UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 11-15463-shl

- -x

In the Matter of:

AMR CORPORATION

Debtors.

- -x

Adv. Proceeding - 13-01392-shl

Fjord et al.,

v.

AMR Corporation et al.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York 10004

August 15, 2013

10:13 AM

B E F O R E:

HON. SEAN H. LANE

U.S. BANKRUPTCY COURT JUDGE

ECRO: Karen

HEARING re: Doc. #8590 Confirmation of Debtors' Second Amended Joint Chapter 11 Plan

Adversary 13-1392

HEARING re: Doc. #4 Ex Parte Application for Order Advancing Status Conference and Setting Trial and Schedule

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P R O C E E D I N G S

THE COURT: Good morning. Please be seated. All right. We are here this morning for a hearing in AMR Corporation. I'm going to take appearances in a minute. I see we have a full courtroom, and in the Murphy's Law department, the air conditioner has chosen today to stop working. So it was debated whether to actually move to another courtroom this morning, but that takes some time and unsettles a lot of folks. So, if over the course of the hearing it becomes uncomfortably warm in here, we may do that during the break at which point it would be much easier to do and won't delay things.

And I have no problem with people standing, there is an overflow room, but I know how it works, you say people can go to the overflow room and no one moves. However, to the extent that the nice person from downstairs who has a badge on his, attached to his lapel tells you that you need to move for safety and security reasons, then you need to move. So that's the way that all works.

So before I get appearances, I did also want to set the stage for today's hearing a little bit. This hearing was scheduled several months ago to consider the debtors' plan of reorganization. The plan of reorganization was and is based on a proposed merger between the debtors and US Airways. The merger itself had been presented previously for Court approval, and in fact was approved because it represented a good result

for the debtors, creditors and other stakeholders in this case. In both the merger motion and the proposed plan, the debtors represented that the merger was subject to approval, regulatory approval by the United States and that no decision had yet been made by the government. This is not much of a concession, of course, because the stay imposed by the Bankruptcy Code does not apply to the federal government's exercise of its police and regulatory powers, including review of a merger for compliance with the antitrust laws.

Two days ago on Tuesday, August 13th, 2013, the Department of Justice in fact filed a lawsuit in the United States District Court for the District of Columbia, and that lawsuit seeks to block the merger based on antitrust concerns including section 7 of the Clayton Act.

Upon learning of that lawsuit, my chambers reached out to the debtors to ask whether the debtors wished to go forward with today's confirmation hearing, and the debtors informed chambers that they wished to proceed. And the reason I asked that question was because in light of how recently the Department of Justice lawsuit was filed, no party had addressed the impact, if any, of that lawsuit on today's confirmation, notwithstanding the many briefs that were filed leading up to today's hearing.

Simply put, the question is whether proceeding with confirmation of this plan is proper or appropriate under the

circumstances. And notwithstanding debtors' desire to proceed with the hearing, I nonetheless strongly considered adjourning this hearing, at least temporarily, to get the parties views on that question. Ultimately I decided not to adjourn today's hearing given that adjournment on such short notice might have created unhelpful confusion or uncertainty when compared with simply addressing these issues at today's hearing.

But I nonetheless will ask the debtors and other interested parties to provide me with briefs regarding the impact of the Department of Justice antitrust litigation on the confirmation standards, and more generally on the appropriateness of ruling on confirmation before the antitrust litigation is resolved. I don't want the briefing to contain any posturing about the parties' views on the Department of Justice antitrust litigation, after all, that litigation is not before me. In fact, no antitrust issues were presented to me in connection with the hearing on the merger motion, so I have no views on the subject, and I will leave that subject in the more than competent hands of the District Court in D.C. Rather, I want the briefing to be limited to the bankruptcy issues and focus on any applicable bankruptcy case law including but not limited to the issue of the feasibility of the plan and other confirmation requirements.

In the meantime, I will allow debtors to present their case for confirmation today, given that I understand such

a hearing can be completed in one day, namely today. Of course, I still have lingering doubts whether this approach is the most efficient or prudent under the circumstances, particularly given that the Court has numerous other matters and cases to address and is operating on budget restrictions imposed by sequestration. But I think it's the best we can do under these circumstances.

Therefore, we will proceed now with the confirmation hearing, and I will ask that in the presentations as appropriate, the debtors and other interested parties address as best you can the questions I've raised in my opening remarks notwithstanding the additional briefing that will occur.

So with that statement, I'd like to get appearances from all parties who anticipate speaking. And to the extent that you may have had an issue that you wanted to raise or needed to raise that's been resolved, I would anticipate that that probably does not necessarily require your entering an appearance at this time. But I'll leave that to your judgment.

MR. KAROTKIN: Your Honor, Stephen Karotkin and Alfredo Perez, Weil, Gotshal and Manges for the debtors.

MR. BUTLER: Your Honor, good morning, Jack Butler and Al Hogan from Skadden Arps appearing on behalf of the Creditors Committee.

MS. GOLDEN: Good morning, Your Honor, Susan Golden on behalf of the United States Trustee. I'm here with the

United States Trustee, Tracy Hope Davis.

THE COURT: Good morning.

MS. GOLDEN: Assistant United States Trustee, Linda Rifkin and Brian Masumoto.

MR. HAHN: Good morning, Your Honor, Richard Hahn of Debevoise and Plimpton, special aircraft counsel to the debtors.

MR. COOK: Good morning, Your Honor, David Cook on behalf of the objecting parties and the adversary plaintiffs.

THE COURT: Good morning.

MR. AGUSTI: Good morning, Your Honor, Phil Agusti, Steptoe and Johnson on behalf of the Allied Pilots Association.

MR. WALL: Good morning, Your Honor, Daniel Wall and Jan Baker from Latham & Watkins for US Airways appearing in connection with the adversary matter.

MR. TOPP: Good morning, Your Honor, Frank Topp from Chapman and Cutler on behalf of US Bank National Association for the 2009-3 senior secured loans, the 2011-2WTC and the 2009-1WTC.

MR. WARNER: Good morning, Your Honor, Michael Warner and Ilan Volkov from Cole Schotz on behalf of Hewlett Packard Enterprise Services.

MR. FOGG: Good morning, Your Honor, Robert Ross Fogg representing, on behalf of Carolyn Ford, the objecting party in the adversary proceeding.

MR. JOHNSTON: Good morning, Your Honor, Jim Johnston of Jones Day on behalf of US Bank National Association in its capacity as indentured trustee for the seven and a half percent senior secured notes.

MR. CIANTRA: Good morning, Your Honor, Thomas Ciantra, Cohen Weiss and Simon LLP for the Airline Pilots Association.

MR. PRAGER: Good morning, Your Honor, Mark Prager, Foley & Lardner on behalf of US Bank National Association as indentured trustee in the 7.5 and the 10.5 percent notes.

MS. GOING: Good morning, Your Honor, Kristen Going, Drinker Biddle and Reed on behalf of Manufacturers and Traders Trust Company as indentured trustee for ten issues of special facility bonds that I'm not going to go through here.

THE COURT: Thank you for that.

MR. O'DWYER: Good morning, Your Honor, Brian O'Dwyer with O'Dwyer and Bernstein, US Airline Pilots Association.

MR. GLASER: Good morning, Your Honor, Barry Glaser on behalf of Los Angeles County Treasurer and Tax Collector.

MR. BARKASY: Your Honor, Richard Barkasy from Sneder Harrison Siegel and Lewis on behalf of the Allegheny County Airport Authority.

MS. CATON: Good morning, Your Honor, Amy Caton from Kramer Levin on behalf of Bank of New York Mellon and Law Debenture as indentured trustees for approximately 2 billion of

airport revenue loans.

MR. MESSINA: Good morning, Your Honor, Gil Messina for the plaintiffs in the adversary proceeding.

MR. UZZI: Good morning, Your Honor, Gerard Uzzi of Milbank Tweed Hadley and McCloy on behalf of the Ad hoc Committee.

MR. KLAYMAN: Good morning, Your Honor, Robert Klayman [indiscernible] for the Association of Professional Flight Attendants.

MR. LAURIA: Good morning, Tom Lauria with White & Case for Appaloosa Asset Management.

MR. KAO: Good morning, Your Honor, Dennis Kao for U.S. Bank Indentured Trustee for the 2009-2 secured notes.

THE COURT: All right. Thank you very much for everyone's appearance, and good to see folks that I've seen before in these cases, and also good to see new folks as well. All right. So with that, let's proceed.

MR. KAROTKIN: Again, good morning, Your Honor, Stephen Karotkin, Weil Gotshal and Manges for the debtors. I want to thank the Court for hearing us today; we do appreciate your time and indulgence.

As you noted, Your Honor, we're here today to consider confirmation of the debtors' joint chapter 11 plan. The plan is entirely consistent with the intent and purpose of chapter 11 in the Bankruptcy Code. I will note that the plan

is a fully consensual plan, and as we'll get into a little more detail later, that the plan was overwhelmingly supported by all classes of creditors and AMR stockholders entitled to vote on the plan. And that plan, Your Honor, has the potential to provide full recoveries including post petition interest to the debtors' creditors, and a substantial return to AMR's existing stockholders. I would say quite a unique situation in an early chapter 11 case.

Obviously, Your Honor, we are disappointed with the complaint that was recently filed by the Department of Justice to which you alluded earlier. As US Airways and the debtors have stated, they believe that the Department of Justice is wrong in its assessment of the merger and they intend to mount a vigorous defense to the lawsuit in order to achieve a closing of this merger.

I would note for Your Honor that the commencement of that lawsuit is not an impediment to this hearing going forward for you to consider confirmation of the plan. Of course, until that lawsuit is resolved, it is an impediment to the closing of the transaction. I will note, Your Honor, that the resolution of regulatory issues is not a condition to entry of the confirmation order. It is, of course, however, a condition to the occurrence of the effective date, and the consummation of the merger, that's reflected in section 9.2(f) of the plan, and the conditions to the occurrence of the effective date. So

this, Your Honor, was an eventuality that is contemplated by the plan, contemplated from the disclosure materials that everybody saw when they voted on the plan, and certainly well known to everyone in connection with the voting process.

By way of background, just getting a little history of where we are, by order dated June 7th, 2013, the Court approved the debtors' disclosure statement related to the plan and approved solicitation and voting procedures and related matters and also set the hearing to consider confirmation of the plan for today. Your Honor, the Garden City Group which has been retained pursuant to an order of this Court handled the solicitation of votes and the providing of notice of today's hearing to the debtors' creditors, stockholders and other parties in interest, in excess of 300,000 parties in interest. All of that noticing and solicitation was done in compliance with the provisions of your order dated June 7th which addressed all of those procedures.

On August 8th, Your Honor, we filed with the Court the declaration of Craig Johnson, who is the senior director with the Garden City Group which sets forth in great detail the procedures undertaken by Garden City in connection with the planned solicitation and notice process. And if I may, Your Honor, as I said that is on the docket, I would like to offer that up into evidence as part of the record of that hearing. Of course, Mr. Johnson is here and available for cross-

examination if anyone wishes to do so.

THE COURT: All right. Rather than deal with the declarations that have been provided by the debtors in piecemeal, why don't we deal with them all right now.

MR. KAROTKIN: Sure.

THE COURT: Just, I don't know if there's any objections to any of them. So if you would identify all the declarations at this point and just ask me to consider them as evidence in the hearing, then I'll ask if there are any objections.

