UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 11-15463(SHL)

Adv. Case No. 11-15463(SHL)

- x

In the Matter of:

AMR CORPORATION,

Debtors.

- x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

May 25, 2012

10:14 AM

B E F O R E :

HON SEAN H. LANE

U.S. BANKRUPTCY JUDGE

TRIAL RE: Doc. #2035 Motion to Reject - Motion of Debtors for Entry of Order Pursuant to 11 U.S.C. 1113 Authorizing Debtors to Reject Collective Bargaining Agreements

Transcribed by: Sherri L. Breach and Dawn South

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P R O C E E D I N G S

THE CLERK: All rise.

THE COURT: Good morning. Please be seated.

All right. We are here this morning for closing arguments in the 1113 proceeding in the AMR Corporation bankruptcy.

Any preliminary matters before we proceed?

MR. GALLAGHER: Yes, Your Honor. Very briefly. Jack Gallagher for American Airlines.

We have a few more exhibits to offer Your Honor. I will hand up to the bench American Exhibit 1779, which is American's valuation of the TWU's last prehearing proposal for mechanics and related employees, and we have agreed with counsel as a placeholder to reserve American Exhibit 1780, that number for a similar price-out of the TWU's last prehearing proposal on Stores. We've had a last minute glitch about exactly which piece of paper goes there. So we're going to work that out with counsel and we'll submit it as soon as we resolve that.

So I will hand -- I've distributed it to counsel. I will hand up Exhibit 1779 and offer it into evidence, and reserve a place for American Exhibit 1780.

THE COURT: All right.

MS. LEVINE: Your Honor, we have no objection to the admissions. We have reserved our right to let Tom

O'Rourke and Dom Davis to take a look at it, and we may, although I'm not sure we will, have a short supplemental certification to address any issues that we might have.

THE COURT: All right. Remind me where 1779 fit. Who it was offered in connection with and whether I heard testimony or whether there was written testimony.

MR. GALLAGHER: There was not -- not separate stand-alone testimony, Your Honor, about the specific valuations that had been assigned by the company to the TWU's May -- last proposal on mechanics and related.

Mr. Roth testified about the differences, but we did not previously offer this exhibit.

THE COURT: All right.

MR. GALLAGHER: So we're simply completing the record.

THE COURT: All right. Thank you.

(American Airlines' Exhibit No. 1779 was admitted)

MR. GALLAGHER: Mr. Pollack has a couple of additions, Your Honor, as well.

MR. POLLACK: Good morning, Your Honor.

THE COURT: Good morning.

MR. POLLACK: A few evidentiary housekeeping matters as well. You recall that we were going to amend Exhibit 1778. This was the revenue growth chart that we addressed with Mr. Dichter earlier in the week. We have

provided a new version of this Exhibit 1778-A. I've reviewed it with counsel. I don't believe there's an objection. I'll tender that to the Court and move its admission.

Yes. Mr. Flicker reminds me this is a confidential exhibit and we would designate it as such.

Then there are two other exhibits, Judge, that one relates to the disclosure statement that Mr. Resnick was examined on from the United Bankruptcy. You recall that was a specific attachment to that disclosure statement and we wanted the opportunity to review the entire document. You would be pleased to know we're only going to introduce a very brief excerpt from that document --

THE COURT: All right.

MR. POLLACK: -- which we've marked as 1781. I've also provided that to counsel. I don't believe there's an objection.

And then lastly you may recall that with Mr. Yearly we examined him on a particular pleading from the Delta Airlines bankruptcy that we then identify -- marked as 1704. Mr. Yearly was not familiar with it, so we did not move its admission at the time, reserved the right to do so, and would like to do it before the evidence concludes today. Again, I don't believe there is an objection.

So I will tender each of those and offer their

admission, 1778-A, 1781 and 1704.

THE COURT: All right. Let me see them and then -- thank you.

All right. I think 1778-A is consistent with the conversations I recall counsel having. Any issues with -- with this document?

UNIDENTIFIED SPEAKER: Nothing, Your Honor.

THE COURT: All right. So that's in.

(AA's Exhibit No. 1778-A was admitted)

THE COURT: The United Airlines, I believe I had a couple of pages that had been tendered and the debtors reserved their right to tender a couple of other pages. Any objection to 1781?

UNIDENTIFIED SPEAKER: Nothing, Your Honor.

THE COURT: All right.

(AA's Exhibit No. 1781 was admitted)

THE COURT: Just give me a second to -- before I put it in the gigantic pile of papers that I have. If I don't -- is there -- is there a particular paragraph you would like to --

MR. POLLACK: Yes, Judge, there is.

THE COURT: I know counsel, when offering the selection that she did, she -- she pointed out, which is very helpful, what -- what in particular she wanted me to look at.

MR. POLLACK: Yes. It is the paragraph captioned competition. It --

THE COURT: Okay.

MR. POLLACK: -- runs onto the next page you'll see.

THE COURT: All right.

All right.

MR. POLLACK: And we recognize that we've given Your Honor a number of loose exhibits in the course of the rebuttal case. What we intend to do is provide a binder for ease of reference --

THE COURT: All right.

MR. POLLACK: -- to you next week.

THE COURT: Thank you.

MR. POLLACK: There is one last clean-up item I do want --

THE COURT: Wait. Let me -- let me get to -- I just want to get to 1704, just to make sure that -- I think that was the last document you just mentioned, right?

MR. POLLACK: Yes.

THE COURT: And you said there was a Delta exhibit?

MR. POLLACK: That was a pleading in the Delta bankruptcy case.

THE COURT: Ah, okay. All right. Any objection

to 1704?

MS. KRIEGER: We believe it's not clear what this relates to, since it has to do with distressed termination of future plan. I don't think that --

THE COURT: All right. Well, we can handle that one of two ways. I -- I could either ask for an explanation. We could go off --

MS. KRIEGER: No. I'll just leave it as is.

THE COURT: All right. I'll take it for what it's worth and trust that parties will address it in their submissions to the extent that it warrants such attention.

(AA's Exhibit No. 1704 was admitted)

THE COURT: All right. So that's --

MR. POLLACK: Thank you, Your Honor.

THE COURT: -- in as well.

MR. POLLACK: Thank you.

The last item is the APA has proposed certain redactions to Mr. Dichter's declaration and we have yet to reach common ground on the proprietary scope of those redactions. Ms. Krieger and I have agreed to continue discussions, not to belabor the record this morning with that. And we will attempt to reach an agreement next week. If not, we will seek Your Honor's guidance.

THE COURT: All right. It -- would it at all be helpful to give me a preview of that or you think it's --

it's not worth doing at this time?

MR. POLLACK: I don't want to take up much of the -- of the time this morning.

THE COURT: All right.

MR. POLLACK: It relates to a just a few discreet provisions in the -- in the declaration.

THE COURT: All right. All right. I'm happy to proceed that way. Any comments?

MS. KRIEGER: We're happy to proceed.

THE COURT: All right.

MR. POLLACK: Thank you.

THE COURT: All right. Thank you.

Are we still talking about preliminary matters?

MR. CLAYMAN: Yes, Your Honor.

THE COURT: All right.

MR. CLAYMAN: I think we mentioned the other day that we were going to submit a supplemental declaration of Alex Roghan and I -- which has been marked as APFA Exhibit 401. So can I approach and just hand that up?

THE COURT: Yes, please.

Thank you.

MR. CLAYMAN: Copies have been distributed to the company, so I don't know if --

THE COURT: How long was Mr. Roghan's original declaration?

MR. CLAYMAN: Actually, I don't recall. I believe it was probably in the -- around ten pages or so.

THE COURT: Well, I -- I just ask because I note that this is 16 pages. Give -- give me a second. What is this offered in terms of --

MR. CLAYMAN: It's in response to Eric Briggles (ph) declaration which went into an issue that had not been addressed by Mr. Roghan in his initial declaration.

THE COURT: All right. And that issue is?

MR. CLAYMAN: The calc -- how the early-out was calculated and whether or not any mistake was made in the calculation of the early-out.

THE COURT: All right. Any objection?

MR. GALLAGHER: No objection, Your Honor.

THE COURT: All right.

MR. CLAYMAN: Thank you, Your Honor.

THE COURT: Thank you.

(APFA's Exhibit No. 401 was admitted)

THE COURT: All right. Anything else to add to the stack?

(No verbal response)

THE COURT: All right.

All right. I presume debtors are going to go first, but just before we do this I -- I did take a look at the calendar and I think I had asked the parties for their

submissions on -- on June 6th, and I think when I originally set that date I think I was under the impression that we were probably going to be going into next week. I have no desire to move the date up in a way that is -- is really pulls the carpet out from under anyone's feet. But if at all possible -- so originally I was thinking next Friday, but I think given the weekend and expectations about the 6th, I think that's -- that's too much.

But if people could get it to me on the 4th say at noon, which would give me -- again, the point is that you want them to be considered and given the -- given the circumstances that -- that would be particularly helpful if you could do that. If that presents a particular problem, because you -- let me know. Just -- just -- and we'll figure it out. But that would be helpful because, again, I -- I had sort of expected that we were going to just sort of slide into the Tuesday after -- after Memorial Day, but here we are.

All right. With that said, proceed.

MR. GALLAGHER: Your Honor, one last clarification. We weren't sure on our side if Your Honor had indicated that our proffer of Exhibit 1779, the price-out of the mechanics and related proposal by the TWU, American's price-out, if that had been admitted?

THE COURT: Yes. That's admitted.

MR. GALLAGHER: Thank you, Your Honor.

For the record, Jack Gallagher for American Airlines, Your Honor.

I would be remiss, Your Honor, if I did not begin by, on behalf of the debtors, thanking Your Honor for the time and the attention you've devoted to this matter, for your patience with all of us, and I must say, for some valuable instruction, some remedial instruction, and trial practice techniques.

THE COURT: Oh, I -- I wouldn't go that -- that far. Counsel here all know what -- know what they're doing and are -- are accomplished folks, and so I'm happy to have the benefit of everybody's expertise.

MR. GALLAGHER: Well, it helps to get reminded, Your Honor. And I'm sure that all the parties join in those sentiments.

Turning to our case, Your Honor, the Courts agree that the debtor has the burden of proof in a Section 1113 proceeding. We don't disagree with that. And that the burden is evaluated on the preponderance of the evidence standard.

There's been a lot of rhetoric in this case, Your Honor, but what I will focus on this morning are the facts, the facts that we believe are established on this record and that we believe we've established by far more than a

preponderance of the evidence.

I'm going to mention a lot of facts in the course of my discussion, but our proposed findings of fact will include each item I mention today, many others, of course, ones that we can't -- don't have a enough time to mention them all. But each item that I mention here today will be highlighted in our proposed findings with citations to the record evidence -- either transcripts, exhibits or both, which support that proposed -- that statement of fact.

And it's our hope, Your Honor, that clear findings of fact by Your Honor will help both parties as we move forward to whatever the next stage of this process holds.

I would like to begin, Your Honor, by talking about Section 1113, and I've taken the liberty of putting a free-standing copy on the bench. I'm sure Your Honor has access to many, many copies and many books and volumes on it. But this is a simple printout of the language of a statute itself.

And I share it, Your Honor, because I want to talk about the wording of the statute. As Your Honor knows, the heart of the requirements start in Section 1113(b)(1)(a), and that's where the core requirement of a proposal necessary to permit reorganization is found.

But I want to call some -- your attention first to words which precede that necessary language which is in the

second line because at the end of the first line there are other words that are not frequently the subject of dispute or discussion in the courts, but which we think do have a bearing on this case.

And those words are that the proposal that the debtor makes that becomes the subject of the 1113 process must be, and I quote, "Based on the most complete and reliable information available at the time of such proposal." We think that timing element is important, Your Honor, because it -- it clearly sets up a time frame and a sequencing process which we believe flows throughout Section 1113.

And just as clearly this language makes clear that the statute does not require the debtors' proposals to anticipate future events that might or might not happen. The key requirement of Section 1113 is in the next line, Your Honor, and that is that the debtors' proposals must be "necessary to permit the reorganization of the debtor."

As I noted in my opening statement, the Second Circuit has told us in Kerry Transportation that the necessary standard of Section 1113 means that the debtors' proposed contract changes must "increase the likelihood of a successful reorganization." And the Second Circuit went on in Kerry to tell us how to do that, how to evaluate it. And they said, and I quote, "In virtually every case it becomes

impossible to weigh necessity as to reorganization without looking into the debtors' ultimate future and estimating what the debtor needs to attain financial health."

So the Second Circuit has told us that this case is about the future, not the past, and it's about the future of this company and all of its stakeholders. It's not just about preserving value for the creditors, important as that is, but about preserving jobs for the thousands of dedicated employees of American Airlines. And, of course, yes, it is also about sharing the burden of reorganization as fairly and as equitably as possible in the circumstances.

So that's what American has tried to do, Your Honor, in our business plan. And that is why so much of our case focused on an understanding of the airline industry and American's business plan for the future.

Now fortunately much of the evidence on critical points in this case is undisputed on this record, Your Honor. There's no evidence at all disputing the debtors' arguments and evidence on the following propositions: That the airline industry has become intensely competitive; that American has suffered staggering losses of almost $10 billion over the past ten years; that American continues to be unprofitable at the rate of $80 million per month in the first quarter of this year; the UCC's statement called to this, and I quote, "sobering evidence," and, indeed, it is.

It's also undisputed that despite this sobering evidence, these parties have spent almost four years discussing American's financial and competitive position, but have been unable to come to agreement on what to do about it; that even before Chapter 11, American's non-labor costs were in line with those of its competitors and that bankruptcy will enable American to achieve further reductions in those costs which were not possible outside of Chapter 11.

It's undisputed that because of its financial condition American has underinvested in its product and services over the past several years. It's undisputed that American has a level of secured debt which is much higher than its peers and much higher than other airlines which have been through the bankruptcy process. It's undisputed that American has run out of unencumbered assets to pledge for new -- new financing.

And, finally, Your Honor, it's undisputed that American has a labor cost problem. All parties here have agreed that this debtor cannot successfully reorganize with the current labor contracts in place. Counsel for the unions have stood up and told Your Honor on the record that they agree that American needs a material reduction in its labor costs.

So one key issue before Your Honor is how much

labor cost reduction is needed. American's valuations show that the unions have offered less than half of what the company believes is truly necessary for a successfully reorganization. But this case, Your Honor, is not just about direct labor cost reductions. There is another set of major issues in the terms of these contracts.

As the Court is now aware, the pilot scope clause contains restrictive provisions on how American can operate its business, especially in the area of regional jets and its commuter partners and code-sharing with other airlines.

In the TWU agreements which remain at issue for the mechanics and related and the Stores' employees, they also contain a limit on the total amount of flying that can be done by regional carriers on behalf of American Airlines. A six percent cap on the total ASM's available. That brings those two features, both the labor -- direct labor costs and the contractual restrictions bring us to this Court to determine whether the debtors' proposals satisfy the reasonably necessary standard. And the case law, as I've indicated, tells us that the standard way to determine what is reasonably necessary is to start by looking at the business plan.

Now because we are the last airline rather than the first major network airline to go through this process, we do have those prior airline examples to help enlighten

our perspective as we go through and evaluate the business plan. Now before I proceed on the business plan, Your Honor, I want to note that we are very pleased to have the support of the unsecured creditors committee on this motion because their professionals are the only ones other than the unions' advisors who have done the due diligence to investigate the debtors' financial and business affairs.

THE COURT: Well, let me ask. There was a comment made and maybe you can unpack it, agree with it, disagree with it, or explain the nuance and maybe the committee can, is I believe one of the unions said that they are supporting the business plan for purposes of this motion, but they haven't bought into the business plan for any other purpose.

MR. GALLAGHER: I would defer that to Mr. Butler, Your Honor, because --

THE COURT: All right.

MR. GALLAGHER: -- I certainly don't want to speak to the committee. But as we read their motion -- or excuse me -- their statement of support, they agree that these -- the changes that the debtor has sought are necessary for a successful reorganization and, therefore, they support the motion.

THE COURT: All right. Well, it's clear the debtors have the burden. How am I to understand the burden as to the business plan here. And that obviously comes up in

the context of this transaction that has been talked -- much talked about. But, first, just talking about the business plan. In our view, what do I need to find for the debtors to prevail; that the business plan is a reasonable basis for the proposed changes --

MR. GALLAGHER: Yes, Your Honor.

THE COURT: Do -- what level of granularity do I need to -- to make that kind of finding? Do I need to go through as in each proposal to each union where I do have to look at each union separately? Do I have to look at each part of the business plan? What -- what -- what should my inquiry be from your point of view?

MR. GALLAGHER: Well, with regard to our proposals, Your Honor, 1113 I would believe would stand alone as to each union. But, of course, the business plan itself is unitary. It affects all of the unions and that's one of the reasons why this is a combined case rather than three separate cases because we didn't want to try the business plan three times over.

But we believe, Your Honor, that in the -- in the setting of simply evaluating the business plan, the Second Circuit has said reasonably necessary. In our view Your Honor would apply the business judgment rule and would need not go down and inspect every title and jot of the business plan, but rather looking at it as a whole conclude that it

has been conduct -- created with sufficient due diligence, sufficient professionalism, sufficient attention to detail as our experts have testified that it is a reasonable basis upon which to proceed to evaluate the total amount of labor cost savings needed and the --

THE COURT: Well, I --

MR. GALLAGHER: -- type of labor costs --

THE COURT: -- I think you've --

MR. GALLAGHER: -- savings --

THE COURT: -- just articulated my question very well for me, which is 1113, the debtors have the burden, but the business judgment rule is deferential to the debtors, right? So --

MR. GALLAGHER: We agree with that, Your Honor.

THE COURT: -- so how -- how is it -- how am I supposed to square those two in this context? Am I supposed to give the debtors the benefit of the doubt? Am I supposed to say, no. The debtors have the burden so they don' get the benefit of the doubt.

MR. GALLAGHER: Well, we think, Your Honor, the preponderance of the evidence standard answers that; that we think -- we think that the debtors have presented overwhelming evidence about the equality of effort and results. No business plan can -- can guarantee success. It's a prediction of future performance. But in terms of

level of effort and professionalism, we think we've carried the burden and have more than a preponderance of the evidence in place about the quality of our business plan.

