4 A Yes. The equity section is on page 10, it  
5 goes to page 11, and profit sharing goes from page  
6 11 to page 12.

7 Q All I have is page 10 in my book.

8 MR. FREUND: Me too.

9 THE WITNESS: I am sorry.

10 BY MR. KATZ:

11 Q Well, in the books we don't have pages 11  
12 and 12, so why don't we supply those over a break.  
13 In the meantime you could start on page 10 --

14 A Okay.

15 Q -- and point us to what is significant  
16 there?

17 A What is significant here is the fact if  
18 there was, first of all, the company agreed that  
19 they would propose a plan of organization and they  
20 would include an offer of equity participation and  
21 it would be at a certain level. Depending on the



22 equity that came into the company, \$250 million or  
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1 less it was 8.5 percent, of the new equity.  
2 Anything over that would be reduced, and I am  
3 highlighting here.

4 If we participated in profit sharing it  
5 would be reduced by 50 percent, and if the equities  
6 was in excess of \$250 million then there would be a  
7 decrease in equity in proportion to be agreed to by  
8 the group.

9 MR. BRUCIA: Hang on just one second. We  
10 want to make sure our --

11 CHAIRMAN NICOLAU: Excuse me, Dan. The  
12 chairman doesn't have page 10, but he does have page  
13 11 and 12. You have page 10, but you don't have 11  
14 and 12?

15 MR. BRUCIA: Yes.

16 MR. KATZ: We just collaborate. Captain  
17 Carey has shown me that we actually have the pages  
18 but they are past the next divider and past the  
19 transition agreement header.

20 CAPTAIN CAREY: They got stuck in with  
21 transition agreement.

22 MR. BRUCIA: Under what tab is that?

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1 MR. KATZ: Phil, I think you are wrong --

2 CAPTAIN CAREY: All right, we will get it  
3 straightened out.

4 MR. KATZ: This is the transition  
5 agreement. I am missing those pages.

6 CAPTAIN CAREY: All right, we will get it  
7 straight. We will supply the missing pages.

8 CHAIRMAN NICOLAU: Yes, I think the only  
9 one I am missing is 10.

10 MR. BRUCIA: Take my 10, we will share.

11 CHAIRMAN NICOLAU: Okay, thank you.

12 BY MR. KATZ:

13 Q With all the confusion about the  
14 documents, let me make sure I have got the last  
15 point that the witness made straight, because it is  
16 an important point.

17 It seems that the letter 93 gave the US  
18 Airways pilots a choice, is that what you are  
19 saying?

20 A That is correct.

21 Q And would you, just to put a point on it,  
22 tell us in simple terms what those choices were?

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1 A As far as the equity is concerned we had a  
2 choice to take all the equity or take a portion of  
3 that equity and trade it in for profit sharing.

4 Q Okay, now recognizing that many of us  
5 don't have the actual pages in front of us, can you  
6 summarize what else in letter 93 concerning equity  
7 and profit sharing was of significance?

8 A Well, the thing that was really of  
9 significance was the profit sharing was very robust,  
10 and the equity was also robust, and it was also  
11 tied, very importantly, to either what came in or  
12 what the officers received. So we tied it to that  
13 as well.

14 Q So if the officers of the corporation  
15 received a big bundle of stock the pilots would be

16 carried up in their equity with that?

17 A As well, if it exceeded 8.5 percent.

18 Q Okay. And in terms of the equity, were  
19 there also stock options provided for as well as the  
20 stock grants?

21 A Not in this particular document. The  
22 stock options came in the transition agreement as an

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1 adjunct to the transition agreement. That was  
2 negotiated later.

3 Q All right. Well, let's turn to the  
4 transition agreement.

5 CHAIRMAN NICOLAU: Again, off the record.

6 (Discussion off the record.)

7 CHAIRMAN NICOLAU: Okay.

8 BY MR. KATZ:

9 Q Let me just ask, before we get to the  
10 transition agreement, Captain Hollerbach, was there  
11 also a reaffirmation of the section one protections  
12 regarding scope and mergers in the Letter 93?

13 A Yes.

14 Q Can you tell us anything about that?

15 A Other than the fact that our scope would  
16 survive. I mean the LOA 93 we were trying to be  
17 very cognizant of the fact that our scope was very  
18 robust and we wanted that to survive over all else.

19 Q Okay. Now, what happened, turning to the  
20 last several pages of Exhibit 1, which begins with  
21 transition agreement cover page, what happened to  
22 these stock and profit sharing provisions in the

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1 transition agreement negotiations, can you describe

2 that for us?

3 A Well, it wasn't necessarily per se in the  
4 transition agreement. We knew that LOA 93 had a  
5 provision that said to the maximum extent  
6 practicable; if there was a change in the equity  
7 that there would have to be an adjustment for equity  
8 in excess of \$250 million. And it had to be some  
9 kind of proportional adjustment. So, Captain  
10 Schneider, who is the MEC vice chairman --

11 Q That is Kim Schneider?

12 A Yes, and a group of people sat down with  
13 the company to include the MEC chairmen and say what  
14 do we need this equity to be.

15 Throughout that negotiation the end result  
16 of that was that we would receive 1.25 million  
17 shares of America West new common stock plus 1.1  
18 million stock options delivered in three tranches  
19 that would be delivered in 2006, 2007 and 2008.

20 The first tranche would include 500,000  
21 options, the second tranche 300,000 options and the  
22 third tranche would be 300,000 options. And they

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1 would have a life of five years.

2 To go on further, the measurement date was  
3 determined to be -- the measurement strike price was  
4 determined to be the previous 20 days high trading  
5 close on the America West stock, on average. And  
6 the measurement date was the 20 days prior to the  
7 31st of January in 2006, 2007 and 2008.

8 So, for example, for 2007, we are  
9 currently in the measurement period and the

10 measurement period is from January 30th of 2007 all  
11 the way back to December 29th of 2006?

12 Q So there is 20 trading days?

13 A 20 trading days, that is correct.

14 Q When you said America West stock you mean  
15 stock in the merged company?

16 A LCC stock.

17 Q And that is the stock of the combined  
18 USAir and America West?

19 A That is correct.

20 Q This was negotiated at what point in time,  
21 Captain Hollerbach?

22 A It was in order to come out of bankruptcy.

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1 In other words, we had to solve that one piece as a  
2 requirement to come out of bankruptcy, because we  
3 were under LOA 93 entitled to equity.

4 Q So, this was a negotiation that occurred  
5 in the summer of 2005 then?

6 A Yes, it was August time frame,  
7 August-September.

8 Q And it was finalized prior to the  
9 bankruptcy court approving the emergence from  
10 bankruptcy and the merger and all of that in the  
11 middle of September?

12 A That is correct.

13 Q All right, in the transition agreement,  
14 the second page of this last document, includes  
15 something headed plan of reorganization. Is this  
16 some of what you are referring to?

17 A This refers to the profit sharing piece,  
18 not the stock piece.

19 Q But both of them were necessary for the  
20 company to exit bankruptcy?

21 A That is correct.

22 Q And both required the approval of the U.S.

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1 Air's MEC?

2 A That is correct, and if I might elaborate  
3 on that.

4 Q Go ahead.

5 A There was great discussion for a rather  
6 lengthy period of time as to whether to engage in  
7 the profit sharing or to forego the profit sharing  
8 and actually take advantage of the equity.

9 Q Now, you are referring back to the choice  
10 that you described a minute ago?

11 A That is correct.

12 Q The choice between taking everything in  
13 equity or taking some in equity and some portion in  
14 profit sharing?

15 A That is correct.

16 Q And when you say there was discussion, who  
17 was doing the discussing?

18 A The MEC.

19 Q The USAir MEC?

20 A Yes, sir.

21 Q What was the ultimate resolution of that  
22 choice?

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1 A The ultimate resolution of that choice was  
2 to engage in the profit sharing and to not take the  
3 full stock issuance.

4 Q And who benefited from that?

5 A Well, at that particular point in time,  
6 not being able to foresee the future, that was what  
7 the lively debate was about, because there was some  
8 question, because the profit sharing formula had  
9 changed.

10 LOA 93's profit sharing percentage was  
11 significantly more robust than the one that was  
12 being offered in the merger scenario and, therefore,  
13 you know, there was lively debate over which would  
14 be best for US Airways pilots given the change in  
15 the scenery, the change in the profit and  
16 percentages and the availability of LCC stock. And  
17 when I say lively debate, it was tremendously lively  
18 debate.

19 Q I am sure that is a very tactful way to  
20 put it. Having been to some of the MEC meetings I  
21 can only imagine.

22 On page 9 of the transition agreement it

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1 describes the profit sharing arrangement as being a  
2 profit sharing pool based on 10 percent of the  
3 pre-tax profit excluding unusual items. Is that  
4 what you were describing as less robust than what  
5 was in LOA 93?

6 A No, that particular provision is  
7 consistent with LOA 93, in that it is pre-tax  
8 profits before unusual items due to GAAP adjustment  
9 or accounting changes.

10 Q So what was the modification that made it  
11 less robust?

12 A Well, in LOA 93 it had to do with the

13 percentages; in LOA 93 the percentages were 10  
14 percent for pre-tax margins of 0.1 percent, to 5  
15 percent, and at above -- for that above 5 percent it  
16 was 25 percent of the pre-tax margins.

17 Q So now in the transition agreement it has  
18 been scaled back --

19 A Tremendously.

20 Q -- so from 5 to 10 percent, it is going to  
21 be 10 percent instead of 25 percent?

22 A Well, not only -- not only does the level

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1 change from 5 percent to 10 percent, okay, but it  
2 also changes for the profit percentage in excess of  
3 that from 25 percent to 15 percent, significant  
4 change.

5 Q So the trigger is later for the enhanced  
6 value and the enhanced value is a lower percentage  
7 than it was before?

8 A Yes, it is. Significantly lower.

9 Q And were there resolutions of the  
10 outstanding equity issues as well in the transition  
11 agreement?

12 A As far as the transition agreement was  
13 concerned that did not address the equity issue.

14 Q That was in a separate agreement with the  
15 USAir MEC?

16 A That is correct.

17 Q Then finally on page 9 there is a  
18 reference that has been highlighted to the share of  
19 the pool of profit allocated to the pilots of US  
20 Airways and America West at 36 percent?



21 A That is correct.

22 Q Can you give us any information about

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1 that?

2 A Part of the profit sharing pool, if I  
3 could regress into the negotiations of LOA 93 for  
4 just a moment --

5 Q Okay.

6 A -- part of the negotiation there was to  
7 provide relief to the company now for future  
8 returns. The level of contribution of the employee  
9 groups equaled about \$1.082 billion. Of that \$1.082  
10 billion the pilots participated at a \$367,400,000  
11 level. And for that participation we were granted  
12 no less than 36 percent of the profit sharing pool  
13 for all the employee groups.

14 Q And these are annual numbers, aren't they?

15 A They are annual numbers; correct.

16 Q And the other aspect of this provision is  
17 highlighted in the transition agreement is that it  
18 is now talking about a profit sharing pool allocated  
19 to the pilots US Airways and America West?

20 A That is correct.

21 Q I take it that the America West pilots had  
22 nothing to do with LOA 93 because they weren't in

2349

1 the picture at that point?

2 A That is correct.

3 Q And now the USAir MEC has agreed to extend  
4 the reach of the profit sharing pool to the America  
5 West pilots as well?

6 A That is correct.

7 Q On the page that follows in the exhibit,  
8 No. 11, there is an item highlighted, would you  
9 explain the significance of that, please?

10 A Could you give me the section, please.

11 Q It is section D, I think this is 8-D,  
12 regarding company contributions to the associations  
13 applicable 401(k) or defined contribution plan.

14 A Oh, okay. This particular agreement, if I  
15 could regress back to LOA 93 again, when our defined  
16 benefit plan went away it was replaced by a defined  
17 contribution plan, and that particular defined  
18 contribution plan was based on a target, every pilot  
19 reaching a target number of a million dollars. And  
20 depending on the circumstance for each individual  
21 there was a percentage of contribution that was made  
22 of their annual earnings in order to attempt to

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1 bring them to that particular level.

2 So we had people with defined contribution  
3 levels of anywhere from 100 percent to 10 percent,  
4 depending on their particular circumstance.

5 Q Pilots age would have a lot to do that?

6 A The pilots age, the number of years left  
7 to retirement, and there was a host of formulas that  
8 went into that particular calculation.

9 Q That arrangement was an outgrowth of the  
10 first bankruptcy in which Judge Mitchell approved  
11 the termination of the USAir pilots defined benefit  
12 pension plan?

13 A That is correct.

14 So in that particular case, when LOA 93

15 became effective, the percentage of contribution,  
16 defined contribution, went from as high as  
17 100 percent to 10 percent for certain individuals,  
18 so that was a significant sacrifice that created a  
19 series of value that needed to be repaid in the  
20 future.

21 Q So, just to make sure I have got it right,  
22 when LOA 93 became effective around the 1st of

2351

1 November of 2004, the lid for all US Airways pilots  
2 for their defined contribution pension arrangements  
3 was 10 percent, that is right?

4 A That is absolutely correct.

5 Q And that was a substantial reduction for  
6 many of the pilots?

7 A Pretty much all the pilots were able to  
8 see a reduction in their defined contribution plan.

9 Q And that alleviated the cash pressures on  
10 US Airways at that time?

11 A Yes. And if I could expound just  
12 slightly --

13 Q Go ahead.

14 A -- on that, and if I can talk bean counter  
15 talk here for just a moment, one of the things that  
16 those \$235 million payments were for was to provide  
17 relief based on cash, and not expense. We all know  
18 that there are certain expenses that are not cash  
19 driven, such as depreciation, that doesn't take up  
20 cash.

21 In the particular case of a defined  
22 contribution that exceeds the Internal Revenue Code

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1 section that caps the amount that can be put into a  
2 qualified plan, the remainder has to go into a  
3 nonqualified plan which is basically a liability to  
4 be paid out in the future, but it does not affect  
5 cash.

6 So, in order to provide other relief to  
7 the company to make up the difference between the  
8 expense and cash, the company provided two payments  
9 in the future for that investment. That is how  
10 those numbers came about.

11 Q Okay. And so the, these changes resulted  
12 in a change for the America West pilots, too,  
13 according to provision 8-D of the transition plan.  
14 Can you explain what was the benefit to the a the  
15 America West pilots secured in that provision?

16 A Well, in this particular case the America  
17 West pilots had a contributory plan. In other  
18 words, the company contributed a certain amount and  
19 then the pilot would have to contribute another  
20 amount that would be matched. So in other words,  
21 the pilot had to take available cash flow to him and  
22 defer that into a plan in order to have the

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1 matching.

2 What this did here made the company make  
3 the entire contribution, not require a contribution  
4 from the pilot, and so in reality that freed up cash  
5 flow to the pilot to either spend or invest or make  
6 a decision to expend that money in some manner that  
7 was not available in the past.

8 Q All right. Page 12 of the transition

9 agreement, Captain Hollerbach, has a section 9-C  
10 that has been highlighted, dealing with flight pay  
11 loss of up to 84 hours a month, to the America West  
12 MEC. Can you explain what the significance of this  
13 provision is, please?

14 A It is my understanding that they did not  
15 have this provision. The east pilots had a  
16 provision for three negotiating members to be paid  
17 by the company to conduct ALPA business in order to  
18 help the company maintain, you know, some semblance  
19 of an operation. And so this was a benefit that  
20 they derived out of the transition agreement that  
21 they didn't already have.

22 Q Okay. We go back to the start of this

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1 exhibit now, and take a look at the analysis that  
2 you have done at the outset, and please tell us what  
3 you analyzed here and how you went about it?

4 A The pages --

5 Q I am sorry, I forgot one thing. I have  
6 got to interrupt you, I am so sorry, but after the  
7 first blue divider with your 20 page calculations  
8 there is a letter that I skipped over that  
9 chronologically I we should come to now.

10 This is a July 26, 2006 letter from Al  
11 Hemenway to the two MEC chairmen for the US Airways  
12 and America West pilots?

13 A Yes.

14 Q Would you address that, please?

15 A I don't have that in front of me but I can  
16 tell you from memory that this was a letter that was  
17 sent by Al Hemenway, Captain Jack Stephan and

18 Captain J. R. Baker outlining the pilots' share of  
19 the \$1.082 billion of sacrifices --

20 Q Right.

21 A -- of the employee groups. And the second  
22 page actually shows the employee groups and what the  
2355

1 savings were that each group provided. And you can  
2 see second from the bottom down there is the ALPA  
3 pilots.

4 Unfortunately this letter has an error in  
5 it that Al Hemenway corrected, in the fact that it  
6 said that it was going to be determined on W-2  
7 earnings. That is the way it was written in LOA 93  
8 but it was amended in the transition agreement to  
9 allow ALPA to come up with an allocation method and  
10 provide the company with that method, so it would  
11 not necessarily be on W-2.

12 Q That is up to ALPA to determine?

13 A And we already have, yes, that is correct.

14 Q We are done with that. Now would you  
15 please go back to the opening calculations and  
16 explain us to how you went about this task, please?

17 A Well, the other -- what I was asked to do  
18 is actually look to the other levels of compensation  
19 that the pilots would have received, and to somehow  
20 quantify what that value would be.

21 Now, needless to say there has to be  
22 certain assumptions in things to take into play

2356

1 here, so I think it is more an exercise of showing  
2 what is out there, than the actual exactness of the

3 calculations.

4 So, for example, we have got two  
5 \$35 million lump payments, we have capital stock and  
6 options, 1.25 million of capital stock and 1.1  
7 million of options, and profit sharing at 10 percent  
8 pretax profits, at a level of 36 percent. I would  
9 like to highlight that the 36 percent was provided  
10 by the sacrifices that the east pilots, and that is  
11 how that 36 percent participation became open.

12 The gross effects of the value to the US  
13 Airways pilots is \$235 million lump payments of \$70  
14 million, the capital stock transaction calculated at  
15 the market midpoint price.

16 Let me just kind of go into how that was  
17 calculated and all the documents behind it are  
18 calculations and work papers, as I have provided all  
19 the work papers so everyone can, I think they also  
20 got it in a software so you can manipulate it as you  
21 see fit.

22 The capital stock transaction was 1.25

2357

1 million shares, the measurement date was  
2 November 11th of '05, the execution date was  
3 December 5th of '05, the strike price was 31.99 a  
4 share, and once the stock was distributed to the  
5 pilots they could elect to do with that stock as  
6 they see fit.

7 It was picked up in their W-2 earnings in  
8 2005 at the \$31.99 per share. The average pilot  
9 received 300, for 12 months of participation,  
10 received approximately 377 shares, and that was in  
11 excess of, at that particular point in excess of

12 \$12,000 of earnings in that particular period.

13 Now, from that point forward is where the  
14 assumptions come in, in that they could have  
15 actually cashed the stock at that point, held the  
16 stock, you know, I can't really account for choice  
17 and the pilots were not pooled. So what I did was  
18 is looked at the actual range of stock from high to  
19 low, picked a midpoint thinking that half the pilots  
20 might have held, half the pilots might have sold,  
21 somebody held it to the end, so many cashed it in  
22 the beginning, some amalgamation of that probably,

2358

1 well, did occur, and so anyway that equaled that  
2 \$59 million figure.

3 The stock options, as I alluded to in the  
4 past, were calculated on a 20 trading day period  
5 closing average in 2006 from January 30th backwards.  
6 That resulted in a price of 33.65 per option, and  
7 although I am not here to give people a class in  
8 options, but an option is only as good as the  
9 spread.

10 So you will pick up in income what the  
11 spread is between the option received and the option  
12 sold. So on that particular case I took a similar  
13 approach. There were 500,000 options, each pilot  
14 got about 155 options, and got a midpoint, some  
15 held, some sold, we can pretty much bet that they  
16 didn't get the options and just trade them in for  
17 zero, and that resulted in the \$7,405,000  
18 calculation.

19 Q How long are the options good for?



20 A Five years.

21 Q You have got some TBDs here, would you  
22 explain why?

2359

1 A Yes. Being an accountant, and it is okay  
2 to call me bean counter, I wear that badge proudly,  
3 one of the things we try to be is conservative. And  
4 so even though I have a fairly decent idea of what  
5 the options this year will be struck at, because we  
6 are still in the measurement period, unfortunately I  
7 am not a soothsayer and I can't tell what the spread  
8 will be. So, therefore, I did not value them at  
9 all. Even though they do have a value, I couldn't  
10 even apply the Black Scholes method because we don't  
11 know what the strike price is.

12 So even though they have a value they came  
13 into this as zero. And that occurred for the 2008  
14 options, '07 options and '08 options. So even  
15 though they do have a value, I can't honestly sit  
16 here and tell what those values are, so they  
17 were put in at zero.

18 Q The 149 million doesn't include anything  
19 for those future options or future profit sharing?

20 A That is correct.

21 Q Okay. You have got an entry for profit  
22 sharing?

2360

1 A The profit sharing was an interesting  
2 animal in the fact that this particular profit  
3 sharing calculation, because the year end results  
4 are not in yet, and even though I have had several  
5 conference calls determining what the year end

6 numbers are probably going to look like, the base  
7 net income figure that I used is only for  
8 three-quarters, because that is all that is  
9 reported.

10 So this is understated. It may be  
11 understated significantly. But, I cannot tell you  
12 with any certainty what the profit numbers are going  
13 to be for the remainder of the year, for the fourth  
14 quarter.

15 So, in this particular calculation one of  
16 the things we looked at is what would the value be  
17 to the US Airways, I mean the US Airways east  
18 pilots, given the level of effort that was expended  
19 to generate the profit?

20 Now, fortunately in the current reporting  
21 system they have to, in the condensed financial  
22 statements, actually break out the profits generated

2361

1 by the east and the profits generated by the west as  
2 stand alone items.

