

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 11-15463-shl

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5 In the Matter of:

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7 AMR CORPORATION

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9 Debtors.

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13 United States Bankruptcy Court

14 One Bowling Green

15 New York, New York 10004

16 June 4, 2013

17 11:23 AM

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19 B E F O R E:

20 HON. SEAN H. LANE

21 U.S. BANKRUPTCY JUDGE

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25 ECRO: Matthew

1 HEARING re: Doc. #8154 Motion to Approve/Motion of Debtors for
2 Entry of Order Pursuant to 11 U.S.C. 363(b) Approving Support
3 and Settlement Agreement among Debtors and Consenting Creditors

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6 HEARING re: Doc. #7633 Motion to Approve Debtors' Motion for
7 an Order (1) Approving Notice of Disclosure Statement Hearing;
8 (II) Approving Disclosure Statement; (III) Establishing a
9 Record Date; (IV) Establishing Notice and Objection Procedures
10 for Confirmation of the Plan; (V) Approving Solicitation
11 Packages and Procedures for Distribution Thereof; (VI)
12 Approving the Forms of Ballots and Establishing Procedures for
13 Voting on the Plan,; and (VII) Approving the Form of Notice to
14 Non-Voting Classes Under the Plan

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25 Transcribed by: Theresa Pullan

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P R O C E E D I N G S

THE COURT: Good morning. Please be seated. We are here in the AMR Corporation for a hearing on the debtors' motion to approve a disclosure statement and related relief as well as a motion to approve a settlement. We've opened the windows because the air conditioning picked a bad day to actually decide not to work. I've been assured that's not related to sequestration, because you never know. So I also understand that there's a gentleman who came here to chambers who is representing himself who English was not his first language and he had gotten a notice, and I think he was wondering what to do. And I understand that debtors' counsel kindly spoke to him to find out what they could do in terms of explaining the procedures and whether he actually wanted to be here or not. So maybe we can start with that matter.

MR. PEREZ: Yes, Your Honor. The gentleman that I spoke to had sued American Airlines in Small Claims Court and he thought that the notice that he had gotten, and we served 400,000 people, so anybody who had filed, who basically filed a claim or would otherwise be subject of a proof of claim, we served them, so he thought that the notice that he had gotten was in fact in the case in his case involving the claim filed in Small Claims Court. And I told him that, you know, one really didn't impact the other.

THE COURT: One didn't affect the other.

1 MR. PEREZ: Yeah, and that's how, I think he --

2 THE COURT: All right. I strongly suspected that was
3 the case, but I appreciate you talking to him about that
4 because obviously it's bit of an awkward conversation for us to
5 have in chambers.

6 MR. PEREZ: Sure.

7 THE COURT: All right. With that matter out of the
8 way.

9 MR. PEREZ: Good morning, Your Honor, Alfredo Perez
10 on behalf of the debtors. Your Honor, we're here very happily
11 today on the disclosure statement hearing. In addition to
12 that, Your Honor, we have the hearing to approve the support
13 and settlement agreement with the ad hocs.

14 We received, Your Honor, twelve pleadings, some of
15 them objections, some of them a reservation of rights. I
16 believe that we are just down to two or three parts of one
17 objection and that everything else has been resolved. In
18 addition, Your Honor, we have a stipulation with Citibank that
19 Mr. Karotkin will present at the appropriate time.

20 Since there is no objection to the motion to approve
21 the support agreement, it might make sense to take that first.

22 THE COURT: That's fine.

23 MR. PEREZ: So, Your Honor, in connection, and the
24 motion was filed in separate hearing today, there were no
25 objections received. In connection with the negotiation of the

1 merger agreement, there were simultaneous negotiations with a
2 group of creditors that had organized. And if the Court will
3 recall, the Court had entered an order basically approving work
4 fees for them in connection with discussions with the debtors
5 going back to April, May, June of 2012. So discussions
6 commenced in over a period of time many, many discussions,
7 exchange of information to in essence try to come up with a
8 consensual plan resolving the key issues that formed the basis
9 of the treatment of the plan which were the intercompany
10 claims, the guarantees, the transfer of assets and the
11 interdebtor and intercreditor issues resulting from the way the
12 company was run. And as a result of that, on the same day that
13 we signed the merger motion, we also signed the settlement
14 support agreement as well as a term sheet which forms the basis
15 for the distributions under the plan. And that term sheet, I
16 think it's very complex, and it's unique in that the way we're
17 going to value return is based on the market after the fact.
18 Your traditional case, Your Honor, you would have two experts,
19 they would say the value is X. Here, what we've done is we've
20 said we're going to distribute the stocks -- since almost all
21 the currency is going to be in stock of the new AAG -- we're
22 going to distribute it and we're going to look every thirty
23 days to see what the actual market trading price is so that
24 people get a recovery. In connection with that, they agreed
25 that the common shareholders of American would receive

1 approximately three and a half percent right at the outset and
2 that that would escalate depending on the price.

3 Your Honor, exhibit B to the disclosure statement is
4 really the key document that shows what kind of the anticipated
5 recoveries are and what, and what depending on the trading
6 price of the stock, and really of the U.S. Air stock since
7 basically the market views the U.S. Air stock as a proxy for
8 recoveries, what creditors will likely receive in this case and
9 how much equity would receive in this case. So in connection
10 with that, we entered into a support agreement that basically
11 in which they agreed to support the plan based on the term
12 sheet. We agreed to pay their fees including a success fee to
13 Houlihan who had been their banking and a deferred, and another
14 fee to the bankers for the special facility revenue bonds. And
15 they, subject to certain terminations provisions, a fiduciary
16 out on our part they would support the plan. In essence, we've
17 been in daily contact with them, you know, turning drafts of
18 the plan, turning drafts of the disclosure statement, and
19 having those discussions along with the creditors committee
20 which, who has also been involved in basically at every step of
21 the way.