MR. KAROTKIN: Very well sir. We have, as I indicated, Mr. Johnson's declaration; we have the declaration of Beverly Goulet (phonetic) who was the chief restructuring officer of the debtor and now the chief integration officer; w have the declaration of Homer Parkial (phonetic) from Rothschild, the debtors' financial advisor; we have the declaration of Kevin Harmady (phonetic) from McKinzey with respect to the liquidation analysis, which is an exhibit to the disclosure statement; we have the declaration of Armando Cordina (phonetic) who is the lead director of AMR Corporation relating to the objection filed by the United States Trustee; and we have the declaration of Douglas Frisky from Towers Watson, the debtors' financial, I'm sorry, executive employment consultant as well. And those are the declarations for today.

THE COURT: All right. Anyone have any objection to

me receiving these as evidence with obviously parties reserving their right to argue about what they mean and how I should consider them? All right. I don't see any objections, so I will accept those as evidence for today's hearing.

(Debtors Declarations Entered)

MR. KAROTKIN: In addition, Your Honor, while you're considering evidence, we would also like to admit into evidence the third amended plan of reorganization which was filed last night which takes into account some technical amendments which we will go through with Your Honor this morning. That has been furnished to the various parties, and as well as the affidavits of service and publication by the Garden City Group, all of course which are on the Court's docket.

THE COURT: All right. Any objection from anyone? All right. Those are received as well.

(Third Amended Plan of Reorganization Entered)

(Affidavits of Service and Publication Entered)

MR. KAROTKIN: And lastly, of course, is the disclosure statement.

THE COURT: All right. Well I think I've already approved that, so I think that that's part of the record.

MR. KAROTKIN: Yes sir. As reflected in Mr. Johnson's declaration, Your Honor, notice of the hearing as I said and the objection deadline and the solicitation of votes, were done in full compliance with the order and that is set

forth in quite some detail in his declaration. And as I indicated, they have filed affidavits of service and publication which again demonstrate compliance with your order. And Mr. Johnson's declaration also describes in great detail the procedures utilized by the Garden City Group to solicit and tabulate votes on the plan. And if I could direct your attention, Your Honor, to page 21, I don't know if you have a copy, I can present you another copy.

THE COURT: No I have plenty of copies of various documents. It's this volume 2, am I correct?

MR. KAROTKIN: I believe so.

THE COURT: And which tab?

MR. KAROTKIN: Maybe it's easier if I just hand this, hand this up to you.

THE COURT: No, that's all right, I really would like to avoid getting multiple copies of things, so just direct me to the correct volume and the correct tab and we're in business. Volume 2?

MR. KAROTKIN: It's pretty thick.

THE COURT: Volume 2? Where, volume 2? All right. I'll find it.

MR. KAROTKIN: E.

THE COURT: E. Thank you.

MR. KAROTKIN: Page, Your Honor, pages 21 and 22 of Mr. Johnson's declaration have a summary by class of the voting

on the plan. And as I mentioned previously as reflected, as is reflected on pages 21 and 22, the plan was accepted by overwhelming majorities with respect to each class upwards of 99 percent both in terms of number and dollar amount in the creditor classes and with respect to the class of AMR equity interest in excess of 99 percent as well of those shares voting. If you'd like I can go through each of those class votes, but I really don't think it's necessary, I think it's very clearly set forth in the declaration which is in evidence.

THE COURT: All right. No, it's not necessary to go through it.

MR. KAROTKIN: Thank you. I would like also Your Honor to hand up to the Court a document we filed last evening which is entitled modified technical amendments to the debtors' second amended joint chapter 11 plan. May I approach?

THE COURT: Yes, please. Thank you.

MR. KAROTKIN: As I indicated, this was filed with the clerk's office last evening and reflects various amendments to the plan largely in the nature of clean up and clarification that do not have the material impact on the value of the distributions to be made to impaired classes under the plan. For ease of reference, Your Honor, we have attached a blackline copy of the plan reflecting the changes and modifications to the second amended plan. Of course, this has been shared with the UCC and other parties in interest and I believe that no one

has any issues with it.

I will note, Your Honor, as reflected in the cover page for those modifications, there is a reference to a letter agreement between the company and the APA, the Allied Pilots Association, which addresses mechanisms for the payment of backup withholding tax and the stock to be distributed to unionized employees represented by the APA. And there also is another letter, Your Honor, attached as an exhibit to that pleading from American to the APFA as well as the TWU advising them that they would be provided similar treatment with respect to addressing backup withholding. I am told that the implementation of these letters in connection with the plan and the distribution to the unionized employees does not have too real effect on the value to be distributed to creditors and shareholders under the plan, again in the nature of a technical modification to facilitate the payment of taxes, and that's why it was being done.

I am happy, Your Honor, to take you through the technical amendments and describe to you what they are, and any questions you may have, I'll be happy to address.

THE COURT: All right. Proceed. I assume we'll use the blackline version.

MR. KAROTKIN: Yes sir. Obviously the first change is call it the third amendment plan. And I'm just flipping through pages. Just bear with me one minute. I think the

first change, Your Honor, is on page 41.

THE COURT: All right.

MR. KAROTKIN: Which is a definition 1.250 of VWAP (phonetic). This basically provides for an additional 24 hours to make the calculation. From a practical standpoint, it doesn't go to the economics, but in view of all the distributions that would have to be made, it just provides an additional 24 hours to make the calculation.

THE COURT: All right.

MR. KAROTKIN: The next change is on page 60 dealing with withholding and reporting requirements, section 5.5.

THE COURT: All right.

MR. KAROTKIN: What this does, Your Honor, is basically provide under the plan the mechanism which is reflected in the letters to the APA and the other unions in order to permit addressing backup withholding and facilitating the payment of backup withholding consistent with those letters.

THE COURT: All right.

MR. KAROTKIN: And the change in B is really, was really just to clarify what forms had to be submitted by whom in connection with the payment of backup withholdings. So it was overly broad and covers parties who were not necessarily subject to those requirements.

THE COURT: All right. Thank you.

MR. KAROTKIN: And I did miss something. If you go back to page 16, Your Honor, I apologize, the definition of distribution record date.

THE COURT: I'm there.

MR. KAROTKIN: Originally that provided it was the confirmation date. And being that was anticipated originally that the confirmation date would be the day we had the confirmation hearing and an order would be entered, in light of the DOJ action, the confirmation order may be entered and there may be a time lag between the entry of the confirmation order and the effective date of the plan longer than was anticipated. This is designed to address that so it doesn't really freeze the record date way in advance of the potential effective date.

THE COURT: All right.

MR. KAROTKIN: The next change is on page 77, on paragraph 7.3(c).

THE COURT: All right. I'm there.

MR. KAROTKIN: This is to clarify that the voting of the stock in the disputed claims reserve would be consistent with the stock being distributed to AMR stakeholders under the plan rather than all of the stock of the new company.

THE COURT: All right.

MR. KAROTKIN: My tax partner says I should clarify that the letters that the unions address withholding not just backup withholding, and I'm sure that means more to you than it

means to me.

THE COURT: All right. Next change.

MR. KAROTKIN: 7.4, oh, 7.4(a) on page 78. This is with respect to shares in dispute in claims reserve, and because there may not be necessarily a fixed number of shares attributable to each disputed claim, a direct amount because dollar for dollar as we explained to you at the hearing we had on the reserve motion, this was clarified to reflect the amounts in the reserve that are attributable to it, not necessarily specifically reserved as to those claims. In section 10.9, Your Honor --

THE COURT: Page?

MR. KAROTKIN: Page 94, avoidance actions. We have agreed that in connection with this plan that the debtors would not pursue avoidance actions. Essentially it's kind of an academic point since the plan would be essentially 100 percent plan, there would be no reason to pursue avoidance actions, and frankly I'm not aware of any avoidance actions out there we would pursue anyway.

THE COURT: All right.

MR. KAROTKIN: Section 10.11, this was an issue raised by the Justice Department in connection with I'm sure you've seen this before, in connection with other plans before your Court. The U.S. Attorney in the Southern District of New York has requested modifications to this language to protect

its rights, making it a bit broader than it originally was. And we have agreed with the Department of Justice on this precise language.

THE COURT: All right.

MR. KAROTKIN: And that obviated objection being 5 million. I'm sorry, I missed on page 92, Your Honor, 10.4. Just to clarify that it would cover an order entered by you as well.

THE COURT: All right. C is 99, is that right?

MR. KAROTKIN: 99 is the next one which goes to the ongoing participation of the creditors' committee post effective date. And in discussions with Mr. Butler and his colleagues, there were some changes made to increase the number of committee members that would continue, and to address the manner in which they would be compensated going forward as well as certain professionals. I believe that's it.

THE COURT: All right. Thank you.

MR. KAROTKIN: Okay. And Mr. Perez tells me that schedules 2 and 3 were updated related to executory contracts. No? Which relate to the single DIP and the double DIP claims.

THE COURT: All right. And what was the gist of the amendment?

MR. PEREZ: Your Honor, there were, in the original schedule 2 there was a blank left for the attorneys' fees incurred by the indentured trustee for one of the indentures.

That, in essence, our understanding with them was that they would get their attorneys' fees but in a claim as opposed to being paid in cash. So we had left a blank, that blank has been filled in, it's approximately a million dollars. And then with respect to any fees incurred after those that are properly payable under the indentures, those would be paid in cash. That's the, that's the change to schedule 2. The change to schedule 3 is really to update the numbers because it's about a 2 million dollar difference. Some of them were a little under, some of them were a little over, we just agreed on the numbers with the counterparties.

THE COURT: All right. Thank you.

MR. KAROTKIN: I will note, Your Honor, that in connection with the technical amendments that we just went through, the proposed confirmation order that we are working on will include a finding that these amendments are not material, and do not require solicitation of votes or an opportunity for those who have voted to change their votes.

THE COURT: All right. Anyone wish to be heard on that topic? All right. I don't see any objections to that here today in Court.

MR. KAROTKIN: Your Honor, pursuant to the Court's order approving the disclosure statement and the solicitation procedures and again setting today's hearing, you've also set July 31st as the deadline for filing objections to the plan. I

would note there were a number of objections filed, and we have submitted, as well as the creditors committee has submitted a comprehensive memorandum of law, both in support of confirmation and addressing those objections. We also attached, Your Honor, as an exhibit to our memorandum of law a chart summarizing the objections. And since we filed the memorandum of law last week, I would like if I may to update the status of these.

THE COURT: Certainly.

MR. KAROTKIN: I'm pleased to say that most of them have been resolved. So if you, if you have that in front of you --

THE COURT: I have it in front of me.

MR. KAROTKIN: And then at some point during the proceeding, I know that various statements need to be put on the record to reflect exactly how these were resolved. But perhaps we could save that for after I just go through the status of these.

Number one, as to the United States Trustee's objection, that's still outstanding. Number two has been resolved.

THE COURT: All right.

MR. KAROTKIN: That's the U.S. Airline Pilots Association. Number three is a pleading filed by the Airline Pilots Association. It is not styled as an objection, Your

Honor, it's styled as a reply, and it was filed after the objection deadline. I believe counsel for ALPA is here if they have anything to say, we will be happy to address whatever they have to say. We did actually in our memorandum of law address the issue that they did raise in that reply.

THE COURT: All right. It probably makes sense to, did you just want to deal with these on the merits as we go to the extent that, or do you want to just give me a summary first?

MR. KAROTKIN: Well let me give you, if you don't mind I'll just give you a summary.

THE COURT: All right, the summary, and we'll go back.