THE COURT: But then how does the business judgment standard factor in if I'm talking about the preponderance of the evidence, then, because that's a differential standard?

MR. GALLAGHER: Well, we may not need it, Your Honor. I would call it a backstop; that if -- if it were a close case, I think that, you know, the case law does not call upon Your Honor to second guess each route selection or whether a particular route is profitable. But I don't think this is a close case, Your Honor. So in our view the preponderance of the evidence standard would suffice standing alone.

THE COURT: All right.

MR. GALLAGHER: Now unlike other airlines in Chapter 11, American did not rush immediately in to Section 1113. Instead, it launched a major effort to review its business strategy and to define its economic needs. Four witnesses testified about the process by which the business plan was developed. Beverly Goulet let the in-house team. David Resnick of Rothschild let a team which advised on financial issues and the proper financial metrics; even the union expert, Mr. Owsley (ph) attested to Mr. Resnick's

expertise and reputation in the industry. And Mr. Resnick testified here on Wednesday that this was one of the most thorough and substantial due diligence efforts he's ever been involved in.

Mr. Vahidi was here on the witness stand and he led the in-house team on scheduling and network planning, and they developed the new long-term network plan. Mr. Dichter of McKinsey led a team of McKinsey people who worked with American to develop from the bottom up a new revenue model to cross-check the financial projections on the revenue side.

And Mr. Dichter testified here on Wednesday about the construction and operation of that revenue model, about its granularity down to the root by root level, about the various sensitivities which his team did, and which they discussed in meetings with the union advisors. That the model was given to the unions and their advisors so that they can run their own sensitivity analyses.

THE COURT: All right. Well, let me ask you about that. There's been a lot of talk about the model out -- is obviously, like many things discussed here, proprietary. And the parties seem to have not explicitly, but implicitly drawn the line in the sand that, yeah, we each have our proprietary models. No one is going to say that that presents an impediment to being able to offer a view about

the proprietary model. But, certainly, I have perceived there to be criticism about soft of a black box nature of -- of the model as to the business plan.

And how do you respond to -- to that argument?

MR. GALLAGHER: Well, Your Honor, not so. I think there may be a misimpression. The business plan model was made fully available to the unions. They were briefed repeatedly and invited in to question and answer sessions with management who were familiar with the model on how it worked and all the different tabs and inputs that were in there. The various thins that could be done with it.

THE COURT: Well -- well, the testimony --

MR. GALLAGHER: We don't think that's a black box.

THE COURT: Well, the testimony I'm thinking of is -- is I believe there was a reference to how long would it take to run various scenarios we want to run and -- and book-end issues in terms of -- of upside, low side and things of that sort.

MR. GALLAGHER: Right. Well, Mr. -- Mr. Dichter testified, Your Honor, that certain sensitivities like you can change the projected amount of macro-economic growth and gross domestic product and its impact on passenger demand, and, therefore, it's impact on revenue. And those tabs are relatively easy to change in the model.

What is not easy to change is one number,

especially a revenue number for example, the real discussion was around can you just say we're going to take half as much labor cost improvement, for example, and take -- take $500 million of labor cost savings out and say, poof, the result will kick out from the bottom.

And when they got to that problem, they said, we can't do that -- we can't do it simply. It's not linear. It doesn't just -- if you take $500 million and add it back of labor costs or -- that you don't remove. The problem with that is that that's going to impact many, many other things in the model. It's going to impact which flights are --

THE COURT: That I understand and I -- I got the point, but I guess what I'm trying to figure out for purposes of the 1113 analysis is where does that leave me? I suspect I'm going to see an argument that says that they lack sufficient information because of -- of that aspect, meaning that we can't -- we can't run that -- those particular scenarios for you and it sounds like the model was handed over, but not in the sense of somebody else can run those scenarios.

So -- so what's your response to that? Is it that -- that's sort of the way it is; is it that folks can, as I think one expert talked about, we -- we put together our own models and then run our own simulations and everybody --

everybody has a model. I -- what's your response?

MR. GALLAGHER: My response, Your Honor, is that this is one of the most sophisticated models that's ever been used and every model has its limitations and every debtor has a limitations on its resources and its ability to rebuild it or build multiple variations. But this is both not just a reasonable model, but a robust model and a very sophisticated model going back to Mr. Dichter and Mr. Resnick saying, this is very --

THE COURT: No. No. I understand that. I'm getting into the information part of it, meaning that --

MR. GALLAGHER: Right.

THE COURT: -- that folks want to be able to say particularly because of its sophistication that they want to be able to wrap their arms around it and -- and probe it. And so there seems to be -- and, again, folks can get up and -- and correct me if I'm wrong, but there seems to be a criticism about certain assumptions but then also criticism of we can't -- part of our criticisms and our assumptions are that we can't quite wrap our -- our brains around certain parameters.

And so I'm not -- I'm not really talking about the substance of the model, but just the access as to various levels of detail and ability to run simulations. That's really my question.

MR. GALLAGHER: Well, they certainly had all of the details that were in the model, Your Honor. They had it. Now there's -- there's an impossibility issue. There's a -- there's a question of how much is enough. I think in this case we have done as much or more as has ever been done in any other case and we have to rest with that, Your Honor. I think parties could always make the argument that we want more, more, more, but there has to be a level of reasonableness. What -- what does a debtor ordinarily do; what is a debtor required to do by the code? We've certainly satisfied the standards in information requests of our own creditors committee.

So I do think there has to be some logical limit, but I stress that in terms of relative level of effort, we've done a tremendous amount here and far more than is typically done in most bankruptcy cases.

THE COURT: All right.

MR. GALLAGHER: Mr. Dichter testified in great detail about the revenue model, about granularity down to root by root level and that he had great confidence in the business plan. So the evidence is that this business plan was carefully done from the bottom up based upon many variables and inputs, and they did have access to all of these inputs, Your Honor: The fleet plan, how many new aircraft were delivered, when, how many aircraft are

retired, when, the revenue model broken down by detailed schedule, and the labor cost model and all of the demographics and other variables that run the labor cost side.

And this business plan was designed to address precisely the five major problems which have held this company back prepetition. It's lack of profitability in ongoing operations; it's unsustainable debt mode; it's need for an expanded network scope, and we addressed that both through organic growth and through synthetic growth with code-sharing and use of regional partners; the scope clause restrictions on our ability to generate revenue, and, finally, our uncompetitive labor costs.

And the results of the business plan, Your Honor, are a 3.1 billion-dollar improvement in annual financial performance by 2017. And that $3.1 billion is made up of $1 billion in additional revenue; $600 million per year improvement in non-labor costs, and $1.5 billion of labor cost reductions by year end's 2017, and that translates, on a six-year average, which we use in negotiations to $1.25 billion in labor cost reductions.

Of that 1.25, $260 million is targeted for American's 20,000 non-union employees, and the remaining 990 million is for employees represented by these unions. And as I've indicated, Your Honor, their last proposals to us

prior to this hearing only get us halfway there. So the gap is quite large.

And this --

THE COURT: Well, let me -- let me ask about consideration of proposals. There's been a lot of proposals back and forth, and I've heard the word "agreement" used in a lot of different contexts meaning our 2003 agreement, meaning something that was actually signed, sealed and delivered and everyone's operating under it. But, also, as to individual things that prior to the hearing folks had said, well, we're not going to fight about this issue anymore. We're willing to do that.

How am I to understand these, what I would call less final, more interim kind of agreements in the sense that folks say, well, we've reached agreement about this issue. What -- what am I to make of those?

MR. GALLAGHER: Well, Your Honor, the unfortunate fact is that there's no agreement until there's final agreement in -- in labor negotiations. But the parties necessarily have to address one topic at a time. And I'm sure my colleagues on the labor side will have their own view of this.

But in our view, when they say things -- when they have said in court that they have agreed to PBS, we don't think that's accurate, Your Honor. What they have done is

made a proposal that said, we will agree to PBS if, and every one of those proposals has conditions attached to it: That they get to approve the vendor; that they get to approve the final plan design; if -- if you give us an early-out, if you agree to thus and so. And those conditions across the board have been unacceptable. So --

THE COURT: Well, but --

MR. GALLAGHER: -- while pieces of the puzzle have been agreed to --

THE COURT: Well, but let me -- let me ask it this way, then. Certainly, in the context of 1113 and talking about a basis to reject, the cases make reference to proposals made by the unions at issue, and I guess I'm -- I'm trying to figure out how to consider these agreements in that context.

Are you saying that I can only consider a final agreement saying here's our package, soup to nuts, or, yes, you can consider them for purposes of good faith rejection, but we don't think that even if you consider those they meet the standard or something else?

MR. GALLAGHER: Well, closer to the latter, Your Honor. The proposals that you must evaluate under Section 1113 are the debtors' proposals, and that's where our evidence has focused. The unions, of course, introduced their proposals and -- and they are in the record, and we

think they are relevant to the issue of good faith bargaining. We think they are relevant to the issue of whether they had good cause to reject. If they had offered us something at or very close to what we were seeking, they -- the cases indicate that might be good cause to reject in the right circumstances.

We don't get that far, Your Honor, because although individual little pieces might have moved in the right direction, none of the -- none of the contracts that are before Your Honor, on none of them do we come close to anything like meeting. And the contrast I would draw is to Judge Drain's decision just last week in the Hostess bankruptcy which APA has put before you.

Judge Drain said the parties were very close, so close that he didn't think it was necessary for a reorganization in order to -- to grant the motion and -- but he spelled out exactly what the issues were and exactly how they could be resolved to make an agreement. And he said -- he denied the motion, but he -- without prejudice and said I -- if they aren't resolved that way, you can come back to me and I'll look favorably upon a new motion. So Judge Drain clearly in that case thought the parties were close enough that a judicial nudge could get them there.

Now I wish, Your Honor, that we were that close, but we're not. We're miles apart. We've $500 million apart

on straight labor cost valuation, but then we have the scope clause and then we have the TWU's ASM cap. So the cases are clear that Your Honor must evaluate the proposals as a whole and the only way in which the unions' proposals become relevant is did they -- did they come -- first, once Your Honor determines that we're right, hopefully, on what is reasonably necessary, and we don't think there can be any dispute on this record, for example, that scope clause changes are necessary. How do the unions proposals match up? Do they get us at or anywhere very close to the need that we've shown?

And if you look, for example, Your Honor, at the unions' proposal on scope clause issues alone, they are so restrictive, as Mr. Glass testified, that we just can't compete effectively without the relief we're seeking.

So we think, Your Honor, first you look at the business plan and decide if that sets the right benchmarks, and then you look at our proposals and see do they -- are they reasonably calculated to get us there. And we think in both cases the answer is yes.

THE COURT: All right.

MR. GALLAGHER: And then --

THE COURT: Since you mentioned benchmarks, is -- there was a lot of back and forth about EBITDAR and about the target number and the unions view being too high and we

won't get into numbers, obviously, because they're confidential.

But -- but one of the things that came up was essentially talking about other bankruptcies and -- and the numbers there versus the historical numbers. How am I to understand other bankruptcy cases numbers other than the fact that it is perhaps a cautionary tale for all bankruptcy judges everywhere about trying to evaluate numbers in a bankruptcy as -- that are predictions.

Because I can see two -- at least two ways to view it: One is to say, that's what everyone has done. We're doing what everybody else has done so you can't blame us for it. The other is to say, well, those numbers were all -- bear no resemblance to actually what happened, so shouldn't' you -- given the historic -- that historical precedent change your numbers. And so -- and I guess the third way would be to say, well, maybe we -- maybe we should, maybe we shouldn't, but if we -- we shoot high, we're hoping to get where everybody else got.

What -- what is your narrative about what to think of those numbers?

MR. GALLAGHER: Well, Your Honor, first of all, the comparison numbers are in the record in paragraph 41 of Mr. Resnick's declaration and in the company's Exhibit 306-A. And consistently, Your Honor, the targets that American

have set are lower than the EBITDAR targets set by the other major network carriers in their plans of reorganization consistently, both for the year of emergence and the out years. I -- I think there may be one exception in one out year where one of those carriers was modestly less.

But Mr. Yearly did not -- when he -- he testified that our targets were high. But he didn't suggest what an alternative appropriate target would be. And there's a reason for that, Your Honor. He couldn't do it.

The company experts, Mr. Dichter and Mr. Resnick, offered thorough explanations which are unrebutted on this record as to why an alternative EBITDAR calculation is not linear or straight forward as Mr. Yearly implied because we would have to go back and redo the model. You could do the simple calculation if you took $500 million off the EBITDAR -- of the bottom line number, what effect would that have?

But that would be very misleading because it wouldn't go back into the model and change the revenue and pull out the unprofitable flights and decide whether the capital investment was warranted now in light of the return on the investment. And there are so many variables that -- that's when it becomes imponderable.

But every one of those airlines targeted margins above what they and their peers had achieved in the past because going forward, Your Honor, most businesses tend to

look at the world as a bit more rosy than it ultimately turns out to be. They have optimistic projections, but they also factor in risks and, of course, in this industry the risks are well known because whether it's fuel prices or any of the huge number of variables that affect passenger demand, whether it's a terrorist attack, an epidemic, a tsunami and weather events, the record is full of those kinds of events.

So we project what we would like to attain in an ideal world where business conditions are do, travel is good, the economy is moving positively. And our model takes into account the best, current macro-economic forecast available, current, not past, current.

That's about the best we can do. I don't know how we could do it any better, Your Honor. So --

THE COURT: Well -- well, let me -- let me see if I can try this again, which is I guess the third thing of the three that I mentioned was what to make of the fact that those bankruptcy cases predicted numbers that seemed to be higher than where they actually got. And I assume when predicting higher numbers, the sacrifices that are asked -- that are asked and that are requested are higher, whether they're consensual or -- or they're some other means.

And so I'm -- I'm sort of struggling with -- with what to -- to make of that. It sees to cut both ways for --

MR. GALLAGHER: Well --

THE COURT: -- for all sides. In other words, if -- if they were overly optimistic and everyone sacrificed to get to that target and even with those asks we didn't get there, but we managed to get what we needed, I'm -- I'm trying to --

MR. GALLAGHER: Well, Your Honor, it's -- it's an excellent question because, of course, the fundamental question for Your Honor is one on which there is a broad definition. Reasonably necessary, that's the standard and -- and, of course, Your Honor, has to struggle with it as the Courts have struggled with it from the beginning under this statute.

But the case law gives us guidance that it's business judgment and, Your Honor, we have projected EBITDAR less than all of our peers, less aggressive, less optimistic because we thought that was reasonable. We did not want to over reach. But then the question is, well, how long can you go and still satisfy -- keep -- keep enough room there for all of the exogenous events that might happen. What is reasonable? That's a -- that's a very tough call.

But we -- we concluded that by going less than what others had, we were satisfying ourselves that we were not overreaching, but we were still coming in with when -- within where our financial advisors told us was a zone of

reasonableness in terms of what the financial markets would expect of us in order to make us credit worthy, in order to make us a viable candidate for investment for the new equity which we will need.

So it's -- it is at the end of the day, Your Honor, there are collect -- series of business judgments that go into that. What Your Honor is called to do is to evaluate those, we don't think piece by piece. We don't think you need to get in with a fine-tooth comb, but to look at the total big picture and say did we do a reasonable job? We think we've done an exemplary job, Your Honor, and we don't think it can be the law that Your Honor is then required to pick apart a business plan any single imperfection because perfection is not attainable. This is a business plan. It's inherently predicated on assumptions and hopes and aspirations for the future.

And the question is are those aspirations and hopes and plans reasonably grounded, and we they are, Your Honor. We think we got the best talent available to put it together and that's what we did. And we did not start off with preconceptions. We did it from the ground up.

THE COURT: Before we get to the individual unions, and I -- I realize that we'll have to get there shortly, I just want to talk about the other transaction argument. And here there is something that is, in your

view, to speculative; in the unions' view concrete because it -- it is memorialized in term sheets.

Let me hear our view as -- as to the other transaction and are you telling me that I should ignore the concrete term sheets and they are not enough what would be enough in your view to push the nose of the football over the goal line?

MR. GALLAGHER: Your Honor, we think those -- the suggestion that there is a transaction likely with U.S. Airways is wholly speculative wishful thinking. There is -- U.S. Airways is apparently willing to pay a premium to our unions for support of emerging. That does not constitute evidence at all, and there is none in this record, that our proposed cost reductions are not necessary for a successful reorganization because the unions have not proffered any evidence at all of a viable transaction.

They have not proffered evidence of corporate agreement or even negotiations. They have not proffered a business plan. They have not proffered financial projections. They have not proffered a fleet plan, a route plan, a cost structure. They have not proffered support from the creditors' committee. We think it's ironic, Your Honor, that the unions are so quick to embrace this ephemeral acquisition scenario on which absolutely no due diligence have been done and yet they question to pieces the

American business plan which has been very professionally developed and thoroughly vetted.

THE COURT: Well, let -- let me ask you what am I supposed to make of the fact that -- the fact of all the other airline mergers that have occurred and -- and what seems to be the universal view that, yes, that's something that's appropriate to look at because if -- if you take that predicate, I think the union then makes the argument that this is about timing and, therefore, you could use that timing issue in the context of an 1113 argument to say the time is not now.

MR. GALLAGHER: Well, 1113, Your Honor, doesn't have a timing requirement. It -- it says is -- is the debtors' proposal in the time in which it is made necessary for a successful reorganization on the record before the Court.

Now all of the other mergers that occurred, Your Honor, at Northwest and Delta, Continental and United, all of those carriers had been in bankruptcy -- in Continental's case, many years before -- but in United's case they came out of bankruptcy in 2006. They didn't consolidate until 2010 and '11. Delta and United were both -- excuse me -- Delta and Northwest were both in bankruptcy, came out in 2007, did not announce a merger until more than a year after they came out.

So you -- we don't know whether consolidation is in the future, Your Honor. What we do know and this was strong evidence from our witnesses, Mr. Kasper, Mr. Dichter, Mr. Resnick. Ms. Goulet, that American Airlines is strong as a stand-alone company. American Airlines does not need a merger. It needs a competitive cost structure, and with a competitive cost structure it can live and thrive successfully.