3 Now, if one were to go into the financial  
4 statements and try to tie the east stand alone and  
5 the west stand alone to the consolidated, you are  
6 going to find that the numbers vary. And the reason  
7 they vary is because there are certain transactions  
8 that occur between the entities that have to be  
9 eliminated. So to try to do that would be an  
10 exercise in futility.

11 So I took the stand alone numbers and put  
12 them together and calculated the percentage of net  
13 profit generated by the east and generated by the

14 west as a percentage of the total profit generated,  
15 and then applied that to the consolidated number,  
16 and it turned out a number that is pretty staggering  
17 in the fact that these pilots generated 92 percent  
18 of the net profit versus 8 percent for the west  
19 pilots, for a variety of reasons, but that is what  
20 occurred.

21 So, in this particular case, 92 percent of  
22 the profit sharing in the calculations that are

2362

1 back, equated to \$11 million of profit sharing that  
2 are attributable to the east pilots.

3 Q And that all summed up to approximately  
4 \$149 million?

5 A That is correct.

6 Q In turning to page 2, did you make an  
7 effort to spread that to the hourly pay rates?

8 A Yes.

9 Q Would you explain that to us, Captain  
10 Hollerbach?

11 A Basically the unbox here at the top shows  
12 the various additives that would be added to pay  
13 rates.

14 Q That comes directly from the first page?

15 A Yes.

16 Q And then for the box below you start out  
17 2005 pay raise is that right?

18 A Yes, and what I did was the build up of  
19 the stock allocation for 2005, based on the numbers  
20 on the front page, that equated to \$17.96 per hour,  
21 and the build up for the allocation of the \$70  
22 million lump sum adjustment was \$2.28. So the

2363

1 average pay rate would -- and because we used a  
2 weighted per capita method across the pilots and not  
3 a W-2 method, each pilot would get a \$20.24  
4 adjustment to their pay rate on a per capita basis.

5 Q All right. In the box below that, you  
6 have added that \$20.24 to the book rate for each  
7 position in the US Airways fleet?

8 A That is correct.

9 Q And then down below you have simply shown  
10 top of scale rates at a per America West pilots for  
11 all equipment?

12 A Yes.

13 Q And looking at the third page have you  
14 done a similar exercise for 2006 pay rate?

15 A Yes. In this particular case this was a  
16 build-up for stock option allocation for 2005, using  
17 a similar methodology, build up of the allocation of  
18 the \$70 million lump sum which remains consistent  
19 from 2004 to 2011, and a build-up of the profit  
20 sharing because 2006, is the first year in which  
21 profit sharing will be available, and this \$4.44 is  
22 only for three quarters, so it is understated.

2364

1 Q And there is something different. Then  
2 you have added that so that the 757 captains, for  
3 instance, have increased their earnings for 2006  
4 from \$144.02 to \$153.04?

5 A Correct.

6 Q And how did that compare to 757 pay for  
7 America West pilots?

8 A Well, their pay rate is consistent across  
9 all equipment, so it is -- it would compare to the  
10 \$137.72.

11 The adjusted rate over here is, was  
12 produced by our analysts as to what the blended pay  
13 rate at America West is, based on longevity as of  
14 July of 2006.

15 Q So that is a weighted average rate  
16 calculation?

17 A Correct. Where all the pilots at US  
18 Airways are at top of scale, the pilots at America  
19 West are not at top of scale, so that was a  
20 calculation as to a blended rate based on longevity  
21 at that particular airline.

22 CHAIRMAN NICOLAU: Mr. Hollerbach, I am  
2365  
1 not sure. Who is getting these adjusted rates now?

2 THE WITNESS: I am sorry.

3 CHAIRMAN NICOLAU: Who is getting these  
4 adjusted rates?

5 THE WITNESS: No one is getting these  
6 adjusted rates, this is what these -- well, to be  
7 quite honest with you, the adjusted rates are what  
8 our rates would have been, based on what we have  
9 actually received on a per hour basis.

10 MR. BRUCIA: Are you saying they are  
11 equivalents?

12 THE WITNESS: Equivalents.

13 CHAIRMAN NICOLAU: Whose rates, USAir --

14 THE WITNESS: U.S. Air's rates plus the  
15 value of the stock options, what the value of the  
16 \$70 million lump sum would be and the value of the

17 profit sharing.

18 CHAIRMAN NICOLAU: Does this mean the new  
19 company doesn't have to bring the USAir pilots up to  
20 the America West scale.

21 THE WITNESS: No.

22 MR. FREUND: Works for us.

2366

1 CHAIRMAN NICOLAU: Okay.

2 MR. KATZ: There is a distinction that I  
3 think you have been explaining between the adjusted  
4 rates in these box for USAir pilots and the adjusted  
5 rate calculation for the America West pilots.

6 CHAIRMAN NICOLAU: I didn't hear it.

7 BY MR. KATZ:

8 Q So let me sharpen that and ask you, where  
9 it says at the bottom America West captain, top pay  
10 rate all equipment 2006, and it has under book rate  
11 137.72. That is the top of the scale rate for  
12 America West captains for all equipment is it not?

13 A That is correct.

14 Q Then 134.73, as I understood your  
15 testimony, is the weighted average rate, based on  
16 the longevity of America West captains; is that  
17 right?

18 A That is correct.

19 Q Calculated as of what point in time?

20 A July of '06.

21 Q Okay, and then the similar exercise for  
22 co-pilots resulted in the top of scale rate of 98.99

2367

1 for America West co-pilots, actually working out on

2 the longevity of the company pilots, \$70.06?

3 A That is correct, because not all of their  
4 pilots are top of scale.

5 Q So in the case of the America West pilots  
6 those bottom two entries reflect on average what  
7 America West captains and co-pilots received during  
8 2006 in compensation?

9 A That is correct.

10 Q And the top numbers for the USAir pilots  
11 represent what USAir pilots received in total  
12 compensation based on the calculations that are in  
13 your exhibit?

14 A That is correct.

15 Q And then on page 4 have you taken 2005 and  
16 2006, the analysis that you did on pages 2 and 3 and  
17 then combined them to reach an average for those two  
18 years?

19 A That is correct, and the reason for that  
20 was to try to take out the effects of the difference  
21 in the individual items.

22 Q Okay, and looking at the A320 captain at

2368

1 USAir, the average rate works out to \$139.51; is  
2 that correct?

3 A Correct.

4 Q And that compares to the average received  
5 by America West captains of 134.73?

6 A That is correct.

7 Q And for A320 co-pilots the average rate  
8 for those two years for compensation was \$99.92 at  
9 USAir?

10 A Correct.

11 Q As against \$70.06 at America West?

12 A That is correct.

13 Q Okay, the remainder is the back up and  
14 detail is it not?

15 A That is correct.

16 MR. KATZ: That is all the questions I  
17 have for Captain Hollerbach.

18 CHAIRMAN NICOLAU: Do you need some time.

19 MR. FREUND: I don't need very much time,  
20 since this is fantasy land, but I do need a couple  
21 of minutes. Why don't you give me a half hour?

22 MR. KATZ: I thought you didn't need much

2369

1 time.

2 MR. FREUND: I want to go upstairs and  
3 look at this, but -- well.

4 (10:58 p.m. -- recess -- 11:35 a.m.)

5 CHAIRMAN NICOLAU: Okay, we are ready. We  
6 are back on the record.

7 CROSS EXAMINATION

8 BY MR. FREUND:

9 Q Good morning. Who is Mike Cross and Lance  
10 Fenson?

11 A Mike Cross and Lance Fenson?

12 Q Yes.

13 A Mike Cross currently is the LEC chairman  
14 in Charlotte, soon to be replaced in February. Mike  
15 Cross, he is the captain representative, and Lance  
16 Fenson is the first officer representative.

17 Q And they have been in that position for a  
18 while?



19 A Three years, I think.

20 Q So the LOA 93, I think you told us,  
21 produced some 300 some odd plus million dollars of  
22 annual savings out of pilot work force; is that

2370

1 right?

2 A Yes.

3 Q And those savings were accomplished by  
4 reaching agreement on an agreement which was to  
5 remain unamendable until the end of 2009?

6 A December 31st, 2009, that is correct.

7 Q So the 300 some odd million dollars in  
8 savings per year which came out of wage reductions  
9 and work rule -- wage reductions, benefit reduction,  
10 work rule relaxations would remain in effect until  
11 at least the amendable date and how ever much longer  
12 would it take to achieve a new contract once the  
13 contract was amendable, correct?

14 A On an annual basis, that is correct.

15 Q Yes. So, 2000 -- it was negotiated  
16 sometime in 2004?

17 A Correct.

18 Q 2005, 2006, 2007, 2008, 2009, and then you  
19 are an experienced negotiator, two years from and an  
20 amendable date to get a contract?

21 A I haven't negotiated a full section 6, so  
22 I can't answer that question. But --

2371

1 Q That is not out of the realm of reality  
2 based on what you know in the airline industry, is  
3 it?

4 A Probably --

5 Q These guys know, so --

6 A Probably not, I mean I --

7 Q You can tell them. It is okay.

8 A No, I know it is okay, it is just that,  
9 yes, okay.

10 Q Okay. And so the America West pilots -- I  
11 am sorry, strike that.

12 The US Airways pilots in 2004 gave up some  
13 \$300 million in wage benefit and work rule  
14 concessions that were going to last probably until  
15 sometime in 2011, and what they got back for it was  
16 agreements to make these, what are they, lump sum  
17 payments, stock and profit sharing, if the company  
18 emerged from bankruptcy, correct?

19 A That is correct.

20 Q And if you US Airways had liquidated  
21 rather than emerged from bankruptcy those would have  
22 all been worth a big fat zero, correct?

2372

1 A If the assumption is that US Airways  
2 liquidated then that would be correct.

3 Q You concluded that these seven or so odd  
4 years of reductions were going to have to be given  
5 if the company was to survive, correct?

6 A Could you restate the question?

7 Q You concluded that the concessions that  
8 you have described in LOA 93 were going to have to  
9 be given by the pilots if the company were to  
10 survive?

11 A It was our position that the company  
12 needed those concessions, that is correct.

13 Q To survive?

14 A They needed those concessions.

15 Q To survive?

16 A You know, as far as the survivability of  
17 the company --

18 Q Uh-huh.

19 A -- I can't really answer that, because  
20 there were some things going on at the present time,  
21 but it was our position at that particular point in  
22 time that those concessions were necessary, that is

2373

1 correct.

2 Q Well, I am just going to read from what  
3 Mike Cross and Lance Fenson wrote to the Charlotte  
4 pilots about that round of discussions --

5 MR. KATZ: I am going to object, Lance  
6 Fenson and Mike Cross aren't here to testify. If  
7 they come and testify you can use it to  
8 cross-examine them. This witness hasn't vouched for  
9 them.

10 MR. FREUND: I don't need to wait for  
11 them. This is an ALPA document produced by them, I  
12 am going ask, read it to him --

13 MR. KATZ: I object to that whole process.

14 MR. FREUND: That is very interesting.

15 MR. KATZ: I haven't seen the document,  
16 you haven't made it an exhibit. I would object to  
17 it if it was an exhibit and I certainly object to  
18 your cross-examining this witness with it.

19 MR. FREUND: There is not a single basis  
20 for that objection.

21 CHAIRMAN NICOLAU: I agree with you. Go  
Page 35

22 ahead.

2374

1 BY MR. FREUND:

2 Q "We sent Don," I assume that is referring  
3 to you, "in to examine the company's books and loan  
4 covenants. His report back to the MEC was sobering.  
5 He validated managements business plan and they need  
6 over a billion dollars in cuts from employees. The  
7 pilots' share was \$300 million. He, along with the  
8 national ALPA financial advisors, professional  
9 negotiators and our investment banker all agreed if  
10 the company was going to survive they would have to  
11 get the cuts they were asking for."

12 Do you remember seeing a letter from, to  
13 the Charlotte pilots from Mike Cross and Lance  
14 Fenson in which they made those representations?

15 A No, I don't recall that. I wasn't a  
16 Charlotte pilot at that time.

17 Q Did anybody ever tell that you they wrote  
18 that letter?

19 A You know, that was so long ago, I mean all  
20 I can answer to is, you have a copy of the letter.

21 Q I do.

22 A I don't have recollection of seeing that

2375

1 letter, and I don't have any recollection of anybody  
2 telling me that the letter was written.

3 Q I'm going to ask you again, was it your  
4 view after, was your report back to the MEC sobering  
5 after looking at the company's books?

6 A Yes.

7 Q Was it your view, along with the national  
8 ALPA financial advisors, professional negotiators  
9 and their investment banker, who was there  
10 investment banker, by the way?

11 A It was Michael Glanser, I believe is who  
12 they are referring to, but I can't tell you for sure  
13 if that was the guy that they are referring to.

14 Q Well, did you learn about a report from  
15 Michael Glanser --

16 A Michael Glanser was with me examining the  
17 documents, but if that is the person they are  
18 referring to.

19 Q Did you all in fact agree that if the  
20 company was going to survive they would have to get  
21 the cuts they were asking for?

22 A I believed that they needed the cuts that  
2376

1 they were asking for, yes.

2 Q Now, we have already established that  
3 these upside or the returns for the seven years of  
4 these cuts were, would have been worthless if the  
5 company had liquidated. They didn't liquidate  
6 though, did they?

7 A No.

8 Q Because of the transaction that we are  
9 here talking about in the seniority integration?

10 A That is correct. The transaction is what  
11 it is, and we are here today.

12 Q Yes. And so directly as a result of the  
13 transaction that occurred the benefits that you  
14 described that were negotiated in LOA 93 that would  
15 have been worthless if the company had liquidated,

16 will be paid to the US Airways pilots, correct?

17 A I think what I have you to say in that  
18 regard is the transaction is what the transaction  
19 is. We are where we are today.

20 Q Correct?

21 A But absent this transaction I can't say  
22 that there wouldn't have been another transaction

2377

1 that resulted in something similar where we were  
2 still here today.

3 Q You don't have to say anything about that  
4 because we have got plenty of testimony on that  
5 subject and you have no call to testify on that  
6 subject?

7 A That is correct.

8 Q My simple question -- maybe Don could just  
9 read my question.

10 (The reporter read the record as  
11 requested.)

12 THE WITNESS: I can tell you where we are  
13 today those benefits are being paid, that is  
14 correct.

15 BY MR. FREUND:

16 Q And it is a direct result of the  
17 transaction, correct?

18 A The transaction put us where we are today,  
19 that is correct.

20 Q And then I just have one more question for  
21 you and then we are done.

22 A Sure.

2378

1 Q In addition to these benefits you  
2 described, you understand, do you not, that the  
3 Joint Negotiating Committee is seeking to obtain  
4 wage parity on book pay rates for the US Airways and  
5 America West pilots, correct?

6 A That is not correct.

7 Q That is not correct?

8 A That is not correct.

9 Q Can you tell me what you are understanding  
10 is?

11 A The purpose of the Joint Negotiating  
12 Committee at this particular point in time is to  
13 secure pay rates in excess of that.

14 Q Ah, yes, okay. That is right, but first  
15 everybody has got, in order to get pay rates in  
16 excess of where the parties, where the two groups  
17 are today, the US Airways pay rates have to get up  
18 in the narrow body range to at least where the  
19 America West rates are, and the America West 75  
20 rates have to get up to where the US Airways rates  
21 are, right?

22 A That is correct.

2379

1 Q And then they negotiate from there?

2 A That is correct.

3 Q And none of the benefits that you  
4 described as a consequence that are going to come to  
5 the US Airways pilots as a consequence of LOA 93 and  
6 the transaction are being calculated into the US  
7 Airways rates as the sort of the plateau from which  
8 the higher wage rates are going to be negotiated,  
9 correct?

10 A To my understanding that is correct.

11 MR. FREUND: Okay, that is all I have got.

12 CHAIRMAN NICOLAU: Mr. Katz?

13 MR. KATZ: Let me ask a question or two of  
14 the witness.

15 REDI RECT EXAMI NATION

16 BY MR. KATZ:

17 Q On cross-exami nati on Mr. Freund was trying  
18 to suggest that the rates in the transformati on  
19 plan, LOA 93, were going to continue for at least  
20 seven years. Do you have a view as to whether, if  
21 another opportuni ty arose improvements would be  
22 negotiated sooner than that?

2380

1 MR. FREUND: Obje cti on; call s for  
2 specul ati on.

3 CHAIRMAN NICOLAU: I thought it was a  
4 nonamendable agreement. But it could be, if  
5 somebody said yes. Is that what you are saying?

6 MR. KATZ: That is right.

7 CHAIRMAN NICOLAU: That is possible. It  
8 is also possible that it would n' t be seven years,  
9 that no matter how long it took to negotiate it a  
10 lot of the rates would be retroactive. We all know  
11 that.

12 MR. KATZ: That is possible.

13 CHAIRMAN NICOLAU: Okay, so you don' t have  
14 to do that.

15 BY MR. KATZ:

16 Q And you testi fied, I think, that there was  
17 an opportuni ty presented by the Del ta transacti on,



18 did you say something about that?

19 MR. FREUND: No.

20 CHAIRMAN NICOLAU: No, he didn't say  
21 anything about that.

22 MR. FREUND: No.

2381

1 BY MR. KATZ:

2 Q I won't follow up on that then.

3 Once the pilots had made the cuts in LOA  
4 93, the other employee groups at US Airways also  
5 agreed to similar reductions in pay totaling a  
6 billion dollars a year; right?

7 A In excess of a billion dollars, that is  
8 correct.

9 Q And at that point didn't the company  
10 recognize that went a long ways toward ensuring it  
11 is survival?

12 MR. FREUND: Objection.

13 CHAIRMAN NICOLAU: Well, you know, I mean  
14 the company may have told him something.

15 MR. FREUND: If they told him something  
16 that would be fine, otherwise he is asking him to  
17 read their minds.

18 THE WITNESS: Would you restate the  
19 question for me?

20 BY MR. KATZ:

21 Q Let's go back to the point in time when  
22 all of the pay cuts from the different groups had

2382

1 gone into effect.

2 A Correct.

3 Q And I guess that would be January 2005?

4 A Correct.

5 Q All right, from that time frame do you  
6 know whether the merger transaction was the only  
7 transaction that was being evaluated US Airways and  
8 its management?

9 A I do know that US Airways and its  
10 management were actively seeking financing but as  
11 far as a, on a stand alone basis, but other than  
12 that I have no direct knowledge from the company as  
13 to what they were doing.

14 Q You weren't involved in that process?

15 A No.

16 MR. KATZ: All right, I will save that  
17 question then for our next witness. And that  
18 completes my questioning of Captain Hollerbach.

19 CHAIRMAN NICOLAU: Anything?

20 MR. GILLEN: I don't have anything.

21 MR. FREUND: I don't have any.

22 MR. BRUCIA: No.

2383

1 CHAIRMAN NICOLAU: Thank you.

2 MR. KATZ: We would like to call Tim  
3 Phelan as our next witness.

4 Whereupon,

5 TIMOTHY R. PHELAN

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

8 DIRECT EXAMINATION

9 BY MR. KATZ:

10 Q State your name and business address for  
11 the record, please.

12 A Timothy R. Phelan, I am a senior vice  
13 president of Simat, Helliesen & Eichner, also more  
14 commonly known as SH&E, and I am at the 90 Park  
15 Avenue, New York City office.

16 Q And what is the business of SH&E,  
17 Mr. Phelan?

18 A SH&E is -- was founded originally in 1963  
19 so we are certainly the oldest and we believe the  
20 largest consulting firm in the world specializing  
21 just in air transportation projects.

22 Q How long have you been employed with SH&E?

2384

1 A A little more than 28 years.

2 Q And your CV is attached to your report?

3 A It is, indeed, Appendix A.

4 Q Appendix A to the report, and in the Tab 2  
5 we have a series of 16 slides followed by a blue  
6 divider, and then a written report with several  
7 appendices; is that correct?

8 A That is correct.

9 Q Have you --

10 MR. FREUND: Can you hang on one second,  
11 Dan? Okay.

12 BY MR. KATZ:

13 Q Would you describe for the arbitration  
14 panel some of your experience consulting or working  
15 in the airline industry?

16 A Obviously, I have been in the airline  
17 industry since 1965 so obviously it is long and  
18 experience hard one, but in the consulting area most  
19 recently I suppose, I co-managed the firm's  
20 financial and technical services practice. And the

21 technical, financial and technical services practice  
22 is divided in two parts, one is just strictly the  
2385

1 technical side, the tangible asset management,  
2 tangible asset valuations, maintenance, process  
3 efficiencies.

4 On the other side is myself, on the  
5 financial support side, and we, my group does a lot  
6 of due diligence activities for investors, for  
7 equity firms or hedge funds.

8 We do restructuring plans for distressed,  
9 if you will, and/or bankrupt carriers. We do  
10 intangible asset valuations, which have been doing  
11 quite a bit of recently for the distressed carriers.  
12 Beyond that I the get involved in strategic and  
13 tactical planning assignments on more or less a  
14 global basis.

15 Q Who are some of the clients you have done  
16 this work for?

17 A Well, most recently, I suppose, there has  
18 been a number of investment banks, J.P. Morgan,  
19 Citicorp, GE Commercial Finance. We have done them  
20 for small private equity firms that have made  
21 investments in the airline industry outside the U.S.  
22 In the U.S., we have done it for investment firms,  
2386

1 foreign based investment firms that have made  
2 investments in MROs and start-up airlines overseas.

3 Q Have you testified in legal proceedings  
4 before?

5 A I have testified in several, the last of

6 which that I can remember is on behalf of the US  
7 Airways MEC in the ALPA fragmentation process, which  
8 was back during the time of the United, pending at  
9 that point the United-US Airways mergers.

10 Q That involved an analysis of the  
11 provisions of the USAir Section 1 protections in  
12 connection with spinning off assets in the  
13 USAir-United deal?

14 A That is correct. I have also, along with  
15 our founder John Eichner, participated in seven or  
16 eight different arbitration proceedings over time,  
17 for the US Airways pilots for the Piedmont pilots,  
18 Air Canada pilots, Canadian Pacific and Pacific  
19 Western pilots.