22 So Your Honor, we would request that the Court enter
23 the order approving the motion, we did not receive any
24 objections.

25 THE COURT: All right. Anyone else wish to be heard

1 on this motion?

2 MR. BUTLER: Your Honor, Jack Butler from Skadden &
3 Arps on behalf of the creditors committee. Your Honor, the
4 creditors committee stands in support of the request to approve
5 the support and settlement agreement. We discussed it in more
6 detail at the beginning of paragraph 15 of our joinder and
7 statement filed at docket number 8502. I think there are just
8 two comments we wanted to make on the record here.

9 First, the approval of this agreement and the
10 mechanics that are now in the plan that's before Your Honor to
11 go out for solicitation, assuming Your Honor approves that
12 solicitation, set up the dynamic of this case of valuing the
13 term at the end of the day based on the market as opposed to
14 having a parade of investment banker testimony or other
15 valuation testimony before Your Honor, and Your Honor having to
16 try to figure out what the value is. The creditors in this
17 case certainly the members of our committee believe that the
18 facts and circumstances of this case, that's a far superior
19 approach and one that we support. So not only do the ad hoc
20 committee believe that's important, I think the creditors
21 committee does also.

22 I think the second piece of this is to emphasize that
23 your approval of this support and settlement agreement does not
24 include approval of the underlying 9019 settlement. That's
25 incorporated into the plan, it'll come back at confirmation

1 after everyone has had a chance to vote on it as it should be.
2 It has lots of pieces to it, we'll talk a little bit later
3 about our views of the debtors' efforts of disclosure which we
4 think have been really outstanding here at that portion of the
5 hearing. But this really is an opportunity I think for Your
6 Honor to approve the mechanics that allow us to move forward
7 here and leaving the underlying 9019 settlement to the plan
8 process.

9 THE COURT: Thank you. Anyone else wish to be heard
10 in connection with this motion? All right. I have before me
11 the debtors' motion for an entry of an order pursuant to 363(b)
12 approving a support and settlement agreement among the debtors
13 and consenting creditors. I believe it easily satisfies the
14 requirements of the Code, that is a legitimate business
15 justification for the proposed action, and for that reason, I
16 will approve it.

17 MR. PEREZ: Thank you, Your Honor. And just by way
18 of reference, we now have approximately \$1.6 billion dollars of
19 claims that are signed on as consenting creditors, we started
20 with about 1.2, and we've got another 400 million since that
21 time.

22 THE COURT: All right.

23 MR. PEREZ: So, Your Honor, now we come to the
24 disclosure statement. I should, we should probably take the
25 easier stuff first. I believe, do you want to do Citibank?

1 MR. KAROTKIN: Good morning, Your Honor, Stephen
2 Karotkin, Weil Gotshal and Manges for the debtors. As a
3 preliminary matter which addresses one of the objections to the
4 disclosure statement, we submitted yesterday a stipulation
5 among Citibank, the debtors and the creditors committee which
6 provides that the debtors agree to assume various agreements
7 with Citibank which are set forth on the schedule to the
8 stipulation. Those agreements relate to the Advantage Credit
9 Card program that the debtors have with Citibank. That
10 assumption, Your Honor, to be conditioned on the occurrence of
11 and effective as of the date of the entry of the confirmation
12 order with respect to the plan that is before Your Honor today
13 in connection with the disclosure statement or a similar plan.
14 So that assumption would become affected then. And we would
15 ask, Your Honor, that you approve that stipulation as a
16 preliminary matter today. Your approval of that stipulation
17 would take care of Citibank's objection to the disclosure
18 statement, Citibank's motion seeking an order compelling the
19 debtors to assume or reject those agreements, as well as
20 Citibank's motion to estimate its claim for voting purposes.
21 And as I indicated, this has been fully reviewed with the
22 creditors committee, and they are a signatory as well.

23 THE COURT: All right. Anyone wish to be heard in
24 connection with this stipulation?

25 MR. BERGER: Good morning, Judge.

1 THE COURT: Good morning.

2 MR. BERGER: Neil Berger, Togut, Segal & Segal. My
3 firm is responsible for representing the committee in
4 connection with matters pertaining to Citibank. As Your Honor
5 has seen and heard from Mr. Karotkin, the Citibank agreements
6 are significant components of the debtors' business operations.
7 They're also the source of significant claims and liens
8 asserted by Citibank, and the committee looked closely at those
9 matters. Given where we are in the case in the process, we did
10 sign as a non-objection to the stipulation. We also joined the
11 debtors' request that it be so ordered.

12 THE COURT: All right. Thank you. Anyone else wish
13 to be heard?

14 MR. HUEBNER: Good morning, Your Honor, extremely
15 briefly, Marshall Huebner of Davis Polk & Wardwell on behalf of
16 Citibank. As Your Honor may remember, these contracts were
17 actually assumed on an interim basis. On the first day of the
18 case, we graciously waited until the end of the case to resolve
19 the issues. We're delighted that our partner of more than 25
20 years will be proceeding with us and these contracts will be
21 assumed as we expected they would. And I will confirm as Mr.
22 Karotkin said, there are various motions that were filed a
23 couple of weeks ago in connection with certainty as the case
24 is, we're finally wending towards a very happy conclusion, we
25 now have that certainty in hand. The stipulation, I think is

1 exceedingly straightforward, and we ask that it be entered, and
2 we are delighted to be American's partner going forward.