MR. KAROTKIN: And then we'll go back to what's open and needs to be addressed. The Clayton plaintiffs, those are the pleadings filed by the Alioto firm. That's still open. Number 5, Allegheny County, that has been resolved. Number 6, Hardware Electric, that has been resolved. Numbers 7 and 8, the Supplemental Pilot Beneficiaries and the American Independent Cockpit Alliance, the former TWA pilots, those are still outstanding. Number 10 --

THE COURT: Nine.

MR. KAROTKIN: I'm sorry, number 9, by U.S. Bank National Association as to the seven and a half percent senior secured notes that has been resolved. Number 10, another one

by U.S. Bank with respect to the 2009-1 WATCs, and the 2011-2 WATCs, that has been resolved. Number 11, again US Bank as trustee for the 10.5 percent senior secured notes, that has been resolved. Number 12, again filed by US Bank Trust National Association relating to the 2009-2 secured notes, that has been resolved. Number 13, the Salt Lake City, the Salt Lake County Treasurer, that has been resolved. Number 14 has not been resolved. Number 15 has been resolved by the Los Angeles County Treasurer and Tax Collector. Number 16 filed by the Texas [indiscernible] jurisdictions has been resolved. Number 17, Miami Dade County has been resolved. And then the next section, Your Honor, there are a number of objections, or I would say letters filed by various pro se parties. That is numbers 18 through 27. Those have not been resolved.

THE COURT: All right.

MR. KAROTKIN: And then when you get to numbers 28 through 32, those are already reflected as a resolved.

THE COURT: All right. Thank you.

MR. KAROTKIN: So I am pleased to say that we have narrowed the issues for today quite substantially and we do appreciate the cooperation of the parties with whom we have resolved objections for helping us to do that.

THE COURT: All right. Perhaps now is a good time to put anything on the record that you need to put on the record to reflect those resolved objections so we can get that to the

side.

MR. PEREZ: Your Honor, the first resolved matter is the one for, Alfredo Perez on behalf of the debtors, the first resolved matter is on behalf of the US Airline Pilots Association, and they did file a notice of withdrawal of their objection.

THE COURT: Yes, I saw that.

MR. PEREZ: We inserted some language in the confirmation order in order to address that. The second one, Your Honor, is the Allegheny County Airport Authority. Counsel is here in the courtroom. And in essence we agreed to, they have disputed claims as a result of a rejection of part of their gates at Pittsburgh at the Pittsburgh Airport. And so we agreed to enter into a scheduling order to in essence put fixed times by which we would object and which we would resolve. So in essence we agreed to file an objection by the end of September and have the Court consider it, you know, do the discovery, have the Court consider it within 90 days from the time of the filing, so we would get a prompt resolution of that matter. We drafted the scheduling order in essence as between us and Allegheny County. I did get a note from the creditors committee saying, you know, obviously they have a continued involvement in this and the stipulation is not intended to do that, obviously, they're going to be a participant to review in what we're doing, so that should not be an issue. But I do

have the, it was filed on the record and I do have the order to hand up.

THE COURT: All right.

MR. BUTLER: Your Honor, on that point, Jack Butler of the creditors committee, we don't have an objection to the stipulation with the understanding on the record here that we have the independent right to object and will participate.

THE COURT: All right.

MR. PEREZ: And that's what was intended. And, Your Honor, the next one is Hargrove, and Hargrove joined in the objection of Allegheny County. Their situation is just slightly different. They have a lien which we dispute in connection with the Tulsa Airport. They had a technical amendment and that being we put some language in the confirmation order to address their issue which is their concern that the confirmation the plan would strip their lien before it was adjudicated. And so, and they filed a motion to lift stay that's currently set for hearing on the 29th in order for them to proceed to try to liquidate their lien. Obviously, we'll address that on the merits. But the immediate issue that they had the concern about we've addressed and then they also have filed a notice of withdrawal of their objection.

THE COURT: All right.

MR. BARKASY: [indiscernible] I just wanted to clarify --

THE COURT: I think you need to get closer to a microphone. I'm sure it's a minefield. You can pick any microphone, for anyone that comes up, there are microphones all over the place so you don't have to hurdle over folks to the extent that you can avoid it.

MR. BARKASY: Richard Barkasy for Allegheny County, Allegheny County and Port Authority. I just want to clarify, the committee doesn't have any objection to the timeframes set forth in the order. Is that correct?

MR. BUTLER: No, Your Honor, we don't.

MR. BARKASY: Thank you, Your Honor.

THE COURT: You're welcome. All right. So that brings us to the resolutions I believe with US Bank in its many varied capacities.

MR. KAROTKIN: Yes, and I'll Mr. Hahn from the Debevoise firm address those.

THE COURT: All right.

MR. HAHN: Good morning, Your Honor. I'll address these four in pairs starting first with the two relating to the long running make whole dispute, the objection with respect to the 2009-1 and 2011-2 WATCs and the objection related to the 2009-2 secured notes. The objection related principally to the issue of assurance of payment should Your Honor's decision with respect to the pay ability of the make hold be reversed on appeal. The parties have agreed to add an order to the, an

order, paragraph to the confirmation order which would provide in essence that should the trustee prevail on appeal and a final order be entered requiring payment of the make whole, that make whole would be payable prior to the effective date by the debtors and subsequent to the effective date by new AAG in cash.

THE COURT: All right.

MR. HAHN: And the parties have agreed on precise language. The other two objections, the objection related to the 7.5 percent senior secured notes and the ten and a half percent notes, those objections have been resolved through a series of identical agreements between the trustee and the debtors. Those agreements are as follows. The parties will work in good faith to agree on amounts due in connection with each of those facilities. I should note that in each case there are, the plan provides for payments in the case of the seven and a half percent cure payment, that facility is going to be reinstated. In the case of the ten and a half percent notes full repayment of the facility that's being paid off because it's matured. So the parties will work in good faith to reach agreement on the amounts due. Notwithstanding anything in the plan, both parties reserve the right to bring any disputes with respect to those amounts to Your Honor for resolution. The debtors agree to pay any undisputed portion of those amounts at the effective date, notwithstanding any

continuing disagreement about portions of the payments due. The trustee's reserve are not waiving any right to assert that all payments must be made on or before the effective date, notwithstanding anything in the plan the trustee's retain the right to seek post-effective date interest to the extent any amounts are not paid on the effective date, and the reorganized entities that are the obligors on the underlying securities would be liable for any unpaid amounts subsequent to the effective date. I believe that resolves both of those objections.

THE COURT: All right. Thank you.

MR. TOPP: Your Honor, Frank Topp on behalf of the US Bank for the 2009-3 senior secured notes and the 2011-2 EETCs in 2009-1, EETCs and that accurately reflects our agreement. With respect to 2009-3 in particular, though we just really think it ought to be resolved sooner rather than later and that's why we reserve our right to make sure it gets paid prior to the effective date.

THE COURT: All right. Thank you.

MR. JOHNSTON: Good morning again, Your Honor, Jim Johnston of Jones Day on behalf of the seven and a half percent note issue. Two clarifications, first on the procedure where any party reserves the right to come back to Your Honor for a determination of whatever is disputed on the amounts owed, the debtors have agreed that they won't argue that this is

something that should be pushed off beyond the effective date, put into the disputed claims process or the like and that if it, if we don't reach agreement, hopefully we will, but that we can come back and have the matter determined before Your Honor before the effective date because that's something that we think needs to be done in the case of an unimpaired claim. The second is to the extent that this isn't determined and resolved by the effective date, the debtors I think it was phrased that we would reserve the right to seek interest beyond the effective date. The clarification that I think we had agreed on was that section 7.7 of the plan would not apply. Section 7.7 of the plan purports to cut off the approval of interest as of the effective date for disputed claims. Here, to the extent we're not resolved by the effective date the debtors have agreed that that provision would not apply to halt the accrual of interest until Your Honor rules and we get paid.

THE COURT: All right.

MR. KAROTKIN: Both those clarifications are satisfactory to the debtors, Your Honor.

THE COURT: All right.

MR. KAO: Dennis Kao for the 2009-2s, just confirming what the debtors described as accurate and we withdraw our objection.

THE COURT: All right.

MR. KAO: Thank you.

THE COURT: Thank you. I believe that brings us to taxing authorities.

MR. KAROTKIN: Right. Salt Lake City has just agreed to withdraw the objection based upon what we reflected in our responsive pleadings which basically is we're going to pay them what they're owed.

THE COURT: All right.

MR. KAROTKIN: Los Angeles County, we've agreed with Los Angeles County to include a provision in the proposed confirmation order which would say notwithstanding section 7.7 of the plan, any allowed administrative expense or allowed secured claim of the Los Angeles County Treasurer and Tax Collector in respect of unpaid taxes shall if not timely paid bear interest accrued and at the rate as determined under applicable bankruptcy law.

THE COURT: All right.

MR. GLASER: Good morning, Your Honor, Barry Glaser on behalf of the County of Los Angeles Treasury and Tax Collector. That is correct, we've agreed to that and therefore we withdraw our objection.

THE COURT: All right. Thank you.

MR. GLASER: Thank you, Your Honor.

MR. KAROTKIN: I would like to point out that we agreed with Mr. Glaser, notwithstanding the fact that he told me he flew United Airlines from LA.

(Laughter)

MR. KAROTKIN: As to 16 and 17, Your Honor, I don't believe there are any clarifications that need to be made, they've just withdrawn their objections --

THE COURT: All right, that's fine.

MR. KAROTKIN: -- based on our responsive pleadings. And the resolved objections reflect exactly how they were resolved.

THE COURT: All right.

MR. KAROTKIN: So I think that brings us current. I would like to mention before we move on to consider the remaining objections, that in addition to resolving the objections that we just went through, Your Honor, we also resolved the potential objection that was to be filed by Appaloosa Management on behalf of the funds for which it is an investment advisor. We had given Appaloosa an extension of time to object, obviously with the permission of chambers, and that was resolved, and I would like to state on the record how that was resolved.

THE COURT: All right.

MR. KAROTKIN: Now this is relating to the NOL issues, so I would ask you to bear with me on this one as well. Because of the significant adverse impact a subsequent tax change in ownership could have on the reorganized company's ability to use its tax benefits, the proposed new charter for a

new AAG contains certain restrictions under disposition or acquisition of stock by what is called a substantial, by substantial stockholders, which are those stockholders owning 4.75 percent or more of the company without board approval to do dispositions or acquisitions. Because claim holders and current AMR stockholders may receive additional shares over the approximately 120 day period following the effective date of the plan, the determination of whether a particular holder is a substantial stockholder during the 120 day period, takes into account such potential additional shares, and it does this by requiring that the holder adjust its actual stock holdings by a predetermined amount based on its existing holdings as of the effective date. And there is a formula to address that. It is possible, Your Honor, in cases where a holder as of the effective date has a combination of existing claims, existing AMR common stock and/or US Airways common stock, that the amount determined pursuant to this formula may exceed the maximum amount the stockholder may actually receive. So the formula could be a bit inadvertently out of whack, and I'm told there's really no way to adjust that in advance.

In this regard, based on the composite of its current claim and stockholdings, Appaloosa has requested approval for Appaloosa and its funds to be able to sell any shares they receive in the reorganized company under the plan even though they may technically fall within the formula inadvertently.

Now based on an analysis of Appaloosa's current holdings, both claim stock on both companies, the debtors in consultation with the creditors committee and with US Airways have agreed that during the 120 day period following the effective date, Appaloosa may dispose of stock they receive pursuant to the plan notwithstanding any potential restriction under the tax benefit protection provisions of the chart. In return, in exchange for that, Appaloosa and the Appaloosa funds have agreed that the collective holdings of the funds in existing AMR stock and US Airways stock and claims will not exceed the funds' aggregate holdings as of July 31st, 2013, so it won't move the needle. That way we know it won't run afoul of those formulas.