20 I have also been qualified as an expert in  
21 bankruptcy proceedings, giving testimony in the  
22 Eastern case, in the Pan Am case, at least, TWA

2387

1 second bankruptcy.

2 MR. KATZ: We would proffer Mr. Phelan as  
3 an expert in airline economics.

4 MR. FREUND: I have just a couple  
5 questions.

6 CHAIRMAN NICOLAU: Uh-huh.

7 VOIR DIRE EXAMINATION

8 BY MR. FREUND:

9 Q Mr. Phelan, first I am curious about this  
10 testimony in connection with the United-US Airways  
11 merger. I don't remember any proceedings in which  
12 there was testimony, but maybe you can help me?

13 A There was a proceeding, I -- forgive me, I  
14 forget the framework of the proceeding, but there

15 was testimony, there was a hearing over in  
16 Arlington, Virginia.

17 MR. KATZ: It was before the US Airways  
18 ALPA System Board of Adjustment chaired by Robert  
19 Douglas, involving questions under the Section 1  
20 protections of the US Airways pilots.

21 BY MR. FREUND:

22 Q You said that in some of the work that

2388

1 SH&E does is advising investment banks and private  
2 equity firms in connection with possible airline  
3 investments. Have you done that personally or has  
4 SH&E done that?

5 A No, I have done some of that personally,  
6 but it is myself and our CEO, David Tritell, and our  
7 technical services guy, Claude Medlin, several of us  
8 in the New York office. We also have if you will  
9 counterparts in our London office that do the same  
10 thing.

11 Q Can you tell me the -- I don't want to get  
12 into anything that is confidential because I suspect  
13 some of the advice you may have given is in  
14 connection with transactions either that didn't  
15 occur --

16 A 100 percent of it was in connection with  
17 some transactions of which occurred, most of which  
18 did not occur.

19 Q Okay, so if I ask you a question that  
20 requires you to give some confidential information  
21 then tell me that is confidential and don't give it?

22 A All right.

2389

1 Q When was your most recent foray into  
2 advising either investment banks or private equity  
3 firms in connection with airline investments in the  
4 United States?

5 A The last several that I can think of were  
6 overseas, that is to say foreign companies. We  
7 are -- I am sorry.

8 Q Well, go ahead, why don't you finish and  
9 we will circle back?

10 A We are looking at investments in two U.S.  
11 based, two proposed start ups right now that we have  
12 been asked to advise investors on.

13 Q You do that now, and prior to that the  
14 last ones were foreign investments?

15 A Yes, European-based MROs and South  
16 American-based airline, yes.

17 Q When was that investigation?

18 A Last two.

19 Q 2006?

20 A 2006.

21 Q And before that when was the last peak  
22 into that kind of work, let's stay in the U.S. for

2390

1 the moment?

2 A We did five complete due diligence  
3 assignments last, five or six last year, from our,  
4 you know, from our New York office. My recollection  
5 is that all but one was foreign, one was very  
6 definitely a U.S. airline, flag airline.

7 Q Did that one close?

8 A It did.

9 Q So that is not confidential at this point?

10 A It is confidential, our client is  
11 confidential, yes.

12 Q Okay. So you did one U.S. last year and  
13 it closed. Before that one, when did you engage in  
14 similar activities.

15 A Last year --

16 Q When you say last year --

17 A 2006.

18 Q Okay, because we are early 2007?

19 A Yes, 2006.

20 In 2005 we were in the Caribbean working  
21 with two flag carriers looking for investors on  
22 their behalf after we developed restructuring plans.

2391

1 So sometimes we work for management, if you will,  
2 and sometimes we work for investors.

3 Q Did those close?

4 A They did not. Those are not, that I can  
5 recall.

6 Q And I am only going to go back one more  
7 year before that, 2004?

8 A 2004 was at least one that closed, where  
9 we worked on behalf of the creditors on a  
10 restructuring, I believe it was 2004. That was  
11 Atlas Holding, I can tell you that one, I think it  
12 was 2004.

13 MR. KATZ: We know something about that.

14 MR. FREUND: I know a little about it.

15 THE WITNESS: Hawaiian is another one we  
16 worked on, of course that was 2004, I think, or



17 maybe the beginning of 2000 -- I am sorry, 2005,  
18 maybe the beginning of 2006.

19 BY MR. FREUND:

20 Q And that one closed, too?

21 A It did indeed.

22 MR. FREUND: I think that is all I have.

2392

1 I have no objection to Mr. Phelan  
2 testifying as an expert.

3 CHAIRMAN NICOLAU: Thank you.

4 MR. FREUND: I gather he has been  
5 proffered on airline economics.

6 MR. KATZ: Right.

7 DIRECT EXAMINATION (Resumed)

8 BY MR. KATZ:

9 Q Did you take on an assignment, you being  
10 SH&E that you, Tim Phelan, spearheaded for the US  
11 Airways merger committee?

12 A I did.

13 Q Would you describe what that project was?

14 A Well, essentially on the -- we put  
15 together a slide presentation just as a summary, if  
16 you will, of extracts from our statement, our full  
17 statement. So a lot of this material is current.

18 But what we were asked to do was to  
19 analyze America West's financial performance in  
20 calendar, in the beginning of calendar year 2005,  
21 relative to some statements made by their CEO Doug  
22 Parker to the pilots January 2006, just 53 weeks or

2393

1 so ago, under which he expressed very convincingly  
2 that without the US Airways merger that America West

3 was destined for Chapter 11, along with seven other  
4 carriers perhaps.

5 Q How did you go about doing the analysis  
6 for this project?

7 A Our analysis was strictly financial, that  
8 is to say balance sheet and/or income statement  
9 based. We did take into consideration some  
10 competitive, we did take into competitive  
11 considerations a little bit.

12 But essentially we started with financial  
13 analysis, financial ratio analysis of the balance  
14 sheet of America West. And in the next, in slide 3,  
15 I guess it is, we do show a comparison of one  
16 measure, an acid test comparison of US Airways and  
17 America West Airlines.

18 Part of our thesis, okay, was when we --  
19 myself and my couple colleagues sat down to see what  
20 we could do for this case, part of my thesis was  
21 that America West's performance was so much like  
22 carriers who had, were in bankruptcy or had gone

2394

1 through bankruptcy, that their direction suggested  
2 that they would have followed suit the same way, in  
3 other words to confirm what Mr. Parker was saying.

4 Q Mr. Phelan, in terms of the data sources  
5 that you used, it was essentially public sources of  
6 data wasn't it?

7 A We only had public sources, whether SEC  
8 documents, 10K, 10Q, S-1 and Form 41 which everybody  
9 files including America West.

10 Q So you didn't use any inside information

11 from America West or US Airways?

12 A We had none, no inside information by the  
13 companies.

14 Q Okay. And you prepared a detailed report  
15 which follows the series of 16 slides?

16 A Correct.

17 Q But rather than go through that report  
18 which does have a great deal of detail in it, can we  
19 learn the highlights of your analysis from the  
20 slides?

21 A I think we can, yes. I think it outlines  
22 how we got to the conclusion where hindsight tells

2395

1 us that Mr. Parker was well motivated, if you will,  
2 to make the statements he did a year ago about the  
3 potential likelihood of the America West bankruptcy.

4 Q Okay. Let's take a look at the first  
5 slide then, maybe you can tell us what we can learn  
6 from that?

7 A Unfortunately I have to correct a couple  
8 things, on the first slide. We did several  
9 financial analyses, one of which was the acid test  
10 as I indicated, the other one, another one had to do  
11 with working capital ratio analyses.

12 But the point here, and the table -- I am  
13 sorry, Dan, go to the next --

14 Q Yes, I think you are on three.

15 A Yes, I am already into --

16 Q The first two slides repeat some of the  
17 quotes that came from the January 26th transcript  
18 and some of the more detailed findings in the  
19 report?

20           A     Most of the material on this page is, the  
21 first two points either are direct quotes or  
22 summarize Mr. Parker's projections, and our

2396

1     conclusion that we think he was very correct.

2           But this is the acid test comparison, US  
3 Airways and America West, and what is not correct  
4 are the two percentages. First of all there should  
5 only be one percentage in the third line. It says  
6 America West was put in .34 and .36 percentage  
7 points, it really ought to be America West liquidity  
8 fell .18 percentage points, almost twice as quick as  
9 US Airways before it filed bankruptcy.

10           The 34 points refers to the working  
11 capital analysis which is another one we did but we  
12 took the acid test here because it was just as valid  
13 from our perspective. So what we see is based on a  
14 ratio of unrestricted cash and short term  
15 investments, divided by current liabilities, which  
16 is a true test of a carriers ability to pay its  
17 bills, and a factor of less than 1, less than 1.0  
18 suggests that its liabilities exceed its cash. In  
19 other words it can't essentially, if forced -- it  
20 could be forced into bankruptcy. It can't cover its  
21 liabilities with its cash.

22           So ratio of less than one is not good.

2397

1     And in this particular analyses US Airways, which  
2 was in bankruptcy, compared to America West, we are  
3 suggesting that America West's ratio was falling at  
4 twice the rate of US Airways before it went into

5 bankruptcy, and that is to say America West before  
6 the merger announcement.

7 Q So that is a bad sign?

8 A So it is a bad sign. It is always a bad  
9 sign.

10 Q So what is the next slide?

11 A Next slide deals with cash, which is  
12 another measure of liquidity that we looked at,  
13 another survival measure. And what this slide  
14 indicates is that in the quarter prior to the merger  
15 approval America West had essentially less cash than  
16 some other carriers already in bankruptcy, so again  
17 another indication from an unrestricted days of  
18 cash, days of cash to cover operating expenses.  
19 They were much like a carrier in bankruptcy than I  
20 think, as the next slide shows, unlike, very  
21 different than what we call in here healthy cash  
22 carriers, and they would include American Airlines,

2398

1 Jet Blue, Continental, Southwest and Frontier?

2 Q Are you on to the slide that goes in the  
3 other direction instead of up and down?

4 A I am on No. 5, yes.

5 Q Okay, let's look to that then.

6 A It is America West in green, they had  
7 about 37 days of operating cash, and the average of  
8 the balance of the carriers I mentioned, what we are  
9 calling a healthy carrier, was about 100 days of  
10 cash.

11 Q And in fact America West had less cash  
12 than Northwest and Delta when they filed in  
13 September 2005?

14 A Northwest is kind of a wrinkle because  
15 Northwest had a lot of cash, they do have a lot of  
16 cash today. That cash comes out of their  
17 monopolistic Pacific routes.

18 Q Okay?

19 A Certainly they had less cash than US  
20 Airways the second time, or Delta, and just  
21 marginally better than Hawaiian. US Airways --  
22 Northwest had 60 days of cash, which is insufficient  
2399

1 but it is substantially more than some of the other  
2 carriers in bankruptcy. And what I am saying is  
3 that is attributed to their special network route  
4 operations.

5 Q Okay. And the next slide has the details,  
6 the numbers on the healthy carriers, as you called  
7 them?

8 A Average of 100, yes, 100 days of operating  
9 cash.

10 Q And that's superior to America West's  
11 situation?

12 A At \$37, yes. 37 days, yes, sorry.

13 Q The figure on slide 6 seems to be 32.96 at  
14 the end of the second quarter?

15 A I am sorry, it depends on this -- as I  
16 said, we used two different sources, SEC documents  
17 and Form 41 documents, reconciling the numbers in  
18 both is sometimes difficult, so that the 37 days was  
19 based on SEC documents, the 33 days, 32.96 days was  
20 based on Form 41.

21 Q I see. And then the next slide, if we

22 could, you looked at some other issues aside from  
2400

1 cash, although I take it cash is an important --

2 MR. GILLEN: King.

3 THE WITNESS: Yes, cash is king, as they  
4 say. Yes, thank you.

5 We also looked, Mr. Parker also made I  
6 guess obvious comments, or he affirmed the position  
7 that they competed, that America West competed to a  
8 substantial degree with low cost carriers,  
9 Southwest, Jet Blue, Frontier, and others, and this  
10 chart just indicates the overlap between HP  
11 situation and, HP's route network as an independent  
12 as a stand alone as compared to LCC's, generally,  
13 which is about, they have about 70 percent,  
14 70 percent overlap rate.

15 They also compete against network  
16 carriers, Delta, American, Continental, Northwest,  
17 United and U.S., and that competition exists on  
18 about 12 percent of their routes.

19 The point is, building to the comparison  
20 of, first of all you have a situation where America  
21 West had substantially less cash than competitors  
22 like Jet Blue and Southwest, only about a quarter of

2401

1 what they had to continue operations. And  
2 Mr. Parker indicated, and we get in to it a little  
3 later, and America West had lost their strategic  
4 cost advantage against network carriers, and in fact  
5 against other low cost carriers.

6 Q So where did that put America West at that  
7 point in time in terms of its competition?

8           A     Between a rock and a hard place, I think  
9     is the simple answer. On the one hand they were  
10    getting squeezed from a cost perspective, their cost  
11    advantage was going away, both by the network  
12    carriers getting cost reductions and tapering down  
13    their unit costs, but the other side of the point is  
14    the LCC carriers continue to maintain a cost  
15    advantage, that is they had lower costs than America  
16    West.

17                 America West was being squeezed from both  
18    sides from a marketplace perspective. They had  
19    relatively low amount of cash, even before fuel  
20    prices began to take off in 2005, they really didn't  
21    begin to take off until the third quarter.

22                 They were just being squeezed to the point  
2402

1     where they had to do something to improve their cash  
2     situation and/or their route situation.

3           Q     So the rock is the LCCs and they were able  
4     to compete on a low cost basis against America West  
5     with more cash in hand than America West had?

6           A     Yes, they were, yes, that is true.

7           Q     And the hard place is the carriers like  
8     network carriers that provided more amenities and  
9     service than America West did?

10          A     That is correct.

11          Q     And they were kind of betwixt and between?

12          A     It appears that way.

13          Q     The next slide, you take this analysis a  
14    little deeper, don't you?

15          A     We do. Mr. Parker made a comment about



16 how great the Phoenix and Las Vegas hubs were,  
17 truly, and truly they were, but, on the other hand,  
18 they were being -- they would never -- they couldn't  
19 get yields high enough to compensate, to help  
20 compensate for cash shortages because the other  
21 hubs, which essentially carried people in the same  
22 markets, got -- were substantially stronger, both

2403

1 from a demand standpoint and from the yield  
2 perspective.

3 Atlanta, for example has a 15 cent  
4 industry. He used four specific examples, Atlanta,  
5 Dallas, Chicago O'Hare and Philadelphia, and every  
6 case the yield is substantially higher except at  
7 Philadelphia where it is higher but I wouldn't say,  
8 I wouldn't call it substantially higher because  
9 Southwest is in that market in this time period.

10 The point being that the traffic routed by  
11 other hubs got yields that were greater than those  
12 that he could get out of Phoenix and Las Vegas, and  
13 the demand was greater at those hubs than Phoenix or  
14 Las Vegas.

15 So he was handicapped by his own network,  
16 if you will, in terms of net new cash generation.

17 Q So, when Mr. Parker said on January 25,  
18 2006 that America West was losing its advantage in  
19 Phoenix and Las Vegas because of cost competition  
20 coming from other sources, your analysis bears out,  
21 confirms his statements?

22 A We think we do, we think it does, yes,

2404

1 absolutely.

2 Q And his statement about Atlanta, Dallas,  
3 Chicago and Philadelphia, among other places having  
4 better yields, that is also confirmed by your  
5 analysis?

6 A Yes.

7 Q What about the conclusion that Mr. Parker  
8 reached about the absence of a long-term viable  
9 business plan for America West?

10 A Their business plan was centered around  
11 providing low cost transportation and that  
12 advantage, which they had at one time had, literally  
13 evaporated over the last several years.

14 Q Okay, could we have the next slide,  
15 please.

16 This is a quote here, and you agree with  
17 Mr. Parker's statement?

18 A Oh, I think absolutely. In here he makes  
19 the point, here he makes the point that the network  
20 carriers had been very successful in reducing their  
21 costs. They went out squeezing, if you will,  
22 America West from the top in terms of price

2405

1 competi tion.

2 Q And is it your view that America West did  
3 not have the ability at its Phoenix and Las Vegas  
4 hubs to increase yields in order to combat that?

5 A They didn't. They could not increase  
6 yields substantially enough to offset a cash issue,  
7 yes.

8 Q The next slide, please. Number 10, in our  
9 book, and how did that relate to this issue?

10           A     It just generally profiles or trends the  
11 performance of America West from a yield and a RASM  
12 and CASM, RASM being revenue per available per seat  
13 mile, CASM being cost per available seat mile, you  
14 see in six of eight quarters going back to April, to  
15 the fourth quarter of 2004, the CASM grew faster  
16 than RASM, that in effect is saying they had very --  
17 that operating margins were declining and when  
18 operating margins decline it is an inference that  
19 the cash is becoming more acute, the cash shortage  
20 is becoming more acute.

21           Q     Because your costs are going up faster.

22           A     On the other hand because costs are going

2406

1     up higher and faster revenue, right.

2           Q     Do you have any comments about the one  
3 quarter that kind of stands out, it is different  
4 there?

5           A     It is an aberration. America West took  
6 some route action in the first quarter of 2005, they  
7 had entered the transcon markets, the year before,  
8 they proved not to be successful and that service  
9 was discontinued.

10                     However, our research actually when we saw  
11 these numbers, we knew it was an aberration. What  
12 we did was go back and do some, if you will, some  
13 analysis of Form 41 and what the numbers suggest is  
14 that the big spike in yield and RASM in two first  
15 quarter 2005 was purely attributed to a change in  
16 the way they accounted for feeder traffic. That is  
17 to say, historically, and this is true for other  
18 airlines also, carriers account for revenue from

19 feeder partners, Mesa in the case of America West --

20 Q That was the America West express carrier?

21 A On a net basis, that is to say they have  
22 the revenue, they pay the cost of the feeder service

2407

1 and just book the difference, whether that is a  
2 positive or a minus.

3 What we think, and actually one of the  
4 security analysts confirmed this, the big spike in  
5 first quarter 2005 is they changed their process to  
6 account for all of the revenue which effectively  
7 factored into yield increases, and just treated  
8 costs the same way. So it is just an artificial  
9 change in the way they accounted for things that  
10 showed a big boost in yield in one-quarter.

11 Q I see. All right, what about the next  
12 slide, No. 11, talking about the industry?

13 A This is a trend analysis, the time series  
14 that have, I think conclusively demonstrates what  
15 was happening to the Northwest -- to America West's  
16 costs. They are the bright red line towards the  
17 bottom. And we went back and traced costs, broke  
18 cost into two groups, again the LCC group and a  
19 network group, America West and US Airways, as stand  
20 alone and a composite network carrier index.

21 Clearly we can see the beginning in the,  
22 at different times, of course, but for America --

2408

1 for US Airways which is actually the top line, you  
2 see costs start to come down in about the fourth  
3 quarter of 2003. You can see, the two centerlines,

4 the green and the blue, I guess it is, that is --  
5 not blue, purpleish, I guess, costs start to come  
6 down among, on the network carriers in 2004.

7 You have America West red, which has  
8 pretty steady going back across all of the time  
9 frames higher, until the fourth quarter of 2004 when  
10 costs begin to spike.

11 And you have the bottom line, the bright  
12 blue line is the LCC, low cost carrier, an acronym  
13 for low cost carriers, which show lower costs  
14 historically than America West, a spike up in fourth  
15 quarter of 2004 and then a very rapid decline in  
16 costs through the second quarter 2005.

17 So this is, this is the analogy we are  
18 trying to put before you. You have the network  
19 carriers at the top, higher costs but costs trending  
20 down toward the LCC levels. You have America west  
21 in the middle now, with rising costs in the  
22 beginning of 2005. And you have low cost carriers

2409

1 will continue their low cost positioning versus  
2 America West and the network carriers.

3 Q So this chart we are looking at now and  
4 the related analysis that is in the full report  
5 confirms Doug Parker's comments about the  
6 competition dropping their costs?

7 A Their strategic model was broken, their  
8 low cost strategic model was broken.

9 Q Thank you, Mr. Phelan.

10 The next exhibit, slide 12, switches to a  
11 slightly different subject doesn't it?

12 A Well, it does, indeed.

13 Q Would you explain that, please?

14 A Mr. Parker said that you know, but for the  
15 merger, if you will, but for the merger they would  
16 have, and given the fact that they had four reasons,  
17 they didn't have a strong enough market position  
18 from a financial standpoint or from an income  
19 standpoint to raise additional capital, equity, on  
20 the equity side.

21 They had, as I recall, they only owned two  
22 aircraft, two out of 140, so they had no collateral.

2410

1 They had no assets to pledge as collateral for  
2 additional debt. Most of their loans were  
3 unsecured, I should say, but at any rate he said you  
4 know, but for -- given our competitive situation,  
5 given our inability to raise additional capital, and  
6 given our cash situation, we had to merge or  
7 liquidate, we had to merge with US Airways or  
8 liquidate.

9 And this just goes to compare the four  
10 quarters prior to the merger with the, if you will,  
11 the two stand alone carriers, and the fourth  
12 quarters after the merger. And what it indicates is  
13 that again he was entirely right, that US Airways  
14 turned out to be the white knight, if you will, to  
15 his own interests. They contributed 63 percent of  
16 the passengers, 60 percent of the RPM, 68 percent of  
17 the revenue, 129 of the operating profit.

18 In the four quarters after the merger  
19 America West still had an operating loss.

20 Q All right. The next slide, No. 13,

21 compares America West's stock movement to the  
22 industry before the merger. My question is what  
2411

1 conclusions and analysis do we have here?

2 A It really goes to the question of America  
3 West's inability to raise funds, raise additional  
4 capital in the public markets. This graph just  
5 tracks America West's stock prices, which is  
6 obviously an indication of the faith the market has  
7 in a particular company, versus the rest of the  
8 industry.