Then it can, with that strength and with that value created for its stakeholders, then it can see what -- what's out there in the real world over a long period of time in the future, and if one consolidation or another makes sense to expand its network, it can do that, but it will do it in its business judgment with the consent of its shareholders or if it were still in bankruptcy it would be its creditors.

But -- but that may or may not be in the future. But the record is crystal clear that this company is not only viable, it is strong. Look at U.S. Airways today as an example of a smaller carrier that's profitable as a stand-alone entity. It doesn't need the network scale. It might like to have it, but it doesn't need it to be profitable because it's got a lower cost structure. And where is its big advantage? It's in its labor costs, Your Honor.

So what we need, and everybody agrees with this,

first and foremost to get out of bankruptcy we need a competitive labor cost structure. That's what we seek. That's the sine qua non of a successful reorganization. No matter what else happens, that is what we need.

So we think there's no question that we need these -- these changes for a successful reorganization. No reasonable question at all. And then the -- what may happen in the future, we don't think Your Honor can determine that. We can't determine that. No one can. But on this record in terms of the evidence, there is no basis upon which you can evaluate the likelihood of a future transaction.

These unions have signed term sheets. They are agreements to agree. They are contingent on their face. They are contingent on membership ratification if and when the transaction ever happens. So we don't know if there will be a transaction. We don't know if there will be membership ratification.

We think that's smoke and mirrors, Your Honor; that it's a distraction; that it's a red herring and it's not really an issue before you on this record.

THE COURT: All right.

MR. GALLAGHER: One other thing I can comment on, Your Honor, is to contrast the approach of the unions. As Your Honor probably understood from the record, bargaining stopped with the pilots and the flight attendants once they

signed the TWU term sheets. They just weren't available for further negotiations. So rather than use the time leading up to this hearing after our motion was filed for intense last-minute negotiations to try to reach agreement, they went to Phoenix. That's their prerogative, but they walked away from bargaining with American.

Ms. Gladding admitted on the witness stand -- or perhaps it was Ms. Loew -- that they spent a total of three hours after the end of March with the company. We don't think that that's a sign of -- we don't think that's the right way to do it, Your Honor. We contrast that with the TWU's approach because what the TWU did was they said to their members, we've signed a term sheet with U.S. Airways so that if that ever happens, we're protected. We have a deal, just like the pilots and the flight attendants. But then they said, but now we are going back and we are going to engage with American Airlines because that's where we are today and we're going to try to work out the best deal we can with American Airlines.

And they did. And they took those packages out and five out of seven ratified. We think that's the responsible way to do it, Your Honor, and we think that indicates good faith bargaining by the company and by the TWU.

Now they're not in love with us and we're not in

love with them, but we found a way to make a deal. That's what's supposed to happen in Section 1113. It has not happened with the pilots and the flight attendants, but on this record about the reorganization of this company, there's only one business plan in the record and it is real and it is viable and it is necessary.

Now the unions have many, many arguments about their problems with our business plan, Your Honor, and I don't have time to address them all. So I'm going to try to address just a few of them.

They -- the argument that American is not viable on a stand-alone basis, we think that's pretty flimsy, Your Honor. Dan Kasper testified here on Monday that he's been involved in all of the other major airline restructurings and that he sees "no reason" -- and I'm quoting -- "no reason why American which has more fundamental strengths and strong reputation and brand recognition, I see no reason why American cannot do what United, Continental, Northwest and Delta and U.S. Airways have done previously." And that is emerge and achieve profitability on a stand-alone basis.

Mr. Dichter agreed that American is very viable as a stand-alone.

Now Mr. Akins was the primary advocate of the theory that stand-alone is not viable, but he couldn't really decide which way to go on it because he said first

that our stand-alone plan is not viable because it has too much growth, but then he says our network is too small and we need to grow. We don't think he can be right on both points.

He criticized, Mr. Akins' did, our counter-stone strategy as if he thought it was unsuccessful. But Mr. Kasper and Mr. Dichter both testified that all network carriers use a hub strategy. Delta has a fortress in Atlanta. United has a fortress in Chicago and Denver and San Francisco. But Mr. Dichter testified that he had analyzed alternative hub scenarios. He had actually done the detail work and found that various changes consistently yield worse financial results. So he validated our business plan on the hub strategies.

The other argument that our plan is a placeholder is simply not supported, Your Honor. We have -- they have -- we have union rhetoric, but we do not have evidence. In fact, we have strong evidence from the company that that is not the case.

And the unions talk about the protocol agreement between the company and the creditors' committee as if it were some type of a glaring signal that a merger is inevitable. Not so. The protocol agreement is a simply reflection of the agreement between the company and the UCC on an appropriate schedule of due diligence, the kind of due

diligence that has to be done in every case where the company will have a stand-alone plan, share it with the creditors, fully evaluate it, achieve it, begin to take all the steps necessary to achieve it, and then we'll explore whether there are any other options available now in real time that will achieve better value for the creditors and better benefits and viability for the estate.

That's it. It doesn't say they will or they won't where they end up because that has yet to be determined. But it is -- that's all it is. It's nothing more. It's nothing extraordinary. It drew media attention because it was announced maybe ten days after it was actually agreed to at the same time the unions were trying to fan the flames and put publicity on U.S. Airways.

Their last argument about what we seek, Your Honor, is that it seeks too much and it's just not necessary. And that's a more conventional argument and it would be much more understandable if American were the first major airline to seek to reorganize under Chapter 11.

But the charts introduced by Mr. Kasper this week make very clear that American's proposals will generally place American's employees in a better relative position to their counterparts else here in the industry, employees in the same jobs at other majors in terms of the labor costs. Where everyone else moved to the bottom of the pack,

American is moving to the middle. We have consistently been on the high end, Your Honor. Given the decibel level of protests you would think that we were falling off a cliff and going to the end of the earth on the bottom.

Mr. Kasper's exhibits show you that's not the case. So we urge you not to be deterred by the rhetoric, but to look at the evidence and the evidence shows that -- and Mr. Glass testified to this as well -- that American's proposals -- and remember we protect compensation so the proposals necessarily effect work rules and benefits. Mr. Glass testified that our proposals consistently place us in the middle of the pack consistent with market competitive terms.

Section 1113 doesn't require that, Your Honor. At U.S. Airways they went to the bottom because they had to from a financial perspective because their financial condition was so bad. We haven't done that. We've gone from the top to the middle. We think that's appropriate.

Now the -- Your Honor asked about the unions' counter-proposals and when they say agreement, I urge Your Honor to go look at the term sheets they passed across the table, and when things -- when they say things like we agreed to PBS, look at the conditions. There's a reason why there wasn't rapid agreement on those terms that they offered, because the conditions were unacceptable. And the

company remained available to continue to bargain, to try to find a way to make it work, but without success.

THE COURT: There's been some discussion about -- from the union side about the company not moving off of its original 1113 ask and that the idea was that you could -- you could change where the savings were, but you couldn't change the savings needed. And so they characterize it as sort of a take it or leave it.

I realize the statute presents challenges to all sides in terms of trying to understand what you can and can't do without damaging your own position. But how do you respond to that argument?

MR. GALLAGHER: Well, Your Honor, that argument simply ignores the very substantial change of position that American made on the pension freeze versus pension termination. Now that change resulted in a dramatic shift in the balance sheet of this -- of the reorganized company, of the prospective balance sheet because it retained more than $4 billion in longer-term liabilities on the balance sheet. So that required a rerun and major revision of the business plan.

But American did not. There were -- because of that added burden, we could have gone back and said, well, now that we're keeping those costs in order to be financially stable, we need more from labor. That is not

what the company did. You heard the testimony; that what the company did was they said we're not going to ask more from labor. We are going to project and -- and go to the marketplace for additional equity or find a way to make it work without -- with investment, additional capital, and not ask labor for more.

So we think that in and of itself is -- is a response to the take it or leave it argument.

But the second part of that, Your Honor, is we did what the statute requires. We -- we tried to figure out what do we need to successfully reorganize, to come up with a solid business plan and then ask for that. We did not do what is often happens in conventional collective bargaining where both sides ask for too much because they know they're going to end up compromising in the middle.

This statute doesn't call for that. This statute is very different in that respect. We -- we believe we would have been called to task had we done that. So American was very careful to build its need, but then Mr. Brundage testified that if the unions had come back to us and -- and convinced us that there was a fundamental flaw in the business plan or, for example, persuade us to change the pension plan position, we would do it. And the pension issue is a terrific example of the fact that we did.

So we think we were responsive; that it wasn't

take it or leave it. It was we think -- we've worked hard to come up with a rock solid set of -- of projections of our need and if you -- and unless you can show us that that need is not real, that's the number we have to get to. We don't think that's take it or leave it bargaining, Your Honor.

Now related to that in terms of the good faith bargaining is the valuation issues. And, quite frankly, Your Honor, I'm not sure exactly how to -- how to deal with that because APA and TWU have raised a number of valuation issues and APA has accused us of manufacturing some valuation disputes.

APFA does not disagree on valuations. Mr. Akins agreed on the witness stand that he had no issues with the company valuations. But let's look at the record, Your Honor.

First and foremost, first and foremost, when they went to U.S. Airways, the unions agreed to use a American's valuations across the board as the basis for the valuations of their agreements with U.S. Airways. That alone should end any debate on who has better numbers.

And the record is clear, Your Honor, that American was open to discussion of its valuations and agreed to change several of them multiple times in negotiations with both the pilots and the flight attendants. Ms. Clark for the APA acknowledged that American had changed its

valuations in APA's favor by $29 million a year. Ms. Loew, for APFA, agreed that American had changed its valuations for the flight attendants by $20 million a year. Ms. Clark acknowledged that the parties had worked together for a long time, generally trust each other, and that they used the same data and the same methodologies. And the real differences are in assumptions. And in our view the record clearly establishes the validity of the company's position.

One vivid example of that, Your Honor, is medical plan utilization. The difference between the parties on the value of medical plan utilization, that one item is $88 million per year, a huge chunk of the total difference. Your Honor heard the chief actuary from Mercer and Company, the largest benefit consulting firm in the United States. American relied on Mercer. The unions purport to have relied on Segal and Company. They pulled one of the Segal witnesses and the other one could not explain the basis for the assumptions that were in their black box.

So we think the record evidence shows, Your Honor, and the Mercer actuary explained what they do and how they do it, and the data they use to get to their conclusions. And that's simply one illustration of these valuation differences. They question our assumptions. They question our methods because they want the total number to be lower. But time and again when you look behind the numbers ours

turn out to be solid and there's turn out to be soft.

We understand that, Your Honor; that's one of the reasons why we find value in doing it on the record in open court where it can withstand the light of -- of day and cross-examination because that's the way to find what's real and what isn't. And our numbers across the board, Your Honor, are real.

THE COURT: In your view it's the valuation disputes that lead to the parties differing characterizations as to whether the proposed contract will be at market, in the range of the market, or I've heard some -- some argument that, you know, one proposal is supposed to be 30 percent below market. So really those are driven by the valuation disputes?

MR. GALLAGHER: Very heavily, Your Honor, because we put into evidence comparisons, in Mr. Glass's declaration primarily, to what is in place at other carriers. You heard Mr. -- Mr. Glass testify here that our flight attendant wages would -- would remain, even with the brand new United agreement, we will -- excuse me -- U.S. Airways agreement, the one that failed ratification, we would be ahead of those flight attendants going forward if that agreement had ratified.

We don't know what the future holds, but we don't think there's any credence to the 30 percent below market,

and we don't think there's anything other than conclusory witness statements that support that proposition.

One other example on productivity, Your Honor, is the pilot productivity and work rules. You will remember Mr. Rosselot was here and he testified that he was an expert on pilot productivity and work rules, and the issue was how many reserves the company should have, and it was a big issue to the pilots and it's worth -- the difference is $17 million. And Mr. Rosselot testified that he thought the company's reserve projected -- projections on the need for reserves were too conservative. We were going to keep too many and if we credited them with removing more reserves, then we would get to their value.

But when you -- when we got to ask him on cross-examination how low can you go, he agreed that American's projections already took us down to the range of the most productive pilot work force at Continental, the 12 or 13 percent reserve level, and he says it's -- he wanted us to go lower than that and they already have a PBS system.

So we think that repeatedly, Your Honor, when you look at these kinds of issues, our assumptions and our rationale stand up and there's doesn't.

So I've covered a great deal of territory, Your Honor. On the question of there being to -- asking for too much, I -- I do have some brief responses. American has an

urgent need for capital investment in its product. We need to build our liquidity to withstand structure -- shocks in this market place.

And I emphasize that American today, the amount of money on hand sounds like a lot certainly to the man on the street, but in a company with $25 billion of annual revenue, the analysts say we -- we should have 20 percent liquidity just for prudent day to day management of the airline to withstand the day to day vagaries in things like fuel prices and market demand.

And if -- as long as we are not earning profits, if we continue to lose money, we will have to fund those losses and the available cash will diminish very rapidly. It gets back to the urgency factor, Your Honor. For this debtor in its current financial condition, that would be catastrophic because we're not credit worthy and we have virtually no assets left to pledge.

Thirdly, American has nowhere else to cut costs. Ms. Goulet has testified to the overall level of cost reduction effort over many years. And you heard from -- from some of the witnesses on the witness stand how the management departments have been cut dramatically over recent years, including outsourcing. Mr. Yearly agreed that there was no place else to cut.

Fourth, Your Honor, profit-sharing. If we are

successful, if we attain our business plan targets, the plan projects substantial profit-sharing, many millions of dollars. The numbers are confidential, but they are shown in Exhibit 132-A.

The key, of course, is that profit-sharing is contingent on the very first word, on profits. So if we are profitable, if we -- if, by chance, we do seek too much or market conditions turn out to be extraordinarily favorable, the employees will share in that success and if we get spectacularly successful they'll share even more. Fifteen percent from the first dollar of profits. And those out-year projections on profit-sharing would give back a huge percent of the amount we're currently seeking, Your Honor, if the plan succeeds.

And fifthly, Your Honor, jobs. Employees who remain with the company get something that other stakeholders do not get in Chapter 11. The employees get to continue with good jobs, with at least industry average pay and benefits, including travel privileges. And even those who are furloughed retain recall rights which are likely to ripen during the term of this business plan in light of the expected growth and the average age of our current workforce.

So we don't think we've sought too much, Your Honor. We think our proposals are fair and equitable. They

preserve compensation, provide for future increases, provide for uniform employee benefit plans from the senior executives to the lowest paid in the company. The uniform percentage allocation is fair and equitable, Your Honor, and I want to note what the Second Circuit said in Kerry about that because there's been some discussion about whether a 20 percent cut across the board is fair.

If we didn't do 20 percent across the board, Your Honor, the only group for which there's evidence in the record that they are currently below market is management and non-union employees. If we had not done 20 percent across the board, that group would have had to give less. And we would have heard loud screams from the union's side.

But what the Second Circuit said about across the board cuts in Kerry Transportation, and I quote, they said that the wage and benefits do not always have -- I'm not quoting yet. The wages and benefits do not always have to prove -- have to be cut to the same degree, but "to be sure such a showing would assure the Court that the effected parties are being asked to share a proportionate share of the burden."

The company's evidence shows that our proposals are market-based and the balance of equities, Your Honor, is that approving the company's proposal would save 67,000 jobs.

I need to conclude, Your Honor. American Airlines is a great name in the history of aviation in our country. It has faced financial difficulties in recent years, but it has core strengths that most businesses would love to have. It has name recognition and good will. It has 67 million members in its frequent flyer program. It's trusted by hundreds of thousands of passengers every day to deliver them safely to their depo -- destinations, and those core strengths include 67,000 dedicated employees.

American's title for its new business plan in bankruptcy is titled very simply, a plan for success. We urge you to grant our motion in order to permit this great company to move forward with that plan, not only to achieve a successful reorganization, but to provide for the long-term success of our company, our employees, and all of our stakeholders.

THE COURT: All right.

MR. GALLAGHER: Thank you, Your Honor,

THE COURT: Thank you.

I have two very specific questions before you -- you sit down.

One has to do with the regional jet number and it was pointed out during the -- I don't know if it was -- maybe it was Mr. Glass's original cross about the provision providing for 50 percent of the mainline and what that

resulting number looked like. And my question for you is in your view, one -- one, do you agree with that number? I believe it was -- I don't know it 524 or something in that ballpark. Do you agree with that number, and, two, if you do, how am I to understand that number as compared to other -- other competitors. Is it -- is it in the ball park? Is it aggressive? Is it aggressive, but with an explanation?

MR. GALLAGHER: I -- I am confident, Your Honor, that American Airlines does not have 1,000 mainline aircraft. It is more in the neighborhood of five or 600 mainline aircrafts, so 50 percent of that would be in the 250 to 300 range. I don't have the exact numbers in front of me, but I believe they are in the record and we will certainly address that in our proposed findings.

And we -- we have in the record, Your Honor, both the actual number of regional jet aircraft at each other carrier and at American, and of what our proposals would permit. And we think they're entirely in the zone of reasonableness. And our business plan, of course, lays out exactly where those -- where that regional jet capacity would be allocated. It's not some abstract pie in the sky. It is calculated to serve a specific business need.

As Mr. Dichter and Mr. Resnick testified about re-gaging in certain markets where it makes much more sense to fly a 70-seat plane than 120-seat plane with 50 seats empty.

THE COURT: All right. The second question I had had to do with the argument about code-sharing claiming that the -- what the American's asking for in the view of the union was -- is -- is not in line with the industry because it asks for essentially no restrictions on code-sharing. And there's a -- obviously, there was a lot of testimony about details of other airlines and what they do and what they don't do.

But, one, do you agree with that notion that it is an unrestricted code-share that's sought, and, two, again, how am I to understand that in -- in the context of the industry?

MR. GALLAGHER: Well, Your Honor, Mr. Glass testified that both Northwest and United, when they came out of bankruptcy, had what labor people call a meet and confer requirement. That means, we'll talk to you about it before we do it, but it does not require your agreement.

And so they said -- they have provisions that say, we'll talk to you about any proposed code-sharing and then the company will go and do what it deems appropriate in its business judgment. And the only restrictions beyond that at both Northwest and United coming out of bankruptcy were certain very narrow limits on hub flying, certain places they could or couldn't fly to. But beyond that, they had

unlimited code-sharing partners and nationwide coverage of code-share opportunities.