The debtors have also agreed in good faith to consider whether there is any amount of additional stock that the funds may be able to acquire during the initial 120 day period without becoming a substantial stockholder. Now those, that request by Appaloosa is consistent with section 6.c of the proposed new charter which anticipates that the reorganized company will where appropriate grant exceptions to the tax transfer restrictions. And this would be a normal process, and to the extent that other parties were to come forward with the same types of issues as Appaloosa, I am told that they would be treated in similar fashion.

THE COURT: All right.

MR. LARIA: Good morning, Your Honor, Tom Laria of White and Case for Appaloosa. Mr. Karotkin has accurately stated the parties' agreement on the record. I wanted to clarify, however, that we have some ongoing issues that are under discussion, including how the math works with respect to Appaloosa's holdings, and we would anticipate that those issues would get resolved pursuant to a good faith discussion between the parties.

THE COURT: All right. Thank you.

MR. PEREZ: Your Honor, just to -- Alfredo Perez. Just to go back to the plan, there was a, there was an amendment to exhibit 2 which is a certificate of designation, and for the most part there were basically clean up changes, and they really mostly dealt with the procedure. So there's a new exhibit B there and that impacted the VWAP (phonetic) which was changed, which Mr. Karotkin told you about --

THE COURT: Right.

MR. PEREZ: -- the definition change, his changes in there. And then the preferred cap conversion amount, definition was also changed. So that's the other change that there was in the [indiscernible].

THE COURT: All right. Thank you.

MR. KAROTKIN: So I think, that leaves us with the unresolved objections. But before we get there, I know that Mr. Butler wants to introduce some declarations on behalf of

the committee.

THE COURT: All right.

MR. KAROTKIN: Perhaps it would be a good time to do that now.

MR. BUTLER: Your Honor, good morning again, Chuck Butler on behalf to the committee. Just responding to Your Honor's desire to get the affirmative declarations in the record. The committee filed six of them on behalf of the committee. There were first was the declaration of Mr. Ross from Hewlett Packard at ECF number 9506. Second is Mr. Eaton's declaration on behalf of the APA at docket number 9509. Third is the declaration of Ms. Gladding on behalf of the APFA at docket number 9510. Fourth is the declaration of Mr. Smith on behalf of Boeing at the docket number 9511. Fifth is the declaration of Mr. Glass on behalf of TWU at docket number 9512. And sixth is the declaration of Mr. Becker, the compensation committee consultant for the debtor, for the creators committee at docket number 9513. We move admission of those declarations, and those witnesses are here.

THE COURT: All right. Any objection to the Court receiving those declarations? Hearing no objections, they are received.

MR. BUTLER: Thank you, Your Honor.

THE COURT: Thank you.

(Creditors Committee Declarations Received)

MR. KAROTKIN: Again, Your Honor, Stephen Karotkin, Weil Gotshal for the debtors. We believe, Your Honor, that with the exhibits that have been introduced into evidence including the declarations of the plan of disclosure statement and the other items, that that completes an evidentiary record in support of confirmation and satisfies the requirements of section 1129(a). The debtors as I said, the declarants are here and available for cross-examination. Again, we believe that those declarations are our affirmative case and demonstrates full compliance with 1129(a). And we are prepared to address any objections to confirmation which are remaining.

THE COURT: All right. So let's proceed with the objections.

MR. KAROTKIN: Okay. So I think, Your Honor, if I could summarize where we are and perhaps make a suggestion as to how we proceed with the objections, of course, deferring to what Your Honor would prefer. But what we have left now is one objection by a taxing authority, that's the State of Michigan, we have the objections filed by the supplemental B pilots and the former TWA pilots. We have the pro se letters, and we have the objection filed by the Clayton plaintiffs and by the U.S. Trustee. My suggestion, Your Honor is that we deal with the taxing authorities, the pilots and the pro se litigants first.

THE COURT: All right. That's fine.

MR. KAROTKIN: And then we can go to the two

remaining. As to, again, I would refer Your Honor to the chart we were looking at on the objections attached to our memorandum of law. And again, referring to the State of Michigan. And I don't know if the State of Michigan is here or not.

THE COURT: Is there anyone here on behalf of the State of Michigan Department of Treasury? All right. I don't see anyone rising.

MR. KAROTKIN: As indicated, Your Honor, number 14 on number 14 on the chart, the objection filed by the State of Michigan objects to the plan to the extent it limits the collection of tax debts due to Michigan from nondebtors. And as we've reflected in our response, the plan does not do that, nor is there any attempt to do that. And we would based on that, ask you to overrule that objection.

THE COURT: All right. And I think it's perhaps in light of your response that no one is here from the State of Michigan saying that they're -- that probably resolved their concern. So in light of irrepresentation and in fact nothing in the plan purports to limit the collection of tax debs due from nondebtors, I will overrule the State of Michigan objection to the extent it actually really still exists.

MR. KAROTKIN: Thank you, sir. With respect to items 7 and 8 on page 2, that's the objection filed by the supplemental [indiscernible] beneficiaries and by the American Independent Cockpit Alliance Inc., the former TWA pilots. I

think we can address both of those together, Your Honor. Basically each of those objections ask the Court to delay the confirmation hearing until the resolution of their pending appeals takes place. There are three appeals by the Supplemental B Pilot Beneficiaries, one of this Court's order abrogating supplement B of the APA collective bargaining agreement. Another appeal of Your Honor's order eliminating the lump sum option from the pilot's retirement plan. And the third appeal is of the order authorizing Your Honor again authorizing the debtors enter into the new collective bargaining with APA. The TWA, the TWA pilots' appeal is of one of those same orders, the last one I mentioned your order authorizing entry into the new collective bargaining agreement with APA. As reflected on our response, there is no basis, there is no legal basis to suspend these proceedings pending their appeal. If they believe they were entitled to some sort of a stay, they could have come before the Court and requested a stay. I'm not aware that they have done that, and based on those circumstances, I would ask you to overrule those objections as well.

THE COURT: All right. Is there anybody here from either of those parties who wishes to be heard at this time? All right. I don't see anyone. I will say at this point that it's fairly well established that in order to preserve your rights on appeal, there are numerous procedures that a litigant

can take advantage of including seeking a stay from the trial court, from the appellate court and those have their legal tests as well as their own obligations. I'll sometimes include a bond under certain circumstances. But absent obtaining such a stay, those orders are what they are, and don't see a basis to delay this case based on those orders, and the appeal of those orders.

MR. KAROTKIN: Thank you, sir. We can now turn to the pro se objections on page 8.

THE COURT: All right.

MR. KAROTKIN: Your Honor, those objections I think really fall into three categories, and they're all, a lot of them are relatively similar. A number of them object to the modification of retiree benefits, a couple of them object to the proposed chairman letter agreement relating to Mr. Borden, one objects to venue, and the last one by Mr. McDaniel requests a delay of the confirmation hearing until the AMR board can resolve [indiscernible] retiree issues. We've addressed each of the objections on the chart.

As Your Honor knows, retiree benefits, the plan that is before Your Honor does not seek to modify retiree benefits pursuant to section 1114. There is a provision in the plan that says, to the extent and it, it's actually set forth on the objection that to the extent that the debtors or the reorganized debtors as applicable are unsuccessful in whole or

in part in obtaining the relief requested in the adversary proceeding currently before the Court, any remaining vested retiree health and welfare benefits would be treated in accordance with the provisions of section 1129(a)(13) of the Bankruptcy Code. And I think that those provisions of the plan address each of the pro se objections relating to retiree benefits.

With respect to Mr. Horton, we believe our response to the U.S. Trustee, U.S. Trustee's objection to the chairman letter agreement addresses those and that can be considered in connection with what the U.S. Trustee has raised. Referring to item number 23, which is a letter from a Rose Watkins, it's an objection to venue. We don't think that's relevant to plan confirmation and I don't think there's any issue that venue was appropriate before Your Honor with respect to why we're here today.

And lastly, with respect to Mr. McDaniel, again his objection is not relevant to plan confirmation because the plan doesn't provide for the modification or in any way address the [indiscernible] retiree program. He's been before this Court many times in connection with his claims to retiree travel privileges. Based on that, on that program and as we've explained in prior proceedings, I'm sorry, prior pleadings filed with this Court which again are referenced in our response, he does not meet the eligibility requirements to be

entitled to retiree flight privileges. And we would request that his objection be overruled.

So based on that, Your Honor, we would request that all of the pro se objections be overruled, of course reserving as to the Mr. Horton issue.

THE COURT: All right. Is there anybody who has filed a pro se objection who wishes to briefly be heard? All right. I don't see anyone in the courtroom who is coming forward to address the items that are listed as 18 through 27 on the chart, that's at docket 9516. And so I do agree that there's nothing in the plan that modifies retiree benefits. Obviously those issues are complicated and I can certainly understand individuals being greatly concerned about those issues, and in light of their uncertainty filing such objections so that they can get as much clarity as possible. But there is nothing in the plan that modifies the retiree benefits. There is an adversary proceeding where certain relief has been sought, in fact there are, there is a pending motion for summary judgment that is before me that I need to rule on, but that seeks a particular kind of relief and has been fully briefed by the interested parties including the debtors and the committee on behalf of the retirees which is representing the retirees' rights. So in light of all of that, and other statements and representations made by the debtors, I don't think the modification of retiree benefits is a valid

basis to object to confirmation.

The issue as to the chairman's letter agreement will be addressed in more detail here today. I don't believe any legitimate question has been raised as to venue, so I don't find that to be a basis to object to the plan. And I think the same is true for Mr. McDaniels who has a particular issue that applies to him. I certainly understand his concern addressing his issues, but I don't think it is a basis for objecting to this plan's confirmation. So with the exception of Mr. Horton's issue, I find that all of those are not a basis for objecting to confirmation.

MR. KAROTKIN: Thank you, sir. I believe, unless I'm missing something, that leaves us only with the Alioto pleadings and the objection filed by the United States Trustee.

THE COURT: All right.

MR. KAROTKIN: And of course as I mentioned, ALPA's reply, and I'm not sure how that --

THE COURT: All right, perhaps we should address the ALPA reply first. I don't know if you want to make a statement about your position or you've already explained what your view is.

MR. COOK: Thank you, Your Honor. Again, David Cook on behalf of the Clayton plaintiffs here.

THE COURT: No, no we're not on the Clayton plaintiffs yet. We're talking about ALPA.

MR. COOK: ALPA, I'm sorry. All right.

MR. CIANTRA: Just very briefly, Your Honor, Thomas Ciantra for ALPA. We have not objected to plan confirmation, we just believe that the record would benefit from a more fulsome description of the debtors' business plan and fleet plan for its Eagle operation. That is the only issue we wanted to bring to the Court.

THE COURT: All right. I trust that, that management and the union can have, continue to have fruitful discussions on that topic. Thank you.

MR. CIANTRA: Thank you, Your Honor.

THE COURT: All right. So that leaves us with two objections to address -- one is U.S. Trustee and the other is the Clayton plaintiffs. Any preferences to what to move forward with at this point? We have some --

MR. KAROTKIN: What don't we move with the Alioto and Clayton plaintiffs.

THE COURT: All right. Let's do that. I don't know if the debtors want to start with their view or we want to hear the objection first. I've read all the papers, obviously, so I don't need parties to belabor points made in their pleadings.