9 And while at the beginning of the analysis  
10 in January '04, they actually had higher stock  
11 prices than an index of airlines that we looked at.  
12 They dropped radically over some 18 months or so  
13 until June '05.

14 Again, an indication that the stock  
15 market, if you will, had lost faith in America West  
16 and was not investing at the same price rate, price  
17 level as they had in the past, and that price level  
18 was substantially below other competition.

19 Q The market was more willing to invest in  
20 other airlines than America West?

21 A By the price basis, the answer is yes.

22 Q Slide 14 you have got some appendices  
2412

1 attached to the full detailed report?

2 A Yes.

3 Q And why don't you tell us about those?

4 A Well, the appendices are indicators, an  
5 indication from Wall Street professionals who were  
6 expressing concern about America West's liquidity.

7                   Here we use Bear Stearns' example, and  
8                   Caylon Securities example and Lehman Brothers  
9                   example, all before the announcement of the merger,  
10                  and all expressing their concern about America  
11                  West's liquidity.

12                 Q     And you believe they were right?

13                 A     I would be concerned also, of them.

14                 Q     And Mr. Parker was correct?

15                 A     Mr. Parker was correct in his factual  
16                  recitation that Wall Street had no, had very little  
17                  faith in America West's ability to survive without  
18                  the merger.

19                 Q     The 15th slide, if we could go there, also  
20                  has some information about stocks?

21                 A     Yes.

22                 Q     Can you explain that us to?

2413

1                 A     Yes, this measures the capitalization of  
2                  America West as a stand alone as well as the  
3                  capitalization of the new company which is, which  
4                  carries a symbol LCC, which I think is pretty smart  
5                  application, but in any rate, prior to the merger  
6                  America West's capitalization was improving at an  
7                  average rate of about once a month.

8                         After the merger when the deal, after the  
9                  deal was closed and the new company stock issued  
10                 capitalization improved by almost, you could say by  
11                 800 percent. It went from 1 percent a month  
12                 premerger to 8 percent a month subsequent to the  
13                 merger. Just an indication of again of what, if you  
14                 will, what the strength America West was regaining



15 in terms of market credibility after the merger as  
16 opposed to before the merger.

17 Q And the last slide, you quote  
18 Mr. Parker --

19 A We think he was 100 percent correct, that  
20 he had no choice, he had no choice. He did the  
21 smart thing by merging with America West.

22 Q And after the slide in the exhibit books  
2414

1 we have the full report which is, which looks like  
2 it is 24 pages long, is everything in that report  
3 true and correct to the best of your knowledge and  
4 belief?

5 A Absolutely, yes, it is.

6 MR. KATZ: I think I would prefer to let  
7 the panel read the report as its leisure rather than  
8 having Mr. Phelan go through it line by line, but he  
9 is subject to cross-examine, not only on what he  
10 said about the slides, but on anything that is in  
11 the written expert report that he has prepared.

12 CHAIRMAN NICOLAU: Very good.

13 BY MR. KATZ:

14 Q Let me just ask one final question of  
15 Mr. Phelan.

16 Have you seen an airline that was the size  
17 and had the assets of US Airways in 2005 that has  
18 been compelled to liquidate.

19 A I don't think there has ever been a case  
20 of complete liquidation of airline as large as US  
21 Airways.

22 MR. KATZ: Thank you, Mr. Phelan.

2415

1 He is available for cross.

2 MR. FREUND: Why don't I ask just a couple  
3 preliminary questions and then we take a break.

4 CHAIRMAN NICOLAU: Okay.

5 CROSS EXAMINATION

6 BY MR. FREUND:

7 Q Will you look at slide 11, please?

8 A 11?

9 Q Please. Maybe this is in your report, I  
10 don't know, but rather than pore through it, let me  
11 just ask you. You sourced this document as Form 41  
12 and SH&E estimates. Can you tell me what portion of  
13 the graph is Form 41 and what portion is SH&E  
14 estimates?

15 A It is virtually all SH&E estimates. We  
16 used the financial reporting service to develop, to  
17 pull the data that enabled us to compose the chart.

18 Q That doesn't help me. What is form --  
19 you say Form 41 and SH&E estimates?

20 A The CASM, okay, by definition is cost per  
21 available per seat mile.

22 Q I know what CASM is.

2416

1 A So we used the available seat miles and  
2 operating costs from the various carriers to  
3 construct the index. That came from the Form 41.

4 Q Okay, and what is from the SH&E estimates?

5 A We had raw data and we made the actual  
6 conversions, the calculation, I am sorry. We pulled  
7 operating expenses of carriers, grouped them, we  
8 pulled available seat miles of carriers and put them

9 in the same group, and calculate, you divide one by  
10 the other to get a unit cost.

11 Q Okay. And so I understand that. So what  
12 part of it is an SH&E estimate?

13 A The calculation. It is not quite, you  
14 always refer to it as an estimate but it is a pure  
15 calculation.

16 Q So, there are actually no estimates in  
17 here at all?

18 A No, they are hard numbers in both cases,  
19 in all cases, they are hard numbers and we do the  
20 arithmetic to get at the unit value and that is what  
21 we are calling an estimate, that is all.

22 Q So the, what you did was take the CASM and  
2417

1 divided it by the RASM, by the available seat miles?

2 A No. We took the cost of the operating  
3 expenses.

4 Q The costs, operating expenses, okay,  
5 reported in Form 41?

6 A Right.

7 Q And divided it by?

8 A The available seat miles also reported in  
9 Form 41.

10 Q Okay.

11 A So rather than estimates perhaps it was an  
12 SH&E calculation.

13 Q And according to this chart you excluded  
14 fuel?

15 A Yes, we excluded fuel because --

16 Q Do you know that you actually did exclude  
17 fuel?

18 A Yes, we did, yes, absolutely.

19 Q And I want to just correct you, I want to  
20 let you correct yourself, because you definitely  
21 made a misstatement. You said you believed  
22 Mr. Parker was right when, that he -- that America  
2418

1 West had to either merge or liquidate, you didn't  
2 really mean to say merge or liquidate did you?

3 A No, I am sorry, no I didn't mean to use  
4 the word liquidate.

5 Q No, because he never said that?

6 A No, he did not.

7 Q And you don't think that there was option  
8 to merger, do you?

9 A No, it was not. They could have had a  
10 merger with someone else, perhaps.

11 MR. FREUND: Why don't we take -- 2:00?

12 CHAIRMAN NICOLAU: Think you can make it  
13 by then, lunch as well?

14 MR. FREUND: 2:30.

15 CHAIRMAN NICOLAU: Okay.

16 MR. FREUND: This is your last witness for  
17 today, isn't it?

18 MR. KATZ: Well, no, I was hoping to put  
19 on another witness.

20 MR. FREUND: Well, you still probably can.  
21 I don't think I will be that long with this witness.

22 MR. KATZ: Well, we will plan on and  
2419

1 trying to do that, if it is all right with the  
2 panel.

3 CHAIRMAN NICOLAU: Yes. Well reconvene at  
4 2:30.  
5 (Whereupon, at 12:40 p.m., the hearing was  
6 recessed, to be reconvened at 2:30 p.m. this same  
7 day.)

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2420

1 AFTERNOON SESSION (3:05 p.m.)

2 Whereupon,

3 TIMOTHY R. PHELAN

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

7 MR. FREUND: Are we ready?

8 MR. KATZ: Yes, we can start.

9 CHAIRMAN NICOLAU: I thought we were  
10 waiting for some exhibits.

11 MR. KATZ: Well, the witness's exhibit  
Page 69

12 book is on its way here, but he can use mine.

13 CHAIRMAN NICOLAU: Okay.

14 MR. KATZ: I will share.

15 CHAIRMAN NICOLAU: Okay, let's go.

16 CROSS EXAMINATION (Continued)

17 BY MR. FREUND:

18 Q Mr. Phelan, did you ever see the movie --  
19 no, that is an inside joke.

20 I was struck by the last thing you said  
21 before we left, before Dan left you on direct  
22 examination, and I thought he asked you whether an

2421

1 airline the size of US Airways in 2005 had ever  
2 liquidated before, and you said no. So I  
3 immediately went up to my room and tried to buy a  
4 ticket on Pan Am and was unsuccessful. Did Pan Am  
5 liquidate?

6 A They liquidated over time, but at the time  
7 I think they were smaller than US Airways was last  
8 year, that is what I base it on.

9 Q I see, so they started out bigger than US  
10 Airways?

11 A At the time in the '80s and '90s.

12 Q Then they started selling off their  
13 Pacific routes and their Pan Am building and Europe  
14 and they had just kind of a slow burn liquidation;  
15 right?

16 A It appeared that way, yes.

17 Q Okay. And when I couldn't buy a ticket on  
18 Pan Am I tried to buy a ticket on Eastern, and I was  
19 unsuccessful. They liquidated didn't they?

20 A They did, but the same conditions.

21 Q Same conditions, they started out big and  
22 then they sold off pieces and ultimately liquidated?

2422

1 A And they were smaller than US Airways,  
2 yes.

3 Q Now, has SH&E opined on the question of US  
4 Airways' possible liquidation in the year 2005? I  
5 asked that badly.

6 In the year 2005, let's do it that way, in  
7 the year 2005 --

8 A I think probably the answer is yes,  
9 internally we certainly discussed it, sure.

10 Q How about externally?

11 A With anyone?

12 Q Yes.

13 A No.

14 Q No?

15 A I have -- I did not.

16 Q Well, do you know whether SH&E had opined  
17 on that question in 2005?

18 A I can remember a slide presentation, part  
19 of a slide at a presentation our CEO made where that  
20 was a piece of the slide, yes.

21 Q What did he have to say about it?

22 A I don't know, I wasn't at the session.

2423

1 All I know is that the potential or possible  
2 liquidation of US Airways.

3 Q That was my recollection, of that slide as  
4 well.

5 You wouldn't be taking the position

6 independent of SH&E about that question, would you?

7 A No. But I don't know how the question was  
8 answered.

9 Q You don't know whether SH&E took a  
10 position one way or the other on the possible  
11 liquidation?

12 A That is essentially what I am saying, yes.  
13 That was a potential event, if you will.

14 Q I am sorry?

15 A It probably was labeled as a potential  
16 event.

17 Q I think that is right.

18 Turn to your slide 7, please. So the way  
19 I look at slide 7, it has got, if I read the table  
20 correctly, it has got the percentage of America West  
21 routes competed on by a variety of carriers,  
22 correct?

2424

1 A Yes.

2 Q And you said that you thought in your  
3 opinion that America West was being squeezed by the  
4 network carriers and by the low cost carriers,  
5 correct?

6 A Yes, because of its changing cost  
7 structure, yes.

8 Q Its increasing cost structure, we will  
9 come to that in a bit.

10 The chart shows 38 percent, 38.71 percent  
11 to be precise, of America West routes on which  
12 Southwest competes, and then if I understand  
13 correctly, that means that only Southwest is



14 competing on those; correct?

15 A Correct, that is the way the table is set  
16 up.

17 Q I wanted to make sure I understood how the  
18 table is set up. So 38.7 percent of America West  
19 routes only Southwest is competing?

20 A Yes.

21 Q And then 10 percent of America West routes  
22 nobody is competing on them?

2425

1 A That is probably true, yes. That is what  
2 the --

3 Q I hope it is true because that is --

4 A That is what the analysis indicated.

5 Q Well, the analysis, that is what you are  
6 testifying to under oath, correct?

7 A Correct.

8 Q Do you know that to be the case or did  
9 somebody put this table together and you are just  
10 sort of standing up in front of it?

11 A The table was put together under my  
12 direction so I am more than standing in front of it.

13 Q Okay, good. That is true with respect to  
14 all of these documents, correct?

15 A Yes.

16 Q Okay. Now, on the same table it shows,  
17 five down, Alaska/Southwest is competing on 3.79  
18 percent of the routes, correct?

19 A Yes, it does.

20 Q Now, this table doesn't -- let me back up  
21 a minute.

22 Is there any carrier in the country that

2426

1 you can think of that is not competing against  
2 either a network carrier or a low cost carrier on,  
3 say 90 percent of its routes?

4 A Well, certainly the premise is correct. I  
5 don't know about 90 percent, but yes.

6 Q Everybody is competing?

7 A Against everybody else, yes, somebody  
8 else.

9 Q So when you said that about America West,  
10 that is America West was competing against network  
11 carriers and competing against low cost carriers,  
12 you could have said that about United, you could  
13 have said that about American, Northwest, Spirit,  
14 you could have said that about every carrier,  
15 correct?

16 A Yes, but I don't know whether it is to the  
17 same degree as they compete against America West.

18 Q It is important. You don't know the  
19 answer to that question?

20 A Not sitting here, no.

21 Q Okay. Additionally, looking at this  
22 chart, you couldn't tell us whether, I mean this is

2427

1 a snapshot chart, right?

2 A It is a summary, that is correct.

3 Q Well, it is not just a summary, it is a  
4 summary of a snapshot of the second week of  
5 May 2005, correct?

6 A Yes, that is the way we keep our data, by  
7 weeks, our OAG data, by weeks.

8 Q Right. So do you know what the  
9 competitive, America West's competitive mix was  
10 against Southwest and/or these various other  
11 carriers was for the second week of May 2004?

12 A I am sorry.

13 Q Do you know what the competitive mix was  
14 that America West faced in the, I am just picking a  
15 week, the second week of May 2004?

16 A No, I don't, not sitting here.

17 Q So you don't know if there was more  
18 competition or less competition by this mix of  
19 carriers in May 2005, do you?

20 A Literally I don't know that. I suspect it  
21 might have been less.

22 Q You suspect but you don't know?

2428

1 A No.

2 Q Okay. And nothing in this chart tells us  
3 the first thing about the extent to which America  
4 West was successful in its competition on a head to  
5 head basis or otherwise against any one of these  
6 carriers, rights?

7 A That wouldn't be public available data.

8 Q Well, did anybody show you any of the  
9 other exhibits that had been introduced by either  
10 the US Airways pilots or the America West pilots in  
11 this proceeding?

12 A I saw the exhibits of your experts, or two  
13 of your experts.

14 Q Did you see the exhibits reflecting  
15 America West's head to head competition with  
16 Southwest in Phoenix and Las Vegas?

17 A Yes, we have the same kind of data in our  
18 report.

19 Q And just make sure we are talking about  
20 the same one, do you remember this chart?

21 A I remember it but I don't remember the  
22 facts.

2429

1 Q Why don't you look at it.

2 A Thank you.

3 Q Why don't you read us the slide, that  
4 slide number and the next one and the next one just  
5 so we have it for the record?

6 A 25, 26 and 27.

7 Q Okay.

8 CHAIRMAN NICOLAU: Which book is it in?

9 MR. KATZ: Bob Mann's exhibits.

10 BY MR. FREUND:

11 Q Okay, did you do an independent look to  
12 see whether there was any mistakes in those slides?

13 A No, I did not.

14 Q Do you know whether there are any mistakes  
15 in those slides?

16 A I haven't analyzed it, no.

17 Q Do you have any reason to believe sitting  
18 here today there are any mistakes in those slides?

19 A I do not. It looks like a proper  
20 relationship curve.

21 MR. FREUND: I think that is all I needed  
22 you to do with those slides, you can pass it back to

2430

1 me.

2 MR. BRUCIA: Got it.

3 THE WITNESS: Thank you.

4 BY MR. FREUND:

5 Q I took it away from you but you don't have  
6 any quarrel with them? I will just tell you what it  
7 said, that in 30 Phoenix nonstop markets in which  
8 America West and Southwest both compete, America  
9 West passenger weighted average fares higher than  
10 Southwest by 39.4 percent and America West's fares  
11 are higher in all 30 markets, and in 28 Las Vegas  
12 nonstop markets in which America West and Southwest  
13 both compete, America West passenger weighted  
14 average fares higher than Southwest by 22.4 percent,  
15 and America West fares are higher in 26 of the 28  
16 markets. And that America West's yield curve is  
17 higher than Southwest in those markets. Would that  
18 suggest to you that competing head to head with  
19 Southwest America West has been successful?

20 A No, it doesn't, they are fare curves or  
21 yield curves, not cost curves or profit curves.

22 Q My question is whether they have been able  
2431  
1 to a track business away from Southwest at higher  
2 fares against Southwest in those markets?

3 A I don't think -- I don't think there is  
4 enough information available to pass judgment on it.  
5 I don't think that is a true statement, however.

6 Q You didn't quarrel with anything that was  
7 in those slides did you?

8 A Not with the relation, the fare  
9 relationship or the cost relationship, but you are  
10 asking me about demand relationship.

11 Q Okay? You told us you haven't done any  
12 analysis on that question, correct?

13 A On which question, sir?

14 Q On the question of the success of America  
15 West competing against Southwest or for that matter  
16 any of the carriers that you have listed on slide  
17 seven on a head to head basis?

18 A We have not done anything with respect to  
19 the degree of success, that is true.

20 Q In your -- let's flip to slide 10 for just  
21 a very quick point.

22 In your slide 10 you said something about

2432

1 that first quarter of 2005 regarding an accounting  
2 change, is that right?

3 A Yes.

4 Q So I didn't understand really anything  
5 that you said, but I am going to show you, and we  
6 will worry about it a little bit later, but I just  
7 want to show you, and I don't have copies of this  
8 for the panel at the moment, but we will get copies  
9 to the extent necessary; I just want to show you  
10 page 13 of the second quarter America West 10Q,  
11 showing you note 1, which is headed Basis of  
12 Presentation. Maybe you could read it to yourself  
13 and tell us whether that explanation is a  
14 description of what you thought was going on in  
15 connection with that quarter?

16 A I think the second paragraph does, yes.

17 Q All right, we will parse that with  
18 somebody else later on. I just wanted to make sure

19 that we were working off of the same underlying  
20 information?

21 A Yes, that was -- that is our conclusion  
22 and it was also the conclusion of one of the

2433

1 financial analysts in one of the attachments to my  
2 testimony.

3 Q Well, that is a good segue actually into  
4 my next point. You attached a number of financial  
5 analyst reports as part of your report on the  
6 analysis and -- as exhibits upon which you, at least  
7 in part, based your conclusions, correct?

8 A Three samples, yes.

9 Q I am sorry?

10 A Three samples, yes.

11 Q One of them was a Bear Stearns -- just  
12 make sure I get it right, these were attached I  
13 think to your report, correct?

14 A That is right, that is correct.

15 Q They don't have page numbers. They are  
16 appendices to the report, and they come right after,  
17 they are in appendix -- well, I guess they are  
18 appendix B, and the no page numbers. They are after  
19 the blue divider in Exhibit 2; is that right?

20 A I don't have a blue divider.

21 Q You don't? Isn't that right by your hand,  
22 right where your hand is, is that where you separate

2434

1 it?

2 A No, that separates the report from the  
3 slides. It is appendix B, back past page 26 is my  
4 resume.

5 Q Okay. In the first one that you put in  
6 and that you attached -- well, first of all, I was  
7 kind of interested, much of your report and analysis  
8 and opinion deals with sort of where America West  
9 was trending first quarter to second quarter and  
10 projecting forward thereafter; correct?

11 A First and second quarter, yes.

12 Q Okay. But the three analyst reports you  
13 put in, the first one, Bear Stearns, was  
14 January 21st, 2005 reporting on the year end  
15 results, correct?

16 A And making it a hypotheses of what might  
17 happen in the future, yes.

18 Q Then the second one you put in which was,  
19 make sure I have got them in the same order that  
20 they are in the book, same one you put in was  
21 Calyon?

22 A That is correct.

2435

1 Q And that was first quarter report,  
2 reporting on first quarter results, correct?

3 A Yes.

4 Q And then the last one you put in was  
5 Lehman Brothers and that was reporting on first  
6 quarter results, correct?

7 A Yes.

8 Q Now, let's start with Bear Stearns, I am  
9 not going to really spend a whole lot of time on  
10 Bear Stearns, except to observe that the other two  
11 reports that you put in were dated April 20th and  
12 April 21st, when the first quarter results were



13 announced, and you didn't put in the Bear Stearns  
14 report for the first quarter, did you?

15 A The next Bear Stearns report on America  
16 West was not until May, which was after the merger  
17 or about the time the merger was announced, and it  
18 wasn't really appropriate to our approach because we  
19 think that once the merger was announced the playing  
20 field changed completely.

21 Q Gee, I am looking at an April 20th Bear  
22 Stearns report?

2436

1 A Okay, maybe it is. Sorry.

2 Q Why? Yes. Why don't we mark this. This  
3 will be exhibit G in cross-examination exhibits.

4 MR. BRUCIA: Jeff, what are we calling  
5 this?

6 BY MR. FREUND:

7 Q I believe it is exhibit G in our  
8 cross-examination exhibit book.

9 So you were wrong about whether Bear  
10 Stearns did one before --

11 A I do remember this one. As a matter of  
12 fact, I was looking for my own copy.

13 Q And we will just look at some of the key  
14 points. The third key point, and we don't really  
15 have to go through this in any detail, we have  
16 already done it in the case, but it says first  
17 quarter earnings per share exceeds expectations,  
18 correct?

19 A Where are you?

20 Q On the first page, under key points, third  
21 bullet down.

22 A Sorry, yes.

2437

1 Q The next bullet says, Improving RASM eases  
2 liquidity pressure, correct?

3 A That is what it says, yes.

4 Q And you would say, you would have to say  
5 that -- well, then let's just turn to the next page,  
6 page 2 at the top, where Bear Stearns said, "We  
7 upgraded America West to pure perform last month on  
8 our perception of improving unit in revenue trends  
9 relative to the industry. Did I read that  
10 correctly?

11 A That is correct.

12 Q Do you think it might have been useful  
13 for -- let me change it. Do you think it would be  
14 very useful for your opinion if you had reviewed  
15 this before you testified?

16 A No, actually.

17 Q No? Okay.

18 A Because these recommendations change, the  
19 grade, if you will, okay, change very frequently,  
20 Calyon, for example, changed in April alone.