THE COURT: So the question for that, then, in your view is how you define the relevant comparable set you're using those two airlines coming out of bankruptcy and I -- I -- I think it's safe to assume the unions are using the existing circumstances today.

MR. GALLAGHER: I think that's correct, Your Honor, and, of course, today the world has changed. Five years ago, American was the largest and it was not fighting the -- it was not the small guy trying to match the scale of the larger guy.

Back in the -- at that time Delta, Continental and Northwest were all much smaller than United and American. And they had blanket code-sharing across their systems, all three airlines, very, very elaborate code-sharing because that's the way they expanded their network and it benefited all of them in competing for scale against American.

Now the shoe is on the other foot. United and Delta are much larger, and our need for code-sharing is much more like Delta and Continental and Northwest needed back then. But if you look today at what -- what United or Delta might agree to or limits they might accept today, they can afford to accept greater limits today because they're the kind of the hill. They have the network scope. They don't

need code-sharing as much to expand their reach --

THE COURT: All right.

MR. GALLAGHER: -- as we do.

THE COURT: Thank you.

MR. GALLAGHER: Thank you, Your Honor.

(Pause)

MR. BUTLER: Good morning, Your Honor. Jack Butler from Skadden Arps on behalf of the official committee of unsecured creditors.

While the committee is a statutory party of interest and in this particular proceeding a full Section 1113 party by way of the stipulation and consent of all the other Section 1113 parties that are reflected in Your Honor's pretrial order.

We have sought from the beginning as we indicated in our opening statement and again in the pleadings we filed in this -- in this -- the pendency of this Section 1113 proceeding to moderate our participation, to follow the guidance that really Judge Drain had laid out in the Delphi case about the fact that what committees ought to focus on isn't necessarily the stair-step to 1113 in each and every element, many of which are better adduced between the labor organizations and the company, but rather the committee should focus on, among other things, investigating and considering whether the debtors' decision to reject the

CBAs, in this case the four remaining CBAs, is a proper course of action; that it reflects an appropriate exercise of business judgment.

And unlike Mr. Gallagher, I'm not so sure that there's any deference the Court pays in 1113 to the business judgment rule as it relates -- in that regard. I think the statute and this particular statute, the way it's constructed, requires Your Honor to find by a preponderance of the evidence that the debtors have exercised reasonable business judgment in -- in formulating their necessary asks and reaching the necessary -- it's necessary for the reorganization.

But I do think it's important and we had some difference of view in -- in opening statements among the parties as to what the evidentiary standard is. And I think it is very clearly in the Second Circuit, the preponderance of the evidence on all of the elements. And that's important because one of the problems with 1113 is that people sometimes forget. We said in our opening statement people ought not be confused about what we're here to do. This is part of that process. Every row here ends back at a bargaining table for these parties, American on the one hand, these labor organizations on the other hand, to sort out their differences.

In some respects, no matter what Your Honor does,

that's -- that is really the key issue here. And as a result, congress gives Your Honor -- and the committee recognized Your Honor said this on at least half a dozen occasions during this case.

Congress has given Your Honor a very specific, but as Your Honor has said, very narrow mandate on what the Court ought to be doing here. And that is determining not winners and losers and not by clear and convincing or some other huge evidentiary standard, by simply a preponderance of the evidence, whether the debtors can demonstrate they've met the stair step and they have, in fact, proposed modifications that Kerry Transportation in the Second Circuit tells us is necessary for -- to increase the likelihood of their reorganization.

It is an inward-looking examination and I want to come back to that in a moment because that's an important element of this. And it's only necessary for the debtors to be more right than they are wrong, not to be perfect, not to have -- have a substantially correct view, but to simply have the scale weigh, at the end of the day, slightly more in their favor.

And I know Mr. Gallagher would like to say he's way more, but the reality is Your Honor doesn't need to find that. Your Honor only needs to conclude on this record and on the evidence that has been in -- in this record that the

debtors are more right than they are wrong understanding that if you find that they still have to go back to the bargaining table with these labor organizations.

Your Honor, the -- one of the things I hope that Your Honor will find and certainly will be, I think, in the findings of fact submitted by the parties, and I think it's important and that is that in this proceeding, unlike some others I've witnessed over the years, there can be no question but the good -- about the good faith of the parties, all of the parties that are before Your Honor here.

All of them have acted in good faith and what they have tried to accomplish here. All of them are continuing, at least in the committee's view, to act in good faith. But we also recognize, and I think the record reflects, the evidentiary reflects a level of frustration here. Good faith with a degree of frustration. On the company's side, they've talked about the four years of negotiations since the agreements became amendable without success being, in their view, forced into bankruptcy only to have one of their more significant unions make a $500 million move in terms of -- of moving chips around in the bargaining table which wasn't available to them before they filed bankruptcy.

For a company that spent a decade trying to avoid bankruptcy, you can imagine the frustration on the management team of having that -- having to do that and then

having that result; that it took bankruptcy to do that.

You can also imagine that there -- the record is clear here as it relates to the scope provisions and other -- and certain of the other provisions of the pilots' contracts and some of the TWU provisions and certain other provisions, even in the APFA agreement, that there have been restrictions on competition that have, over the last -- indisputably over the last ten years caused American to -- or have contributed to causing American to lose its way from being -- and there are a lot of other factors that go into that.

But the fact of the matter is the company is not -- the status quo is not sustainable. It is not competitive, and why is that important to the committee? Well, it's important, Your Honor, because as you heard Ms. Goulet testify on Wednesday, the company has no intention of paying off the unsecured creditors in cash, either at par or at any other dollar in terms of cash. They intend to pay the unsecured creditors at some amount less than par to be negotiated with us in the reorganized equity of the reorganized company.

So the creditors care very, very much about whether or not the reorganized American Airlines is competitive in the marketplace and has the ability to move forward and hopefully at some point, as we've indicated in

our prior statements, to reclaim that place that they were over the story part of their 80-plus year history. This is the airline that was the most innovative, that was the most creative, that had, in some respects, over its 80-year history, some of the best labor relations at -- during -- during that period of time and was indisputably the largest and most dominant airline on the planet. And it's now in a different place and it needs to come back in a place where the status quo we all agree is completely unsustainable.

So how does Your Honor approach that? Well, again, we think this is a very narrow issue. We think that while Your Honor recognized and it's hard for any of us to dispute that the parties have presented you a blizzard of evidence before the Court, much of it relates to matters that the committee believe at the end of the day are at best, at best tangential to the narrow issues properly before the Court, and we think they -- that -- that evidence should -- that blizzard should and will melt away under this Court's scrutiny as the finder of fact of those specific things that the Court needs to look at.

The Court is not here to resolve the parties' disputes, although I'm going to talk about that in a few minutes because it's so important to the committee and I think to the parties, or to set the new terms to govern the parties' relationships. Rather, the Court must decide

whether the existing CBAs will continue to govern the parties during their negotiations or whether the debtors will have the authority to abrogate the existing agreement and then to impose other terms of employment as they move forward to negotiate outside of 1113 under the IRLA.

So how does the debtor approach that? How does every debtor who's ever been involved in 1113 approach that assignment? They start with a stand-alone business plan, not a plan that looks at every possibility in the world, not a plan that looks at every alternative, not a plan of reorganization. A business plan that says here's how we think about our view of what we have, our assets, you know, our liabilities, our ability to generate profits internally, how do we move forward. And they generate a business plan and that business plan is vetted.

And the evidence here shows the standard -- the debtors' stand-alone business plan is at present -- and I say at present and I'll discuss that in a moment to answer the question Your Honor put to Mr. Gallagher that was directed in part, to the committee. But at present it is the only -- well, actually, to -- at this point it's true there -- it's the only stand-alone business plan that the debtors or anyone else has constructed.

The evidence is clear that none -- the labor organizations, not the committee, not anyone through all the

due diligence that's been done has suggested that there is a materially different stand-alone business plan. There's only one business plan before you, Your Honor. It's the stand-alone business plan the debtor has constructed. All right.

And there's no evidence that the debtors -- not a single bit of evidence in this record that the debtors have failed to consider other viable stand-alone plans, nor is there any credible evidence, really, Your Honor, that support the contention that the other major components of the stand-alone business plan, the projected billion-dollars in incremental revenue or the $600 million in non-labor savings are understated. And I mention the word "understated" because overstated leads to an entirely different conclusion; that they're understated. These are not understated results because if they were overstated we would be looking for more labor savings, not less. All right. And so it's important to know that.

It's also important to know what the stand-alone business plan is and is not. It's not a plan of reorganization. This is not a confirmation hearing. We're not applying 1129 to the bankruptcy code here. For that reason alone, it's important that the Court and everyone else understand that we don't conflate the requirements under Section 1113 with the standards for confirming a plan

under Section 1129 of the bankruptcy code.

The relevant inquiry, the narrow inquiry that Congress asked in the Second Circuit in Kerry and other cases, Northwest and others, suggest what this Court needs to do is to ask itself two questions as it relates to the business plan. Does the business plan require the labor concessions that have been requested; and does the business plan, if pursued, "increase the likelihood of successful reorganization"? That's Kerry Transportation, the Second Circuit said at 816 F.2d. at 89.

That's the standard. It's not a guarantee. It's not we have to get this done no matter what. It's does this increase the likelihood of an internally focused reorganization of the debtor. The statute says the debtor, a reorganization of the debtor.

And so we have to sort out whether that -- that standard has been met by what the Second Circuit tells us is a preponderance of the evidence. The only question before Your Honor is, is Mr. Gallagher and his colleagues -- and as the debtor, are they more right than wrong on that question? And if they are, and they have otherwise met the standards that have been -- of the stair step of 1113, then the Court needs to grant the relief that was requested.

Now that's not to deny that there aren't points in the company's case that have caused all of us, including the

committee to reflect and to be concerned. And that's why this is not a -- the burden of proof here isn't clear and convincing or some higher standard or some other sets of issues, and Mr. Gallagher and I might in good faith disagree with each other on how far they've exceeded the standard. The committee believes and we put it in our papers that they had exceeded the standard. We think the record, it is clear on that point that the balance shifts in preponderance to the debtors' favor.

But there are concerns, for example, about the fact that the evidence shows that the company never moved off their ask during the entire set of negotiations that are relevant here. Although there was, on -- on cross-examination and on -- and on direct examination Mr. Brundage made it clear in his -- his responses that at an appropriate time they would have, but how does somebody kind of move off something it's -- if people are close to it.

All right. How do you move off your request? How do you negotiate against yourself? And how do you maintain -- as Your Honor even recognized, how do you maintain some sanity with the statutory requirements if you keep bargaining against yourself if what you're -- we're putting on the table is supposedly necessary.

And so you start, as Mr. Gallagher says, in 1113 unlike under Section 6 and other kinds of negotiations.

Companies are forced to start at the end, not at the beginning or the middle point. And the fact that they don't move much is a tenant of 1113 and a properly advised client. It's not really, as frustrating as it is, it's not really an element of people acting in anything other than good faith.

Similarly, we've heard a lot of testimony about the business plan, the 3.1 billion in annual improvements, an EBITDAR margin not to be mentioned, but a target that is -- that people have challenged as to whether it's competitive or not.

But I have to echo what Mr. Gallagher said on this point. There was no evidence in the record, none that suggests that there should have been another target that was credible. And how you would construct a business plan based on that target. This was not a case where people came in and said, no, no. Not that plan, this plan. And here are all the elements and how all the drivers went through.

And as much as I respect Mr. Yearly because he's one of the -- of the people very well known in this business, his testimony said that the 17. -- excuse me -- the percentage, whatever it was, 17 -- excuse me -- the numbers that he put on in his -- in his declaration, that all the numbers that he was talking about, Mr. Yearly spoke to, he went through and he talked about why they were important to him, but when asked -- when trying to sort of

put in -- in perspective how it could be different, he just simply did arithmetic. He just simply said if it was something less, then there -- then that something less would mean -- would -- would automatically equate in less labor savings.

That argument that -- that a change of one amount in the plan would automatically equate into -- automatically into labor savings was, I think, entirely refuted and rebutted effectively by the debtors' case. Right. There are -- the one thing that I think we all recognize is there are so many interactions in this model and so many other issues that go into play. So Mr. Dichter discussed this in great detail on his rebuttal case.

The fact is everything is interrelated, and so while I think everyone would have to acknowledge there would be some positive change, there's nothing in this record to give Your Honor the comfort that there would be a concrete level of savings, or that that -- another target would be the more preferable or achievable target, or that there was a viable business plan based on that target. That evidence is completely lacking in the record.

Now, Your Honor, we're concerned at times with the -- with the debtors case in that the evidence does show that in a number of situations the debtors appear at least to be, with respect to some line items, adopting an all or nothing

approach where it had to be X or zero. And they valued some of the elements, the evidence shows, some of the elements of their proposals at zero or some of the elements of what the labor organizations offered at zero even though they had previously attributed value to those asks or those -- or those offers.

And that's troubling from the committee's perspective. The valuation of crew rest seats, for example, comes to mind as one good example that there was a lot of colloquy on. And the committee is also concerned about the scope and code-sharing proposals made to the pilots because they're very broad and -- and they could significantly reduce mainline flying and that is a legitimate concern to the pilots when they believe, under their collective bargaining agreement they own the flying at American. That's what they're there for.

But having said that, Your Honor, again, the case law instructs us and congress instructed us and Your Honor that it's not a line by line analysis that we all do. At the end of the day we listen to the whole record and then we sort out what the -- what we can consider to be the -- in determining necessity, when you look at the operative proposal you have to view it as a whole and not by its specific elements. And when you do that, you have to conclude whether it's reasonable and necessary by a

preponderance of the evidence.

I mean, that's the box we're in. It's a very narrow box and I think everyone has to understand that doesn't -- that' snot where this all ends. That's the narrow inquiry Your Honor has to make. It doesn't make things right or wrong. It doesn't -- it doesn't put a stamp of approval on the debtors. It simply answers a statutory question that -- that congress asked you to make, and I -- I have less time to speak than anyone else. I'm almost ceded, so I'm just going to answer -- end with two other points.

One, I do want to talk about strategic alternatives. The labor organizations have presented a number of arguments regarding sequencing. The import of those arguments, Your Honor, is that the debtors can't seek 1113 relief based on a stand-alone business plan unless they first compare that plan against a particular set of strategic alternatives.

That's not required by Section 1113 of the bankruptcy code. In fact, it's nowhere in the bankruptcy code. It's certainly not required by the case law in this district or anywhere else. The focus of 1113 is inward looking. It focuses on the debtors' proposal based on the debtors' business plan and asks Your Honor to determine whether that business plan and those proposals increase the likelihood of the debtors' reorganization, not other

alternatives that we may all be looking about in a plan process, looking towards a plan of reorganization.

The preponderance of the evidence here supports the debtors' view that abrogation of the CBAs is necessary to the debtors' successful reorganization on the current timetables so that the debtors can validate the assumptions in their stand-alone plan. We believe that that relief is necessary for the debtors and the committee and others in this case to move forward and expeditiously compare that plan to available strategic alternatives before a plan is formulated. A plan of reorganization is formulated before it is prosecuted.

We believe the company has acknowledged that in its protocol with us. We disagree with Mr. Gallagher's view that the agreement we have between -- between the company and the committee is not extraordinary. We think it's extraordinarily important and there's a lot more to talk about in that, but not in this 1113 proceeding.

Second, there's been a lot of time talked about the importance of the proposed term sheets that each of the labor organizations have negotiated with U.S. Airways. As the committee argued in our papers, that's transaction -- and by the way the cross-examination, one of the very limited ones I did of Mr. Akins on this point, was to get this point into the record -- was that that transaction is

completely speculative. There is no financial deal of any kind with anybody other than an agreement about how labor organizations will be treated if and when those transactions occur.

And that's extremely important in connection with the record. And the fact that they exist does not, by itself, establish good cause for the labor organizations to reject the proposal or, in our view, effect in any way the balancing of the equities that Your Honor is required to do under the statute.

But I'll go one step further, Your Honor. The evidence shows that during the period of time between the filing of the 1113 motion and the commencement of the hearing on April 23rd, the labor organizations negotiated term sheets with -- with U.S. Airways and there was, at least the record suggests and certainly the debtors have suggested there was a -- with certain exceptions a significant lack of negotiation with the debtors.

That lack of bargaining certainly in some degree continued during and up to the commencement of the hearing. We believe that course of action -- the committee believes that course of action should preclude the Court from finding that the labor organizations had good cause to reject the debtors Section 1113 proposals and weighs in favor of American when the Court balances the equities because, as we

understand it, those proposals didn't, prior to the commencement of this hearing, get pushed across the table to the debtors -- let the debtors accept those proposals if they wanted to. They were held over here in abeyance on the side.

And at the end of the day, all right, there is nothing wrong -- and, in fact, we've suggested it to the company. The company kind of needs to think about why there are three labor organizations actually -- were motivated to go do what they did and there should be some reflection in the company's locker room about those issues. But the fact is and the relevance in this Section 1113 case is really only two:

One, as Mr. Gallagher has suggested, the comp -- the labor organizations did use, as the best we understand it under the record, American's valuations in -- in pursuing those discussions, which we think is a probative point for Your Honor. And, two, the fact is that as you evaluate whether anyone has good cause to reject, you have to evaluate how they conducted themselves up to this point in the hearing. It's a narrow valuation, but it's an important one.

Your Honor, I'm going to close on one other point. The form of the order that Your Honor enters, if Your Honor grants relief, we think should be very different than the

order that was proffered by the debtors.

First, the committee believes it should authorize the debtors to reject the contracts if that's what Your Honor finds, but not direct it at that moment in time. That -- there's a distinction there and it's been true in other cases because having the authority, but not the direction to immediately abrogate the contracts provides and is often time enhances continued negotiations between the labor organizations and the debtors, which is really what this is all -- rolls back to. All roads lead there.

Second, we absolutely believe that the portion of the order that suggests that Your Honor ought to approve or ratify or in any way weigh in on what is to be imposed by the debtors should be eradicated from the order. It has no place in the order. It's not what 1113 asks the Court to do.