MR. KAROTKIN: Your Honor, our position is set forth in great detail in our pleadings and we would reserve our right to respond to what they have to say.

THE COURT: All right. So let me hear from those

folks who objected.

MR. COOK: Thank you, Your Honor. Let me address the issue of whether or not a Court can confirm this plan. And given the filing by the Department of Justice which was filed on August 13th, Department of Justice seeks a, seeks relief under section 7 of the Clayton Act, and ultimately an order enjoining this merger. We view that as a serious lawsuit to say the least here. I've read the press releases of Mr. Horton which are not only in a public domain but they're part of the filings for the Securities Exchange Commission. Mr. Horton has stated that he intends to fight this, fight being the filing by the Department of Justice. I take him at his word. He also has stated in the most recent filings which are available through the Securities and Exchange website, Edgar, he states while we don't, while we do not yet know how long the court process will take, it is likely it will take a few months. In other words, it's not going to be over sooner than later. He also states all recent leadership announcements for the new merger will be on hold until such time as a merger process continues, etc. I'm sort of summarizing it. So nothing is going to happen tomorrow.

The Court should deny confirmation, the Court I believe has no choice but deny confirmation given the change of events under 1129(a)(11) which is core feasibility. And core feasibility here is, arises out of the outcome of the DOJ

action because the outcome of the DOJ action should this plan be confirmed would be divestiture, and that would be as I like to say unscrambling the eggs. Now this is obviously a complex plan by anybody's standards. This is a merger between two public companies leading to another public company. How, how or at what enormous expense, enormous expense there could be a divestiture which the court in D.C. might order is nearly unfathomable.

THE COURT: Well, my understanding is divestiture is not an issue because the actual merger doesn't take place until that lawsuit is resolved. So my question is more what would be the point of a confirmation order and resolving real live actual objections that might require thought and wading into various thorny issues if in fact there's a lot work yet to be done by the District Court in the District of Columbia, my old stomping grounds. So I don't understand the request to be that there, that anything that I do leads to the actual transaction occurring and therefore need to unscramble the egg, so --

MR. COOK: Well, that's correct, Your Honor.

THE COURT: So how am I to understand your argument then?

MR. COOK: Well the argument is that the debtor seems to be going forward today, I don't think the debtor can go forward, I think the court is correct that ultimately this case, that is this main proceeding that which actually feeds

into why I'm here on my flight [indiscernible] plaintiffs. Ultimately the Court cannot confirm this today, otherwise if it is, should the debtor claim it could be confirmed which is, which it can't be then we'd have this merger. I agree with Your Honor that it is unconfirmable in its current status.

THE COURT: Well, I didn't say its unconfirmable, what I said is I have questions and I need people to provide me with legal authority one way or the other. They may or may not have had an opportunity to do that, given the timing of all these events, but that's what I'm really interested in. I'm not interested in any posturing about the District Court action in D.C., I'm interested in someone providing me with an analysis of confirmation requirements in this context. And I, this certainly seems to be an unusual circumstance, I'm not sure whether it is a unique circumstance, but that's why we all do the research.

MR. COOK: I appreciate it, Your Honor. So focusing on our objections which again connects to the adversary proceeding, we've objected based on the, what we call the litany of discharge injunction and release provisions, essentially pages 91 through 93 of the plan basically, the 10 series here, and we've objected to that because of our concern of an impact on the Clayton plaintiffs as the adversary proceeding.

THE COURT: Well my question for you is why did you

not file a motion? There is buried in various pleadings that you filed a request and this is before there was any action taken by the Department of Justice to put off confirmation or to do other things. And that really was a request for a temporary restraining order. But there are rules about that and there are reargruments for that because the Court has to evaluate certain criteria which are well known to anyone who has done any of that kind of litigation, and I'm sure they're well known to you as well. And they include a discussion about the merits, and they are in cases involving serious issues, but serious repercussions traditionally accompanied by declarations. That is if you say well here's the basis for our concern and here is the declaration of Joe Smith, Jane Doe, and here's what they established on the merits, here's what they established on the harm. It is highly unusual for a successful and perhaps completely unprecedented for a successful application of that type to be without such things because that's what the case law requires. I'm not making up any new or novel requirements. So given the passage of time, I just don't understand why that wasn't done. So I understand your right, you have a right to object to confirmation. But to the extent that you're seeking certain essentially injunctive relief, there's a way to do that and I don't understand why it wasn't done here.

MR. COOK: Well, yes and no. My objection to

confirmation is strictly on the contents of the plan. And our objection to the contents of the plan are the broad injunction provisions here.

THE COURT: Well that's not exactly right because you filed another pleading that was styled something about scheduling, but included the request.

MR. COOK: That's all that is, Your Honor. I think there's the, when I filed --

THE COURT: No, but it included a request for injunctive relief.

MR. COOK: I -- if it was, what we were seeking to do is when I first filed my objection to the plan I received enormous response saying delay, delay, delay. Everybody just said I'm going to delay this plan which you know delay the play, I waited too long, and my goodness what are we doing here. So thinking that everybody's concerned that I delay the plan then I'll take my Clayton action and file it in this Court here, which I've done in this case. And then to avoid without being unkind to Your Honor, that case being unduly protracted what I did here is say okay, everybody is concerned that there might be some delay and some nefarious basis, is to expedite the disposition of that case. That's all I'm asking for, rather than --

THE COURT: Well, there was a --

MR. COOK: -- rather than seeking to enjoin this

merger today or tomorrow, that I'm not doing.

THE COURT: Well, I don't want to belabor this particular discussion in that obviously things have changed since various filings that you've made. I think all the filings you made were before the Department of Justice took action. So let me just ask this very simple question which is a little beyond the scope of your confirmation objection. If you can tell me what your intent is vis-à-vis this action the adversary proceeding in light of the action taken by the Department of Justice.

MR. COOK: Our, well in viewing that within the concept is our adversary proceeding, that is the Clayton action is a standalone and does not necessarily trail or is dependent upon the outcome of the DOJ.

THE COURT: It's exactly the same issue, isn't it?

MR. COOK: Yeah, it's the same but it's not -- if that goes to trial that's a different matter, but frequently those matters are settled.

THE COURT: You would have me try that case while a District Court in D.C. is trying the Department of Justice case?

MR. COOK: Well we do have that right to independently proceed, that's correct. I think as for today here, and for the scheduling --

THE COURT: People have lots of rights, it doesn't

make them a wise, it doesn't make it a wise idea. So you can address that all in, at a later point, I just wanted to at least get an answer to that question. I will tell you that sounds like a particularly unwise course of action, but I haven't researched the issue as to the overlap of such cases, and but my initial reaction is that that doesn't sound very wise at all. But we'll cross that bridge when we come to it, it's not an issue, that particular question is not an issue for today's confirmation hearing.

MR. COOK: Your Honor, also one of the, in your order and of course some of the filings, there are many people who say, why didn't you show up in, some time on or after February th with the public announcement, why didn't we show up upon the filing of the motion in this Court for the merger, disclosure statement, you know, these various touchstones in this case. I think that really gets to a Melane vs. Hanover matter of what type of notice are these individuals entitled to. It's true that American Airlines bankruptcy is public knowledge, but as to these various touchstones they may or may not be public knowledge and that these individuals may not have received notice of them in which they would be able to retain counsel and start to appear. In other words, the Court said why didn't you file --

THE COURT: You're saying that there is some requirement under the Bankruptcy Code that they receive notice?

MR. COOK: I'm not saying there is any requirement.

THE COURT: All right.

MR. COOK: But if the Court inquires in the order of, and your order that you wrote said plaintiff did not file a response, the subtext of that is why not, and the answer is the individual plaintiffs may not have received notice of date time and place. I would agree with you that, absent the most extenuating circumstances, the public wouldn't necessarily know of a particular bankruptcy date or hearing or get notice of it.

THE COURT: All right. Anything else you'd like to say as to confirmation?

MR. COOK: Well we believe that many of our issues of confirmation are subsumed by the fact that the DOJ and particularly that we wish to do everything possible to preserve our standalone Clayton rights and not have them subsumed by this plan. That is really our issue, because we don't think 1129 ultimately could ever subsume the Clayton rights to bar what would appear to be potentially an anti-competitive merger as a claim, as section says, may lessen or tend to monopolize. Thank you.

THE COURT: All right. Well who is representing who here? I'm not going to give multiple bits in the apple. Are you all together?

UNIDENTIFIED SPEAKER: We are, Your Honor, but you did ask one question about the Clayton proceeding in the

District of Columbia and how it relates to your jurisdiction.

THE COURT: Well I don't want to hear, there are three people standing at the podium who look like they want to talk, so you should caucus now, I'm not going to hear from three folks. If there's one additional thing you'd like to bring to my attention, you want to chat with each other and make sure you get everything in front of me, that's fine, but we're not going to have three folks talking on behalf of one party.

Why don't I suggest this? Why don't I hear from the debtors and you all can chat and then you can circle back around briefly.

UNIDENTIFIED SPEAKER: Just so I know, Your Honor, do you wish to have Mr. Cook address that or --

THE COURT: Well as long as I hear from one person. It could be a different person each time but it has to be one.

UNIDENTIFIED SPEAKER: Thank you, Your Honor.

THE COURT: So that's, I think that's probably a fair way to maintain some flexibility.

MR. WALL: Good morning, Your Honor, Daniel Wall from Latham & Watkins for US Airways, who is involved in this, in the adversary proceedings. These issues are obviously sort of comingled together.

THE COURT: Yes.

MR. WALL: So if I may very briefly, I think that

needless to say, the DOJ action was not welcome to us and it will proceed in D.C. it will be hotly contested. I think what we really care about here today is that the issues in the bankruptcy not get all comingled with the issues in the antitrust case. And the Alioto law suit, the Clayton lawsuit is clearly going to put us on a path to do that if it is entertained at this point in time. And I do think that in this instance timing is everything. There is no question that in general a private party, a consumer, has standing to bring an action like this, and when it involves the outfits that are caught up in a bankruptcy, this Court has jurisdiction to hear that. And had this lawsuit been filed some time ago, it is quite possible that that today you would be in the envious position of having been schooled on all of these antitrust issues and having to add them into the mix of all of the things that you have on your plate. But of course, that didn't happen, and this wasn't filed at all until very late. In its initial incarnation, it was filed in direct contravention to the Adelphia decision which actually involved the same lawyers, so there's really no excuse for the several weeks that were burned while this case was in California for no purpose. And now you have this very unusual argument that is being made to you which is you have to give me some timing relief which however you want to cut it amounts to an injunction because I showed up so late that I won't have any opportunity to do this

if you don't give me that relief. That's a fairly audacious argument. It seems to me that if it is true as counsel says, and I know Mr. Alioto from many prior cases and many years that one, that it takes 60 or 90 days to do a case like this, then it can be fairly, be asked why weren't you here 60 or 90 days ago.

Now we're here right now with just a question about how this affects confirmation. It isn't a day that we decide the fate of the adversary action. And our plea to you would be to keep these things separate, don't allow the bankruptcy issues, which are complicated enough on their own to be held hostage to this very late filed antitrust case. What are the consequences of that on the antitrust cases? It's very hard to say, and it's something that should be properly addressed in the adversary proceeding, it certainly would be, it would be the subject of motion practice and full briefing and an opportunity to deal with this. Because the reality is is that you know first principals would take one to the conclusion that they're not going to be, a private party is not going to be able to pursue this after confirmation. And we've never had a case that has involved somebody who showed up so late in these unusual circumstances, and if they want to make an argument about that, they can make an argument about that. I think I know where that's, how that's going to come out. But that should be an issue for another day. We should keep these

things separate, the confirmation should go forward.