21 Q Forget about the recommendations. What  
22 about first quarter earnings exceeds expectations?

2438

1 Did you know when you came in to testify today that  
2 the first quarter earnings exceeded expectation?

3 A I remember reading that statement, yes.

4 Q According to, at least according to Bear  
5 Stearns who you rely on part of your testimony,  
6 "Improving RASM eases liquidity pressure on America

7 West?"

8 A That is what he said, yes.

9 Q Did you know that before you sat down to  
10 testify today, that was Bear Stearns' view?

11 A I read it that was Bear Stearns view.

12 Q You thought you should tell the panel  
13 about Bear Stearns' year end 2004 report but not  
14 about the Bear Stearns' view after first  
15 quarter report --

16 A We didn't comment on Bear Stearns' report  
17 on fourth quarter, we commented on Bear Stearns'  
18 outlook at the time for America west.

19 Q Okay. By the way, did you review, in the  
20 course of your testimony, Mr. Parker's and other  
21 corporate officials first call with analysts after  
22 the first quarter 2005 results were reported?

2439

1 A No, I didn't see that.

2 Q So you didn't know that at that time -- I  
3 know you are not a lawyer, but you understand, at  
4 least a bit about the securities laws and what  
5 corporate officers obligations are with respect to  
6 forward looking statements, correct?

7 A Certainly.

8 Q Okay. So you didn't see in anticipation  
9 of your testimony or in preparation for your  
10 testimony that when the first quarter results were  
11 released Mr. Parker and other corporate officials  
12 said that they had adequate liquidity, that they saw  
13 no difficulty in obtaining additional either equity  
14 or debt financing if necessary, and that they quote  
15 weren't losing any sleep over liquidity, you didn't

16 see those statements when you, before you testified  
17 today?

18 A No.

19 Q Okay. Knowing now that they testified, I  
20 am sorry, knowing now that they said those things in  
21 the first quarter of 2005 at a time when they were  
22 under certain obligations imposed on them by law,

2440

1 would that change your view of what the America West  
2 liquidity situation was?

3 A It would not.

4 Q It would not, okay.

5 A May I amplify on that?

6 Q No, you may not.

7 CHAIRMAN NICOLAU: Later.

8 BY MR. FREUND:

9 Q I think you told us -- turn to page 11 of  
10 your slides, please.

11 Before we go to 11, I am sorry to be  
12 bouncing back and forth this way, but let's go back  
13 to the analyst reports that you did choose to  
14 attach. And following the Bear Stearns report is  
15 the, what comes next, Lehman Brothers -- no the  
16 other one, Calyon, let's find it. Calyon, right.

17 This was one that you did choose to put  
18 into evidence as part of your opinion, and why don't  
19 we just look at the first page of it. Would it be  
20 fair to say that the Calyon analysts were not  
21 excited about the possible acquisition US Airways  
22 of -- by America West of US Airways?

2441

1           A     That is, I think that they were skeptical  
2 as to whether it was going to happen and whether it  
3 would be successful, yes.

4           Q     Well, they said, "Regarding merger talk  
5 between America West and US Airways generally we are  
6 not fans of airline mergers," and they wound up  
7 actually reducing their rating on America West from  
8 add to reduce, until they had a better sense of  
9 whether a merger that they were not excited about  
10 was going to take place. That is a fair summary?

11          A     One or two weeks later, yes.

12          Q     Yes, okay. And at the same time in the  
13 second bullet they pointed out that America West  
14 reported results for its first quarter of a loss of  
15 30 cents per share versus their estimated loss of 43  
16 cents per share and a consensus loss of 61 cents per  
17 share. So they reported better than expected, both  
18 by analysts generally and by them specifically, a  
19 better first quarter than anyone had expected,  
20 correct?

21          A     Yes.

22          Q     And then the next one that you put in, the  
2442

1 next exhibit that you put in was Lehman Brothers,  
2 why don't we take a look at that. This is all after  
3 the first quarter, correct, these are all first  
4 quarter reports, correct?

5           A     First quarter reports, yes.

6           Q     And since they are in there I thought we  
7 ought to look at them. Do you have the Lehman  
8 Brothers in front of you?

9           A     I do.

10 Q The very first observation they made was,  
11 am I reading this correctly, Recent revenue momentum  
12 impressive and expected to persist but liquidity  
13 concerns and merger speculation make other  
14 opportunities in this space more attractive at  
15 present in our view," is correct?

16 A That is right.

17 Q So they perceived impressive revenue  
18 momentum on America West's part, correct?

19 A That is what he says, yes.

20 Q And then under the summary in the second  
21 bullet they said, "Significant upward estimate  
22 revisions take account of better revenue trends,"

2443

1 and then go on to comment about the merger and say,  
2 "Unfortunately better performance unlikely to move  
3 the equity near term given merger speculation."

4 So am I understanding that correctly to  
5 say that there, while it was significant upward  
6 revenue friends, investing community in their view  
7 was not going to be particularly excited about the  
8 merger?

9 A It suggests that but you have to ask them,  
10 Gary.

11 Q You put this in evidence, so I am just  
12 trying to understand the document you put in  
13 evidence?

14 A I am saying it suggests that, yes.

15 Q Then more to the point the next bullet,  
16 because liquidity has been something that you talked  
17 about and has been talked about a fair amount here.

18 "Given an improving revenue outlook good prospects  
19 to restructure ATSB debt and recent price declines  
20 we are warming to America West."

21 So, is it your understanding that Lehman  
22 Brothers analysts were of the view that there were  
2444

1 good prospects to restructure the ATSB?

2 A That is what they say.

3 Q Okay. And staying on that first page, on  
4 their thoughts about America West-US Airways, they  
5 wrote "By now many are speculating on the potential  
6 for a transaction between US Airways and America  
7 West. Unfortunately that speculation overwhelmed  
8 what would otherwise have been considered a strong  
9 quarter and uplifting outlook for the company in  
10 relative context." Do you see that?

11 A I see it.

12 Q So they had a view that this was a strong  
13 quarter for the company and they had a view that it  
14 was an uplifting outlook for the company, correct?

15 A That is what it says, yes.

16 Q But their view as analysts was that this  
17 overhanging speculation about the possible  
18 transaction with US Airways was depressing the share  
19 price?

20 A That is what they suggest, yes.

21 Q Do you have any reason to think that was  
22 not true in the investing community?

2445

1 A No, I suppose not. I hadn't thought of it  
2 that way.

3 Q But indeed they go on to say that more

4 plainly on the second page where they say, "America  
5 West punished on merger expectations." Do you see  
6 that?

7 A I do.

8 Q And in the second sentence they say "in  
9 the interim," that is before anything further about  
10 the merger; and I am reading again, "the company  
11 reported a strong quarter and revenue outlook going  
12 forward is encouraging as well. These events would  
13 probably have sent the shares in the opposite  
14 direction in the absence of the merger speculation."

15 And they go on to say "We had been feeling  
16 better about America West shares given recent price  
17 declines, what they thought was a good case for  
18 restructuring the ATSB maturities and positive  
19 revenue momentum. Unfortunately, however, we see  
20 significant risk in the potential transaction." Do  
21 you see those words as well?

22 A I see those words, yes.

2446

1 Q Did you take those into account in  
2 reaching your opinion about America West's  
3 circumstances going forward?

4 A No.

5 Q Okay. Going down further on, under  
6 paragraph where it says, "First quarter ahead of  
7 consensus," you see about three lines from the top  
8 it says, "unit revenue climbed an impressive 7.8  
9 percent," and then the point that I really want to  
10 look at is the next sentence that says, "CASM,  
11 ex-fuel," that is without fuel, right, CASM without



12 fuel and unusuals increased by 4.6 percent to 6.37  
13 cents, correct?

14 A That is what it says.

15 Q Okay. Do you think they got that right?

16 A I have no reason to doubt it.

17 Q I think we can put that one away for the  
18 moment.

19 And we will flip back to where I was  
20 headed, which was your slide 11. Do you have that?

21 A I do.

22 Q One of your premises was that America West  
2447

1 was losing the cost advantage to other carriers,  
2 correct?

3 A I was confronting Mr. Parker's premise,  
4 yes.

5 Q You were confirming what Mr. Parker said  
6 in January of 2006 at a time when you understand the  
7 securities laws did not have any effect or any role  
8 with respect to what he said at that time, correct?

9 A I can't comment on the security laws, but  
10 that is when he said it, retrospectively looking  
11 back to the calendar year 2005.

12 Q Without asking you for a legal opinion,  
13 you understand at least in general terms that  
14 retrospective statements are not governed by the  
15 same obligations as forward looking statements?

16 MR. KATZ: Object, you are asking him a  
17 legal question.

18 CHAIRMAN NICOLAU: Well, he doesn't have  
19 to answer it.

20 BY MR. FREUND:

21 Q He doesn't have to answer it.  
22 So, do you have the underlying data points

2448

1 for -- well, before we look at underlying data  
2 points, I think, if I understand what you are  
3 saying, is that network carriers' CASM was reducing,  
4 was coming down, and America West, quite in  
5 contrast, was going up and going up dramatically. I  
6 mean that is what this chart purports to show,  
7 correct?

8 A That is correct.

9 Q So the network carrier index is the green  
10 index; is that right?

11 A Yes.

12 Q That, I mean I can't draw an Excel trend  
13 line, but it doesn't look to me like that is a trend  
14 line that is going down from the beginning. Does  
15 it, it looks like it is going flat?

16 A It was going, began going down and in the  
17 fourth quarter 2004, if I understand your question  
18 correctly.

19 Q Well, it also began going down in the  
20 first quarter 2004 and then went up, began going  
21 down in the first quarter of 2003 and then went up.  
22 But if you were looking at trend line, the trend

2449

1 line would not reflect a reduction in the network  
2 carriers' CASM, would it?

3 A Well, it may. I can't say as we speak  
4 here because there is no trend line plots had here.

5 Q But you have looked at enough of these

6 charts to eyeball a trend line, haven't you?  
7 A Yes.  
8 Q It doesn't look like it is trending down?  
9 A To me it does look like it is trending  
10 down, but that is all right.  
11 Q A lot?  
12 A No, not a lot, no. I wouldn't say a lot;  
13 maybe a half a cent.  
14 Q Yes, year over year, take a look at second  
15 quarter 2004 as compared to second quarter 2005,  
16 does that go up or down or stay the same?  
17 A Second quarter --  
18 Q Second quarter '04 as compared to second  
19 quarter 2005, looks to me to be about the same,  
20 doesn't it?  
21 A That is perhaps about the same, yes.  
22 Q Uh-huh, and second quarter 2003 to second  
2450  
1 quarter 2004 looks to be about the same, doesn't it?  
2 A Yes.  
3 Q Okay. Now, I am really interested in the  
4 little hockey stick that you show in the red line  
5 which is America West. Can you tell us what the  
6 data points are for 4th quarter 2004 and 1st quarter  
7 2005 and what the percentage increase in CASM was?  
8 A No, I don't have those with me. I can  
9 provide them tomorrow.  
10 Q Well, can you eyeball it by looking at it?  
11 A Which periods?  
12 Q Fourth quarter 2004 to first quarter 2005,  
13 is the increase from 2004 to 2005?  
14 A Oh, perhaps -- perhaps from about 6 cents

15 to 7, 8-1/4.

16 Q So about --

17 A Two cents.

18 Q About a 25 percent increase?

19 A Yes.

20 Q And just to be clear on this chart, it is

21 excluding fuel, correct?

22 A I confirmed that, yes.

2451

1 Q Well, we just looked at the Lehman  
2 Brothers analysis that you gave us, and it shows  
3 that CASM, ex-fuel and unusuals, increased by 4.6  
4 percent?

5 A Yes.

6 Q Which one of those is right?

7 A I think ours is right.

8 Q Do you think Lehman is wrong?

9 A I think Lehman perhaps is wrong.

10 Q Uh-huh. Would looking at the company's  
11 first quarter 10Q give us an answer of who was  
12 actually right?

13 A Probably not. No, we would have to -- the  
14 source of this is Form 41 we would have to go back  
15 in the database to look at the Form 41, which I  
16 could but I don't have it --

17 Q So, what you are saying is Form 41 and SEC  
18 data are different in terms of increasing CASM from  
19 first quarter '04 to first quarter '05 you are going  
20 to the Form 41 and not the SEC data?

21 A I am going with the Form 41 data, yes.

22 Q Okay.

2452

1           And, while we are looking at that cost  
2 chart, what are the data points, if you can tell us,  
3 between the first quarter of '05 and the second  
4 quarter of '05?

5           A     For America West?

6           Q     America West, yes, please?

7           A     It is about I would say 7 cents in the  
8 first quarter '05, and 8-1/4 or so in second quarter  
9 '05.

10          Q     And what kind of a percentage would that  
11 be?

12                   MR. KATZ:   Which one?

13                   BY MR. FREUND:

14          Q     From the second quarter of '05 -- from the  
15 end of first quarter '05 to the end of second  
16 quarter '05?

17                   THE WITNESS:   From 6 to, it is probably  
18 more than 25 percent.

19                   BY MR. FREUND:

20          Q     Why don't we pass out the next exhibit, it  
21 will be the Fulcrum report.   Do you know Fulcrum  
22 Global Partners.

2453

1           A     I know the name, yes.

2           Q     They are an investment house like these  
3 other investment houses?

4           A     Yes.

5           Q     This is reporting on the second quarter  
6 results for America West.   And why don't we look to  
7 the, for the moment, look to the second page, 6,  
8 under costs.   Can you read --

9 MR. KATZ: Where are we?

10 MR. FREUND: Second page of 6, bullet,  
11 costs.

12 THE WITNESS: Ah, yes.

13 BY MR. FREUND:

14 Q It reads, "The airlines CASM ex-fuel  
15 increased 2.9 percent year over year driven by 4.5  
16 percent rise in labor costs per ASM and 6 percent  
17 increase in other rent & landing fees per ASM."  
18 There is a wide gap between 2.9 percent and the  
19 25 percent that is showing, correct?

20 A Certainly.

21 Q You are going with your 25 percent right?

22 A For now I am, yes.

2454

1 Q Because that is all you have got in front  
2 of you is the work that somebody else prepared in  
3 order for you to testify about, correct?

4 A That is correct.

5 Q While we are on the Fulcrum analysis --  
6 well, before we go further in the Fulcrum analysis,  
7 you put a lot, you put a number of first quarter  
8 reports into evidence to show where the, to bolster  
9 your opinion or to show others' opinions about where  
10 the company was going but you didn't put any second  
11 quarter reports in, correct?

12 A That is correct.

13 Q And while we are on the Fulcrum report  
14 let's just take a look at what else they have to say  
15 about America West after the second quarter results  
16 were announced. They begin by saying that "America

17 West recently reported a solid profit of \$0.41 per  
18 share for second quarter 2005 versus \$0.11 per share  
19 a year ago. This was well above our forecast of  
20 \$0.05 per share and First Call Consensus of \$0.13  
21 per share."

22 Did you know those facts when you

2455

1 testified here this morning about your opinion of  
2 America West on a going forward basis?

3 A That America West's earnings were better  
4 in the second quarter than the first quarter, yes, I  
5 think I did.

6 Q And that didn't affect your opinion, is  
7 that right?

8 A No, because I think the playing field was  
9 changed when the merger was announced.

10 Q So, I am more likely to fly America West  
11 and pay their fares because they have announced the  
12 merger with US Airways than I would if they hadn't  
13 announced the merger with US Airways? Is that how  
14 the playing field changed and how it affected  
15 their --

16 A No, I meant the analyst's perception.  
17 These are improved results and second quarter  
18 results by definition, if you will, should be better  
19 than first quarter results.

20 Q Yes, but this is \$0.41 per share and for  
21 the second quarter 2005 as compared to \$0.11 per  
22 share for the same quarter the year prior, would you

2456

1 say that is a significant improvement over the  
2 second quarter of 2004?

3 A For the industry the market improved  
4 substantially year over year, yes.

5 Q Did you take that into account when you  
6 gave us your opinion this morning, the America  
7 West's improved performance in second quarter of  
8 2005 as compared to the second quarter of 2004?

9 A Essentially I did, yes.

10 Q Didn't you tell us this morning that the  
11 rest of the industry was improving in the second  
12 quarter of 2004 and that America West was not?

13 A I don't think I said that.

14 Q Did your report say that?

15 A I don't think it does.

16 Q If it did should we ignore that?

17 A No, I would have to go back and look at  
18 it.

19 Q If it said that would it be wrong?

20 A At what?

21 Q If you said in your report that by the  
22 second quarter of 2005, while the rest of the

2457

1 industry was improving America West was not, that  
2 would be incorrect, wouldn't it?

3 A That is an analysis of the statistics, it  
4 doesn't refer to earnings.

5 Q I see. On an operating statistics  
6 basis -- well, first of all, do you remember saying  
7 that in your report or do you remember not saying  
8 that in your report?

9 A Something similar to that yes.

10 Q So your report, and we can parse it at our



11 Leisure, your report concluded that in the second  
12 quarter of 2005 the industry was improving and  
13 America West was not?

14 A I think there was in the context of the  
15 industry is improving more than America West, not --

16 Q Do you think the industry was improving  
17 more than the difference between a \$0.41 per share  
18 as opposed to \$0.11 per share increase?

19 A On an earnings basis, I don't know.

20 Q On the same report it says, "Driving the  
21 upside to our estimate was a 4.0 percent point  
22 increase in load factor and strong pricing with RASM

2458

1 up nearly 12 percent year over year." Was RASM  
2 increasing 12 percent year over year, better, worse  
3 or the same as the industry?

4 A I don't know.

5 Q Wouldn't it be important to know the  
6 answer to that to reach a conclusion about how  
7 America West was doing as compared to the industry?

8 A We didn't do any year over year  
9 comparisons. We were talking about comparisons of  
10 America West with competition and other carriers in  
11 the industry during the same period.

12 Q By the way, we were talking about costs.  
13 Looking at that same paragraph we already looked at  
14 there, what they report, the actual CASM is, but  
15 putting analytical words to it they said, did they  
16 not, and again tell me if I am reading correctly  
17 "Also contributing to the upside was strong cost  
18 control, with CASM ex-fuel increasing 2.9 percent,  
19 even with wages per ASM increasing 4.5 percent year

20 over year?"

21 A I am sorry, where are you?

22 Q Same page, first page, first bullet, last

2459

1 line.

2 MR. KATZ: That is on the second page.

3 CHAIRMAN NICOLAU: No, the first page.

4 MR. KATZ: Oh, they repeat themselves.

5 MR. FREUND: They do. These guys repeat  
6 themselves a lot. I guess they like to hear  
7 themselves talk.

8 MR. KATZ: It is word for word the same on  
9 the second page.

10 BY MR. FREUND:

11 Q Well, like I said, they do that a lot. I  
12 guess they get paid by the word.

13 Do you see where I was reading from?

14 A I do.

15 Q Okay. And you said that the view of the  
16 2nd quarter, one of the reasons you didn't put the  
17 second quarter results in was because things were  
18 muddied by the merger and that sort of the future  
19 expectations were based on positive expectation of  
20 the merger going forward?

21 A In essence, yes.

22 Q Well, looking at the second bullet it

2460

1 says, "Main take-away from conference call:" And  
2 they begin by saying, "Putting aside the upcoming  
3 risks relating to America West consolidation plans  
4 with US Airways, scheduled for this fall, we believe

5 the company has certainly hit a strong momentum,  
6 with RASM up a robust," we have heard that word  
7 earlier today, "a robust 12 percent year over year."  
8 Do you think that they were reporting a great degree  
9 of excitement about the prospects of the merger?

10 A I have no idea.

11 Q Well, read the words. What do you think?

12 A It seems to me that they were taking  
13 rather a negative view.

14 Q It does seem that way, doesn't it?

15 A But I don't know.

16 Q And then skipping a sentence, they  
17 describe why it got, why things got to where they  
18 got to with regard to this momentum, this RASM  
19 momentum, but then they go on and say "This should  
20 allow America West to continue to post solid revenue  
21 gains for the rest of the year, and potentially into  
22 the next year," do you see that?

2461

1 A I do.

2 Q Did you take that into account when you  
3 reached your opinion that you testified to today?

4 A They did have solid revenue gains.

5 Q Did you take that into --

6 A Sure. Yes, absolutely, yes.

7 Q And by the way, I was kind of intrigued by  
8 this last little piece on the first page, in the  
9 third bullet they raised their 12-month target price  
10 and they said, "Our 12-month target price for  
11 America West is \$8, versus old target price of \$5,  
12 slightly below current price. This is due to our  
13 perception that US Airways' pilots may be more

14 amenable to integration talks than we factored in  
15 before." Do you see that?

16 A I see that sentence, yes.

17 Q Do you have any idea what they were  
18 talking about in that sentence about US Airways  
19 pilots perhaps being more amenable to integration  
20 talks?

21 A I do not.

22 Q Do you think it might have meant that the  
2462

1 a US Airways pilots might have been concerned about  
2 liquidation and, therefore, they would have been  
3 more amenable to integration talks?

4 A I can't draw that conclusion from that  
5 sentence.

6 Q Okay. We will let others draw whatever  
7 conclusion they will.

8 And then turning to page 2 of 6 you said  
9 you were, your testimony related to America West's  
10 improvement, not year over year but vis-a-vis the  
11 rest of the industry, correct?

12 A Correct.

13 Q But under the risks analysis on page 2,  
14 Fulcrum says, "Our main concerns for America West  
15 are more in line with the airline industry as a  
16 whole and not specific to the airline alone." Do  
17 you see that?

18 A I see it.

19 Q Did you take that into account when you  
20 reached your opinion about America West versus the  
21 other carriers?

22 A I don't know what it means.

2463

1 Q You don't know what it means?

2 A No. Well, no I don't know what it means.

3 Q Do you think it might mean that Fulcrum's  
4 view of America West was that it was in  
5 fundamentally the same position as the rest of the  
6 airline industry at that point in time in terms of  
7 ongoing future progress, not in any worse position  
8 than the rest of the industry?