Finally, Your Honor, like everyone else in this case, I've had a few sleepless nights and reflected about all of this because we all know we need to get to a deal. And as we think about it from the committee's perspective, and as we evaluate the good faith of these parties in which -- and we went on before Your Honor indicating we think they all have good faith. They're all working hard to get to the right place. We -- we tried to -- this concept came to mind to me and I'll -- I'll close on it. And that is simply I

thought about a movie that Matthew Broderick, a resident of the City, starred in early in his movie career and it was called War Games.

And I don't know if anyone remembers the movie or Your Honor ever saw it, but it was it was really a situation where Nor ad had taken -- had allowed its -- its -- the North American defense system to go into a black box and the computer controlled it. And not surprisingly, the black box went astray, we're on the edge of thermal nuclear war and -- and responses to proceed, but not real threats from other places.

And low and behold Matthew Broderick, the young -- the young star shows up and -- and asks the computer a question and it shuts down and everything goes back to normal because he plays a game with him. It's a game of chess, actually. And at the end of the -- and it all of a sudden turns out that the computer can't win, and when the computer shuts down, the computer says -- says, I have to stop this. The games are over because "the only way to win is not to play."

And we say that, Your Honor, because we think here, while this is not a game, just like thermal nuclear war is not a game, and this is not a claim in terms of putting this together, we do think that everyone has to consider that fact. There is 28 days between today and the

time Your Honor is scheduled to issue your ruling, and we believe -- the company believes -- excuse me -- the committee believes that the way for everyone to win is for people not to play the outcome of what 1113 relief might be, but rather to settle between here and there.

Thank you.

THE COURT: Thank you.

MR. JAMES: Your Honor, may I take a three-minute break?

THE COURT: Sure.

(Recess taken at 12:01 p.m.)

THE COURT: Please be seated.

MR. BUTLER: Your Honor, before ceding the podium, I was reminded during the recess by -- apparently, there is a large number of War Games fans in here, so --

THE COURT: Checkers.

MR. BUTLER: No. Actually, tic-tac-toe.

THE COURT: Tic-tac-toe. All right.

(Laughter)

THE COURT: Tic-tac-toe.

MR. BUTLER: So just so the analogy is correct and the record is correct, Your Honor. Thank you very much for your time.

THE COURT: All right.

I should know that because as somebody who has

children from the ages of one to seventeen I have seen that movie in the last number of years, so.

I'm sure --

MR. JAMES: Good afternoon --

THE COURT: -- Matthew Broderick would be happy that there were enough people out here that could correct your --

(Laughter)

THE COURT: -- correct your statement.

Good afternoon.

MR. JAMES: Thank you, Your Honor.

I'm not going to go back over the points my colleague, Jack Gallagher, raised, but it's a little like chasing a raccoon in a sit down lawn mower. There's so many I would be zipping around here.

Minor ones, but U.S. Airways, we gave the company our valuations that we gave to U.S. Airways. They're our valuations. They're not the company's valuations. Indeed, in this case there was no cross-examination of our witnesses on our valuation of our proposals, the 270 million we offered the company.

I would -- I would say it's a little more complicated than Jack Butler suggests in that in Royal Composing the Court says -- well, let me jump back to the statute. The statute says in (b)(1)(a) that "the 1113 must

have necessary modifications that are necessary to permit the reorganization." If the union makes a counter-proposal on an item, then, unfortunately, there's a burden on the Court to see -- to examine that proposal and whether what the company's proposing is necessary. That comes up -- you'll see it in Royal Composing, and what Royal Composing said, if the union refused the bargain, then the Court could just look at the overall proposal.

You'll see that in Kerry, the proposal must contain only the necessary elements, the modifications and there are a couple of jurisdictions -- court cases outside of here -- Valley Kitchen, Southern District of Ohio, and Express Freight Lines. I'm just saying it's a little bit more complicated than --

THE COURT: Well --

MR. JAMES: -- to just look at --

THE COURT: -- but --

MR. JAMES: -- the global ask.

THE COURT: Let me -- I understand that. Let -- but let me ask you to -- to address it in a little bit more specific terms.

I understand it goes to good faith bargaining. It may even go to good faith cause for rejection. But I guess the term has been used loosely in terms of agreement and, obviously, they -- it almost seems -- and I think people use

the term, supposals, at one point, just to try to put various shades of gradation on what -- where parties were. It obviously is an agreement to -- in the same way the 2000 agreement is an agreement. It's something else. It's part of a, well, we're trying to put in a bucket everything we're willing to do. You have your bucket. We have our bucket and hopefully someday we'll come up with --

MR. JAMES: I understand.

THE COURT: -- one that everyone agrees. So I'm wondering how to consider that for purposes of necessary. In other words, is it really a proposal? Is it evidence of good faith? Is it -- is it a basis to say that rejections of the proposal is appropriate? What is it?

MR. JAMES: I believe it goes to good cause, certainly good faith. But also to necessity, and I'll give you a -- I'll walk you through scope for a minute just to give you an example.

And it's -- the parties never in bargaining 1113 actually ink deals and say, this is the final deal. Everybody understands the whole thing is contingent upon final agreement, but if the union says, here, I'm prepared to do this, then the question is, is what the company's asking necessary? Is that a necessary element?

And let me just walk you through, Your Honor --

THE COURT: But my question is when you have one

part of an overall agreement. I understand that everything is contingent and it's got to go out to a vote.

MR. JAMES: Correct.

THE COURT: But what -- what my question is, when you -- when you don't have -- essentially, where lawyers say to -- to each other, I can't tell you what my client's going to tell you, but I'm willing to recommend that. But you can have that circumstance where you say, well, here's -- here's my bucket. I've got everything in here. This is what I'm willing to recommend, but what if you only have two things of ten in there, what am I supposed to make of the relevance of those two things because are you 20 percent there, if they're big things are you 80 percent there? What -- what is -- what am I to make of that?

MR. JAMES: Oh, I understand that can be complicated. Let me just walk it through. I think scope is an example where they have to show more to show necessity of their scope proposal, if --

THE COURT: All right.

MR. JAMES: -- if I may.

And this is an example of an ask. Most of the business plan is coming out of the pilots. I think it's -- they have a billion in revenue, and there are three elements of that revenue. It's the joint business agreement, so that's British Air and Niberia (sic). No real number there.

Most of it's the RJ and domestic code-share.

Now it's a non-monetized item because they say we're not going to give the pilots any credit for that because they didn't get credit at Northwest, Delta and United. My reaction to that would be none of those were litigated on what the consequence of that was. The pilots did end up with a large unsecured claim. I'm suggesting that there's the 370 million, and I think it's not just the 370 million they won't -- they won't move on. It's the elements within the 370 million. As Dichter said we can't remodel elements within that. It's too difficult. I'll get to that in a minute.

But on scope, it -- this is the iceberg that they're hoping you let go into the shipping lane. You can see the 370. That's worked out very tightly. When it comes to the ones they don't monetize, they're huge and -- and it's basically below the surface.

For example, the -- and scope is nothing more than a job security provision. We're talking about real jobs. Domestic code-sharing, they have one in their business plan and they've already talked about it in open court. It's JetBlue. That's the one in the business plan. Before the bankruptcy, they had a number associated with that JetBlue code-share. It's the same number they're using post-bankruptcy, the value that that's going to contribute to

revenue.

Pre-bankruptcy, we gave them the routes they wanted on that JetBlue code-sharing agreement. Post-bankruptcy, they -- and we gave them two others. The code-share they talked about on the shuttle and Alaska. That's now out in open court. The -- now they want it unlimited. They want with anybody in the United States they can do domestic code-sharing. The industry standard is there are limitations at every carrier on the scope of that domestics code-sharing. So they went from wanting one in their business plan to now wanting unlimited. Their business plan has one. I'm not saying one's enough. I'm just saying that was the business plan demand.

RJs, we gave them the exact -- almost the exact number. I think they're six planes off from the number they have in their business plan. They say we need X number of RJs. We gave them that number. They want 300 percent of that. They want three times that. That's four times the size of JetBlue.

The dispute we have is an industry -- is a gage issue. In the industry, there are two different ways they handle that. One, they have a seat gage of 50, 70, 76 seats or you can do what U.S. Airways does where they fly these -- a lot of RJs right at the break point. And so they have a larger gage at U.S. Airways, but they are flying a gage

continuous through there and they're allowing -- they're having the pilots fly those larger RJs at the main line.

The company wants three times what's in their business plan in terms of the RJs. They want a seat gage that's well beyond what anybody in the industry has among the major competitors -- that's United, Delta -- well, Continental and United are not yet -- have figured out what that gage is going to be.

I would just say something about the weight, just because it came up. This is only --

THE COURT: Well -- well, before we get to --

MR. JAMES: -- a footnote --

THE COURT: -- before we get to weight, let me just go back and ask you about code-share. And the argument that I heard this morning was that you don't measure the current industry standard. You have to look at what other airlines had coming out of bankruptcy when they didn't have the market share that they have now. What's your response to that particular argument?

MR. JAMES: Well, United -- the code-share -- they cited their code-share -- their scope clause, but the United code-share actually has some -- has some restrictions on it. It's not unrestricted coming out of bankruptcy or what they negotiated. On the same day they got their scope clause they negotiated the code-share agreement. It has

restrictions in it. None of them are completely open-ended.

Now the company put in this 1(h) provision they now want to get rid of that said, we don't know who we're going to code-share with. We'll agree that we can code-share with anyone in any part of the country as many as we want, but the arbitrator within 30 days will determine what are industry standard protections. So it's going to look at what's in the industry. They want to get rid of that. Basically, their only alternative, we want to get rid of any restrictions on code-sharing.

THE COURT: But what -- my --

MR. JAMES: On code-sharing --

THE COURT: I guess my question is more -- more -- more almost theoretical, which is what's the relevant time period for me to look at now or a company coming out of bankruptcy or look at both and decide how they fit because, obviously, you're using the metric of what is code-share -- what code-sharing is going on right now among these carriers. The debtors are using, well, what do these companies have coming out of bankruptcy. Those are two different time periods.

MR. JAMES: They're actually three different time periods. Before they went into bankruptcy, while they're in bankruptcy was the time of big code-sharing. Northwest, Delta, United, U.S. Airways, and there were limitations on

extent of that code-sharing. And I think those have carried forward. For example, in the U.S. Airways United deal, that's something you would look at. That's what the arbitrator would look at. That's what the parties ought to be looking at. What are -- what are the protections.

There are certain things parties generally don't permit. You don't allow the competitor to be feeding your hubs. It's basically a way to set up another hub, a virtual hub. What Northwest did with it is they didn't have a lot of reach in -- on the west coast, so they agreed to allow another carrier to use their hubs to expand the synthetic network. That's what American wants to do with Alaska. They've still capacity left in their Alaska deal.

JetBlue, it's now in open court, they want to do JetBlue because --

MR. FLICKER: Well --

MR. JAMES: Sorry.

MR. FLICKER: -- what's in open court, sir, is there have been news --

THE COURT REPORTER: I can't -- I can't hear you.

MR. FLICKER: Sorry. What's in open court is that there have been news reports about a possible code-share. There's been no testimony about what the business plan is.

MR. JAMES: Fair enough, Scott.

The way that 1(h) was structured, Your Honor,

that they put in in 2003 was that the arbitrator would look at the existing protections that exist. It doesn't give an exact timeframe of what he's supposed to look at. But that was designed to be an expedited process.

The scope ask goes well beyond the plan. The other point is furlough protection is another example. They want to get rid of any furlough protection in the current contract. Right now they can furlough down to 2000 pilots. And Denny Newgren's declaration, paragraph 155, he said we may need to furlough up to 400 pilots. They want to get rid of any furlough protection. They have a force provision. They used that after 9/11. Why do you need to just gut the furlough protection? Why do you need to move the scope provisions that are well beyond anything in your plan or what other people have in the industry? That's the conundrum for the pilots.

The -- just a weight point which is a minor -- it's a footnote. Jerry Glass said we need to have -- we ought to -- you know, the highest weight for a subcontracted RJ in the industry is 90,000 pounds. They're asking for 114,500 pounds. He said, you put bigger engines on these things, the airplanes get heavier. In fact, the trend in the industry is just the opposite. A 787 carries the same as a Triple 7. It's 100,000 pounds less. Airplanes are getting lighter rather than heavier.

Back to -- let me just talk about the pilots and the plan, and I made this point. I don't want to belabor it. But if there's one group that cares about the success of this airline, and there -- and all groups do -- the pilots have a deep abiding interest in it. They're going to go through five sets of management. They can't take advantage of the Wall Street rule and take a walk. We've always been -- we've historically been opposed to mergers because they have not a pretty history at American Airlines, but we've gone into thinking that consolidation is the way the -- what's happened in this industry is the effect of Northwest and Delta, United, Continental and U.S. Airways and America West has fundamentally altered the landscape of this industry.

THE COURT: Well, let -- let me -- let me cut you off here because let's assume for a moment that I found persuasive that transaction, some sort of merger is -- is a likely scenario, and we'll just use likely meaning more than 50 percent. Legally, what am I to make of it in 1113 because 1113 on its terms -- the question is where in 1113's terms am I allowed to consider it under your reading of the statute?

MR. JAMES: I guess two places, Your Honor. I would say this is an unusual case in that you have to determine whether this term sheet is necessary to

reorganize, and what we're seeing now is a sequencing going on. And we argued it and it's now happening, and that you had testimony from -- I think it was Resnick that his team was exploring consolidation. When he got involved he was told not to do that. Bev Goulet was looking at consolidation up to the point she's trying to design this plan. They put on blinders. It's willful blindness. Now it's great for horses, not good for airlines. They said, we're not going to look at anything except this plan.

Then you have the application filed by McKinsey a couple of weeks ago saying we're now looking at alternative business plans --

THE COURT: Yeah, but my question's a legal one. Where in the -- in the statute am I allowed to consider it?

MR. JAMES: How -- how do you make the determination, Your Honor, that this particular term sheet is necessary to reorganize when they just told you they're picking up the -- they're picking up a moving metric. They're now through the protocol. They admitted it publicly on their own. They expanded scope and McKinsey work. They're going to see what's necessary. Here's --

THE COURT: Well --

MR. JAMES: -- here's where --

THE COURT: -- but I -- again, I'm asking sort of a very bankruptcy question in a way 1113 is really -- is

much -- much more like a district court kind of proceeding and that, in a lot of ways, bankruptcy is just the backdrop, but not -- but not, you know, really what the case is about.

But in some ways it very much is and the statute is the 1113 statute, and when people talk about other alternatives, obviously, that always comes up in a plan context and people say, well, what are the other options and what -- and usually it's in a comparative way: What did you compare? Did you compare somebody you want to sell this asset, you want to reorganize, you want to -- you want to merge, you want to abandon, whatever it is.

But -- but here the question is for 1113, does 1113 require that those things be done at this part or -- at this time or -- or have a bar to using 1113, and my question is where in the statute do you find that or in the Bankruptcy Code in general? That's -- that's what I'm -- my question is.

MR. JAMES: I think I understand, Your Honor.

I would say it's hard to say. We've been given a plan, the most complete and reliable information, when they say they haven't examined what they admit they're going to examine. They -- how do you determine it's necessary that -- that the cuts they're inflicting on these employees are necessary when they've basically said we're going to take a broader view. You had Resnick say before they exit they

will examine M&A activities and a possible merger. Our argument is, Your Honor, deny this pro temp without prejudice. They're going to go look at alternatives, come back. We're the one group that will be stuck -- how is it -- how is it fair and equitable?

They're going to take cuts out of the employees that are permanent and they -- they make all these representations. They're not going to furlough anybody because of the RJ and so forth, and they need these cuts to reorganize. This thing is going to move. They're going to -- they're going to examine a broad array of options and come back and the other creditors are going to get the benefit of -- of maybe a different plan, maybe not such deep cuts.

There's no way to undo this for us. 1113 is permanent. They can keep coming back with new 1113s. That's happened in a number of these bankruptcies. We can't come back and say, what they told you was necessary is now no longer necessary. That doesn't happen. It makes a mockery of this statute that we're going to take these deep cuts right now and the thing is going to move and you don't know what other people are going to take. I -- I think that's a tough position.

What we've said is we -- we pointed out in the supplemental authority, if you go to what we've offered the

company, 270 million, that's .3 percent off their EBITDAR. And I can show you. I've got the exhibit, but I don't want to bore you with exhibit, but you look at their exhibits, despite what Mr. Gallagher says, it's 305-A.

THE COURT: Well, but -- but let me get back to what you just said before. Okay. I understand where in the statute your position. But then it becomes a question of degree. And, certainly, all of the parties have talked about these other bankruptcies and the proximity in which -- to which they reach some sort of agreement about a merger. Some were a year later, some were in the bankruptcy.

And what -- what is your sort of test as a -- as a -- as how close is -- is something that triggers the stop period and how close -- how far out where someone says, well, we're obviously going to look at it, but we haven't looked at it yet. And they have their own sort of sequencing as the debtors-in-possession, particularly where they have an exclusive period in the bankruptcy?

MR. JAMES: I think if you look at United, Delta and Northwest, those went in -- and nobody's arguing, despite their reply brief, that you -- I understand you get a plan in bankruptcy. It's -- it's going to change as you go through the bankruptcy. The numbers are going to change. But every one of those was a company that was going in and the employees supported them. It's United going in, coming

out; Northwest going in, coming out; Delta going in, coming out.

Here you don't have that. What you have is their -- their own expert witness, you have the company's statements. You have the protocol. You have the McKinsey saying what -- what their witnesses say is we put on blinders in November. We stopped looking at alternatives. We designed this plan and then right in the middle of our hearing, ten days before the hearing they say, oh, by the way, we're going to expand and look at a consolidation in the industry. This thing just moved on us.

The -- I think Mr. -- I think it was Dichter yesterday said, and you get this from the unsecured creditors' committee and my good friend, Jack, here saying -- he didn't say it this time, but he said it before and he said in his papers, we want this stand-alone plan because we need something with which to bargain a merger transaction. Dichter said two days ago, we need a stand-alone so we get a bigger slice of the pie on merger.

The idea that this is a prop, that the employees are going to be cut based on this plan so we can use it as a metric to bargain with another company is quite odd in the bankruptcy. And they admitted they're going to look at it in the course of this process. I'm just saying how --

THE COURT: Well, why do you say it's odd in

bankruptcy? I mean, certainly, in bankruptcy companies come in and do all sorts of things to reorganize to make their enterprise in healthier shape.