3 THE COURT: All right. Thank you. Anyone else? All
4 right. I have read the stipulation order, thank you for the
5 advanced copy, and I will approve it as consistent with all the
6 representations here today and also resolving Citibank's
7 rejection.

8 MR. PEREZ: Thank you, Your Honor.

9 THE COURT: Thank you.

10 MR. PEREZ: Your Honor, in connection with our
11 response, we submitted a chart. With the Court's permission,
12 I'm going to deviate a little bit from the way that we
13 presented the chart just to deal with the things that we can
14 deal quickly first and then move to the end to the objections.

15 THE COURT: Whatever manner you think is most
16 efficient.

17 MR. PEREZ: So the first item, Your Honor, is
18 actually the very last item on page, on page 13 and 14 of the
19 chart. And those were just straight reservation of rights that
20 were filed by Appaloosas (phonetic), I don't believe that
21 there's any action required on our part. We did respond to the
22 concern that they raised, I believe Mr. McBride (phonetic) is
23 here, but I don't know that that requires any additional action
24 on our part. It's basically, you know, reservation of rights
25 that we'll continue to reserve.

1 THE COURT: All right. That's how I understood it,
2 although I did notice that the debtors added some additional
3 language to attempt to make it clear. Does this resolve - I'm
4 assuming for purposes of the disclosure statement there's no
5 objection to that proceeding.

6 UNIDENTIFIED SPEAKER: That's correct, we do not
7 object to the disclosure statement [indiscernible] and making
8 your honor aware of an issue that may arise --

9 THE COURT: Well an issue that may arise in
10 connection with confirmation, I don't know that it's
11 particularly profitable to do that here, but I'll leave it to
12 your judgment. There are certainly times when people feel
13 compelled to make certain statements, and it's actually easier
14 to let them make the statements then to try to dissuade them
15 otherwise. So I will leave it to your judgment as to which
16 category this falls into. Thank you.

17 MR. PEREZ: Your Honor, next I would take objection
18 8244, Harold Plog (phonetic) which is on the bottom of page 8.
19 And I think Mr. Plog just misunderstood what the effect of the
20 plan, there is no equity going to shareholders, it's just, I
21 just think he basically misunderstood. And in any event, it's
22 a confirmation objection, I don't believe there's any
23 additional action required on our part.

24 THE COURT: All right. Is Mr. Plog present? All
25 right. Thank you.

1 MR. PEREZ: Next, Your Honor, we have the eight
2 pleadings that were filed by U.S. Bank in various capacities.
3 And I have to thank Mr. Hahn (phonetic) and Ms. Aball
4 (phonetic) for really helping work through a lot of these
5 issues. In connection with our filing on Friday, which we
6 filed an amended plan of disclosure statement, I believe that
7 we addressed almost all of the issues. There were two
8 remaining issues that remained outstanding. One was just a
9 little clarifying language, and last night we circulated,
10 haven't filed yet, additional changes to address that one
11 issue. And then today the only truly remaining issue was a
12 concern by the objection 8295, the seven and a halves, that they
13 be told whether they were going to be reinstated or paid off.

14 THE COURT: Right.

15 MR. PEREZ: So in essence one of the main objections
16 was you need to tell us, one of the main objections was you
17 can't return the collateral, we agreed, so it's paid in cash,
18 cash or reinstated. Here, we were asked to specify when we
19 would do it.

20 THE COURT: Which one.

21 MR. PEREZ: And it would be five business days before
22 the voting deadline -- objection deadline, the objection
23 deadline, five business days before the objection deadline that
24 we would specify. And to the extent that we reinstate it,
25 their guarantees would also reinstate. I think we put that in

1 with respect to the others.

2 So I think that resolves the last remaining objection
3 by U.S. Bank. We made extensive changes, we rewrote one
4 section, and I don't believe that there are any remaining open
5 issues with the aid of the U.S. Bank objections.

6 THE COURT: All right. Is anyone here from U.S. Bank
7 who wishes to comment?

8 MR. JOHNSTON: Good morning, Your Honor, Jim Johnston
9 of Jones Day on behalf of U.S. Bank in its capacity as
10 indentured trustee for the 7 1/2 percent notes. What Mr. Perez
11 relayed is accurate with respect to those notes. They have
12 resolved our objection by agreeing to inform us five days
13 before the objection deadline of whether our notes in their
14 unimpaired capacity will be reinstated or whether they will be
15 paid off. I envision potentially a disputed confirmation over
16 exactly what it means to be paid off or reinstated but that's
17 obviously an issue for confirmation.

18 And on the issue with respect to the guarantee claim,
19 we would just like that incorporated into the plan. As of now
20 they said in their reply that the guarantee claim would
21 continue forward if the notes are reinstated. That didn't get
22 picked up in your amendment to the plan or the disclosure
23 statement.

24 MR. PEREZ: We can put it in the disclosure statement
25 Your Honor.

1 THE COURT: All right. Thank you.

2 MR. JOHNSTON: Thank you.

3 THE COURT: All right, so that's 8295 I understand
4 using the chart.

5 MR. GOLDMAN: Good morning, Your Honor, Ira Goldman
6 from Shipman & Goodwin representing U.S. Bank on 8283, which
7 is the first one listed, the one with respect to all
8 transactions. And I'm just confirming that every, all the
9 issues we raised were dealt with satisfactorily by the debtor.