9 A I think you could draw that interpretation  
10 from the sentence in July.

11 Q Is there any other interpretation that you  
12 could draw from that sentence?

13 A As I said, I didn't write it, I don't  
14 really know what they meant when they said it, but  
15 could you certainly infer that is what they were  
16 saying, without faced with the Delta and Northwest  
17 bankruptcies at the time.

18 Q While we are looking at analysts reports  
19 why don't we look at our next exhibit which is our  
20 friends at Bear Stearns. I think you said one of  
21 the reasons that you didn't put in Bear Stearns was  
22 because the focus was on a merger related events as

2464

1 opposed to stand alone related events, is that  
2 right?

3 A I am sorry.

4 Q I think the reason you said you didn't put  
5 in Bear Stearns or any other analysts in for the  
6 second quarter was because of the focus was, the  
7 focus by then was on the possible transaction rather

8 than stand alone, correct?

9 A I am not sure I said that, to tell you the  
10 truth.

11 Q Well, then I will give you another chance  
12 to tell us why you put in only first quarter results  
13 and no second quarter results, or first quarter  
14 analyst reports and no second quarter analyst  
15 reports when you testified this morning, why did you  
16 make that choice?

17 A Because they set the tone for the  
18 liquidity issue which was a problem in our view,  
19 which would have been an ongoing problem in our view  
20 throughout the year but for the announcement of the  
21 merger, and that changed the playing field.

22 Q Okay. Okay, so let's look at Bear

2465

1 Stearns, since you showed use an earlier Bear  
2 Stearns. It is going to the key points, they repeat  
3 what we saw earlier, second quarter profit beats  
4 expectations, RASM in line/CASM a touch better.  
5 They show a 6.5 percent increase in yield, and CASM  
6 it doesn't even look like it is CASM minus fuel,  
7 rising by 10 percent year over year, with a robust  
8 unit revenue outlook and they report, this is  
9 management talking, management indicated that third  
10 quarter could see unit revenue gains out pace the  
11 12 percent year to year improvement seen in second  
12 quarter '05?

13 A That is what it says.

14 Q Did you take those observations into  
15 account in thinking about the liquidity problem that

16 you just told us about?

17 A Not management observations, no.

18 Q Bear Stearns, like Fulcrum, was concerned  
19 about the risks associated with a US Airways  
20 transaction, correct?

21 A I assume so.

22 Q Well, let's look. Further, under peer

2466

1 perform, peer perform you understand to mean that  
2 they are going to perform as their peers perform,  
3 correct?

4 A Yes, essentially.

5 Q They say further some USAir merger  
6 integration risks still exist. So, when you said  
7 that the second quarter views on liquidity and on  
8 the future prospects were, may have been driven by  
9 merger discussions, if they were driven at all they  
10 appear to, at least in Bear Stearns and Fulcrum's  
11 views, to have been driven down by merger talks, is  
12 that a fair assessment?

13 A I am not sure it is, no.

14 Q No? Further, some USAir merger  
15 integration risks still exist?

16 A I don't know what that means by this.

17 Q And then under summary and  
18 recommendations, they wrote, We upgraded America  
19 West in the first quarter on our expectation of  
20 improving unit revenue trends relative to the  
21 industry. We still believe this trend will play out  
22 as the year progresses. They seem to show share

2467

1 Fulcrum's view of the future; is that correct?

2 A In terms of revenue, yes.

3 Q Okay. And on the next page, the last full  
4 paragraph before the first bold heading reads "The  
5 merger leaves some uncertainty, the improving top  
6 line should allow for the performance at least as  
7 strong as the peer group." Do you still have a  
8 question about whether they viewed negatively risk  
9 associated with the merger?

10 A I am sorry, where are you?

11 Q Do you still have --

12 A Where are you?

13 Q I am sorry, I am on page 2?

14 A Right.

15 Q The first full paragraph, last line of the  
16 first full paragraph. Where it reads "While the  
17 merger leaves some uncertainty, the improving top  
18 line should allow for performance at least as strong  
19 as the peer group." I think my question was  
20 something like, do you still have a view that  
21 whatever positive assessment the analysts had in the  
22 second quarter was driven by a positive view of the  
2468

1 merger? Is this consistent with a positive view of  
2 the merger? Are those observations consistent with  
3 a positive view of the merger?

4 A I don't know that it is related to the  
5 merger. They are still saying they are, there is  
6 still some uncertainty as to the merger. Improving  
7 top line should allow for performance at least as  
8 strong as the peer group. That is -- in July that  
9 is a fair observation, if they are saying America



10 West is not going to do any worse than the peer  
11 group.

12 Q Well, and indeed in looking up on the  
13 paragraph before it they say we continue to believe  
14 that the carrier's transcon pull down and more  
15 aggressive yield management should help America  
16 West's RASM outperform the industry in the third  
17 quarter," correct?

18 A That is what it says.

19 Q But your take is on the cost side, there  
20 are still two quarters of increase in CASM were  
21 offsetting that?

22 A It is on the cash side, that is related to  
2469

1 the cost side, yes.

2 Q Even though none of the analyst or the  
3 company reported anything close to 25 percent  
4 increase in CASM over those two quarters combined  
5 let alone both of those quarters?

6 A It seems to be revenue generated opinions,  
7 not necessarily cost generated opinions.

8 Q You were saying, I think you told us, that  
9 these were revenue generated opinions, but your  
10 concerns were that the costs were getting out of  
11 hand by two quarters of increases in CASM. And my  
12 question to you was, the analysts in and the company  
13 didn't see or report CASM increases anywhere close  
14 to 25 percent over two quarters let alone 25 percent  
15 in each quarter?

16 A They didn't address the issue. We have an  
17 exhibit that does show CASM rising at a faster than  
18 RASM, which is the part of the issue, was a part of

19 the problem.

20 Q No, they reported CASM increases of 2  
21 percent and 4 percent ex-fuel as compared to your  
22 projections, your reports of 25 percent at each

2470

1 quarter, ex-fuel, isn't that correct?

2 A It says 2 to 4 percent, yes.

3 Q Uh-huh, okay. I guess we might as well  
4 close the loop with our next exhibit which will be  
5 the Calyon second quarter. You gave us the Calyon  
6 first quarter so I suppose we ought to look at  
7 Calyon second quarter.

8 This will be exhibit 1?

9 MR. KATZ: You did I already.

10 BY MR. FREUND:

11 Q Sorry, J. I just didn't put I in my book.

12 Calyon's view of the universe was the same  
13 as the company's and as Bear Stearns and Fulcrum's  
14 as I see they said America West Holdings reported  
15 rock solid second quarter earnings with earnings per  
16 share of \$0.41 against their estimate of \$0.04. And  
17 further that the second quarter results represent an  
18 earnings growth of more than 200 percent, and  
19 improvement in the operating margin of 4.5 percent  
20 versus 3.4 percent a year ago. These very strong  
21 results were attributable to a strengthening revenue  
22 a mid high demand for the company's product." Did

2471

1 you have the benefit of Calyon's second quarter  
2 analysis when you testified this morning?

3 A No.

4 Q But you gave us their first quarter  
5 analysis?

6 A Yes.

7 Q And on the second page, again looking at  
8 the cost issue, if you look at the fifth paragraph  
9 down, Calyon reported operating cost per available  
10 seat mile, CASM increased 12.2 percent, this is not  
11 ex-fuel, primarily driven by 43 percent increase in  
12 its average fuel price. So even with fuel, even  
13 with fuel as compared to your ex-fuel reports, they  
14 are showing a 12.2 percent increase?

15 A That is what it says, yes.

16 Q That is what it says. Do you have any  
17 reason to doubt that is correct?

18 A It is inconsistent with our estimates, but  
19 not right now.

20 Q These are not estimates, are they, these  
21 are the -- this is a report of a companies second  
22 quarter report results, correct?

2472

1 A Yes.

2 Q Okay. Which they were reporting to the  
3 SEC, correct?

4 A I assume so.

5 Q And indeed to do apples to apples they say  
6 CASM excluding fuel hedging and special items grew  
7 by, and I am go to insert the word "only" 2.7  
8 percent. Do you still have the same reason to doubt  
9 that you did before, namely that it is different  
10 than your report?

11 A I'm sorry, say again.

12 Q Do you still have the same reason to doubt

13 the accuracy of that number as you did in doubting  
14 the accuracy of the CASM reports by the other  
15 analysts, namely that the number is different than  
16 the number you testified to?

17 A I am sorry, what are you referring to?

18 Q Their CASM, 2.7 percent CASM ex-fuel, 2.7  
19 percent, increase in CASM ex-fuel?

20 A It is different than our number.

21 Q It is. Let's go back to Exhibit 11,  
22 please?

2473

1 A 11?

2 Q Please? Do you have it?

3 A I do.

4 Q That red line on the bottom would look  
5 very different if it reflected 2.7 percent and 4  
6 percent increase quarter over quarter than  
7 25 percent increase, wouldn't it?

8 A Oh, yes, but I am not sure that is what  
9 the analysts are talking about, they may be talking  
10 about year over year, but I don't know. But they  
11 would look different, to answer your question,  
12 certainly.

13 Q All right. Well, even if they were  
14 talking year over year it would look exceptionally  
15 different, wouldn't it?

16 A Yes.

17 Q It would be flat basically; right?

18 A Yes.

19 Q Four percent, two percent on --

20 A I would think so, virtually flat.

21 Q On about \$0.06 would be virtually flat?

22 A Slight upward tick, but not dramatic.

2474

1 Q And if that were correct, if that were  
2 correct, then your testimony about the America West  
3 losing its historical cost advantage, at least as  
4 shown by these numbers would be incorrect, wouldn't  
5 it?

6 A To this degree, yes.

7 Q Do you know whether America West led the  
8 industry in year over year RASM improvement in the  
9 second quarter of 2005?

10 A I do not.

11 Q If I told you that -- do you know who  
12 Scott Kirby is?

13 A Yes.

14 Q Executive vice president of sales and  
15 marketing, if I told you that in a call to analysts  
16 after the release of the second quarter results he  
17 said the following, "We are obviously very pleased  
18 with our second quarter RASM of 12 percent year over  
19 year. We think that we led the industry in year  
20 over year RASM improvement and we are continuing to  
21 experience a very strong revenue environment."

22 Do you think he got it right?

2475

1 A I don't know.

2 Q Let me put it this way. Sitting here  
3 today do you have any facts on which you can  
4 conclude that he didn't get it right?

5 A No.

6 Q And if I told you that he said we also saw

7 an industry leading 6.5 percent increase in yield,  
8 sitting here today do you have any reason to believe  
9 that he didn't get that right?

10 A No.

11 Q And looking forward to the third quarter  
12 of 2005, if he was asked the following question by  
13 David Strine. You know who David Strine is?

14 A Yes.

15 Q Bear Stearns?

16 A Yes.

17 Q Strine asked "you mentioned a pretty good  
18 acceleration of RASM in the second quarter and I am  
19 wondering what your perception is of the behavior as  
20 we proceed through 3Q. Are you continuing to see  
21 that sort of acceleration into July," and Mr. Kirby  
22 answered "yes, we are. July will be -- July is

2476

1 coming in very strong, August looks good, it is  
2 really too early to tell much about September, but  
3 at least for now the advance bookings are fine and  
4 the advanced book yield is materially ahead of last  
5 year. So as I said, in my scripted comments, we  
6 expected revenue momentum to continue and expect the  
7 3rd quarter to be up on a year over year basis at  
8 least as much as the second quarter results."

9 Sitting here today do you have any reason to think  
10 that Mr. Kirby got it wrong?

11 A You are talking about year over year?

12 Q Yes.

13 A No, I have no basis to contest it, no.

14 Q Assuming all of those things are true, do

15 you have any reason to think that America West would  
16 not have been able, if it had liquidity problems,  
17 could go out into the equity and debt markets,  
18 capital markets, and raise cash? Assuming  
19 everything that we have just gone through were true,  
20 do you have any reason to believe that absent a  
21 merger, which the analysts were concerned about by  
22 the way, that America West would have had any

2477

1 difficult going into the capital markets and  
2 raising cash?

3 A Perhaps not in July but in September they  
4 would have.

5 Q In September they would have?

6 A Yes, because we had two major carriers go  
7 bankrupt, and also we keep talking about revenue.  
8 We are not really addressing operating margin or  
9 cost.

10 Q Well, no we have talked about cost and  
11 they, both the company and all the analysts seem to  
12 have a different view of costs than you, correct?

13 A Fair enough, yes.

14 Q If they are correct, let's assume that  
15 they are correct about costs and you are not,  
16 because I have to say a 50 percent increase, didn't  
17 that strike you as passing strange just looking at  
18 the chart of 50 --

19 A It did, it did, and we went back and  
20 checked the numbers.

21 Q So do you think there was something wrong  
22 in the Form 41 reporting that led to that

2478

1 unbelievable increase in the cost?

2 A I have will the answer to tomorrow.

3 Q It strikes you as odd, doesn't it?

4 CHAIRMAN NICOLAU: He said that.

5 BY MR. FREUND:

6 Q Have you ever seen a low cost carrier  
7 increase its CASM by 50 percent?

8 A Something happened, yes.

9 Q Yes.

10 Did you have occasion to sample the  
11 capital markets in the last quarter of 2005 and the  
12 first quarter of 2006 for domestic carriers?

13 A I don't understand the question. I don't  
14 understand what you mean by sample.

15 Q Have you done any analysis of available  
16 investment capital, either through debt financing or  
17 equity, in the domestic airline industry in the last  
18 quarter of 2005 or first quarter of 2006?

19 A I think we did, yes.

20 Q And was it somebody that you can disclose  
21 to us, is it for somebody that you can disclose to  
22 us?

2479

1 A No, I cannot.

2 Q Did you succeed in obtaining -- well, you  
3 weren't the investment bankers, I take it?

4 A No, no, no.

5 Q But you were assisting an investment  
6 banker or assisting a carrier?

7 A Assisting a client, yes.

8 Q Did you succeed in getting equity



9 fi nanci ng, debt fi nanci ng?

10 A No.

11 Q Was it a domestic carrier or  
12 international?

13 A Both.

14 Q Start ups?

15 A No.

16 Q You know that in or around this time  
17 period we are talking about in 2005 American  
18 Airlines and Continental airlines succeeded in  
19 obtaining investment capital either through debt or  
20 equity financing?

21 A Debt financing.

22 Q They were successful in achieving that?

2480

1 A Yes, they had the collateral to support  
2 it.

3 Q And your view is that America West would  
4 not have been able to get that equity, debt or  
5 equity financing?

6 A I don't think they would have because they  
7 didn't have the collateral to support it.

8 Q You know that an investment banker  
9 experienced in financial restructuring of the  
10 airlines has testified in this case and testified  
11 contrary to your views, did anybody tell you that?

12 A No, I don't think I knew that.

13 Q If I told you that an investment banker,  
14 indeed the financial analyst, financial advisor to  
15 the US Airways creditors committee in both the first  
16 and second bankruptcy, testified in this proceeding  
17 that in his expert opinion as an investment banker

18 America West would have been capable of, easily  
19 capable of obtaining debt or equity financing, would  
20 you say he was just flat wrong?

21 A That is not Mr. Parker's impression.

22 Q Well, that was assuming Mr. Parker's

2481

1 impression in April of 2005, wasn't it?

2 A No, in July of -- January of 2006, looking  
3 back.

4 Q In April of 2005 did you read the,  
5 Mr. Parker's comments to the investment community  
6 following the report of the first quarter results of  
7 2005?

8 A I don't think I had access to them, no.

9 Q Dan didn't show them to you?

10 A I don't believe so.

11 Q If I told you that he said that they were  
12 not losing any sleep over liquidity, and that with  
13 results like America West demonstrated in the first  
14 quarter of 2005, he was confident they would be able  
15 to achieve, to fund investment income -- investment  
16 or cash, one way or the other, either through debt  
17 or equity financing, if he said that in 2005 in  
18 connection with the results, the reporting of the  
19 results of the first quarter of 2005, would you say  
20 he was just wrong when he said that?

21 A No, they did have a good first quarter.

22 Q And they had a better second quarter

2482

1 didn't they?

2 A By April 2005 the deal was already made or

3 probably, but not announced so he was perfectly  
4 confident in saying something like that, I would  
5 think.

6 Q Look --

7 A I don't want to second guess the man.

8 Q Well, the first quarter of 2005 when he  
9 made those statements the deal was not announced,  
10 fair enough?

11 A That is true.

12 Q And when he made those statements he said  
13 we are not losing any sleep over liquidity, an  
14 airline that performs the way we performed in the  
15 first quarter of 2005 will not have any problem  
16 attracting investment capital.

17 Would you have any reason to disagree with  
18 Mr. Parker's own words to the investment community  
19 the day that the first quarter results were  
20 released?

21 A Probably not in April 2005 but conditions  
22 changed dramatically in the summer and the fall.

2483

1 Q Right. Among other things, the second  
2 quarter of 2005 as we have just gone through,  
3 America West did better than the first quarter 2005  
4 correct?

5 A Yes.

6 Q And better than the industry?

7 A I don't know about but that is the  
8 statement that they made.

9 Q What is the statement?

10 A That they did better than the industry, I  
11 said I don't know about that.

12 Q Well, sitting here today you are not  
13 telling us that what was said here was incorrect  
14 about their doing better than --

15 A No, I am not, no.

16 Q So in the first quarter 2005 he said, no  
17 problem with getting additional cash through debt or  
18 equity if necessary. Things got better in the  
19 second quarter and you are sitting here telling us  
20 that in your opinion they wouldn't have been able to  
21 raise cash, is that your testimony?

22 A Yes, I am, later in the year, absolutely.

2484

1 Q Okay.

2 A Because the industry wasn't faced with the  
3 same fuel prices they were the second half as  
4 opposed to the first half. A lot changed in the  
5 industry in the second half of the year.

6 Q I was taken by -- I am going to slip over  
7 slide 12 for the moment but we will come back to it,  
8 I was taken by your slide 13 and 15. Slide 13 shows  
9 an indexed -- I will never get these index lines  
10 right, but it shows an index price of America West  
11 stock; is that right?

12 A Versus an industry index, yes.

13 Q Versus an industry index, and did you  
14 compare this to American Airlines stock performance  
15 over the same time period?

16 A Individually?

17 Q Yes.

18 A No.

19 Q American Airlines was one of the companies

20 that we talked about that was able to obtain a cash  
21 infusion, correct?

22 A I believe so, yes.

2485

1 Q Well, the reason I was intrigued by it,  
2 the reason I have trouble understanding these index  
3 lines, if you look at your slide 15 you report  
4 certainly from July '04 through August '05 the  
5 average monthly return on America West stock stand  
6 alone was 1 percent per month, correct?

7 A Yes.

8 Q 12 percent a year?

9 A Uh-huh.

10 Q So, from July '04 to August '05,  
11 recognizing that the scale is kind of an interesting  
12 one, America West's stock was growing at the rate of  
13 12 percent a year?

14 A Yes, approximately. Yes, you can infer  
15 that.

16 Q Now, I want to go back to slide 12,  
17 please. The title of this slide is "US Airways  
18 Clearly Brought the Vast Majority of Traffic,  
19 Revenue, Operating Profit and Capacity to the  
20 Merger." You are a believer in the market, correct?

21 A Yes.

22 Q You know what the ownership structure of

2486

1 the new company is, don't you?

2 A Essentially.

3 Q America West owners own considerably more  
4 of the new company than do, than did US Airways  
5 owners who were parenthetically not the original

6 owners but rather the creditors; correct?

7 A Yes, I know that, yes.

8 Q The market describes what the valuations  
9 were, correct?

10 A The market describes --

11 Q Doesn't the action in the marketplace  
12 describe who was contributing what value to this  
13 transaction?

14 A No, I don't think so.

15 Q You don't think so?

16 A No.

17 Q So you think that it is sensible, that  
18 notwithstanding the fact that America West owners  
19 owned considerably more of the company than US  
20 Airways owners, that nevertheless, it was US Airways  
21 that brought the lion's share of value to this  
22 transaction, is that what we should understand?

2487

1 A Essentially, yes, during this period.

2 Q Well, during this period, it is kind of  
3 interesting looking at the operating statistics, why  
4 don't we just take a moment and look at those  
5 operating statistics.

6 I think you are dead wrong, by the way on  
7 your first point, but on an operations basis the  
8 only thing that happened between the four quarters  
9 prior to the merger and the four quarters after the  
10 merger was that on an operating basis US Airways  
11 shrunk; correct? Let's look at RPM --

12 A Yes.

13 Q For the four quarters prior to the merger

14 there were, these are in millions, I guess, except  
15 for departures and block hours. There were, we will  
16 just say, 41,639 for US Airways and for the four  
17 quarters after the merger, that dropped to 37,600,  
18 correct?

19 A Yes, some capacity was taken out of the  
20 market.

21 Q And seat miles dropped from 55 and changed  
22 to 48 and change, correct?

2488

1 A Correct.

2 Q Departures dropped from 477,000 to  
3 391,000, block hours dropped from over a million to  
4 under 900,000; correct?

5 A Yes.

6 Q But if you look at the same statistics,  
7 America West, four quarters prior to four quarters  
8 after, they held up pretty solidly; correct?

9 A About the same I think, yes.

10 Q So, it is still your testimony and your  
11 opinion that it is US Airways that brought the  
12 significant value to the transaction and not America  
13 West?

14 A It is, indeed, yes.

15 Q Can you explain why it is that the facts  
16 are what they are, namely as I said to you, and that  
17 you agreed, that it was the America West owners that  
18 got the lion's share of the ownership and not US  
19 Airways own owners?

20 A I don't understand the relationship  
21 between that statement and the operating statement.

22 Q How about the relationship between that

2489

1 statement and value?