Now, I know that you asked for briefing on that, I mean certainly we're more than willing to do that. But I think you sort of already put your finger on it where at the beginning of the hearing when you said that the Department of Justice, exercising its police powers has a right to do this in a particularly different way than anybody else does. And they're pursuing that and we will deal with that in that forum. But for here, the Court schedule on this bankruptcy is entitled to respect, and the fact that they have come in here so late effectively asking for a back door TRO by virtue of putting off the confirmation hearing simply shouldn't be allowed. Thank you.

THE COURT: All right. Thank you.

MR. BUTLER: Your Honor, Jack Butler from Skadden on behalf of the committee. First, as a procedural matter, Your Honor, in response to the Court's order, which was actually entered in the adversary which also set which was also set for today. In addition to filing our objection, our response to the Alioto plaintiffs' pleadings, we did prior to filing the objection, filed both a motion to shorten time at docket number 18 in the adversary and a motion of the committee to intervene as of right, at docket number 19. As a procedural matter, we'd like to present those motions to Your Honor today.

THE COURT: All right. Does anyone have any

objection to the committee intervening to be heard in connection with its question? All right. I don't hear any objection, so I will grant that request and so let me hear from you.

MR. BUTLER: Your Honor, there are two items that I want to, items that I want to address. But before I do so, I just want to say both personally and professionally on behalf of the committee, how much the committee appreciates the Court's decision which we know took some thought and deliberation to proceed today. The committee believes it's extraordinarily important in connection with these cases to proceed in the move to confirmation and to obtain a confirmation order. We're happy to explain that initially today and then in the briefing Your Honor has requested, but we really do want to express on this record our appreciation to the Court.

The two issues that I wanted to address here is first the summary of what our objection says. And then second to answer the question because I think this is probably as good a time, unless Your Honor tells me otherwise, this is as good a time as any to address the broader question of the interplay of the antitrust action and a confirmation hearing. In our objection, we believe, we stated and we believe that the Alioto plaintiffs don't get multiple bites of the apple, and that the rights of a private cause of action to claimant under the

Clayton Act, when a party to a proposed merger is a bankruptcy debtor is different than when the Bankruptcy Code is not in play. And we believe that when, we also believe frankly in the gravitas and the, if you will, in some respects sanctity of the confirmation process under the federal Bankruptcy Code. This is one of the only times frankly, one of the very few times in federal jurisprudence where Congress has established a statute that brings hundreds of thousands of people together with all kinds of disparate interests, and at a moment in time reconciles that in a plan of reorganization which is a contract among everybody. It is a very unusual framework in federal jurisprudence and there is all kinds of case law including at the Supreme Court level which talks about the importance of preserving this process and the importance of preserving the finality of this process, and there are all kinds of special rules that attach to people trying to both involve themselves and to attack this process under applicable law. And it is the committee's position that if the Alioto plaintiffs want to come in as a private claimant and want to argue about the use of the debtors' property in connection with a plan of reorganization, that their sole remedy, their sole ability to do that is to file an objection to confirmation and to seek the Court to deny confirmation of the plan.

Now, having said that, we said to the debtors and I'll say it to the Court, from the committee's perspective, to

the extent that the debtors because of the unique circumstances of the DOJ having commenced litigation. If the debtors would come to Your Honor and say we actually want you to carve out the Alioto adversary proceeding, just leave it out there, deal with it separately, we're not going to press our views on that issue, we'll defer to the Court and to the debtors on that. But we actually think the law is that the Alioto plaintiffs had to file an objection to confirmation, and oh by the way, they did. Now they filed lots of other pleadings in the last couple of weeks, Your Honor, but they filed an objection of confirmation, and that objection is, not got very little to it. The actual objection they filed by the date Your Honor ordered objections to be filed has no there there. It's nine or ten pages long, and you read every line of it, right, there is nothing there that on the merits of that piece of paper ought to permit this Court or require this Court to deny confirmation and that objection should be overruled. They kept supplementing it, they filed an adversary proceeding, they filed several other documents, all late, all after the date that your order, Your Honor ordered it be filed to come before the Court, including within the last number of days. And our view, we said in our papers, that you know, for the record we should, you know, probably combine all those things and call them the Alioto objections and look at them, but that they should be summarily dismissed by the Court in the context of

the confirmation hearing.

And as Your Honor has taught us to do in this case, I'm not going to go through all the arguments and the objections to why, we know Your Honor has read them, but we think that's the law. And we think there's good public principles, we think there's good public policy as to why that is the law. Because when you have confirmation of a plan and it's dealing with all of these disparate interests, and it's bringing them all together at kind of a flashpoint to try to sort of set the stage for an emergence from bankruptcy of a company under chapter 11, if people want to interfere with that or want to have a point of view in that, they've got to come into that process. And, you know, as Mr. Wall said, this notice thing is just really nonsense. I'll say that it's nonsense, I'm not certain what Mr. Wall said, what he said to you was, you know, they, these are the same folks who came into the Adelphia case, they're the same folks who tried to file litigation outside, in another court, they were admonished by Judge Gerber in Adelphia, there is plenty of, written on that subject and they did the same thing here. On July 2nd, they filed a case in San Francisco that violated the automatic stay of this Court, and there's no question at least in the committee's mind that they knew it when they did it. Now, that may all be water over the dam because they're now, they did file an objection to confirmation, in our view, that's the

right place for them to be, but we ask Your Honor to actually consider the only piece of paper that they filed legitimately in accordance to Your Honor's order and schedule, which was, which is what we call Alioto 1 which was the first objection that was filed prior to the objection deadline. So that's sort of point one.

Point two, I'd like, Your Honor, because I think it fits into this line of the hearing, I'd like to take a few minute and actually address Your Honor's questions that you raised at the beginning of the hearing on which I think have been implicated by the statements of the Alioto plaintiffs in their objection if I may.

THE COURT: Yes please.

MR. BUTLER: Your Honor, I think it's important that as with all matters that create uncertainty and create sort of a dislocation in how parties are considering an action that as Your Honor has, that everybody take a breath and take a step back and look at where we are. And certainly the committee did that. The committee met earlier this week after the Justice Department complaint was filed and what we did was we said, let's just look back at all the things we've said to the Judge, and all the things that we've said to our stakeholders, and all the things that are included in the orders entered by this Court up to this point in time, and let's put this in context. And to do that, you have to look at the merger agreement, you

have to look at the plan of reorganization, and you have to look at the disclosure statement. It's important because two of those three documents have been reviewed extensively by this Court after noticing the hearing and approved by Your Honor. The merger agreement had its own separate approval track, and there's a final order of this Court approving the merger and all that it says.

There is a final order of this Court approving the disclosure statement and all that it says, and based on the disclosures that went out, as is now into evidence. Every class of creditor and equity holder entitled to vote on this plan has overwhelmingly voted in favor, frankly by numbers that in my career I have not seen in a case. And they're all north of 90 percent when you look at them. I think there might be one [indiscernible] class of 86 percent or something like that. But they are astonishing in terms of how the support that this had. And there are a lot of disclosures about what would happen in this case and how we would, one would execute a merger as part of an emergence from chapter 11. So I'd like Your Honor if we could, at the Court's indulgence, I'd like to just to take a few minutes and go back and look at those agreements, and look at what has already been approved by this Court, what's already out there in the public and the framework that we have all constructed to consider this eventuality. Because the fact is as unhappy as it is from the committee's

perspective that the Justice Department has done what it's done, and I'll not comment on what they did because Your Honor has asked us not to do, we have strong views on all those issues, but that we'll not raise that in this courtroom today. But they filed the action that they filed, it will be dealt with in the District of Columbia, and we now sort of say to ourselves, did we plan for this eventuality? We thought we did, and we did. Did we disclose it properly? We thought we did and I think we did. And I think that there is the opportunity for the Court to do what we think is not only permissible but mandated under 1129 which is to enter at the appropriate time and Your Honor is comfortable that all the issues have been vetted, a confirmation order that essentially resolves the principle issues in this case pending the condition preceding the consummation of the plan which is the regulatory approval.

And how do we get there? Let's start with the merger agreement. The merger agreement has in it a number of important provisions. One of them is at section 5.1(b) of the merger agreement, which are the conditions to each party's obligation to affect the merger. And 5.1(b) is the provision that deals with regulatory approvals. And it says, excuse me, it says that everybody, you have to go and get all the required regulatory approvals and happily the fact is that the parties have gone out and they have obtained most of the regulatory

approvals. There are a lot of regulatory approvals that have come in from regulatory authorities outside of the United Stated as that are required to be obtained, there have been a number of regulatory approvals that are, that they're done with, those boxes have been checked. As I understand it, there are two outstanding, one from the Department of Justice who has commenced the Clayton Act and action, and the other from the Department of Transportation here in the United States. All right. So what does that mean under the merger agreement? Well it means a couple of things. First, there is in section 4.7 of the merger agreement a contemplation that this event might happen. And if this event happened, what would the obligations be of American and US Airways. Well the merger agreement answers that question. It says the parties will have the obligation, and I'll quote, to cooperate with each other and use, and cause their respective subsidiaries to use their respective reasonable best efforts to defend any lawsuits from legal proceedings, whether judicial or administrative or actions by a governmental entity challenging the consummation of the merger or the other transactions contemplated hereby including using reasonable best efforts to seek to have any stay or other injunctive relief which would prevent or materially delay or impair the consummation of the transactions contemplated by this agreement entered by any court of the governmental entity reversed on appeal or vacated.

Now, the agreement doesn't stop there, the framework that was approved by this Court does not stop there, it goes further. It says that one might ask, what does reasonable best efforts mean? Well, the merger agreement answers that questions, it defines it. It says, in the very same section it says for purposes of this section, reasonable best efforts will include, each of American and US Airways agreement to first sell, hold, separate or otherwise dispose of its assets or the assets of its subsidiaries, or conduct its business in a specified manner; or two to permit its assets or the assets of its subsidiaries to be sold, held separate or disposed of or permit its business to be conducted in a specified manner. And there are other provisions that go on. All right.

So we now know that this event was contemplated and the obligations were set out and in fact even remedies and settlement opportunities are spelled out and authorized in the merger agreement. One might say, okay, well how about the bankruptcy court, how does Judge Lane know, how does he get comfortable that he hasn't been cut out of that part of the process. Everyone understands Your Honor that you're not going to be deciding the Clayton Act issue. But presumably this Court would want to say how do, I have comfort in this framework that if something happens in the Clayton Act issue, which is supposed to happen is the creditors committee and the debtors are urging after I enter the confirmation order, now do

I have comfort that something comes back to me if it's going to affect what I've done. Well, that question is also answered in the merger agreement. And it was answered in the merger agreement in the very same section in 4.7 in which it says that American, and this is in sub clause Z of that section it says that American's reasonable best efforts are qualified by the fact that in the case of American, American can't do something that is not permitted by the Bankruptcy Court, provided that American has used its reasonable best efforts to, and it's taken all reasonable action necessary to promptly obtain permission to take such action from the Bankruptcy Court. Which means, Your Honor, that if you read this section, and re-read it carefully, we understand in the framework that's been set out that if there is a reasonable best efforts resolution of this where there's a settlement, there is some disposition of assets or so forth. In the case of American, there's a provision that provides oversight of this Court, which it ought to and which we understand. And that was all put into the very architecture of the merger agreement approved earlier by Your Honor. But the merger agreement doesn't stop there. It lays out a framework and a timetable that all this goes on for. So when you look at section 6.2 of the merger agreement, in the termination section, in article 6, what you find is that there is an opportunity to terminate and abandon the merger at any time prior to the effective time of the merger by either

American or US Airways, if and there's a number of conditions, but the relevant one here is as of October 14th, 2013, which was the original termination date or drop dead date, the condition set forth in section 5.1(b), remember that's the one that I quoted to Your Honor earlier, those are the regulatory approval sections, if they have not been satisfied or waived, the termination date may be extended from time to time by American or US Airways one or more times to a date not beyond December 13th, 2013, although there are the abilities to amend that date. And then there's a further provision in section 6.2 that actually amends December 13th by when the second request was actually certified in terms of substantial compliance of it, so if you actually do all of the arithmetic, Your Honor, December 13th is probably December 17th in terms of looking at the dates.