10 THE COURT: All right. Thank you.

11 MR. TOPP: Good morning, Your Honor, Frank Topp from
12 Chapman & Cutler on behalf of U.S. Bank National Association
13 U.S. Bank Trust, National Association for the 1991 APDCs, 1991
14 CPTCs, 2001-1EETCs, 2009-1EETCs, 2011-1EETCs and 2011-2EETCs.

15 THE COURT: I'm very impressed you can get through
16 that without any notes whatsoever.

17 MR. TOPP: And we're pleased to announce, Your Honor,
18 that in terms of, for purposes of the disclosure statement, all
19 of our objections have been resolved in a satisfactory manner.
20 Of course we may have plan objections and of course reserve the
21 right to bring those as necessary. But for purposes of the
22 disclosure statement, we are signed off.

23 THE COURT: All right. Thank you very much.

24 MR. PEREZ: Thank you, Your Honor. And I'm not sure
25 that I agree that the amount, if we reinstate the amount of the

1 reinstatement, whether that's really a plan confirmation issue
2 or a claim issue. So I'm not sure that's ---

3 THE COURT: But it's not an issue for today.

4 MR. PEREZ: It's certainly not an issue for today.

5 THE COURT: All right.

6 MR. PEREZ: So I believe, Your Honor, that takes care
7 of 11 of the 12, and the only remaining one is the one by the
8 U.S. Trustee. And with respect to that, Ms. Golden can correct
9 me, but I think there's only a couple of things that remain.

10 THE COURT: All right.

11 MR. PEREZ: Let me talk about what we've resolved.
12 Under 3(a) lack of disclosure, we've, relating to the 9019,
13 we've put in several pages of additional information with
14 respect to the 9019, so I believe that one is no longer on the
15 table. Same thing is true with respect to substantive
16 consolidation. This plan, although we say it's substantive
17 consolidated, there's really no substantive consolidation in
18 the plan, there's really three functional estates -- the AMR
19 estate, the American estate, and the Eagle estate. There's no
20 substantive consolidation as between those three estates.
21 There is, for purposes really for administrative purposes, when
22 you go down the line, there might be, but for the most part
23 they have no assets or liabilities. All of the intercompany
24 claims are as between American and the AMR debtors or American
25 and the Eagle debtors. There is no in-between debtor debtor

1 claims at all, so we're not really compromising anything.

2 THE COURT: All right.

3 MR. PEREZ: So I believe that as it relates, the
4 additional information with respect to substantive
5 consolidation is sufficient for their purposes.

6 Then I know that C is probably still open although we
7 put in significant additional information. And I don't know
8 whether D and E are still open.

9 THE COURT: I understood that D was resolved, and
10 that E we hadn't heard one way or the other.

11 MR. PEREZ: We did put in all of the information with
12 respect to D, the named, the NEOs.

13 MS. GOLDEN: My apologizes, I stapled it.

14 THE COURT: That's quite all right.

15 MS. GOLDEN: We do -- good morning, Your Honor, Susan
16 golden for the U.S. Trustee, I'm here with Tracy Davis the U.S.
17 Trustee and Brian Masumoto.

18 THE COURT: Good morning.

19 MS. GOLDEN: We do have some issues in connection
20 with C, but if Mr. Perez wants to continue with what we do not
21 have any, what we have resolved if that's okay with Your Honor.

22 THE COURT: All right. I think the question is
23 whether there is anything left of D and E, I think D, I think
24 Chambers had been told D was, it was likely resolved.

25 MS. GOLDEN: That is correct, Your Honor. The U.S.

1 Trustee believes that D has been resolved.

2 THE COURT: All right. And then E I think was open
3 and I think there was some language, but we didn't know if it
4 had resolved the issue.

5 MS. GOLDEN: That is correct, Your Honor. And in
6 terms of F for the releases, for the disclosure statement, it
7 seems to comport with what is usually in disclosure statements
8 for the major cases, but we reserve our rights at confirmation.

9 THE COURT: All right. So, let me just back up for a
10 second. E, I wasn't sure, E is resolved then?

11 MS. GOLDEN: E is not resolved, but not in terms of
12 the language that was put in the plan for E, but its placement
13 in the plan.

14 THE COURT: All right. I look forward tremendously
15 to that discussion.

16 MS. GOLDEN: Okay.

17 THE COURT: But we'll get - we'll get there in a
18 minute.

19 MR. PEREZ: So, Your Honor, so I think G we just
20 basically took their language, so that's resolved.

21 THE COURT: All right.

22 MR. PEREZ: So, Your Honor, all we have is, left is C
23 which deals with the chairman letter, and E which deals with
24 the where you place the no objection provision. We did amend
25 the disclosure statement, we put in the no objection provision

1 in the same place where we put in all of the various terms and
2 conditions of the new collective bargaining agreements, because
3 this was part of the new collective agreement with the TWU and
4 the APA. We put it where we thought it was appropriate because
5 it was part of those agreements. The U.S. Trustee requested
6 that we put that in with the discussion of Mr. Horton's
7 (phonetic) severance agreement, and we don't believe it's
8 appropriate there or should go in that place.

9 And frankly from a disclosure standpoint, I don't
10 think that there's any, there's no issue, I mean we've
11 disclosed it, we've more than disclosed the terms of the
12 various of the chairman's letter agreement extensively, we've
13 added additional information last night to the document, Your
14 Honor, which I believe addresses the concerns in C, not just
15 those in D.