MR. JAMES: Right.

THE COURT: And, again, I know that's very -- a polite euphemism for something that has real world consequences. So I'm not trying to be -- to be flippant about it. But -- but companies do that and then lots of things can happen. They can sell. They can reorganize. They can do, but -- but they say, well, we'll have the best options if -- if we take those steps to get ourselves on -- on more stable footing. We stabilize our situation.

MR. JAMES: And then the question for you, Your Honor, not for me, of course, is -- is when that has been told to you that that is likely to happen is happening, this broader look -- doesn't mean a transaction is going to happen, but they're going to at least look at it, why 1113 to make permanent cuts out of one class of stakeholders and not the others who are going to get to go free and they'll show up at the end of the case and get whatever they get.

Right now they've filed -- they say they didn't file quickly. They filed within two months. The labor ask between November 27th and February 1st moves by an enormous amount of money.

Horton says on November 29th, I believe is the day

they filed, we have 600 day here and a million dollar labor cost gap. It's goes to 1.25 billion on February 1. They filed this thing very early in the bankruptcy. You see Ms. Goulet and Mr. Resnick say we did not look at consolidation. Ms. Goulet specifically stopped looking at consolidation. They're just going to look at what's necessary, this 1113, what cuts are necessary and then before the hearing begins they say, now we're going to look at a wider range of options.

That, I think, puts the Court in a tough position. And we're not arguing no, never. We're not arguing the status quo is sustainable. We're saying that this ought to be, like some of the other bankruptcies in 1113 where you deny it temporarily and they come back. I think that's what Judge Drain said is that a one percent difference in the EBITDAR margin.

Our difference, the labor difference, if you look at what -- what the employee groups did with U.S. Airways, it's one percent off the EBITDAR. That's the driver. Ours is .3 percent off the EBITDAR. I can show you the charts to show you where American is on the EBITDAR coming out of bankruptcy and it's over the top of -- of their competitors. It's not over the top of the low-cost carriers, but that's an argument you've -- you've heard over and over again.

I don't think the fact that American competes in

Las Vegas for gamblers going to Las Vegas with Allegiant means they match Allegiant's business model. We represent the pilots at Allegiant. It is a tiny little airline. So to use the LCC EBITDARs or their business models, they're radically different business models than the big legacy spoken-hub carriers.

The -- and just to be clear, the labor ask is -- is -- is solely driven by the business plan, the stand-alone business plan. You've -- that's in their -- I think it's in the business plan itself. The chart, you have Exhibit 1505-A, Exhibit 1505 --

THE COURT: Well let me ask you the same question I asked the debtors' counsel, which is what am I to make of the fact that those companies coming out of bankruptcy predicted very aggressive EBITDAR margins, in a lot of cases higher than what's predicted here? It seems that they didn't meet them and that seems to cut a variety of different ways, depending on which side of the room you're on. What do you want me to make of that?

MR. JAMES: Well, you know, I guess I have a number of reactions.

One, I don't know that there's any testimony that says in those other bankruptcies the EBITDAR was the sole driver of the labor ask, number one.

Number two, post -- post-911, I think everybody

was trying to figure out what the EBITDAR margins ought to be. And now we have -- we're a decade into it. We have a pretty good idea what the realistic EBITDAR margins are. The fact that somebody else used numbers that aren't real, it's -- it's, I find, intellectually unsatisfying that I'm allowed to use the same unreal number because somebody else did. It doesn't make sense to me.

And they -- you know, Mr. Dichter said, you know, they couldn't model -- they couldn't even model a piece of the labor ask, not just the 370, but elements within it. It was too difficult to grind down into the model and see what the result is. I've got a couple of exhibits where they did exactly that.

When the freeze occurred, immediately turned around and they figured out what that was going to do to the EBITDAR. There's another chart. These are American, I think it's 005 and 006. They changed numbers in their business plans. They ran it quickly and it just changed the bottom EBITDAR. It changed the EBITDAR margins. It's not that they can't. It's -- it's they don't particularly want to.

I think one of the problems we've got, also, is how do you -- how do you figure out the necessity and the validity of this business plan when they wouldn't give Lazard their re-fleeting documents. This is the largest

aircraft order in American history. The -- it's -- and I forgot. I had the number of airplanes, but it's just enormous. You've got -- it's 460 aircraft. In connection with that aircraft order, Ms. Goulet said they did a three to four-year business plan and a financial analysis to justify it. Vahidi said it drives the profit and loss. Dichter says that re-fleeting order has sufficient -- he said, why didn't you model upside because the re-fleeting order has sufficient flexibility to react to opportunities and to respond.

We don't know -- we couldn't get the data on the amount of that order, the magnitude of the dollar costs and how -- and the timing, the sequencing of that. I think that makes it very tough for our financial advisors that -- and -- and if you look at the number of that re-fleeting order compared to their revenue in 2017, there's not a significant disconnect. Those are -- those are B numbers and they're huge B numbers. That is a huge driver of the company's financial difficulty right now. It's a huge driver of the business plan. We should have been allowed to see that. We didn't get that from -- from Rothschild.

The -- and now I'm completely off my order of battle. But --

THE COURT: Well, let me ask you, if that's the case, to address a very specific issue which is -- I also

asked debtors' counsel -- which is the number of RJs and I think there was testimony and argument dealing with this 50 percent of the main line and, therefore -- and people had warring charts. So they had their charts and then you would remake their charts, and you had some charts and they would remake your charts. And the numbers would change.

So I'm trying to get a handle on what is the number that -- from your point of view and how that then compares with the industry.

MR. JAMES: We worked off the number in their business plan. The number in the industry, I -- I would have to go back through exhibits, but we have -- we have for various carriers the number of --

THE COURT: But -- but which number are you talking about because, again, I -- I think what I heard was, well, what's -- is it a current number on the main line that you're using or some other number?

MR. JAMES: The number we offered them in bargaining is the number they have in their plan that they -- they say they want to buy. They want 300 percent of that. We say that's not necessary. It's not reasonable. We ought to work on a different number. We haven't gotten a different number.

The other issue we have is a dispute about gage. Right now it's -- I don't think the seat gage is

confidential, Scott?

MR. FLICKER: Which is it?

MR. JAMES: The seat -- seat gage of the RJ ask. It's 88 seats. That's what -- that's higher than the other big legacies, unless you go to U.S. Airways where you have a very different way of -- of dealing with the RJ flying.

Does that get you --

THE COURT: That helps. Thank you.

MR. JAMES: Uh-huh.

Just the -- I want to just spend a minute on the labor ask; that despite the testimony of my friend the other day that it's always been a billion, it has not always been a billion. It's been 600 million repeatedly to the union, the Securities and Exchange Commission. Horton gave the 600 to 800 million on the day they filed for bankruptcy.

It -- when Mr. Brundage was asked, did you build that number for the business plan on my direct he said, no. I was given a number. Taylor Vaughn said the same thing, and I believe Jack Butler crossed him on, well, you built that from market. He said no, I didn't. I -- I was given the number to fill. And he said, well, how do you plan to get this ratified with the flight attendants and he said that's not my job to worry about I get this thing ratified with the flight attendants. I was given a number and you build to that.

Now Mr. Brundage is saying, if you want me to, I can build to that. I can -- there's fleet discontinuities. There's an older work force. You can build to that number, but we -- we submit that the labor disparity, the contractual gap is shy of that; that the one percent shaving of the EBITDAR gets us down to what we believe, and I believe the flight attendants would testify about is the real labor cost gap and it's very close to the deal that the employees did with U.S. Airways.

If -- if you take one percent off the EBITDAR, that takes the pilots down to 270 million, exactly. That's exactly what we offered the company. Mr. Gallagher crossing Larry Rosselot and Allison Clark said he didn't have questions about our valuation of our proposal. That was what we offered.

The company, we believe, and -- and we have -- we do have a dispute about this. We believe that their number is not 370. It's 460. But if you look at the chart on the way these numbers work over the term of the 1113, they start with one number and by -- by six years out they've just gone through the ceiling. Once you've got this six-year agreement with those numbers -- and ours were now -- let's not take my 460 as the -- as the average over six years. Take the company's. Their 370 is well in middle pack of 400 million and just keeps going up. That -- that these --

these numbers go through the ceiling.

Now the company says why did we need such a big reach; what changed dramatically in two months? Fuel didn't go down. The economy didn't improve, and convergence didn't occur. In their own chart in that November board presentation you'll see at the AMR board -- and I forget which AMR exhibit -- they have not what Mr. Glass calls convergence where all -- all the pilots have the same wage rates. That's not -- that's not what we're talking about. The company's idea of convergence is we are a notch above the next one down. At what point did they converge on us and go to the top of us.

With the pilots and the flight attendants I think it's 2014. They say that was occurring fast enough. We just had Delta take an enormous jump. United's in bargaining. And a six-year agreement and the new Delta deal -- and that was in the testimony of Jerry Glass. He agreed with it. In 2015 they're 40 percent higher than we are at the pilot wage rates. Those -- that convergence in six years, they're going to go way over the top of the pilots and they're locked into a six-year deal that just keeps going down.

Your Honor, if they constructed a deal that had a gyro compass or with some courts snap -- snapbacks -- and that shows up, I think, in the Mesaba case and in Wheeling

Pittsburgh -- that said, okay. If we do another plan or if we come out of bankruptcy, the profit-sharing you'll hear about, that doesn't even begin to address it. We'll snap you up to some relative level instead of just going through the floor. That's where the 1113 has us.

If, in this bankruptcy, they had a proposal that said, look, we'll throw in some kind of a gyro compass that will maintain you steady state so you're not falling through the floor on those cost savings going out in view of maybe we have a different plan in this bankruptcy or what's going on in the industry, we would have a different kind of bargaining. But we don't have any of that. And I'm not going to run the math on the profit-sharing, but it -- it does not -- you would have to have an enormously large profit-sharing to deal with that.

The -- I've dealt with the EBITDAR, the pension freeze, the labor ask, the fleet order. Jeff Brundage says no one asked us to change the business plan. We would have. That's in the transcript. We didn't have a fleet order to know what you would suggest ought to be redone in terms of the business plan. We didn't get that from Lazard or Lazard didn't get it from Rothschild.

I've dealt with fair and equitable. I just want to say as to not only does the 1113 have to be based on the most complete and accurate information, but there's an

additional information requirement under 1113 and it basically says they have to provide information necessary to evaluate the proposal. I would suggest the re-fleeting comes up in two places: One, that first prong that it's -- in order to evaluate their plan, the best and most complete information we needed the re-fleeting. The information necessary to evaluate the proposal, we needed the re-fleeting information.

Also, the AMPL model. Now despite some kerfuffles, the company admitted, finally, that they never gave us the AMPL model runs. We find out about the AMPL model on March of bargaining, asked to see it. We can't see it because it's a propriety -- it's their black box. We say, run scenarios and give us the scenarios. We never got the scenarios. We complained about it several times. We still didn't get the scenarios. Mr. Newgren had to admit on the stand that we never got the run. That's where you find out what the headcount effect is going to be going forward.

I think we have productivity models to know how to value pref bid, sick and so forth, what effect it has on headcount and reserve. What we don't have is the manpower planning model and -- and they didn't give it, and they never gave us the documents.

The final points I would make, Your Honor, by good cause is for those reasons, and for the reason that we

offered 270, it's a roughly with -- if all the other employees got the same deduction -- and, frankly, that is what is modeled in their U.S. Airways term sheets -- it's a one percent reduction of the EBITDAR, and it's market-based. It is what they show as the contractual labor gap. The one thing they do have in there is they say, well, there's more money because you're older. Allison Clark came back and said, well, U.S. Airways is older and your own business model shows that what's going to go on is the employee age is going to trend down.

We're saying we have enough -- additional basis good cause for turning down this particular proposal. The only thing the pilots are saying, Your Honor, is we're asking it denied temporarily while they take a look. If they come back in several months and say, look, we've looked at alternatives. We don't think they make sense. That's a different game.

The unions will stipulate to carry the record forward. We're not talking about retrying this case. We're saying you can't -- you can't go into a bankruptcy and put on blinders and say, we're not going to look at anything. And early on in the bankruptcy just before you've -- you go to your hearing on the unions say, now we're going to look at a range of alternatives. We think they ought to be looking at -- they're saying it's very inward-looking, has

to be their proposal. Well, all the testimony by Kasper, Dichter and Goulet is we live in -- we don't live on an island. We live in an industry with lots of other players. We're just saying, you better look at what's going on in the industry, you've admitted you're going to do that, and then come back because as to us once they hit us, it's a permanent hit. There's no going back for us to say, oh, by the way, that was a mistake, Your Honor. It was based on changing premises.

We're the only ones who are going to be stuck with a permanent deal. The other creditors are going to wait and see where this thing goes.

THE COURT: All right.

MR. JAMES: Any -- any --

THE COURT: Thank you.

MR. JAMES: Thank you, Your Honor.

MS. PARCELLI: Your Honor, good morning. Carmen Parcelli on behalf of the Association of Professional Flight Attendants.

Your Honor, at the risk of chart fatigue for all of us, I have a couple of things that -- particularly aide if you're going to talk about anything confidential -- easier to put material in front of you, if I may.

THE COURT: All right.

Thank you.

If I was worried about chart fatigue, the trial would have ended quite a while ago.

(Laughter)

MS. PARCELLI: And, also, Your Honor, these are just materials that have been previously entered into the record, just things that --

THE COURT: No. That's fine.

MS. PARCELLI: -- for --

THE COURT: It is -- it is helpful to -- as a way to avoid confidential numbers, but still make your point. Understood.

MS. PARCELLI: Yes.

Now, Your Honor, as the APFA has made clear from the outset, it is American's term sheet that it placed before the APA -- the APFA that is on trial in this proceeding. It is the substance of the term sheet itself as well as the methodology that the debtor used to derive its term sheet. It's also, of course, the company's conduct in negotiating over that term sheet. So those are the key elements that must be judged against the demanding standards of 1113.

Now as you're well aware, Judge Drain has recently issued his decision in the Hostess case denying Section 1113 there. And in that decision Judge Drain reiterated what several courts have said before, which is that Section 1113

is a higher standard than you find under Section 365 of the Bankruptcy Code. And, in particular, it's the requirements that the debtor prove that the contract changes that are sought are necessary, that there is fair and equitable treatment, and also the assessment of the union's good cause. These are factors far removed from the business judgment type of analysis under Section 365.

So in our view there are three primary reasons why American's term sheet fails to satisfy Section 1113's stringent standards.

The first, it fails because the term sheet seeks a commitment to six years of concessions from the flight attendants, even while American is exploring consolidation as the obvious strategic alternative to its stand-alone plan. So that's the merger argument, Your Honor, the first point.

Our second key point, the term sheet fails because it's predicated on an arbitrarily selected and unnecessarily high EBITDAR target. So, of course, the ever-popular EBITDAR argument.

And lastly, Your Honor, the term sheet fails because the amount of concessions sought from the flight attendants are simply not market-based.

Now I will address and hope to get through all of these key points in turn, and at the end, hopefully, give an

explanation that somewhat weaves them together. But, Your Honor, even standing alone each of these arguments, as well as others, of course, that we've raised in our briefing require denial of the Section 1113 motion.

Now turning to the merger argument. Embedded in the Section 1113 analysis of necessary is the question, necessary to what? So here American says that its Section 1113 terms are necessary for the success of its stand-alone plan. American has even conceded that the concessions that it seeks might not be necessary to a business plan that's based on a strategic alternative, obviously, merger.

Now as set forth fully in our brief, we believe that with merger alternatives now or very soon to be actively considered by the debtors, American simply cannot satisfy the 1113 requirements, particularly the necessary requirement. But, also, it speaks to APFA's good cause to reject under the present circumstances.

Now in response to our argument and similar arguments raised by both APA and the TWU, American filed a reply brief with this Court on April the 19th. Now in that brief the company contends that the merger alternatives are entirely irrelevant to this case. Okay. That's the factual and legal position that they stake out. They say, "Speculation about a possible strategic transaction at some point in the future is not relevant to the timing or content

of a motion to reject under Section 1113." Not that it's just not relevant here, it's just not relevant, period. That's their position.

Now as a threshold matter, Your Honor, American simply misrepresents the likelihood of a consolidation in its future. In fact, during this trial chief restructuring officer Beverly Goulet was asked whether or not she agreed with the following statement that Mr. Resnick made during his deposition in this case.

So this is Mr. Resnick's statement: "Well, I think the CEO of American, Mr. Horton, has always said that he believes consolidation is something that has to occur in the industry and something where American needs to participate, and that there are a number of options available and the question is really when to pursue consolidation and then, also, to analyze with whom and where there would be most value."

Okay. So when she was asked -- when Ms. Goulet was asked whether or not she agreed with this -- this statement, she said the following -- testified the following: "Yes. I believe that's an accurate statement, an accurate reflection of what Mr. Horton's views would be."

Thus, according to American's CEO, it is not a matter of whether or not American will merge, only a matter of when. Clearly, our expert, Dan Akins, is hardly alone

when he says that a merger is inevitable.

Now throughout the course of this bankruptcy proceeding the question of when a merger will occur has come more sharply into focus. Now in our brief we've traced for the Court the evolution of Mr. Horton's own statements regarding consolidation, tracing that from his initial position that consolidation would only occur following an emergence from bankruptcy, to his most recent pronouncement that merger alternatives will now be vetted in conjunction with the UCC.

Also, as Mr. James mentioned, as of April 13th, American expanded McKinsey's retention to include the evaluation of alternatives to its business plan. We also know that there is a protocol in place with the UCC to explore strategic alternatives. Now although the details regarding the timelines under the protocol are not public, what we do know is that American's exclusive right to propose a plan of reorganization extends until September 28th of this year.

Now, Your Honor, equally well known is U.S. Airways desire to acquire American. In fact, U.S. Airways has gone so far as to reach out to each of the three unions in this case and enter into contingent collective bargaining agreements with them triggered upon a merger. Now these agreements, as you have heard throughout this case, contain

terms far more favorable to employees than what you find in American's Section 1113 term sheets that are based on the stand-alone plan. They represent a substantial step forward in a merger process.