So we have a framework in the merger agreement that says all right, there may be this litigation, here's how people will defend it, here's how people may settle it, here's how the Bankruptcy Court interacts with that, and oh by the way, the timeframe isn't this week or next week, it is a timeframe going throughout the fall through mid December.

So that's the merger agreement. Now -- oh, by the way, the merger agreement also has another important section which is, there is a requirement of the parties, and this is in section 4.20, the parties have an obligation to go seek

approval of the plan and obtain the confirmation order and to do it obviously promptly and if you look at the construction of the merger agreement, in advance of the effective time of the merger, in advance of the conditions to closing of the merger. So 4.20(a) requires American to diligently pursue confirmation and consummation of the merger, and that's, and 4.2(c) requires US Airways to use its reasonable best efforts to assist and cooperate in connection with getting, obtaining the confirmation order.

So given these risks and given these issues and given the process that's going forward and given the sequencing of this, the question becomes, how did the plan deal with it, which is before Your Honor for approval today, so it's just a plan at the moment, but also how did the disclosure statement disclose this to everybody when they voted in the overwhelming way they did to support the merger.

And let's first deal with the plan provisions, because the plan provisions deal with the sequencing of these issues in a way that is completely unambiguous. Section 9.1 of the plan says, here are the conditions precedent to confirmation of the plan, and section 9.2 of the plan says here are the conditions precedent to the effective date of the plan. 9.1 requires essentially that the plan supplement in the form of confirmation order that Your Honor might be willing to enter at some point in time be satisfactory to both debtors and US

Airways and reasonably satisfactory to the committee, among others. Those are the conditions for the confirmation order. So have we solved all the problems we need to subject to the things that have to be done to close the merger, and are we all in accord and present them to you, and are you prepared to enter them? What are the conditions of the effective date? Well those are at 9.2. And 9.2 deals with receiving all of the authorizations, consents and so forth, and one can't read, and 9.2, to part 2 deals with the conditions preceding the consummation of the merger having satisfied or waived. And one can't read that section out of context, one has to read it in connection with the merger agreement itself, and understand that when we're talking about at least in this deal we're talking about receiving regulatory approval, it's not just a boilerplate provision, it's actually referencing a very thoughtful construct that was put together in the merger agreement about not just getting the normal regulatory approvals where there is consents, but also what happens if you don't get the consent and you have to deal with disputes. And that was, that's been carefully thought out and is sort of part of the framework. Well that's in the plan, how did we disclose it, how did we tell people about this and how did we describe and what assurances did we give stakeholders when they voted on this plan, that could give Your Honor some confidence if you consider entering in the confirmation order that the debtors

and the committee are urging you to enter?

And I'll point to a number of sections in the disclosure statement because this too was carefully I think thought through. Number one, the disclosure statement in section F, or excuse me, section 4 of the disclosure statement talks in great detail about the merger and about the constructs of the merger, and as well as dealing with the disclosure statement conditions to confirmation of the plan and to the effective date of the plan. So this constructs that there are some things you had to do by confirmation and others that had to be done before the plan could be consummated, that construct and the temporal relationships of them was disclosed to everyone before they voted. But we didn't stop there, all right, because there are risks associated with a merger. And so in section 8 of the disclosure statement, the disclosure statement talked specifically disclosed to voters that one of the risks were that consents and regulatory approvals that could be, that needed to be obtained might not be obtained, and acknowledge that that condition was not within the debtors' control and that the debtors could not predict when or if these conditions could be satisfied. Also went on to say, and I quote from section 8.A.1, if any of these conditions are not satisfied or waived prior to the termination date set forth in the merger agreement, which is October 14th as it may be extended, I've described Your Honor, how that moves to December

under the construct that we're in today, it is possible the merger will not be consummated, the disclosure statement goes on to say. And then the disclosure statement has a very important disclosures, and one which I think can give the Court considerable confidence about how people thought about this transaction. It says, failure to consummate the merger in accordance with the merger agreement may result under certain circumstances in termination fees payable by the debtors, among other things. And then goes on to say, in addition, if the merger is not consummated pursuant to the plan, the confirmation order will be vacated, the plan shall be null and void and the administration of the chapter 11 cases will continue. So in its clearest terms, the disclosure statement as approved by Your Honor and is sent out to hundreds of thousands of people upon which they voted, made it very clear that the temporal structure of this particular transaction was that we would get everything done that needed to be done by the confirmation date, we would obtain the confirmation order, and then we would deal with the issues to the effective date of the plan which could be some time later, including the potential of litigating with the Department of Justice and all the issues associated with that, even laying out the framework for how to settle that and what would happen in this Court's involvement in that, and then said to everybody, oh by the way, in terms of the vote you're casting here, if none of that works, right, at

the end of the day if it doesn't work, what's the effect of your vote, and what's the effect of the Judge's confirmation order. There is an assurance provided both I think to this Court frankly and to the stakeholders that this Court is concerned about which says on its terms if that happens down the line, that unhappy circumstance happens, right, then the confirmation order becomes vacated, the plan is null and void, and chapter 11 continues and we deal with part 2, and figure out what happens there.

And so, Your Honor, what I simply want to say on the record here is that while nobody was, is pleased by the actions the Justice Department took on Tuesday, I think it's important in the context of confirmation to say and to note on the record that there was a very thoughtful construct put into the merger agreement, the disclosure statement, both of which have been approved by the Court, and the plan now which we're asking you to confirm, which lay these things out. And in our briefs, and certainly that you're asking us to do we'll argue this point, but I simply want to close this piece of the argument, Your Honor, by making the point that if you're talking about best interest of creditors, balancing of harms, my view even judicial economy, preserving the value of the estate, any of the things that we talk about as restructuring lawyers and in a reorganization context, I would urge Your Honor that every one of those interests are promoted and are preserved by Your Honor

entering the confirmation order, moving this case into a post confirmation phase, allowing the merger to play itself out and to the issues to consummation of the plan to lay themselves out. I think as Your Honor knows, we have been meticulous from the committee's perspective in conditioning so many things relating to like management comp and other things to the occurrence of that effective time, that we've done to make sure to protect the estate if that doesn't, if the effective time doesn't have, and understanding. And I think all the parties can understand, and the message is best interpreted by the markets and best interpreted by stakeholders and people can best conduct themselves in an environment where people say, okay, I get it, I know the rules here. There is certainty in the rules. This is the confirmation order, this is the plan and if the US Airways and American either settle or win the Justice Department situation, this will be the outcome. And the fallback is if that doesn't happen, what I know is this is vacated, the plan is null and void, and we're back in administration, and we'll deal with what happens next. Because I think what's clear, Your Honor, I think the evidence you have before you in the record makes clear is whatever, what happens next in that unhappy context will be a different, will be in a different place, and it will be a different plan. But because it would be a different plan in that contingency, that doesn't prevent the Court from confirming this plan which has been

appropriately developed and appropriately disclosed and overwhelmingly approved by stakeholders. And there's nothing in 1129 that prohibits confirmation of this plan. In fact, I think all of the interests that Your Honor tries to balance as it relates to these matters in terms of what's best for the stakeholders in this case are promoted by entering the confirmation order. And we'll deal with all of this, Your Honor, in the post-hearing briefings that you're asking us to do. But I, and I appreciate the Court's indulgence but I thought it might be helpful to just to get on the record what the actual framework is in which this, and the context in which I think all this should be considered.

THE COURT: Thank you.

MR. BUTLER: Thank you very much.

THE COURT: I'll hear from the debtors.

MR. KAROTKIN: Your Honor, again Stephen Karotkin. Let me just go back to Alioto for a brief moment. I think you put your finger on it when you said they are seeking TRO relief and that's one of the items before the Court, and of course they haven't complied with any of the procedural requirements for that. And if they think they're entitled to some sort of relief like that, they ought to file appropriate pleadings and we can address them. I think before your Court today is their objection to confirmation which you can address to the extent that they believe, I believe as Mr. Wall indicated, they have

any rights with respect to their adversary proceeding, they are free to pursue whatever rights they have subject to whatever happens in this Court, and the debtors and all other parties in interest are free to pursue whatever rights they have in connection with that adversary proceeding. And for them to come in here at the eleventh hour and basically throw themselves on the mercy of the Court when it seems abundantly clear, Your Honor, as we've noted in our pleadings that they tactically decided to wait to the last minute for whatever strategic reasons they have they tactically waited to do that and they ought to live and die with those consequences. And so we would request again that Alioto's objections be overruled and that we proceed with confirmation.

I would echo Mr. Butler's comments with respect to the importance of moving forward. And as I indicated in my initial comments, this was contemplated by the plan and it was contemplated by the merger agreement, it should be no surprise to anybody, and I don't believe that any finding that we are asking you to make in connection with confirmation of the plan under section 1129(a) is really implicated by the Department of Justice lawsuit. I would note, Your Honor, that the feasibility and you did mention a concern about feasibility, the feasibility finding that we would ask you to make is in the context of this plan, in the context of this plan being confirmed and this plan becoming effective. And this plan only

becomes effective, Your Honor, if the merger closes. And the projections that are included in the disclosure statement disseminated to the hundreds of thousands of people are premised on that taking place. And I would note, Your Honor, that those are five year projections, they go on for five years, and remember the context in which those projections exist. Again in the context of a merger, in the context of a plan of reorganization, Your Honor, that in terms of satisfaction of obligations under the plan, again feasibility, what's relevant to feasibility, satisfaction of obligations under the plan those are being satisfied predominantly in equity, not in cash distributions. In addition, as indicated in Ms. Malay's affidavit, again, premised on the merger, the projected cash position of the reorganized entity is upwards of $7 billion, so there is an enormous amount of flexibility built into the capital structure of this company coming out of chapter 11 again premised on the merger to address any particular volatility in the market place associated again with a five year horizon. And I don't think there is any difficulty, Your Honor, finding even sitting here today that this plan is feasible in the context, again, only asking you to determine that in the context of the merger closure.

MR. COOK: Your Honor, I'd like to close this. The Court inquired the Alioto plaintiffs as Clayton action plaintiffs have an independent standalone right. The case law

is clear that they have a favored right to pursue an action to enjoin a merger which may lessen competition.

THE COURT: No, I understand you have an independent right to bring a lawsuit.

MR. COOK: And it's a favored right. We also wish to address the other issue that in some way the Alioto plaintiffs, the Clayton act plaintiffs made a strategic decision or in some way sought to manipulate the system by filing this late. That is categorically rejected. We have not received the Hart-Scott-Rodino documents, and in fact, the best document, or the only document that came out was the June 19th, GAO report, and when the GAO report came out it itself said we're waiting for the DOJ and see what their position is.