16 THE COURT: All right. Let me hear from the U.S.
17 Trustee's Office on the disclosure issues that are in C and E.

18 MS. GOLDEN: Thank you, Your Honor. We just received
19 a copy of the second amended disclosure statement in Court so
20 we haven't really had a chance to go through it. However, in
21 connection with, I'll start with paragraph E which concerns the
22 labor agreements. The language that has been put in the plan
23 is satisfactory to the U.S. Trustee. The reason why the U.S.
24 Trustee believes that it should be either moved over to the
25 section relating to Mr. Horton's severance or at the very

1 least, cross-referenced in that section is because first the
2 U.S. Trustee's objection really went to the fact that the union
3 in connection with its collective bargaining agreement did
4 agree not to object to the severance, although the members as
5 individuals are not so bound. We have received phone calls
6 from individual union members confused on that, and we believe
7 that given our objection was actually pinpointed to that very
8 issue that it should be moved or at the very minimum cross-
9 referenced.

10 THE COURT: All right. Let me ask this question of
11 debtors' counsel which is, is there a way to add one line that
12 cross-references the section?

13 MR. PEREZ: Obviously, Your Honor --

14 THE COURT: We're talking about one sentence here.

15 MR. PEREZ: Yeah. If that's the Court's disposition,
16 I think that's correct. But I would say this isn't about Mr.
17 Horton -- okay.

18 THE COURT: No, I understand that. And I also think
19 it is appropriately in the section dealing with the agreements
20 with the unions because it's part and parcel of that and the
21 reason I think it makes sense to put in one line is, and these
22 things are long enough as they are so I really don't want to
23 start repeating things in two different sections, I think that
24 actually makes things more confusing. But if there have been
25 inquiries about it in the interest of disclosure, ease of

1 disclosure, really not disclosure, but ease of disclosure for
2 folks who may be following this at home for lack of a better
3 term, I think a simple one sentence reference to the other
4 sections more fully set out would suffice.

5 MR. PEREZ: Okay.

6 MS. GOLDEN: Thank you, Your Honor. And in
7 subsection c which deals specifically with the terms of Mr.
8 Horton's agreement, I was able very briefly to take a look at
9 the new disclosure statement. And I do note that the debtors
10 filed a new S4 with the SEC I believe yesterday which included
11 the valuation of the SERP, the S-E-R-P which is the pension,
12 the vesting of the pension plan and they did include the value
13 of that in the new disclosure statement. In addition, one of
14 our concerns is that Mr. Horton's original compensation
15 package, according to the SEC filings would indicate that he
16 would receive approximately \$6.4 million, but if there's a
17 change of control he would receive approximately \$15 million.
18 Under the plan as proposed, he would be receiving \$20 million,
19 and we think that the disclosure statement should address in
20 some fashion that there is a \$5 million difference between his
21 original agreement and the new agreement, and the estimate of
22 the legal fees that may be owed his counsel because obviously
23 that has value and also an estimate of what his flight
24 compensation would be.

25 THE COURT: I understand C to relate to payments to

1 him, not payments to anyone else.

2 MS. GOLDEN: Correct.

3 THE COURT: So I'm not -- so, I'm not sure why we're
4 talking about his counsel in connection with this. I
5 understand the objection was to disclosure of the payments to
6 him under the chairman letter agreement.

7 MS. GOLDEN: Well, I guess it was our presumption
8 that he would be reimbursed for his counsel fees.

9 THE COURT: Well I -- let me hear from the debtors.
10 One of my concerns with this is it's beginning to fall to the
11 realm of micromanagement as to his payments. We already had a
12 hearing of Mr. Horton's payments where the discussion of the
13 amount was fairly exhaustive and I believe received some
14 attention, so I don't think at this point there's a whole lot
15 of confusion, and on top of that we've had many, many pleadings
16 discussing the issue, and I suspect we will have many more. So
17 I think unlike the issue pertaining to we have gotten questions
18 about what happens on the other issue, which is E, I think this
19 information is pretty much out there, so, but let me hear from
20 the debtors.

21 MR. PEREZ: Your Honor, we've kind of bent over
22 backwards. I mean we think that we've put in -- if somebody
23 doesn't know about the chairman's letter agreement, you know,
24 they've been asleep. It's in there.

25 THE COURT: Well let me ask you, is there anything,

1 the only thing that I have, understand too for the -- was
2 payments to him, so hearing about counsel I'm not quite sure
3 what to say about that. So do you have a reaction?

4 MR. PEREZ: The letter agreement provides that he
5 will be reimbursed for counsel's fee in connection with the
6 letter agreement, that's all it says, you know, in addition to
7 the other benefits. But that's all been fully, fully disclosed
8 many times both here and NDS4.

9 THE COURT: All right. Anything else you want to say
10 on C?

11 MS. GOLDEN: No, Your Honor.

12 THE COURT: All right. So for the disclosure issues
13 for E, I think one sentence should be added in light of the
14 inquiries that have been received, but not a full blown exact
15 copy, but rather for discussion of this issue C, and for C, I'm
16 going to overrule that disclosure statement objection because I
17 think that issue has been fairly well vetted in a very public
18 manner. All right. So I think that leaves numbers 1 and 2 to
19 the U.S. Trustee's objection which are more substantive in
20 nature.

21 MR. PEREZ: Yes, Your Honor, and in our reply we
22 reference Journal Register and Adelpia and the Lehman case and
23 we believe that whether we meet the confirmation standards,
24 something to be determined at the confirmation, but certainly
25 this is not the case with the recoveries, with the merger, with

1 the fact that we're really on a fast track and creditors will
2 likely get paid in full that we should stop this for these
3 issues that, you know, we've been talking about them now for
4 months.