In fact, to the extent that merger alternatives are not more fully developed at this point, it is only because of American's own actions, or rather inactions. As testified to during the trial, initially, American simply did not task its advisors, McKinsey and Rothschild, to consider alternatives to merger. Again, it was not until April 13 that McKinsey explicitly received this mandate from the company.

Now to the extent that U.S. Airways is still waiting on the sidelines, it's due in large part to the fact that they have been denied access to American's confidential data room. Given these facts, American should not be heard to complain to this Court that alternatives are now too speculative for consideration.

So the factual predicate of American's reply brief; that is, that a transaction is too speculative to bear consideration in this proceeding is simply not supported by the record we have here.

Similarly, the assertion -- the legal assertion that strategic alternatives are simply irrelevant under the Section 1113 analysis lacks support. We are not aware of

any case and American has cited none that holds that strategic alternatives always are irrelevant as a matter of law. In fact, the case law supports the contrary conclusion, we believe.

I don't want to get too bogged down here. The two sort of primary cases that are discussed in their reply brief are In Re: Horse head and In Re -- I'll probably say this wrong -- Kerikeon (ph). Just in a nutshell, both cases involve debtors where several attempts were made to find a buyer for their business, including in instances a buyer that was willing to provide terms that the union sought were more acceptable.

But in each case after those transactions failed to materialize, the Court did offer rejection -- I'm sorry -- authorize rejection under 1113. And it was literally in both cases when the company -- and the companies were on the verge of having to go toward liquidation. So the relief was deemed necessary in that context, in that setting and, frankly, after a number of alternatives had been vetted. Frankly, in reviewing these cases, we only wish that American had made similar efforts here.

So now not only is the merger question really at the heart of the necessary requirement under the Bankruptcy Code, but we also believe it speaks to the unions' good cause very directly. Your Honor, how can APFA members

reasonably be expected to commit to six years of concessions under the present circumstances with merger alternatives now or soon to be considered?

Similarly, why would APFA sign away its right to bargain over contract terms for a six-year period when American itself is of the view that consolidation is something that it "needs to participate in," and when we have indication of a transaction likely to take place during this bankruptcy or not long afterwards?

You know, why is the union expected to lock itself in, foreclose the possibility of negotiating more favorable terms in the event that a merger transaction substantially improves the outlook for American?

On a related note, as Mr. James' mentioned, you know, it really does bear emphasis that a Section 1113 ruling at this point, in all likelihood, could not be revisited even if a reorganization plan far different from the current stand-alone plan were ultimately put before this Court in a plan confirmation process.

Now this Court found in the Northwest bankruptcy case that Section 1113 does not contain a mechanism for revisiting rejection and, in fact, that once a contract is abrogated, "there is nothing to revise pursuant to the terms of Section 1113." That's 366 BK 270.

Now, Your Honor, employees, we believe more than

-- than any other stakeholder, frankly, in this case want to see an American Airlines that is a long-term viable competitor in this industry. As APFA President Laura Glading testified, APFA very much wanted to see a viable business plan for the company at the beginning of this process. You know, frankly, it -- it was disappointing when APFA's experts and the other non-company experts involved in the case, you know, they performed their due diligence on the plan only to find that in their view it did not hold up.

You know, I'm not going to reprise all the considerable evidence and testimony that we put into the record with respect to the defects of the current business plan, but I -- I do want to emphasize sort of one key defect because I think it speaks very directly to the whole issue of merger. And -- and that key defect, Your Honor, is the timing of when growth occurs under the business plan. And, of course, this is one of those topics that's in the confidentiality minefield.

So if I could refer you to the first chart that I've provided in order to enable some kind of discussion of the matter. Now this is a chart prepared by Mr. Akins and was accepted into evidence and -- and hasn't been refuted in the record.

And -- and what the chart illustrates, Your Honor, is the progression of growth over the six years of the

business plan. Okay. And if you recall back to the closed door session with the Court in which this information was presented, I think Mr. Akins articulated quite clearly what the concerns are in terms of when within the business plan life the growth is projected to occur.

Now even aside from this chart, Your Honor, we also have the testimony that was not -- not in any way under seal of McKinsey's Alex Dichter, and he made very clear that Over the entire course of the business plan, the size of American's operations will remain unchanged relative to its peers. Okay. And that -- that also, by the way, is assuming that its competitors just stand by and allow American to execute on its plan. But assuming that, it's relative size through the course of the business plan will not change.

So, Your Honor, ultimately American stands still under the current business plan.

Now in this proceeding we heard American's own executives sort of derisively describe their pre-bankruptcy strategy as the limp-along plan. But how is this current standstill plan any better? How is it worth the huge sacrifices that the company is demanding of its flight attendant work force?

You know, if it now appears -- or as it now appears that the company's incapable of devising a stand-

alone plan that really begins to take on the deficiencies vis-à-vis the network, other network carriers, you know, in the near term, then the merger option -- that option that American concedes will eventually occur, but does not model in the current plan -- well, that merger option becomes all the more imperative.

Now, Your Honor, APFA has not lightly embraced the alternative of a merger. There is no doubt that a merger raises a number of difficult issues that the combining employee groups must work through. However, in the final analysis APFA finds that a proposed merger with U.S. Airways offers greater job security for its members, requires less sacrifice, and provides a surer path to make American a premiere airline once again.

So unlike American's Section 1113 proposal, which will force 2,000 flight attendants onto the street, the U.S. Airways term sheet does not require any flight attendant job cuts. Significantly, the U.S. Airways term sheet also includes an early-out program, which as Your Honor heard through testimony, the APFA firmly believes is a real win-win proposal for the company.

It -- it also includes -- and I'm not going to get into the details -- many of the other kind of creative solutions that APFA offered during Section 1113 negotiations, but which American, unfortunately, refused to

seriously entertain.

And then perhaps most importantly, and I will return to this point, the U.S. Airways term sheet provides for a process that will ultimately lead to a long-term agreement based on market rates. So for all these reasons, the merger question could not be more relevant for the association in this proceeding, and the company's argument that this Court should simply ignore the entire merger issue, well, Your Honor, it's simply not supported either by the facts or the law.

Now if I may, I'll turn to the EBITDAR argument.

Again, the term sheet is predicated on both an arbitrarily selected and unnecessarily high EBITDAR target. You know, despite, you know, the company's development of a very extensive record in this case regarding matters both great and small, there is precious little evidence in the record about how the company selected its EBITDAR target.

Now as the Court is aware, the EBITDAR selection is really a critical component in this case since the target ultimately drives the amount of labor costs savings that the company is seeking.

So what did we learn? Well, we did learn in this proceeding that Rothschild development -- Rothschild did work that developed a wide range of EBITDAR targets. Okay. And if I could refer you to the second page in my hand out

that is from David Resnick's materials and represents this wide range of EBITDAR targets that Rothschild developed for the company.

But we also learned that Rothschild itself didn't recommend any particular EBITDAR target to American. So -- okay. So we have the Rothschild wide range. And -- and, Your Honor, I think everyone would have to agree it is a wide range. So from that point exactly how was the EBITDAR target selected. And, Your Honor, it's essentially unknown. In her direct testimony, CRO Beverly Goulet indicated that she worked with Rothschild to identify appropriate financial metrics, but, you know, we never heard exactly who determined the precise EBITDAR number or how the ultimate decision was -- was arrived at, what considerations, what factors were taken into account.

Now we do know from Rothschild's David Resnick that American ended up in the "middle of the pack," which means, according to his chart here, literally the median position. It's not an average. It's not a weighted average. It's just the median position on the chart given these particular comparators that were selected.

Now it's become an overused term in this case, but I will use it once again, the EBITDAR selection is essentially a black box. You know, why a certain target was deemed necessary as opposed to any other target within the

wide range of reasonableness that was suggested, it's simply unknown. Accordingly, American has failed to explain, much less justify a central predicate for its Section 1113 ask.

Now I heard this morning that I guess Mr. Yearly or the unions' other advisors were supposed to themselves come up with some kind of EBITDAR target or suggestion on that matter. I think that very much misconceives the burdens in this case. You know, if you're justifying and predicating your Section 1113 ask on targeting a particular financial metric, we firmly believe it's the company's burden to show why that was selected, particularly why it was appropriate.

Now, Your Honor, just briefly, beyond the arbitrariness of simply aiming for the supposed middle of the pack, as you heard -- and I won't go into great detail -- but APA's expert, Andrew Yearly, submitted ample evidence that Rothschild range of EBITDAR targets is not, in fact, reasonable. Most specifically it's the inclusion of low-cost carriers in the target group simply can't be supported. Those carriers operate under a fundamentally different business model as -- as, frankly, Mr. Kasper, American's own expert testified. And they're simply dwarfed in size by the network carriers.

But one thing I did find interesting, Your Honor, I mean, there was obviously a lot of discussion of

comparators throughout the course of the trial and the course of the case. But I think it was a topic that as the case moved on we really got consensus among American's own airline experts as to what the proper comparators are.

So we heard Jerry Glass and Alex Dichter, they both agreed that the proper comparators are other network carriers; obviously, Delta, United, now including Continental and U.S. Airways. And then in addition Mr. Kasper, in the materials that he presented to the Court on rebuttal, he also limited himself to the network carriers.

So although we have Mr. Resnick testifying that -- that he relied on Mr. Kasper's testimony that American, in fact, competes with the low cost carriers, we also had Mr. Kasper testify quite clearly that the low cost carriers have a lower cost structure and that even the successful network carriers would not expect to match that kind of cost structure.

So, you know, in addition to all this evidence, you know, we have American itself consistently relying on its network peers as the appropriate comparators. So given all of these facts, Mr. Resnick's reliance on LCC comparators is simply not reasonable.

Now as for the topic of EBITDAR, of course in Judge Drain's recent decision in the Hostess case, we have a ruling that bears directly upon the issue. In Hostess, the

debtor failed to demonstrate that it could not successfully reorganize with there an EBITDA target that was slightly lower than the amount that formed the basis of its labor demands. You know, similarly, in this case American has made no such showing. In fact, just earlier in the week we had Mr. Resnick testify that he hadn't done any analysis regarding the impact of lesser labor cost reductions on American's EBITDAR.

So, you know, that analysis simply hasn't been done here, according to the company. Now they say they haven't done the analysis. I mean, you know, our -- our experts have submitted indications that, you know, roughly estimated and I believe the figure was said earlier, so this is not confidential. But if you have 25 billion in revenue, as American historically has had, that a one percentage point -- and, admittedly, might be some rough math and need refinement -- would be 250 million reduction. So a one percent reduction in EBITDAR yielding 250 million on a basis of 25 billion in revenue.

So, Your Honor, for these reasons American has failed through its reliance on EBITDAR to show both that it's -- you know, that its proposed labor cuts are really necessary for the reorganization.

Now I would like to move to the question of market-based compensation.

So as we well know, American's was a top down approach. So starting with the EBITDAR target and then working back to its labor ask. And we believe, Your Honor, that it's simply the wrong approach. Instead, what American should have done, it should have taken a bottoms up approach based on market comparisons for its flight attendants.

So after building up from the bottom, comparing flight attendants, other groups to their market peers, American could then assess, you know, whether or not cuts were sufficient to get them to market, were sufficient to yield acceptable financial metrics. So to go about it in precisely the opposite order.

You know, and if through this process we believe, Your Honor, that the debtor finds or concludes that it -- it can't operate profitably with labor-relates that are reflective in the market, well, then it -- it tells you something. It tells you that, you know, a labor cost problem is not your only problem. And, again, it leads you back to considering other alternatives.

Now the market-based process that we described, you know, this is not something that APFA has just invented or dreamed of. Instead, it is exactly the process that the company used in 2003. Most -- more significantly for Your Honor, this is the approach the company is taking currently with respect to work groups at American Eagle. It is

marking their rates to the rates of competitors. Just for background, this is also the approach taken by other airlines in bankruptcy, so, again, something I think Mr. James' mentioned as to keeping in the -- in consideration when you discuss their EBITDAR targets, how were they built.

And in terms of just the Section 1113 standard, a market-based approach is plainly the correct one because a market-based approach provides an ascertainable standard for the necessary requirement. So we're not left with the black box of EBITDAR, and what EBITDAR is the right EBITDAR, and -- you know, we would have something concrete to work from.

Second, a market-based approach for all groups is undoubtedly fair and equitable. I don't really think it can be assailed.

In addition, frankly, it seems unlikely that an organization would have good cause to reject a contract that's based on market rates.

And, lastly, one of the factors explicitly to be considered by the Court in balancing the equities is where a debtors' 1113 proposal places employees relative to the market.

Now APFA is not the only party that believes that market-based rates are relevant in this proceeding. Plainly, American thinks they're relevant. In fact, the company has gone to great lengths throughout this proceeding

to argue that its proposals, although they originate with the EBITDAR target, nonetheless yield at -- at the end product a market competitive term.

So in their attempt to bolster this position, basically, the company has put on evidence of kind of two types: One, evidence that discusses labor costs in the aggregate, so all employee groups included; or they have also discussed -- presented evidence that gets at selected provisions of the flight attendant agreement as opposed to looking at it at a whole and comparing it to market.

But in the final analysis, Your Honor, I mean, we feel very, very comfortable saying American has not offered a single piece of evidence in this vast, vast record that establishes that the current terms of the flight attendant agreement, when considered as a whole, are 20 percent above market rates. You just will not find that piece of evidence, Your Honor.

And, in fact, the evidence that is in the record is to the contrary. So as APFA has shown, you know, relying on the company's own convergence analysis, American flight attendants are currently close to market rates. And I would direct your attention to the next page in my hand out, and this is a page from a presentation to American's board of directors that was given in November of 2011.

And what this chart shows, Your Honor, is that

even considering the proposal that American then had on the table to its flight attendants -- and that proposal would have increased flight attendant costs by 65 million annually. Even considering that, the company was still projecting that its flight attendant labor cost gap would be eliminated by 2014. Okay.

So -- and if I can direct Your Honor to the next and final chart in the hand out, this is a chart that Mr. Akins' prepared. And -- and what he has done here, Your Honor, is simply this, two things: He has taken the company's own convergence analysis, the figures and analysis that we were just looking at in the prior chart, and he has backed out the then tabled position that would have increased flight attendant costs by 65 million, as I said. So that's the first thing he did. And the second thing he's done is he's reflected the 230-million-dollar Section 1113 ask.

So having done those two things, you can see that using the company's own methodology, their own analysis, the Section 1113 proposal will place flight attendants substantially below market, Your Honor, even in 2012.

THE COURT: Well, let me ask. I believe there was some testimony when coming up with the U.S. Airways term sheet as to how that number was arrived at, and I believe there was testimony that it, essentially, was sort of a

culmination of outliers and that it led to that 153 million.

So how am I to understand that testimony when compared with -- with the argument you're making now?

MS. PARCELLI: Yeah. I mean, admittedly, Your Honor, both in proposals that APFA has presented to the company in Section 1113 and in the U.S. Airways term sheet, you know, we see the realities of bankruptcy and we see the realities of this process. And the give there even puts us below market. It's true.

But difference between the Section 1113 where a consensual agreement requires signing on of six years, as I think was emphasized when we presented the a term sheet to you, that that has a mechanism because if there is a merger, the agreements on either side at American -- at U.S. Airways would need to be integrated. So there's a process for doing that. And the touch stone for that process is market-based rates. That's explicitly set forth in the agreement.

So, you know, recognizing the realities of the situation, there might be an interim period, but, again, that is the goal.

Also, I would just clarify, Your Honor, I think something was said by Mr. Gallagher that, you know, that some of this market-based analysis was driven by valuation disputes. That's not correct in the evidence will presenting. We are simply taking the company's own

analysis, backing out those two elements, and that shows you where we stand in a market level according to their own terms.

And, Your Honor, if I could just -- I should wrap up. I'm pushing my time.

Your Honor, Mr. Gallagher remarked in -- in his opening statement at the very outset of the Section 1113 proceedings that on such a motion there are no winners. And I must say as a general proposition I -- I probably agree with that assessment.

But it's also equally true that each one of these cases is unique to its own particular facts, and perhaps this case even more so than the run of them. Now, undoubtedly, Your Honor, it is true, if the motion is granted both employees and the company here will lose. That's a lose-lose.

But if the motion is denied, we believe there is a sound prospect for a win-win outcome for employees, for the company, and for all the stakeholders in this case. And that opportunity lies in all the parties coming together to determine what is the best strategy for the company going forward. Frankly, that's the road that we should have been on from the commencement of this bankruptcy proceeding and it's a path that's still open to us at this time. And if I had to tie it into Section 1113, that's where the balance of

the equities dictates we should be.

Again, we would like to thank Your Honor for your considerable patience in receiving this truly massive record. And just in conclusion, if there is anything that the APFA can do to assist the Court in its work from this point forward, you need only ask.

THE COURT: All right. Thank you.

MS. PARCELLI: Thanks.

MS. LEVINE: Good afternoon, Your Honor.

THE COURT: Good afternoon.

THE CLERK: Judge, could I have another second to check the record?

THE COURT: Sure.

MS. LEVINE: Your Honor, should we take a two-minute break and let --

THE COURT: Well, I'm afraid about -- we'll just hang around for a minute.

THE CLERK: It's ready.

THE COURT: Okay. Thank you.

MS. LEVINE: Good afternoon, Your Honor. Sharon Levine, Paul Kizel from Lowenstein Sandler for the Transport Workers Union of America.

First of all, like all the other parties here we want to thank the Court for your patience over this extended period and we appreciate the time that Your Honor has

dedicated to this difficult process.

THE COURT: Thank you.

MS. LEVINE: Secondly, we would like to address a couple of issues briefly without re-going over everything that we addressed in our opening and the massive record that Your Honor is going to be grappling with over the next month or so.

But we do feel it's important to point out to the Court that the unions and through the debtors' rebuttal case seem to be targeted as a homogenous group and -- and a targeted group. We're not the unions. We're not the labor organizations. We're the men and women that come to work every single day that make the airline work, and we don't want that to get lost in some of the more technical arguments that have been going back and forth.

Secondly, the use of the phrase "the unions," "the labor groups," makes us almost sound like the defendants, like we should be targeted for a concession and that's a -- that it's a litigation against us, to get a get and then do better elsewhere.