2 A The value here is the marketplace. It has  
3 nothing to do with the owners.

4 Q The marketplace, in the transaction,  
5 valued the America West --

6 A The combination better than the stand  
7 alone America West.

8 Q And it valued the America West  
9 contribution more than it valued the US Airways  
10 contribution?

11 A No, I don't draw that same conclusion.

12 Q Even though the owners, US Airways got  
13 considerably less ownership for their contribution  
14 than the America West owners got?

15 A That doesn't bear any relationship on the  
16 market value. I am not talking about how the value  
17 of the company is split.

18 MR. FREUND: I think we are done with this  
19 witness, but if you will give me a few minutes.

20 CHAIRMAN NICOLAU: Okay.

21 (4:35 p.m. -- recess -- 4:44 p.m.)

22 REDIRECT EXAMINATION

2490

1 BY MR. KATZ:

2 Q I do have a few questions for you  
3 Mr. Phelan, just to straighten out some of these  
4 things that got a little bit confused on  
5 cross-examination.

6 Mr. Freund showed you a lot of different  
7 analyst reports. Let me go back. This one is



8 marked Exhibit I, it is Bear Stearns, oh, you have  
9 that too, you have your own copy of that, July 21,  
10 2005, Bear Stearns report --

11 MR. FREUND: Is that I or H?

12 MR. KATZ: I.

13 MR. FREUND: So I got mine in backwards.

14 BY MR. KATZ:

15 Q Do you have that one? It is not in your  
16 report?

17 A Which one, I am sorry. July 21, I?

18 Q Right, July 21, 2005, Bear Stearns, and he  
19 asked you a number of things about these different  
20 reports, but he didn't ask you about this. On the  
21 second page, he was getting into this paragraph, it  
22 is the first full paragraph, the first sentence

2491

1 talks about non-fuel unit costs rising this year,  
2 which would be 2005.

3 And then it says in addition, in the next  
4 sentence, high oil prices will continue to strain  
5 the P & L, and then the sentence I want to ask you  
6 or the clause I want to ask you about, because it is  
7 only part of this sentence, it says, "Our first  
8 quarter concern over the carrier's weakening  
9 liquidity position has been virtually eliminated due  
10 to the U. Air merger finance. Let me ask you what  
11 do you make out of that?

12 A What he is suggesting is that the merger  
13 opportunity alleviated their original concerns for  
14 liquidity issues.

15 Q And by the merger financing, that would be  
16 the hundreds of millions of dollars that investors

17 were prepared to put into the merged carrier?

18 A Almost two billion dollars, yes.

19 Q And do you think on April 20th, 2005, Doug  
20 Parker, without much prognostication, could sense  
21 that was getting close?

22 A The merger?

2492

1 Q Yes.

2 A Yes, absolutely, sure.

3 Q All right, just above that, Bear Stearns  
4 report, in the paragraph that is continued over from  
5 the previous page, is talking about the RASM at  
6 America West improving year over year, and that the  
7 transcon contraction contributed about 3 percent  
8 points of the 12 percent year over year RASM growth  
9 in 2Q. Would you explain that if you can, please.

10 A America West had instituted  
11 transcontinental services I think late in 2003,  
12 apparently they were not very successful and they  
13 were dragging down RASM and increasing costs. Those  
14 resources were pulled down in the first quarter of  
15 2005 and deployed elsewhere. The pull down  
16 apparently improved the overall company RASM by  
17 about 3 percentage points.

18 Q So, the RASM is the revenue, operating  
19 revenue divided by the available seat miles; is that  
20 right?

21 A Yes, or passenger revenue, yes. That  
22 would be PRASM, yes.

2493

1 Q And so when you reduce the denominator,

2 the available seat miles, you increase the RASM?

3 A Yes, you should.

4 Q And so the way America, one of the ways in  
5 which America West improved its revenue per  
6 available seat mile in the first half of 2005 was by  
7 shrinking and dropping these transcontinental  
8 flights?

9 A Yes.

10 Q The other way you mentioned, and then I  
11 thought Jeff at some point, I thought he was asking  
12 you about it on cross, but nobody really came back  
13 to it, and that is the accounting change, that you  
14 mentioned on direct examination.

15 Look at the fraction of the revenue over,  
16 divided by the available seat miles, we saw that you  
17 can increase the RASM by decreasing the denominator,  
18 and you can also increase the RASM by accounting  
19 change that increases the revenue, can't you?

20 A Correct, yes.

21 Q And you mentioned the Lehman Brothers  
22 report, you were asked about that. Let's look at

2494

1 the Lehman Brothers report, it is appendix D to the  
2 SH&E report, Tab 2, and on the second page there is  
3 a chart marked Figure 1, and this report is  
4 April 21, 2005. Would you explain what this chart  
5 is about, if you can, please?

6 A Well, the analyst is comparing the first  
7 quarter estimated revenue with actual, with the  
8 actual revenue, 610 million, was estimated, 723 was  
9 actual, an increase, if you will, a positive  
10 variance of about \$113 million, which the analyst is

11 attributing to the express reclassification explains  
12 the magnitude of this variance.

13 Q Then the expenses also increased in the  
14 line below, didn't they?

15 A They did, yes.

16 Q So they kind of balanced each other off in  
17 the sense that the gross numbers from Mesa were  
18 added in both the revenue and the expense side,  
19 correct?

20 A It would seem that way.

21 Q But when you add in the revenues and  
22 divide by the ASMs you are going to increase the

2495

1 numerator and decrease the denominator and get a  
2 remarkable increase for whatever period of time you  
3 are looking at aren't you?

4 A Just an arithmetic illusion, if you will.

5 Q What some people refer to as smoke and  
6 mirrors?

7 A Perhaps.

8 Q Referring to our cross-examination exhibit  
9 Volume G, we have the annual US Airways group  
10 report, at least an excerpt from it, for the full  
11 year 2005 and it is Exhibit 5 in exhibit G, and this  
12 contains the portion of the report relating to  
13 America West Airlines, Inc. Have you looked at  
14 that?

15 A Not that version, no.

16 Q But in this version what does it show for  
17 the profit and loss for America West Airlines, Inc.  
18 for the year 2005?

19 A It shows a loss of \$120 million, an  
20 increase over the previous year's loss of 16  
21 million.

22 Q That is an operating loss of \$120 million?

2496

1 A Yes.

2 Q And when you go down to the income before  
3 cumulative effect of change in accounting principle  
4 what do you get?

5 A The loss was \$195 million, 75 -- I am  
6 sorry -- yes, 195 million, 75 million more than the  
7 operating loss.

8 Q And 110 million worse than the year  
9 before?

10 A Yes.

11 Q And when you go down to what is sometimes  
12 called the bottom line, the net income line, what  
13 does that show for America West?

14 A \$397 million net loss versus \$85 million  
15 the year before.

16 Q Okay, and this accounting change, there is  
17 a great deal of detail on it, just so that people  
18 condition find this for the record, it is on page  
19 170 and 171 of the annual report and the notes to  
20 the financial statement; right?

21 A Yes.

22 Q Have you had a chance to review this?

2497

1 A Just briefly.

2 Q And does it generally comport with the  
3 explanation you have given?

4 A Yes, it does, as well as being consistent

5 with Lehman Brothers.

6 Q And there is actually a great deal of  
7 detail more in footnote 4 on pages 176 to 177?

8 A Yes.

9 Q Now, in your report I think that Jeff was  
10 showing you slide 11, and during the back and forth  
11 on that I think he managed to confuse the record on  
12 this, and so let me just go over it and make sure  
13 the record is clear.

14 At one point he asked you about the  
15 percentage increase from the fourth quarter of 2004  
16 in the America West line to the second quarter of  
17 2005, a six-month period of time?

18 A Yes.

19 Q And was that when you said there was a  
20 25 percent increase?

21 A That was my estimate.

22 Q All right, and so there weren't -- he

2498

1 characterized it later as 225 percent increases,  
2 that is not what you meant to say, is it?

3 A I don't think I said that, but -- that is  
4 not what I meant to say.

5 Q In fact, if you go to the full report  
6 behind the chart, the slides, to page 17 of the  
7 report, you see the same chart as in the slides. I  
8 will let everybody find that. That is the same  
9 chart, isn't it?

10 A Exact same chart, yes.

11 Q And if you go back a page, to page 16 at  
12 the top of the page you see the America West quarter

13 over quarter change in RASM, CASM and yield,  
14 correct?

15 A Correct.

16 Q Showing your source as the DOT Form 41  
17 data?

18 A Correct.

19 Q And for these two periods, if you look at  
20 the third quarter of 2003, where there is a minus  
21 4.1 percent CASM change, the top right-hand corner,  
22 that is a good change for airline to have its costs

2499

1 drop, isn't it?

2 A That is correct.

3 Q But on the column next to that the revenue  
4 per available seat mile is only going up 1.7  
5 percent?

6 A Right.

7 Q Which is not so great?

8 A No, it is not so great.

9 Q And if you follow the numbers going down  
10 from the third quarter of 2003 there is a drop in  
11 RASM by 3.8 percent and an increase 3.6 percent, 3.8  
12 percent increase, and then a 5.6 percent drop, and  
13 then it is absolutely flat for the fourth quarter of  
14 2004?

15 A Yes.

16 Q So those aren't particularly inspiring  
17 numbers, are they?

18 A No, they are not.

19 Q And then you have got the 28 percent  
20 increase in revenue for available seat miles?

21 A Which is due to an accounting change for  
Page 127

22 the most part.

2500

1 Q And also due to the transcon being  
2 eliminated; correct?

3 A Yes.

4 Q And across on the right-hand side of that  
5 are the two costs per available seat mile increases  
6 that you ballparked at 25 percent; 12.7 percent and  
7 then 13.1 percent increases in cost in two  
8 successive quarters, about 25, 26 percent?

9 A In total.

10 Q Now, having said that is there some way  
11 that you can explain the different numbers that Jeff  
12 was pointing to in the analyst reports?

13 A Well, most of the analyst reports are  
14 built on year over year changes, not necessarily  
15 quarter over quarter changes. If you look, and I  
16 apologize for not having the hard numbers, but I  
17 don't have the hard numbers, the 12.7 percent CASM  
18 increase in the first quarter of 2005, as an  
19 example, may have only been 4 or 5 percent over the  
20 previous year, but the 12.7 percent is over the  
21 previous quarter.

22 Q And in addition the sources are different

2501

1 that the analysts use in SEC filings and SH&E has  
2 used Form 41 --

3 A We used 41 and they may have used SEC  
4 filings or Form 41 but I think they tend to rely on  
5 SEC filings.

6 Q Jeff showed you a bunch of analyst reports



7 that you didn't prepare; is that right?

8 A We weren't involved in them at all, no.

9 Q Going back to the front of your slides I  
10 would like you to look at the slide on, it is called  
11 No. 3, the acid test?

12 A Yes.

13 Q And would you -- you made a correction on  
14 direct examination, and I would like to make sure  
15 the record reflects exactly what you wanted to say.

16 A I was addressing my comments first thing  
17 this morning to the last sentence above the table,  
18 America West liquidity fell .34 and .36 percent,  
19 almost twice quicker than did US Airways.

20 The number of .34 is a correct number, I  
21 said this, inadvertently said this morning it was  
22 0.18; 0.18 was the US Airways number.

2502

1 So, if US Airways changed 1.8 points, the  
2 six months prior to bankruptcy, America West's  
3 liquidity fell .34 points for the six, over the six  
4 months prior to the merger announcement, so America  
5 West's rate of change was twice that .34 versus .34  
6 as was US Airways.

7 CHAIRMAN NICOLAU: What should the figures  
8 be here? I mean is there a change in the chart?

9 THE WITNESS: .34 is correct.

10 CHAIRMAN NICOLAU: Yes.

11 THE WITNESS: This morning I said, I  
12 indicated that would be .18. The .34 should be  
13 correct, and the words and .36 should be deleted,  
14 because that refers to another analysis, a different  
15 ratio analysis.

16 CHAIRMAN NICOLAU: Okay.

17 BY MR. KATZ:

18 Q So just to be absolutely clear, the .18 is  
19 derived by subtracting which quarter from which  
20 quarter?

21 A The .18 which would have been US Airways  
22 refers to the time between the first quarter of 2003

2503

1 and the second quarter of 2004, they having filed  
2 bankruptcy in the third quarter 2004.

3 Q So you subtracted .52 from .7 --

4 A Right .52 from .70. The America West .34  
5 is the difference between the first quarter of 2005  
6 and the fourth quarter of 2003, again six quarters.

7 Q Okay, and does this data, as you have now  
8 clarified it, in your view corroborate or undermine  
9 Doug Parker's statements on January 25, 2006 about  
10 America West liquidity concerns?

11 A It certainly contributes to that  
12 contention, yes.

13 Q I think on cross-examination you were  
14 suggesting something about how to measure the  
15 success of America West in competing against  
16 Southwest Airlines, and I would like you to  
17 elaborate on that, if you can. How would you go  
18 about analyzing whether America West successfully  
19 competed against Southwest Airlines?

20 A Well, I would really like -- the method of  
21 analysis really involves what you mean by competing  
22 against. We did -- we did a hub analysis, for Las

2504

1 Vegas and Phoenix, which showed -- well, let me just  
2 the question to it, get to it.

3 Q Slide 8?

4 A No, the table is more complete than the  
5 statement; Exhibit Number 13 on page 14. Sorry,  
6 Exhibit 12 on page 12, is the Las Vegas and Phoenix  
7 hub comparison.

8 At Las Vegas, just looking at the second  
9 quarter of 2005 as an example, America West had a  
10 yield of 9.9 cents which was slightly lower than the  
11 industry average. They had a market share of  
12 18 percent.

13 Southwest had a higher yield at 12.2  
14 percent, and 22 percent market share. To me that  
15 says, in Las Vegas, at least in that quarter and in  
16 other quarters, America West was not competing well  
17 against Southwest. They had lower yields yet a  
18 lower market share. Southwest had higher yields and  
19 a higher market share which says that Southwest was  
20 better maximizing the demand versus revenue  
21 opportunity in Las Vegas.

22 In Phoenix using the same quarter, America

2505

1 West had a 12.9 cent yield and market share of  
2 38 percent. They were higher than the industry at  
3 11.1 percent. Southwest had a lower yield, okay,  
4 and a 25 percent load factor, suggesting that in  
5 Phoenix, in Phoenix they were competing better  
6 against Southwest, but they should since that is  
7 their fortress hub.

8 So there is -- the measure of good  
9 competing versus bad competing depends on the

10 circumstances, it depends on the market, it depends  
11 on the hub, there are a lot of variables.

12 Q Would you look at page 15 of your report,  
13 please, there is an Exhibit 14 that has operating  
14 margin for America West, Southwest Airlines, Jet  
15 Blue, going through 2-1/2 years beginning in 2003?

16 A Yes.

17 Q Does that tell you something about how  
18 America West did competing against Southwest  
19 Airlines?

20 A Based on financial statistics by far and  
21 away Southwest Airlines is superior and, therefore,  
22 better if you will, than is America West. If

2506

1 America West was competing, it was in a stronger  
2 competitive position versus Southwest, I think the  
3 results would have been better.

4 Q And is profitability one way to measure  
5 success in competition?

6 A It is certainly one of the preferred  
7 methods of measuring competition.

8 Q On exhibit G that Mr. Freund showed to  
9 you, it is an America West report, Bear Stearns,  
10 April 20th, 2005. I think you wanted to say  
11 something, wanted to amplify your remarks about the  
12 analysts changing their ratings from under perform  
13 to peer perform, and you didn't get the opportunity  
14 to do that. Do you remember what you wanted to say?

15 A The one point I think I wanted to make was  
16 the frequency with which those ratings change. They  
17 are very susceptible to public events on a daily

18 basis. As I indicated, the one example I know is  
19 the Calyon analyst Ray Niedl changed his opinion of  
20 America West three times in one month.

21 Q On this document Exhibit G in the first  
22 page talks about easing liquidity pressure but then

2507

1 there is a reference to more manageable burn rate of  
2 \$74 million in 2005, assuming oil at \$50 a barrel.

3 Is that what oil went for during 2005, do you know?

4 A The average price for the year was 50, I  
5 think \$57. I made a note of it.

6 Q Would you consider a cash burn rate of  
7 \$74 million plus to be a good sign for liquidity?

8 A Not when it is based on conservative fuel  
9 price numbers.

10 Q On the next page of the report,  
11 Mr. Phelan, under summary and recommendation,  
12 Mr. Freund didn't ask you about this entry, but at  
13 the end of the second paragraph Bear Stearns says,  
14 "Despite the improving RASM trends liquidity remains  
15 one of our chief concerns." Would you consider that  
16 a resounding endorsement of America West?

17 A No, I would not.

18 Q I guess let's go to Lehman Brothers again,  
19 that is in your report as appendix D, there were a  
20 number of questions, this is just an example, but  
21 Mr. Freund was anxious to point out to you some  
22 places where he interpreted the analyst as saying

2508

1 that stock was being punished on account of the  
2 merger," is what it says on page 2. Do you remember  
3 that testimony --

4 A Yes.

5 Q -- and those questions?

6 And then up above in Point No. 2 on page 2  
7 it says, "We see little chance for implementation of  
8 a transaction of this magnitude between these  
9 particular carriers." So in this case would you say  
10 that Lehman Brothers didn't get it right in terms of  
11 their projection?

12 A They did not get it right, obviously.

13 Q But the other thing about it is that what  
14 I think Mr. Freund was saying is that there was  
15 significance to the fact that Lehman Brothers was  
16 attributing a downward pressure on the stock, as a  
17 result of the proposed merger, is that the way you  
18 understood the question?

19 A That is what I -- that is the way I  
20 interpreted it.

21 Q But in fact if you had bought the stock in  
22 April of 2005 the merger would have ultimately made

2509

1 you money on it, wouldn't it?

2 A I would think substantially more.

3 Q And if you continued to hold it after the  
4 merger you would be even richer?

5 A Yes.

6 Q So Lehman Brothers got it wrong on that?

7 CHAIRMAN NICOLAU: Well, seems to me that  
8 a few of the analysts got a lot of things wrong as  
9 you look at the --

10 MR. GILLEN: Shall we throw all of them  
11 out?

12 CHAIRMAN NICOLAU: Well, you know,  
13 Mr. Phelan said they change their opinions almost  
14 daily, so --

15 MR. KATZ: But they say the same thing  
16 over and over again when they are saying it, so that  
17 they could increase their scores that way.

18 MR. GILLEN: Who would have bought on  
19 these recommendations?

20 CHAIRMAN NICOLAU: Right.

21 MR. GILLEN: I am a pilot, I would have.

22 THE WITNESS: I think I said their rate

2510

1 does change frequently, not necessarily their facts.

2 CHAIRMAN NICOLAU: No, but if their rate  
3 does change it is their opinions that are changing,  
4 right.

5 MR. KATZ: That is all I have, thank you.

6 THE WITNESS: You are welcome.

7 CHAIRMAN NICOLAU: Anything, Mr. Freund?

8 MR. FREUND: No, that is it. Thanks.

9 CHAIRMAN NICOLAU: Thank you very much.

10 MR. KATZ: Thank you.

11 CHAIRMAN NICOLAU: What do you want to do,  
12 Dan?

13 MR. KATZ: It is really up to you, George.  
14 We have a pilot that has I think four exhibits, so  
15 it depends on whether you feel up to working for  
16 another hour.

17 CHAIRMAN NICOLAU: The panel feels up to  
18 it, but I just want to make sure, you only have one  
19 more day, tomorrow. I want to make sure you are  
20 going to be finishing your rebuttal. It is up to

21 you.

22 MR. KATZ: Let me just take two minutes

2511

1 with my clients so I --

2 (5:14 p.m. -- recess -- 5:25 p.m.)

3 Whereupon,

4 KEVIN BARRY

5 was called as a witness and, having previously been

6 duly sworn, was examined and testified as follows:

7 MR. KATZ: We are calling Kevin Barry as  
8 our next rebuttal witness. And I think it is going  
9 to go a little quicker if we just use the projector  
10 at first and then give out the slides, because they  
11 are really not that complicated to follow as you can  
12 tell from the first one.

13 CHAIRMAN NICOLAU: Give it a whirl.

14 DIRECT EXAMINATION

15 BY MR. KATZ:

16 Q So Kevin, what is it that you wanted to  
17 talk to the panel about in terms of subject matter  
18 of your rebuttal testimony?

19 A Well, one of the exhibits we have is the  
20 assumptions underlying the America West proposal for  
21 the seniority integration.

22 Q Is it the view of the US Airways merger

2512

1 committee that are many assumptions underlying the  
2 America West pilots proposal?

3 A Correct, and we have narrowed it down to  
4 nine.

5 Q And of those nine, if they are wrong about



6 one of them what happens?

7 A Well, we are going to demonstrate as we  
8 build the mountain or the house of cards of  
9 assumptions, as you see as we go along if any one of  
10 them falls out we all have built a house of cards,  
11 and realize when you pull one of them out what  
12 happens.

13 Q We do not concur with that kind of an  
14 approach to building the merged seniority list?

15 A No, we concur with the approach of  
16 building a stable foundation and in fact to build a  
17 seniority list.

18 Q Based on date of hire?

19 A Date of hire.

20 Q All right, so what would be one of the  
21 cards that underlies the house that the America West  
22 merger committee has built?

2513

1 A Well, the first card we have is the Ace of  
2 Diamonds and you would have to assume that Parker  
3 was wrong when he spoke to employees on the 25th of  
4 January in Phoenix. He was speaking to employees  
5 and I am just reiterating what you guys will  
6 remember as our exhibit A-34, which is the  
7 transcript from Parker talking to employees.

8 He is trying to address the concerns of  
9 America West employees regarding why America West  
10 merged with US Airways and didn't go stand alone.

11 But as we all know, having read that  
12 transcript many times, when talking about stand  
13 alone Parker said there was a lot more down side  
14 standing alone, there was a lot of down side in this

15 company. And he goes on to talk about the near term  
16 down side, that cash balances, and the end of the  
17 year 2005 would have us absolutely needing to either  
18 raise a lot of financing or we close the merger of  
19 the year, you know. Then he talks about the fourth  
20 quarter, we would have filed bankruptcy; it was  
21 merger or file.