5 THE COURT: All right.

6 MS. GOLDEN: Good morning, Your Honor. Obviously
7 this is the debtors' motion to approve the disclosure
8 statement. And the U.S. Trustee objected to the approval of
9 the disclosure statement because it contains provisions which
10 violate the Bankruptcy Code, specifically provision 503(b) and
11 (c). The law is clear that the Court may consider the
12 confirmability of a plan at the disclosure statement stage if
13 the plan is facially unconfirmable.

14 THE COURT: Well my question to you though is the
15 cases that, there's a New Jersey case you cited, there are
16 cases the debtor cited, I think all of those are either at
17 confirmation I think one of them is even after confirmation.
18 So my question to you is why is it more appropriate to read
19 this as a reservation of your rights for confirmation on these
20 issues?

21 MS. GOLDEN: Because the U.S. Trustee believes that
22 the Court should not allow the distribution, the solicitation
23 of a plan which violates the Code. The U.S. Trustee takes the
24 position that the --

25 THE COURT: Well but patently unconfirmable is the

1 term that's used, and I think everyone knows that that's a high
2 hurdle or every disclosure statement hearing is going to turn
3 into a confirmation hearing. And I think that that's an issue
4 that every judge confronts in every disclosure statement
5 hearing in any large case. And so I have a real concern about
6 adopting that mentality because I think it will, will turn
7 every disclosure statement hearing into a confirmation hearing
8 frankly. So that's my concern. So I'm trying to figure out if
9 you have any particular guiding principles in this instance as
10 opposed to other cases.

11 MS. GOLDEN: Your Honor, the guiding principle is
12 that section 503 both (b) in connection with putting the
13 committee member attorneys' fees into the plan, and the
14 severance agreement, one violates 503(b)(3), the other violates
15 503(c)(2). And Your Honor cannot confirm a plan which violates
16 the Bankruptcy Code, and because of that the disclosure
17 statement as it is proposed should not be disseminated with
18 those provisions in it.

19 THE COURT: All right. Thank you.

20 MR. BUTLER: Your Honor, Jack Butler for the
21 creditors committee. I just make one observation because we
22 really dealt with this exhaustively in our statements, I'm not
23 going to try and go through all the issues. But Your Honor has
24 recognized that patently unconfirmable is the appropriate
25 standard and it's a very high bar. And just because the United

1 States Trustee says something violates the Bankruptcy Code
2 doesn't mean that it does. In fact, in this district, a number
3 of judges have written on these specific points and have come
4 out to a place that's exactly contrary to the position the U.S.
5 Trustee is trying to assert in this case. If the weight of
6 authority in this case, in this district on both of these
7 issues doesn't run in the U.S. Trustee's favor -- now I know
8 she believes that they're wrongly decided and inappropriate and
9 she's appealing certain of those decisions. But the existence
10 of that dispute and that disagreement by itself means that this
11 dispute can't meet the bar of patently unconfirmable, just the
12 existence of that dispute. I don't want to go to the merits,
13 that's for confirmation, we'll talk about it later, but the
14 existence of that dispute itself I think ends this inquiry
15 because I don't know how anyone can actually argue it's
16 patently unconfirmable in light of the law that's in this
17 district to which they disagree.

18 THE COURT: All right.

19 MS. VOLKOV: Good morning, Ilana Volkov, Cole Schotz
20 Meisel Forman and Leonard on behalf of Hewlett Packard
21 Enterprise Services, LLC. We also filed a response to the U.S.
22 Trustee's objection on this point at docket 8484, and for the
23 reasons set forth therein, we support what the debtor and the
24 creditors committee urged the Court to do as well as
25 independently request that the Court consider this issue at

1 confirmation.

2 THE COURT: All right. Thank you.

3 MS. VOLKOV: Thank you.

4 THE COURT: Anyone else wish to be heard? All right.
5 And I believe this is the last issue, I don't believe there's
6 anything else in connection with the disclosure statement and
7 any other objections, so before I make my ruling, let me ask if
8 anyone else wants to be heard in connection with the disclosure
9 statement approval as well as the related procedures?

10 All right. I'm going to then rule on the motion and
11 requests that I have before me. Before the Court is a request
12 of the debtors to approve its disclosure statement as modified
13 up through and including today's hearing and for related relief
14 as to procedures for the upcoming plan of reorganization.
15 Pursuant to section 1125 of the Bankruptcy Code, a plan
16 proponent must provide holders of impaired claims and equity
17 interest with "adequate information" regarding a proposed
18 chapter 11 plan. Section 1125(a)(1) of the Bankruptcy Code
19 defines in relevant part adequate information as "information
20 of a kind and in sufficient detail as far as is reasonably
21 practicable in light of the nature and history of the debtor
22 and the conditions of the debtor's books and records that would
23 enable such a hypothetical investor of the relevant class to
24 make an informed judgment about the plan. Thus, a disclosure
25 statement must on a whole provide information that is

1 reasonably practical to permit an informed judgment by impaired
2 creditors or equity interest holders entitled to vote on a plan
3 of reorganization; see in re Momentum Manufacturing Corp. 25
4 F.3d 1132 at 1136, Second Circuit case from 1994; see also in
5 re Adelpia Communications corp., 352 Bk. Rep. 592 at 600,
6 Bankr. SDNY (2006), and that case states that "an adequate
7 disclosure determination requires a bankruptcy court to find
8 not just that there is enough information but also that what is
9 said is not misleading." Solicitation of a chapter 11 plan
10 should be delayed or prohibited only when the proposed plan is
11 patently or facially unconfirmable, see in re cardinal
12 Congregate One, 121 B.R. 760 at 764, (Bank, S.D. Ohio 1990);
13 see also in re Copy Crafters Quick Print, Inc. 92 B. R. 973 at
14 980 (Bank. NDNY 1988), to establish that a chapter 11 plan is
15 patently unconfirmable, the objecting party must prove as a
16 matter of law that the plan is "so fatally flawed that
17 confirmation is impossible." Cardinal Congregate One 121 B.R.
18 764; citing Monroe Well Servicing Inc. 80 B. R 324 at 333,
19 (Bank. E.D. PA. 1987). As Monroe Well Servicing makes clear,
20 the point is to not to convert the disclosure statement hearing
21 into a hearing on confirmation, therefore plan related
22 objections will be considered at the disclosure statement
23 hearing only if they demonstrate that it is patently or
24 facially unconfirmable.