And the sequencing argument that you've been hearing, which we'll talk about a little bit more when we talk about the legal standard in the business plan, almost is setting us up like bait so that there can be a better negotiated stand-alone plan and/or better negotiated

consolidations and merger, and that process, which will benefit other constituents, not us, will take place because we would have been taken care of through this process.

There also seems to be a -- an assumption that if we go through this process and -- and the Court abrogates these agreements, that it's not really that big a deal because we just go back to the bargaining table. And committee counsel has suggested that you should enter an order that authorizes the rejection, but doesn't require it. We would respectfully submit that from our purposes, that's a distinction without a difference. If the Court believes, as we suggest, not that there's no need for restructuring or reorganization here, but that the process perhaps isn't yet ripe, the motion needs to be denied without prejudice.

And we would respectfully submit that the reason for that is at least with the relief that's being asked of M&R and Stores, that's 4600 -- that's 4,600 jobs, Your Honor. That's 40 percent of the M&R workforce. There's nobody to go back to the table. Once those jobs are gone, once those stations are closed, it's irreparable and its permanent. And we'll talk a little bit more about that when we get to valuation as well.

But to -- but to imply that this is a step in the process and how Your Honor handles it really doesn't matter to the next step in the process, we would respectfully

submit is inappropriate.

Your Honor, at the start of this 1113 process, the debtor asked for $212 million from M&R and an additional ask of Stores, and has taken the position that that's appropriate and necessary. We disagreed -- you've heard the arguments. But just to talk about actually physically what we did at the table and why it's important for Your Honor's consideration in terms of this analysis, we also have an argument here and facts here that are slightly different than perhaps you've seen from some of the other labor groups.

When we came to the table, we came to the table with certain constraints. Okay. We were and are the lowest paid work group in the industry, and it's telling that Mr. Glass's declaration, which cherry picks comparables at other CVAs in other -- at other airlines does not at all mention M&R wages. That's a -- that's an almost an astonishing omission.

In addition to that, we -- you know, we talk about healthcare and the fact that the healthcare here is at the top -- I don't know if the right phrase is the top or the bottom, but it's the most expensive that's out there. And while we've -- you know, we're not revisiting the history since 2003 and before, there were difficult decisions that were made in all of this -- in all of these difficult times

which resulted in some things which now make it even more difficult for other things to happen and go forward.

If you have somebody whose take-home pay is such that they're barely paying their rent, feeding their family, and then they're looking at whether or not they can afford the supplemental choice of copay or added healthcare, they're not going to the doctor. They're not going to the doctor instead of feeding their kids or sending their kids to the doctor. That's a very difficult choice, especially off of these wages.

And despite that, Your Honor, despite that we took the February 1st offer that we got from the debtors and we -- and we put forth the March 21 offer that Your Honor's heard some discussion about. And in that March 21 offer, Your Honor, we proposed 2,100 jobs of the 4,600 that they were looking for. And when we valued that proposal -- and by the way, that proposal also asks for -- you heard some colloquy with regard to the ASM cap, that proposal also offers 15 percent with regard to the ASM cap which is the top of industry if you're looking at market rates.

And when you take a look at that proposal, Your Honor, and you value it, we would respectfully submit that at least as we view the values -- and I'll get into a little bit where the differences are and how we view the values -- we have met the debtors' need.

So in addition to agreeing with all the arguments that Your Honor has heard with regard to why it's inappropriate to use the EBITDAR targets and all the other issues that there are with this business model, we've still recognized the process that we're in and the court that we're in, and we've tried to work within those difficult parameters and come up with a way that's less alternative than simply wiping out 40 percent of our work force and leaving us at the bottom of the market on top of that.

You've heard some discussion, Your Honor, with regard to terminal value and there was some colloquy with regard to whether or not, you know, Mr. Roth used that term appropriately, whether or not Mr. Glass had actually heard that term before. Let's set the vocabulary aside. The bottom line is when you go through a contract, and there's a give in that contract, that give occurs in one of three ways:

Either it lasts for the term of the contract and then there's a snapback and the total value is -- is gone at the end of the catch -- at the end of the contract. Nobody is suggesting that here.

Alternatively, there's what's been referred to, at least in the Northwest case as the steady state, which means that at the end of the term of the contract, there's no further benefit to the company and no further give other

than what's already been contractually given, but it stays.

And then you have, Your Honor, what's being asked of the TWU here, which are permanent concessions and we're getting hit with those permanent concessions without, we believe, fairly being treated with regard to present valuing the post-end of the contract value. Once a job is gone, once a station is closed, it's closed. That give up is permanently gone.

Your Honor, we think it's telling that despite the fact that we've raised that concern and those valuations with the company at the table as indicated in the -- in the declarations -- which, by the way, there was no cross-examination of those witnesses -- that the company came back then on March 22 with a counter-proposal that was virtually identical except for the pension and the healthcare to the February 1, and despite the fact that the TWU was at the table constructively, imaginatively contributing for the entire time during this 1113 process.

We understand that Your Honor is not looking at history since 2003 with regard to the math problems that have to get done in this case, but just briefly want to note that not only were we constructive and at the table and trying to do the right things here to make our -- to make sure that we would wind up with as many jobs as we could with a healthy employer, putting all those pieces together,

but we -- we have a history of doing that.

Since 2003 the TWU has been communicating with the debtor. We were involved, for example, in Tulsa, in programs that increased value; that actually resulted in in-sourcing and that drove value in ways that were not only constructive, but mutually beneficial.

Your Honor, so we have two things that are happening here. Number one, we are at the table trying to do the right thing. Number two, we're beat -- we beat -- we believe that we're being asked to take concessions that are not really, truly necessary. Even if we're assuming arguendo and we're -- and I'm going to get to that second point in a minute -- that we're just negotiating in the very small box of the debtors' 1113 plan.

And in that regard, on that alone, we would respectfully submit that at least with regard to the TWU the motion needs to be denied, denied without prejudice. We want to finish the work. We're not saying to this Court, maintain the status quo and we're done with it. But we need to be able to finish the work.

But, importantly, Your Honor, on top of that we would like to talk a little bit about the 1113 plan and the sequencing. Your Honor, we discussed sequencing in our opening. What we discussed in our opening has been stated back to Your Honor in slightly different ways than we

intended it and we would like to go through that a little bit because we think it -- it plays into what Your Honor's job is with regard to finding -- making findings under 1113.

I believe the statutory section that Your Honor is grappling with is 1113(b) and the nine elements that have come out under 1113(b)(1) and 1113(b)(2) to -- to evaluate whether or not a proposal was made in good cause and then what happened during the course of those negotiations. And the -- and the changes and the added burdens that are embedded in those -- in that section and in that case law over and above the mere business judgment standard that applies under 365.

But there's more than that, Your Honor. There's also the overlay that can't be ignored and excluded of the debtor and the debtors' officers and directors' fiduciary duty to all of their stakeholders, and the committee's fiduciary duty to all of the unsecured creditors including the TWU. So for the debtors to say they want to do this -- this separate stand-alone plan now and then negotiate with the other stakeholders, we would respectfully submit is wrong.

For the committee to come in and say, we support this -- this 1113 process and it would be good to get a stake in the ground because then we can have better negotiations with the other stakeholders at a later date is

also inappropriate. And not only that, Your Honor, but it -- it drives a precedent that would say cut labor to below minimum wage, to below market rates, and then go out and do your real Chapter 11 case with your real stakeholders. That can't possibly be what Congress intended under 1113.

And it's not the way the process should be working. The debtors have indicated that they do not dispute that there's more work to be done on this business plan even if it is a stand-alone business plan along with looking at consolidation and merger and other options.

And you -- and in addition to that, Your Honor, they're not saying that this is the final real business plan which is what we saw in Northwest, Delta, United and U.S. Airways. There's a difference between using a business plan like it was used in those cases where a business plan, a business model is really a euphemism for an Excel spreadsheet. So we understand that it's a live thing, that it matures.

That's different, Your Honor, than a wholesale structural change in direction. So we don't have an improved business plan, a maturation of an existing stand-alone business plan where all the constituents buy in like you saw in Delta, Northwest, United and U.S. Airways. What we have is a business plan that is still suffering or growing in a positive sense from wholesale structural

changes. We've had two examples since the start of just this 1113 process.

Your Honor, first we started out with a business plan that included terminating the pensions and had a large liquidity infusion by a backstop. Through negotiations with major stakeholders the debtor made the decision that it would actually not need that liquidity infusion, but would do better to pay investor creditors more equity without them having to pay cash to reinvest and help the debtor post-emergence with its liquidity.

Two, we saw the pension. We saw the pension go from terminating to freeze, and we would respectfully submit that that's a model of actually how this process works at its best as opposed to what we're seeing here today.

THE PBGC said, we don't want to become the largest creditor through pension termination. The institutional debtor-type creditors said they don't want the dilution of that kind of claim in the capital structure, and labor thought to itself, this isn't a bad thing, to be able to keep your pension benefit. And all four of those stakeholders, although they -- although they diverge on a lot of different issues, were able to sit across the table on this issue and better develop the business plan together.

The debtor and the committee have both admitted that this business plan development process is not done.

Committee counsel stood at this podium and talked about a lot of different things, but not once was there acclamation or support for this business plan. We heard testimony with regard to not one, but at least two ad hoc groups of holders that have not yet weighed in or started the process of talking about this business plan. It's extremely important, Your Honor, that we not be used as the bait and that is not the standard under 1113.

Your Honor, we -- we've heard from McKinsey that it's extremely important that your revenues exceed your costs, and that's basically the sum and substance of how they drove down to these labor concessions. We get that. but that does not mean that you can take your labor costs and put them at below market, especially when you're not asking that equally of anybody else.

We have large trade creditors that are in the process of -- and Your Honor has already approved -- lucrative new agreements with the debtor, aircraft agreements with the debtor. We have the debt holder creditors already gearing up for -- to enter into those negotiations, but we're stuck, Your Honor, in an 1113 process which, as Your Honor has already heard with regard to the Northwest decision, is -- is not subject to a do-over.

And there's just one other point that I wanted to

raised with regard to the valuation of the ask. So in addition to the healthcare, in addition to the wages, in addition to the fact that we offered job cuts which we thought were reasonable, we also heard Mr. Glass testify that he actually had not really considered the fact that under the M&R existing collective bargaining agreement there are an additional 3,000 jobs at risk. And the -- and those 3,000 jobs are tied directly to the age of the aircraft. American's business plan is -- is -- one of the things the American business plan is designed to do is to take that aging fleet and make it perhaps even the newest in the industry.

So in addition to the 2,100 jobs that are already there through negotiation, there's an additional 3,000. That puts us over the debtors' ask. As -- as you'll see if you -- when you get to review all the evidence here, according to Tom Roth's declaration, on outsourcing alone we've met the debtors' stated need.

We would respectfully submit that both under the case law, and the way Your Honor has to interpret 1113 with the timing and the sequencing and the fact that this business plan is not yet ready for prime time, coupled with the fact of the way the TWU has conducted itself throughout this 1113 process and -- and, importantly, during the negotiations that the debtor has not met the elements under

1113, at least not with regard to the TWU, and that terminating or abrogating those agreements would do nothing to move this process forward because once those folks are not at the table, once those stations are closed, they're gone.

The company hasn't shown need. The company hasn't shown good faith, and the company hasn't shown that we've turned down the March 22 proposal, especially in light of all we gave in the March 21 proposal, without good cause, and especially in light of the fact that the process to finish the business plan is far from concluded, again, indicates good cause.

Thank you, Your Honor.

THE COURT: Thank you.

MR. GALLAGHER: Your Honor, may I have five minutes for rebuttal?

THE COURT: I would say five minutes because I think otherwise we -- we -- we may never conclude.

MR. GALLAGHER: I understand, Your Honor, and I will be brief.

I want to address the specter of consolidation issue, Your Honor, not just U.S. Airways, but whomever might be -- might be out there because as you think about it, as I think about it, as the lawyer responsible for trying the case, I wonder how is a debtor ever to build an evidentiary

record for an 1113 if we have to go out and explore and evaluate every conceivable possibility? How many options or possibilities do we have to go out and consider? Which ones? And when do we have to do it?

Quite frankly, Your Honor, it would be a smart strategy for unions to avoid or delay an 1113 forever because there's always something else you might have considered, some other airline you might buy or that might buy you, some other city you might go into, some other code-sharing deal you might do. Where do we stop? 1113 doesn't have a standard for when the debtor must file a motion. It simply says that it has -- when it files a motion it has to make it on the best information available.

And the decision in this case has to be made on the basis of evidence that's in the record, and on this record, Your Honor, there is no there there. It's all rhetoric.

On the question of pro tempore of delaying -- denying momentarily, well, exactly how long does it -- are they proposing that it be denied, Your Honor, and what are the collateral consequences of that at $80 million a month in ongoing losses? What are the collateral consequences of that and all the other fronts like exclusivity?

So we think that there are -- is a lot of severe conceptual problems and -- and matters of principal with

their view of how 1113 should work.

Turning briefly to some nits, Your Honor, there have been thousands of jobs lost in every other airline bankruptcy and you heard Mr. Glass say that there's no such thing as terminal values. For APA's argument on domestic code-sharing, Your Honor, we -- all we have to say is, look at their proposal. Look at the conditions they put on it. Hand cups, once again, the most restrictive scope clause in the industry. American made that mistake once, Your Honor. It can't go back.

And, lastly, on information-sharing, Your Honor. Mr. James grossly overstated the issue with Lazard and information-sharing. They saw the fleet order. They know every airplane delivery schedule. They got all the documents that went to the company's board of directors in connection with that. Look closely, if that -- if they want to press that issue, we welcome it, Your Honor, because when you look closely, again, there's nothing there.

Lazard -- what Lazard requested was an analysis of capital expenditure on that fleet order as if it had been a purchase rather than a lease. And the company said, we didn't do that and we can't do it without -- with our capability.

But under 1113 we don't have to create new information just because Lazard says we would like to take

another look at it. We gave them what we had and then as an accommodation we said we would go out and do a return on invested capital analysis in addition to the net value analysis they had already received. So we think that's grasping at straws, Your Honor.

We, again, very much appreciate your time and attention.

THE COURT: All right.

I have two things that I want to say before we adjourn.

The first is that I, again, want to express my appreciation for all the hard work of counsel in what's not an easy case, and everyone's patience, and I think it has been a very well presented case by all parties. So thank you very much for that.

And the second thing is -- is I just have a brief comment about the proceedings and where to go from here.

I'll take the War Games analogy one step further. Not only isn't it a game that can be won by playing, but it's also a destructive game to play. It reminds me very much of labor arbitration in baseball, which companies and players never want to go through because it forces parties who hope to have a long-term future together to criticize each other, often harshly because of what they see as a zero sum game. And then there are always very bruised feelings,

understandably so, as a result of that process.

And it's a shame because I have been impressed with the folks that I've heard from each side, the hardworking employees who are understandably concerned about their futures and the future of their families in what are clearly difficult economic times, and also the folks who were involved in the restructuring who obviously hope to turn around an airline that has a proud heritage.

So in that context I'm going to say what I -- I'm going to reiterate what I told the parties at the end of that first week of trial when we adjourned. The only thing I have in front of me under Section 1113 is whether or not to reject an existing collective bargaining agreement.

So regardless of who wins and who loses, you're all stuck with each other. And the parties are still going to have to negotiate new agreements. It's -- it's not like a labor -- I'm sorry -- an employment case where someone says, I was fired for that just cause. I want to go back and I want back pay and I want damages, and judges in district court will say, okay. You win, you lose. If you get rehired, this is what you get and you get reinstated at this -- it doesn't work that way. I just get to say whether the existing agreements under the very detailed, although one might say not particularly always particularly helpful standards in 1113, whether they apply.

And so you still have to negotiate new agreements in the context of trying to make sure that this airline turns around in a way where everyone benefits because that's what everybody wants.

So -- and with that, you're going to have to -- everyone is going to have to grapple with difficult economic facts that caused the filing of the bankruptcy and it's because everybody cares about the ongoing success of the enterprise in front of me; that is the airline. And I understand that's what parties are trying to do.

So given this context, I urge -- and I cannot urge anymore strongly that the parties resolve his dispute where it should be dealt with, at the negotiating table. And that means that people are going to have to pocket some really hard feelings on both sides that go back quite a ways.

And so I urge the parties to -- to try to do that and I know it's difficult. I confess I probably can't appreciate how difficult because no one's been talking about me for three weeks. So I don't -- I don't underestimate the difficult task it is. But regardless of what I do, you're going to have to do it anyway.

So -- and I think I just add a level of uncertainty, a level of cost, and an opportunity for further hard feelings to the process. So in bankruptcy court we always talk about adding value. I don't know how much value

I really add to the process in terms of what you all are trying to ultimately get done.

So that said, I'm here. I have a job to do and I will do it even if I'm reluctant to have to do it. So I have -- we've all talked about the date. And I will continue to work to get it done by that date.

So -- so it's not a matter of you saving me any work. I've sat through three weeks of trial and I'm going to continue to work and I must continue to work, and so -- however, if I am finished and I am ready to put my signature on an opinion and you all rush in and tell me, judge, don't issue that opinion, I will -- it would be a matter of great happiness to hear those words. So I will do what I'm supposed to do, albeit reluctantly, and I hope that you all can do what -- what you need to do even if reluctantly.

So thank you very much and Happy Memorial Day weekend.

(A chorus of thank you)

(Whereupon these proceedings were concluded at 2:02 PM)

I N D E X

	Page	Line
CLOSING ARGUMENTS:		
BY MR. GALLAGHER	18	1
BY MR. BUTLER	65	7
BY MR. JAMES	85	11
BY MS. PARCELLI	113	17
BY MS. LEVINE	136	20
BY MR. GALLAGHER	149	19

E X H I B I T S

PARTY	NO	DESCRIPTION	ID.	EVID.
AA	1779	Valuation of TWU proposal	--	10
AA	1778-A	Revenue growth chart	--	12
AA	1781	Attachment to disclosure statement	--	12
AA	1704	Pleading from Delta Airlines bankruptcy case	--	14
APFA	401	Supplemental declaration of Alex Roghan	--	16

C E R T I F I C A T I O N

I, Sherri L. Breach, CERT*D-397, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sherri Breach

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