22 So using that stand alone really was not

2514

1 an option. They really had three choices, for  
2 America West, merger, file or new financing.

3 File, well, as Doug Parker said maybe you  
4 will find a way out. And then he talked about what  
5 would happen in a bankruptcy. And we all know what  
6 happens in a bankruptcy; pay cuts, imposed contract  
7 and the like, it is not very nice.

8 And merger, this is where we are now, both  
9 sides are doing better. We have an opportunity for  
10 an industry-leading pay and working conditions for  
11 what is perceived to be one of the best capitalized  
12 airlines out there.

13 The next would be the 2 of Spades, no  
14 restructuring. You would have to assume that AWA  
15 did not need to restructure. We heard Mr. Parker  
16 say new financing, it was highly remote. I think  
17 that we would probably be in bankruptcy as we speak.  
18 So you would have to assume that America West would  
19 not have to restructure.

20 Next card would be the 3 of Diamonds. 3  
21 of Diamonds, no pay cuts. I don't believe there has  
22 been airline bankruptcy filing that has not included

2515

1 an opportunity for employee participation in pay  
2 cuts.

3 America West pilots had pay cuts coming,  
4 with or without Chapter 11. The merger has saved  
5 their pay rates and provided the chance for raises.

6 The next card is the 4 of Clubs. 4 of  
7 Clubs fleet growth. Back to the three choices  
8 outlined by Doug Parker; merger, file or new  
9 financing.

10 Merger, well, that is what would happen.  
11 Some downsizing occurred on both sides, no fleet  
12 problem.

13 File, some bankruptcy -- excuse me, some  
14 downsizing imposed by the bankruptcy court or the  
15 creditors, or new investors; would be no fleet  
16 growth there.

17 New financing, again it was highly remote,  
18 according to Doug Parker, but if you need to do  
19 financing, to prop up your cash position, something  
20 in your business plan isn't working. You would most  
21 likely incur reductions in manpower and/or fleet.

22 Going back to the analyst report, we look

2516

1 at the Bear Stearns report of January 25, 2006, and  
2 America West did exactly what was referred to in  
3 that report, it reduced its fleet by deferring  
4 orders and returning aircraft to lessor's, thus  
5 cutting operating expenses, no fleet growth here  
6 either.

7 And last, but not least, fuel as a  
8 percentage of operating costs. We all remember how

9 much it was costing to put gas in our car during the  
10 year 2005. It was the first time ever for the  
11 airlines that fuel was costing more than labor. And  
12 let's not forget the flexibility America West built  
13 into its fleet plan, with lease terminations.

14 So again you would have to believe that  
15 America West was going to have fleet growth under  
16 those conditions.

17 5 of Hearts, seniority boost for  
18 merger-related losses. Losses occurred on both  
19 sides, product of the merger, one side should not  
20 benefit over the other for that.

21 6 of Spades, it assumes in their proposal  
22 that all captains are equal, gives no credit for our

2517

1 wide body or international flying, the premium  
2 positions in any pilot group.

3 The 7 of Diamonds, staffing assumptions,  
4 does not give credit for what the real world will  
5 bring, the fact that staffing will be equal post  
6 merger, this fact was acknowledged by an America  
7 West merger committee witness.

8 8, seniority boost for pay parity.  
9 America West pilots did not do a fair evaluation of  
10 pre and post merger gains and losses. We had a  
11 transition agreement in which America West gain  
12 substantial benefits over the US Airways pilots from  
13 that transition agreement. America West pilots did  
14 not consider the US Airways stock and profit sharing  
15 in the total pay parity picture.

16 A perceived short term pay increase is not

17 equal to a lifetime of poor seniority, it is not  
18 fair and equitable. Remember the US Airways Shuttle  
19 case. I am sure we have all read it, and the  
20 great disparity of pay and working conditions in  
21 this merger.

22 We will talk a little bit more about that  
2518

1 later but the pay and disparity there was  
2 significantly greater than it was here.

3 MR. FREUND: You know I hate to  
4 interrupt --

5 CHAIRMAN NICOLAU: He just has one more  
6 card.

7 MR. FREUND: Okay, he just has one more  
8 card. I am sort of used to someone asking  
9 questions --

10 BY MR. KATZ:

11 Q What is the next assumption that underlies  
12 the America West --

13 MR. FREUND: There we go.

14 THE WITNESS: We are trying to shorten  
15 this up.

16 MR. FREUND: I am not anxious for it to be  
17 shortened. Believe me, as a lawyer I can't sit  
18 there and listen to somebody just kind of read a  
19 script, but that is okay, go ahead.

20 THE WITNESS: I am sorry, Dan, could you  
21 repeat the question?

22 MR. KATZ: I don't remember what it was.

2519

1 THE WITNESS: The 9 of Hearts, again a  
2 fair and equitable position, a fair and equitable

3 position for super seniority due to a perceived  
4 financial performance. US Airways side has produced  
5 the lion's share of the profits since the merger,  
6 and we have not asked to punish the America West  
7 pilots before placement on a combined seniority list  
8 because of this.

9 We believe the pilots should be given  
10 credit for the sweat equity and longevity each has  
11 invested into their respective companies, that we  
12 should look to the future at what has been built by  
13 combining these two great airlines and not speculate  
14 what might have been absent the merger.

15 The future looks bright for both the  
16 airlines and that is what we should concentrate our  
17 vision and effort.

18 BY MR. KATZ:

19 Q So does the US Airways merger committee  
20 agree or disagree with these various?

21 A We disagree with all of them and that  
22 completes your house of cards.

2520

1 Q Tumbling away.

2 MR. FREUND: Come on, let's see it.

3 CHAIRMAN NICOLAU: Is that Mr. Parker?

4 THE WITNESS: Yes, it is, it was either  
5 that or Jeff Freund.

6 CHAIRMAN NICOLAU: You are bringing him  
7 down? Is that what is happening?

8 THE WITNESS: No, it is just a picture we  
9 had available.

10 BY MR. KATZ:

11 Q So, do you have some additional analysis  
12 that you put together to demonstrate the problems  
13 with these assumptions?

14 A Yes, I have, it is Exhibit 4.

15 Q We don't have those yet but I think you  
16 can take us through them if I ask you some questions  
17 about what is up on the screen.

18 Do you have that?

19 A No, we have actually two exhibits before  
20 that. That would be -- well, I can skip to that  
21 sure.

22 MR. FREUND: Go ahead, skip away. This is  
2521  
1 very enlightening.

2 MR. KATZ: Why don't we skip to the next  
3 one that you have got.

4 MR. FREUND: Whatever that is.

5 BY MR. KATZ:

6 Q You have heard about SEC requirements and  
7 the criminal penalties for making false statements  
8 to stock analysts. What have you got to say on  
9 behalf of Mr. Parker in terms of squaring his  
10 statements on January 25th, 2006 with what he told  
11 to the analysts?

12 A Well, as the exhibit says, it is what is  
13 keeping Doug Parker out of the pokey. Well, what  
14 Doug Parker said in the first quarter conference  
15 call 2005 is consistent with what he said on  
16 January 20th, 2006 in Phoenix and many other times  
17 that he talked to employees. He had options, he had  
18 many options listed to him for things to do.

19 Next slide you should have.

20                   No, you don't have it, okay, then we need  
21 to pass it out.

22                   MR. KATZ: Okay.

2522

1                   THE WITNESS: There it is, you do have it.  
2 AWA took advantage and returned aircraft, they had a  
3 flexibility to return aircraft to lessor's and  
4 deliveries and they did.

5                   There was a possibility of a fuel price  
6 drop. Well, that didn't occur until after the  
7 merger.

8                   BY MR. KATZ:

9                   Q    Are you saying that when he was talking on  
10 April 20th to the stock analysts he may not have  
11 been losing sleep because he thought maybe the price  
12 of fuel would go down?

13                  A    All these are possibilities that could  
14 have happened. Possibility of debt restructuring,  
15 again highly unlikely that he talked about but he  
16 had the possibility of ATSB creditor leniency or  
17 forgiveness of the loan.

18                  Q    That is where Ed Albert said they could go  
19 and beg the ATSB to let them take longer to pay off  
20 there own?

21                  A    Correct, their unsecured loan.

22                  Possibility of new investors, we saw some

2523

1 of that. Tied to the merger with US Airways.  
2 Possibility of further labor concessions well. That  
3 could have been a possibility if the merger wasn't  
4 consummated and they had their own bankruptcy



5 filing.

6 But the merger for US Airways solved a lot  
7 of issues for Mr. Parker, probably helped him sleep  
8 at night, solved the liquidity issues that we saw,  
9 talked about on some of the analyst reports, gave  
10 them long term business plan, gave them scale and  
11 scope, in a nationwide network for the airlines, the  
12 two combined airlines.

13 Q Okay, let's give these exhibits out to the  
14 panel if we could and to the America West pilots.

15 CHAIRMAN NICOLAU: What book do they go  
16 into?

17 MR. KATZ: The rebuttal book.

18 MR. BRUCIA: Volume H.

19 BY MR. KATZ:

20 Q All right, when you are ready let's go  
21 back up to Exhibit 4, which we didn't have a blow-up  
22 of to put up on the screen.

2524

1 Did you prepare this exhibit that is  
2 headed why was Doug Parker not losing any sleep over  
3 liquidity on April 20, 2005?

4 A Yes, I did.

5 Q And how was the exhibit constructed?

6 MR. FREUND: Why don't you give me a  
7 minute.

8 BY MR. KATZ:

9 Q Sure. How was the exhibit constructed?

10 A The exhibit was constructed to show the  
11 cost of fuel per gallon on the left side for the  
12 year 2005, and points along the time line that were  
13 merger related, and other points of interest during

14 the year 2005.

15 Q You started with the basic graph of the  
16 price of fuel, jet fuel during the year 2005?

17 A That is correct.

18 Q And it indicated a merger related event or  
19 other events that might relate to Parker's statement  
20 about not losing any sleep over liquidity in red?

21 A Correct.

22 Q And other important entries in the black  
2525

1 with arrows going down to the time line itself?

2 A Correct.

3 Q And it is worth keeping in mind that one  
4 cent per gallon change resulted in \$5-1/2 million  
5 annual additional expense to America West, as you  
6 indicate at the bottom of your time line?

7 A That is correct, that is of their second  
8 quarter 2005 report.

9 Q Okay. Well, the first red entry is for  
10 merger talks resume in January 2005. Is there some  
11 record evidence of that already?

12 A We introduced evidence, I believe it is in  
13 volume A our first volume of talks that were going  
14 on between Parker and Lakefield.

15 Q And there is an SEC filing in volume C as  
16 well isn't there?

17 A Yes, there is.

18 Q And the next entry about suspending  
19 hiring, where does that come from?

20 A That comes from Captain Mike Shinn's  
21 testimony from the America West pilots, when the

22 order to suspend hiring at America West occurred.

2526

1 Q When he said he was told to stop hiring?

2 A That is correct.

3 Q Then you have got April 22nd, the merger  
4 talks were publicly confirmed by executives and by  
5 the company?

6 A That is correct.

7 Q And announced on May 19th?

8 A That is correct.

9 Q What is the next thing that happens?

10 A Well, the next thing that we have in red  
11 is the two June investor relations report that is  
12 put out by America West which announced a fleet  
13 reduction. The important thing to remember is it  
14 was announced after the merger, but it was also  
15 included the caveat of whether or not the merger  
16 closes.

17 Q So the flexibility that was there was  
18 taken advantage of by the company?

19 A Correct, the flexibility in lease  
20 terminations and also orders.

21 Q All right, and after that what happened?

22 A After that the next item on the chart is

2527

1 the DOJ, Department of Justice approves the merger.

2 Q There were a series of approvals for the  
3 merger from then on it was pretty straight shot,  
4 wasn't it?

5 A Kind of like a snowball going down the  
6 hill.

7 Q After the DOJ you have got an entry for  
Page 147

8 the ATSB?

9 A Correct.

10 Q Then the America West shareholders  
11 approved it, the bankruptcy court approved it at  
12 about the same time, and the deal closed on  
13 September 27th?

14 A All correct.

15 Q So this relates to whether Parker was  
16 justified in not losing sleep over liquidity?

17 A Yes, I think probably as was part of the  
18 testimony from SH&E that Mr. Parker knew that new  
19 liquidity was going to come in as part of this  
20 merger that had a very good chance of going down.

21 Q After the blue divider you have assembled  
22 some quotes, many of which you have given us during

2528

1 your testimony this afternoon. I think we don't  
2 need to dwell on them because you have talked about  
3 them already.

4 A Correct.

5 Q We have got the photo, and the other item  
6 of bullet point that was up on the screen, and then  
7 the code of ethics, Code of Business Conduct and  
8 Ethics for US Airways, what is the relevance of  
9 this?

10 A Well, we took this off the company web  
11 site. It is the code of ethics that first of all it  
12 was signed by Douglas Parker, Chairman of the Board,  
13 President and CEO, and it sets out a code of ethics  
14 as it says on the cover, for officers, directors and  
15 employees of US Airways group.

16 And it talks about in the first, on the  
17 first page, unethical or illegal conduct, even by  
18 one individual, can jeopardize our company's  
19 integrity and discredit all of us. And he talks  
20 about expect all officers and directors to operate  
21 ethically.

22 Q And if you flip over to numbered page 11  
2529

1 at the bottom of the page where it says ethical  
2 business practices. It specifically requires all  
3 employees to deal with customers, suppliers,  
4 employees, competitors and other outside interests  
5 in an ethical, honest, fair and trustworthy manner,  
6 does it not?

7 A Yes, it does.

8 Q And we feel that Mr. Parker was following  
9 those mandates in his statement to employees on  
10 January 25, 2006 and otherwise?

11 A Yes, he is an employee and he was  
12 communicating to other employees.

13 Q Okay, and these are backed up with  
14 sanctions if necessary?

15 A Yes, up to and including termination.

16 Q All right, Exhibit 5 is an exhibit from an  
17 earlier arbitration involving the integration of  
18 seniority lists of Federal Express and Flying Tiger,  
19 showing a much broader disparity in operating  
20 performance than we have in the instant case; isn't  
21 that right?

22 A Yes, that is great disparity in the last

2530

1 five years or eight years before the merger.

2 Q And likewise, behind the blue divider in  
3 terms of carrier's financial strength there was  
4 really know comparison between Federal Express and  
5 Flying Tiger, was there?

6 A No, there really wasn't.

7 Q Finally, in terms of financial analysis,  
8 the exhibit showing net profits per available ton  
9 mile shows even broader disparity between those two  
10 airlines?

11 A Yes, it does.

12 Q And we have an excerpt from the decision;  
13 what was the result of all of that variance as you  
14 see it?

15 A Well, the result of all that, I will  
16 direct your attention to the second page of the  
17 award where it says, page 38 at the top, the  
18 arbitrator when he decided on position he didn't  
19 take into consideration how much money a person made  
20 but actually what type of equipment that they had.

21 Example here, a Fed-Ex DC-10 captain was  
22 making 170 compared to 93 of a Flying Tiger 74. And  
2531

1 I will take you to page 46, which is the fourth page  
2 in the exhibit, and you will see that he found them  
3 together, the Flying Tigers pilots and the Fed-Ex  
4 pilots into the same group, despite the disparity of  
5 the pay rates which was very significant there.

6 Q And so wide body captains were grouped  
7 with wide body captains?

8 A That is correct.

9 CHAIRMAN NICOLAU: It would be helpful at

10 some point if the board had the full decision here.

11 BY MR. KATZ:

12 Q We will be happy to furnish the full  
13 decision to the board.

14 Exhibit 6, is from the Jet America-Alaska  
15 case and was an exhibit of the Alaska pilots, volume  
16 6, Exhibit 17, page 1, and it shows cash flow  
17 starting in 1987 on the right-hand side of the page,  
18 every year for the last five years, the Alaska  
19 airlines made \$30 to \$60 million in positive cash  
20 flow, whereas Jet America lost money every single  
21 year.

22 A That is correct.

2532

1 Q And then we have behind the blue divider  
2 an excerpt from the decision of the ALPA arbitration  
3 panel, we will supply the full decision for the  
4 panel and the representatives of the America West  
5 pilots.

6 CHAIRMAN NICOLAU: That goes for both  
7 groups, by the way. I assume you know that. If you  
8 are going to quote any decisions --

9 MR. FREUND: Yes, we will give the board a  
10 CD with all of the full text of all of the opinions  
11 that we rely on.

12 MR. KATZ: We will supply these in full  
13 and any others that we cite.

14 CHAIRMAN NICOLAU: Thank you.

15 BY MR. KATZ:

16 Q But there are references in here that  
17 indicate that there was great disparity between the  
18 financial performance of the carriers, wasn't there?

19 A Yes, there was.

20 Q And yet where did the first Jet America  
21 pilot go on the merged list?

22 A The most senior pilot went by his date of  
2533  
1 hire.

2 Q And the others approximated that?

3 A Correct.

4 Q All right, Exhibit 7 is a pay rate from  
5 the USAir and USAir Shuttle case. You should be  
6 familiar with these, Kevin?

7 A Yes, I have seen these many times, yes.

8 Q And these have the, this is a US Airways  
9 exhibit F-6, showing the pay rates of the Shuttle  
10 were far inferior for captains in 1998, to those of  
11 the USAir pilots, with possible exception of  
12 Metrojet, which had an equity compensation factor  
13 that brought the Metrojet captains up to Group 2  
14 rates?

15 A Right.

16 Q And behind the next tab the same goes for  
17 first officers?

18 A Yes.

19 Q And then second officers in the next tab?

20 A Yes.

21 Q And then the next three exhibits behind  
22 the blue dividers show the same information in a  
2534  
1 percentage terms instead of dollar terms?

2 A That is correct.

3 Q And then behind those is an excerpt from



4 the decision of the arbitration board which is in  
5 full in exhibit A-9 of the US Airways pilots in this  
6 case, but which part of this excerpt did you want to  
7 point us to?

8 A I wanted to point you to the page 11 on  
9 the bottom of the page, which is the fourth page in  
10 the exhibit, of the placement of the first Group 2  
11 captain from the Shuttle. The placement, however,  
12 should begin for reasons previously expressed at a  
13 point below the last Group 1 captain, here the  
14 arbitrator used a real world bidding the way that  
15 pilots bid and not the stove pipe as to where he  
16 began placing Captain Al Laney, who was our first  
17 pilot on the list.

18 Q It says at the top of page 11, "Both  
19 parties recognize that the 727-200 is a Group 2  
20 aircraft, leads us to conclude that the Shuttle  
21 captains who command Group 2 aircraft should be  
22 placed among the US Airways Group 2 captains."

2535

1 That was done despite the broad disparity  
2 in the pay for Shuttle 727 captains and US Airways  
3 Group 2 captains wasn't it?

4 A That is correct, not only in pay but in  
5 just about every portion of the contract there was a  
6 huge disparity between the Shuttle and the main  
7 line, in all cases the main line was a much better  
8 contract.

9 Q Exhibit 8, do you know whether there was a  
10 disparity in pay at Republic and Northwest?

11 A Yes, as Exhibit 8 shows it is an exhibit  
12 from the Northwest pilots, and it shows that there

13 was a significant disparity in pay between Northwest  
14 and Republic.

15 Q And we have behind that an excerpt from  
16 the decision, I think the arbitrator will be  
17 familiar with it, we will supply the entire  
18 document.

19 CHAIRMAN NICOLAU: I have a feeling I have  
20 read that one more than I have read my own.

21 BY MR. KATZ:

22 Q Many times, I am sure. And this was a

2536

1 date of hire integration subject to conditions and  
2 restrictions?

3 A That is correct.

4 Q So the Republic pilots and the Northwest  
5 pilots were put in on their date of hire,  
6 notwithstanding the great diversity in their  
7 premerger pay?

8 A That is correct.

9 Q Thank you. Did you have anything to add  
10 or have we covered all of your exhibits?

11 A I think that covered them pretty quickly  
12 and thoroughly.

13 MR. KATZ: Thank you. Witness is  
14 available for cross.

15 MR. FREUND: No questions for the witness.

16 CHAIRMAN NICOLAU: Great move.

17 Anybody?

18 MR. BRUCIA: Nothing.

19 CHAIRMAN NICOLAU: Thank you, Captain.

20 MR. KATZ: Thank you, Captain.

21 CHAIRMAN NICOLAU: What do you have  
22 tomorrow?

2537

1 MR. KATZ: We have two pilot witnesses.  
2 Two other members of the merger committee.

3 CHAIRMAN NICOLAU: Are you concerned --

4 MR. KATZ: I think now that we have  
5 completed Kevin's testimony we will be able to  
6 finish without a problem, unless there is some time  
7 constraint on the end of the day.

8 CHAIRMAN NICOLAU: No, there is not.

9 MR. KATZ: So I would say we should start  
10 at 10:00. We will be able to be done by I think  
11 4:00 or 4:30.

12 CHAIRMAN NICOLAU: Does that make sense to  
13 the witnesses as well?

14 CAPTAIN ROBERT KIRCH: We are along for  
15 the ride.

16 MR. KATZ: This can be off the record.

17 CHAIRMAN NICOLAU: Yes, off the record.

18 (Discussion of record.)

19 CHAIRMAN NICOLAU: 9:30.

20 (Whereupon, at 5:57 p.m., the hearing was  
21 recessed, to be reconvened at 9:30 a.m., on Tuesday,  
22 January 23, 2007.)

2538

C O N T E N T S

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3 WITNESS EXAMINATION

4 DON M. HOLLERBACH

5 By Mr. Katz DX 2328, RDX 2379

6 By Mr. Freund CX 2369  
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TIMOTHY R. PHELAN

By Mr. Katz

DX 2383, 2392, RDX 2489

By Mr. Freund

VDX 2387, CX 2415

KEVIN BARRY

By Mr. Katz

DX 2511