25 In this case, the debtor has requested approval of

1 the disclosure statement. Statements in support of the
2 debtor's motion have been filed by the official committee of
3 unsecured creditors and the ad hoc committee of AMR Corporation
4 Creditors. In addition, a variety of joinders were filed by
5 numerous parties. Several objections were filed to approval of
6 the disclosure statement. As been explained this morning,
7 almost all of these objections have been resolved including
8 several resolutions of objections in the last 24 hours. Only
9 two objections that are unresolved remain.

10 The first is one by pro se equity holder Harold Plog,
11 he appears to be a shareholder. He complains that the
12 treatment of AMR class 5 for equity interest under the plan
13 does not satisfy the requirements of section 1129 as to
14 nondiscrimination and fair and equitable treatment. As a
15 threshold matter, his objection is really more appropriately an
16 objection to confirmation, as it doesn't relate to information
17 provided to creditors or equity holders, but rather to a
18 substantive provision of the plan. But in any event, the basis
19 for his objection appears to be erroneous. He appears to
20 believe that AMR class 6 defined as "AMR other equity interest"
21 includes equity interest held by debtors' employees. In their
22 omnibus reply and again here today, the debtors have made it
23 clear that this is not the case. In fact, class 6 is comprised
24 of equity interest AMR holds in its direct subsidiaries such as
25 the stock of American that AMR holds.

1 And so for both of these reasons, the Court overrules
2 the objection of Mr. Plog to the disclosure statement.

3 Turning now to the U.S. Trustee's objection, that
4 objection falls into two categories, disclosure objections and
5 objections to the substance of the plan. And for clarity of
6 the record, I will refer to objections by reference to the
7 chart attached as exhibit A to the debtors' omnibus reply which
8 is how we've been doing it this morning. And I've already
9 addressed the disclosure statement objections.

10 There were two of these, one was 3C the other was 3E.
11 3C related to the purported lack of information regarding the
12 proposed payments to Mr. Horton on the chairman's letter
13 agreement. The debtors' chart states that additional language
14 has been provided to address the U.S. Trustee's objection.
15 Given the additional language as well as the very public and
16 extensive pleadings filed by the parties on the issue of Mr.
17 Horton's proposed compensation, I overrule the U.S. Trustee
18 because I find the disclosure statement contains adequate
19 information on this topic particularly when taken in light of
20 all the other developments in the case.

21 Objection 3 relates to purported lack of information
22 regarding the no objection provision of the TWU and the APFA
23 settlement letters. As I already ruled, I'm going to require
24 the addition of one sentence in the requested portion of the
25 disclosure statement that will make reference to the more full

1 discussion of this issue that the debtors have already included
2 in the section that relates to the union agreements.

3 Turning to now to what I call the U.S. Trustee
4 substantive objections, these are covered and identified as
5 numbers one and two in the chart, and the objection covers
6 really three items. The first is indentured trustee fees where
7 the debtors propose through section 2.4 of their plan to pay
8 their reasonable professional fees and expenses of the
9 indentured trustees. The U.S. Trustee objects that this
10 violates the requirement under section 1129(a)(1) that a plan
11 complied with all applicable provisions of the Bankruptcy Code.
12 Here, they allege that this violates section 503(b)(3)(d) and
13 503(b)(5) because such a payment will require substantial
14 contribution to be allowed.

15 The second item is, that's objected to is committee's
16 member fees where the debtors propose in section 6.23 in the
17 plan to pay reasonable fees and expenses of the committee
18 members. The U.S. Trustee again objects citing 1129, in this
19 case arguing that payments to individual committee members
20 violates section 503(b)(3)(f) and 503(b)(4) because although
21 503(b)(4) allows for reasonable professional fees of other
22 enumerated creditors, it does not provide for the allowance of
23 such fees for individual members of the creditors committee.

24 And third of the substantive objections is the
25 payment to Mr. Horton where the debtors propose through article

1 6.24 of the plan to approve the chairman letter agreement which
2 approves a severance payment in the amount of \$19,875,000 to
3 Mr. Horton. The U.S. trustee's objection, which has been
4 discussed in other proceedings in this case, argues that that
5 severance payment must be considered under section 503(c)(3) of
6 the Code and that it does not satisfy that the requirements set
7 forth in that section.

8 I'm going to overrule the objections as to the
9 disclosure statement on these three matters because I disagree
10 with the U.S. Trustee that these issues make the plan patently
11 unconfirmable. I find that it would be inappropriate to hold
12 up the disclosure statement in this case based on these issues
13 where there's law supporting each side's position. Indeed, I
14 note that the cases cited by the parties on these issues are
15 all decisions on confirmation of a plan or later, and that was
16 the case for the decisions in Journal Register, Lehman
17 Brothers, Adelpia and TC2 Holdings. None of these cases ruled
18 on the propriety of such compensation under section 1129(a)(4)
19 at a disclosure statement hearing.

20 I would like to make one note about particularly Mr.
21 Horton's compensation. In my earlier ruling on that issue, I
22 stated that it was premature for me to decide the issue of
23 whether compensation of Mr. Horton was appropriate under
24 section 1129(a)(4), and I just want to make it clear that's
25 exactly what I meant, no more and no less. And certainly at

1 confirmation I would expect additional briefing from all sides
2 on the 1129 (a)(4) issue, including how each side views the
3 idea of harmoniously reading the relevant sections of the Code
4 and how they exist or should exist together in the relevant
5 case law. The papers that I received to date, the parties tend
6 to see the world in black and white claiming they are correct
7 and the other side's position is entirely meritless. I find
8 that rarely are things so black and white and so I would
9 certainly appreciate any assistance in trying to understand
10 where 503 starts and ends, and where 1129 begins as well as
11 what should be covered as a matter of policy and the relevant
12 case law under both.

13 But for all the reasons set forth, I'm going to
14 overrule the U.S. Trustee's objection as a matter of the
15 disclosure statement. I find that the disclosure statement
16 here contains adequate information as that term is defined in
17 section 1125. Relatedly, I'm going to approve the procedures
18 requested by the debtors including those as to notice and
19 objection procedures for confirmation of the plan, solicitation
20 packages and procedures for distribution and the form of
21 ballots and master ballot and procedures for voting. And
22 that's my ruling.

23 MR. PEREZ: Thank you, Your Honor.

24 THE COURT: Thank you.

25 MR. PEREZ: We had set forth a schedule in connection

1 with the proposed order, and presumably if that, if that
2 schedule is okay with the Court, then we would keep with that
3 schedule.

4 THE COURT: All right. I confess that when I looked
5 at the proposed order, I wasn't looking at it for that purpose,
6 but let me go back, and I suspect that you spoke to my
7 courtroom deputy about those dates.

8 MR. PEREZ: Well I think the date, I think we do have
9 the 29th date available, but if I have a calendar for the
10 Court.

11 THE COURT: Thank you very much.

12 MR. PEREZ: Your Honor, it might make sense to
13 conclude the hearing and then talk about dates in a different
14 scenario.

15 THE COURT: All right. Unless you think there's
16 anything in particular that would be productive to discuss now?

17 MR. PEREZ: No. Absolutely not, Your Honor. I think
18 the dates, I think we have the dates, I think they're good, we
19 just need to get clearance.

20 THE COURT: I will confess that I think in a very
21 wise decision on my part I rely on somebody who is much better
22 at that than I am and I think you could talk to me by myself,
23 but that's probably folly, so that's probably a good idea to
24 put that off until after the hearing.

25 UNIDENTIFIED SPEAKER: Your Honor, just one other

1 matter for the record. We had, as had been anticipated by both
2 the debtors and by the Court, we did file as exhibit A to our
3 statement the proposed solicitation letter from the committee
4 that would go out to including the solicitation package, that
5 was exhibit A to our response.

6 THE COURT: Yes, I saw that.

7 UNIDENTIFIED SPEAKER: I just wanted to note that on
8 the record.

9 THE COURT: All right. Thank you. All right. So
10 I'll trust that you'll contact Chambers about any dates that
11 need confirming or adjusting, and I will also trust that you
12 will provide me with the last updated version of the order. I
13 know I have a version but I'm always reluctant to use what's in
14 the binders since they are almost always outdated.

15 MR. PEREZ: Well they will have to be updated because
16 we're going to have to file, what we circulated last night has
17 not been filed. We'll make the change that the U.S. Trustee,
18 we'll make the change that the Court ruled on. We'll need to
19 file those, get ECF numbers and then submit the order.

20 THE COURT: All right. So when would you expect to
21 get that to me? I just want to make sure I turn it around.

22 MR. PEREZ: Today would be a real, hopefully today,
23 but more realistically tomorrow morning.

24 THE COURT: All right. And I would assume that if it
25 gets entered on Thursday that will be fine.

1 MR. PEREZ: The sooner --

2 THE COURT: I mention because I'm actually going to
3 be at a funeral on Wednesday, so I --

4 MR. PEREZ: We'll try to get it to you today then.

5 THE COURT: Yeah, if you can get it to me today, I'll
6 try to look at it today, but I will tell you that it's possible
7 that I have to do it Thursday morning unless that dose great
8 valance to the schedule.

9 MS. GOLDEN: We would just like to see a copy as
10 well.

11 MR. HUEBNER: Your Honor would it be possible, the
12 Citibank stipulation, I believe Chambers already has.

13 THE COURT: Yes I have that right here. And we're
14 going to get that entered today.

15 Mr. HUEBNER: Thank you.

16 THE COURT: Thank you.

17 MR. PEREZ: Thank you, Your Honor.

18 (Court Adjourned 12:12 PM)

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I N D E X

RULINGS

DESCRIPTION	PAGE
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HEARING re: Doc. #7633 Motion to Approve Debtors' Motion for an Order (I) Approving Notice of Disclosure Statement Hearing; (II) Approving Disclosure Statement; (III) Establishing a Record Date; (IV) Establishing Notice and Objection Procedures for Confirmation of the Plan; (V) Approving Solicitation Packages and Procedures for Distribution Thereof; (VI) Approving the Forms of Ballots and Establishing Procedures for Voting on the Plan; and (VII) Approving the Form of Notice to Non-Voting Classes Under the Plan	31

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CERTIFICATION

I, Theresa Pullan, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

AAERT Certified Electronic Transcriber CET**00650

Theresa Pullan

June 5, 2013

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