THE COURT: Well, but that works two ways, right, to the extent that you're saying your case is based in the Department of Justice, there is a Department of Justice case that is, that must be resolved for any effective date to occur. So I under -- and so this gets a little confusing and dicey. On the one hand you're saying that you're separate independent plaintiffs, and you have your action in which case in some ways you're viewed independently of whatever else is going on. On the other hand, you're saying well, we're sort of talking about what the Department of Justice is doing in which case you say I understand you have an independent right to file a lawsuit, but relying on that lawsuit for purposes of relief requested in

this case is a bit dicey, right, because the Department of Justice is going off and doing what it's going to do. So do you think it is fair to view your adversary proceeding in isolation essentially for purposes of a confirmation objection, say well, you are where you are, you've explained to me why you took the actions you took and didn't take the other actions you didn't take, and just evaluated for purposes of a confirmation objection on that basis?

MR. COOK: Well actually let me, let me flip that over. What I've heard from Your Honor and obviously counsel of for the debtor and counsel for the committee is what's your proof, why are you seeking to delay or adjourn as they said, the Southern District a multi-billion dollar action based upon the filing of an adversary proceeding in this Court by myself and filing multiple, multiple objections. And the, you know, what's the proof in the pudding for lack of a better expression here, and the proof in the pudding as we say is what the DOJ said but ultimately the legitimacy of our claims and our ability to prevail is brought to fruition by the DOJ filing, the DOJ filing, because if the claim is, if the claim is I'm asking for a prompt trial or I'm asking to make sure my claim is preserved, somebody said well how do we know you have a decent claim. For purposes of saying do I have something there more than the allegations on a 26 page adversary complaint filed in this Court. The answer is well the government

obviously thinks so.

THE COURT: Well again, that's a double-edged sword, right, I mean surely you have to recognize that. So if I, if you want me to essentially rely on what the Department of Justice is doing, well that's a separate lawsuit.

MR. COOK: Correct.

THE COURT: And I may decide to enter a confirmation order today, two weeks from now, I may wait, I'm going to reserve judgment on all of that. But if you're relying on the Department of Justice, well that lawsuit obviously is going to go to a conclusion. So, but you're not, that's not what you're doing, you say we have a separate lawsuit and I can't quite suss out what it is that you want to do with it, in light of the Department of Justice, so --

MR. COOK: I think --

THE COURT: -- if you're, every time I ask you a question you keep you saying well the Department of Justice lawsuit, and that's fine but you've got a separate lawsuit. And until Tuesday, the way you prosecuted it raised some questions with me. If you had an adversary proceeding, you say based on that adversary proceeding we think that there should be an injunctive relief entered to protect our rights, there's a way to do that, and that wasn't done. So it's a bit of a mess, life is complicated, this is a perfect example of that phenomena. But I still don't have much clarity from your point

of view how you want me to consider your lawsuit, and I take it your lawsuit really is the basis for the objection. And so that's why I said funnel everything back to the lawsuit in terms of your, your ability, need and as a practical matter what you actually have done in it to tee it up for purposes of today.

MR. COOK: The answer would be the following. It is apparent after listening to the Court and due respect to counsel that the DOJ is not going to, this matter is not going to be resolved tomorrow at the Department of Justice. That's clear. And apparently the debtor anticipates maybe they'll never get clearance and this case will go on and on and on, and in fact if they don't get clearance, then this, then American Airlines may exist as a standalone entity. We don't know, we cannot tell at this point. So we're really asking for two things here. We're asking that the Court, it deny confirmation or alternatively continue confirmation until the disposition of my action, which in this case given the Court's request for a briefing and given 30 or 60, or whatever --

THE COURT: Now wasn't, wasn't, well, go ahead.

MR. COOK: Okay. Well, I mean the Court is going to consider this, you know, I asked the Court. And then ultimately yes, my case will take, will continue as an adversary. However, as in many plans over many years I've looked at plans, is plans, many plans as this seek a discharge,

an injunction and a release well beyond normal debtor creditor because we all know plans are a contract between the debtor and its creditors, and they usually say when we pay you the 10 cents on the dollar or the 30 cents on a dollar or the stock or equity, your claims are discharged. That's standard discharge provision. In this particular case, the terms of this discharge, the discharge, the injunction, the injunction against interference, the release, that vast machinery goes well beyond what a debtor creditor would ask for. So in focusing on one of our key objections is for the Court to carve out that against my clients. And in effect, what I'm concerned about which happens more than once is that a debtor will use a discharge provision in a confirmed plan for collateral purposes. That in my experience is near expected. Many plans have these collateral discharges, releases and we all know they're for purposes of ancillary litigation against third parties, typically discharging a guarantor who has a claim against the principal of the company, that's the standard, let's get the discharge of that, you know. We see that all the time. And all the time doesn't mean a happy moment here. And we view this in the same tenor here.

So I'm asking the Court to carve out that discharge, asking for it to continue this confirmation, or suspend the merger until the Court at least hears, hears or at least at the status conference our adversary, the status conference is set

September 12th before Your Honor. I think we will all have a better idea by then of how we're going to proceed. But I certainly don't want to get my knees cut from underneath, whatever it would be, I cannot remember the expression, by sitting here, by staring at these discharge provisions and then having somebody file a motion for summary judgment and wiping out my claim action.

And compounding this, I listened to counsel, I've been doing this a long time, and 1129 has no machinery to dispose of Clayton claims. That -- sure, it's a vast machinery, sure, I've been starting at it, I started in the Bankruptcy Act not the Bankruptcy Code. So I started with 1129 in 1978. It has nothing to do with a Clayton claim.

THE COURT: Well how do you respond to complaints made by the debtors and the committee about the way you've proceeded here in light of Judge Gerber's decision in Adelphia?

MR. COOK: Well, this is what happened. My co-counsel obviously filed in Adelphia, goes on appeal, and says you can do that. I get that. So co-counsel files in the United States District Court Northern District of California and we get a letter saying, gee, you know, you're doing the same thing in Adelphia that you ought not to do. What counsel hasn't told you is that Mr. Alioto entered into a stipulation putting the Northern District of California case on hold pending potentially a motion for relief in the automatic stay.

Sot that case got resolved with a signed stip. So to say here that, you know, we did terrible and awful things and violated the automatic stay, and yes, maybe the automatic stay, but we sought to resolve that at the request of counsel. It came to me and my first thought was file a motion for relief of the automatic stay. And then I went through all of the motions for relief of the automatic stay in their northwestern case out of this Court, many of them somewhat related and those were routinely denied by Judge Groper I believe based on, you know, an extraordinary case, you can't have the debtor running around all over the country defending these things. So after looking at that, I'm and reading the Financial News Network case, then I ultimately came to the decision to file here in this Court rather than, rather than walk around, come to this Court and ask for relief under 362(d) of which we were concerned that you would not grant relief at all, and say I'm not going to let United Airlines go out and fend off some antitrust action by a private party 3000 miles away. So we brought it to you, that's why it's here.

THE COURT: But you must appreciate that that was filed less than ten days before today's hearing.

MR. COOK: Absolutely. It was filed because as, and by the way, the bibliography between the Clayton Act and 1129 is very thin.

THE COURT: All right.

MR. COOK: It's not -- so we, I don't think I'm asking for a lot. I just want to make sure that my case, my case -- I knew I would get that sooner than later, it's just a matter of time. It's all right -- that my case survives.

THE COURT: All right.

MR. COOK: Thank you, sir.

THE COURT: Thank you.

MR. WALL: Your Honor, may I just respond very briefly?

THE COURT: Sure.

MR. WALL: Again, Dan Wall for US Airways. First of all I just want to point out that with respect to the stipulation he's talking about, the sequence of events is that the California action was filed, we did object to it under Adelphia. Mr. Alioto advised me that he was going to seek relief from the automatic stay. A few days later, I contacted him to say our time to answer the California complaint is upon us. What are we going to do about that? We entered into a very perfunctory stipulation that just kicks off our answering obligation. That was it. That was the entirety of the stipulation. Then they decided to change course and not seek a stay to file the adversary action and the rest is history. This is on the agenda in two different, with two different hats, both as the confirmation and the request for some sort of accelerated schedule in the adversary action. So just to

complete it, let me just kind of connect these things. It just seems to us that at this point that in light of the obvious laches problem and the comments that the counsel for the debtors and the creditors committee have made about how the plan works, that the, the solution here should be to not allow this to be a valid objection to the confirmation or the plan, go forward with however you would go forward with that, and then we should just simply start the process, the normal process in the adversary action. You know, the whole logic chain for this was going to be that he needed this to put off the confirmation as what we refer to as a backdoor TRO because otherwise the deal was going to close right after the plan was confirmed or it could close at any time. We know that's not going to happen now, it's going to be a while, so there isn't time to deal with that.

THE COURT: Well then what about the statement that he made that he's concerned about his claims being precluded by any confirmation order that would be entered?

MR. WALL: I think that's the least of his concerns.

THE COURT: Well, I don't know about that, because certainly the argument is and we'll get to releases later, but that semblance as well, you know, I'm happy to go ahead with my case if I really am going ahead with my case. So that's one of those issues that I think is a legitimate concern if you're in his shoes. So there are simple answers to that and more

complicated answers to that.

MR. WALL: Right.

THE COURT: I'm not telling you what your answer should be, I'm just trying to figure out what your answer is.

MR. WALL: I think the answer, I mean to me I was eluding to that earlier, that's the hard question that we have to deal with in terms of that we would deal with whether it's by way of a motion to dismiss or something like that in the adversary proceeding, what the effect of this is. We're not trying to set up a gotcha though.

THE COURT: Yeah, but that's why you're going to get -- well --

MR. WALL: If that's what the worry is is that we want you to do this --

THE COURT: Again, this is an extraordinarily awkward set of circumstances. I'm, the pleadings that I received before confirmation, all but one which was not filed by the Alioto plaintiffs addressed events prior to Tuesday.

MR. WALL: Right.

THE COURT: And that's one world that we live in and there is clearly a bit of a disconnect in terms of asking what these plaintiffs are looking for and how their case should be considered, or whether it's their own separate case as you would view before Tuesday, or whether it's essentially don't worry about me, the Department of Justice has sort of solved

any problems you might have with me by virtue of filing their own case. My question is it is not uncommon and perfectly appropriate for folks to say here's a confirmation order, and here's the release and discharge provisions, and you're out.

MR. WALL: Right.

THE COURT: And I'm not saying that's right, I'm not saying that's wrong, but there are times when the practical responses to various questions about the scope of those things solves a very practical problem.

MR. WALL: Understood.

THE COURT: So that's why I'm teeing up, you can mull it over at lunch, we clearly need to take a break fairly soon, and then come back and deal with the U.S. Trustee's objection. So I don't want to put anybody on the spot, and I'm not telling anybody what their answer should be, I'm just saying that that's a very practical question.

MR. BUTLER: Judge, I mean the reason I rise now, I don't know that we need to think about for a very long period of time. If you look at article 10, the things he's complaining about don't occur until the effective time, the consummation of the plan and the effective time of the merger, right. None of that, it's again it's temporal business, none of that happens by virtue of your confirmation order, never happens at confirmation. All these things happen later.

THE COURT: Again, that's fine. The point is do

people want to debate about it after the fact if there's a confirmation entered, or do they want to say, well we can solve the clarity problem. If people say well I'm giving you ice in the winter, it's already in there, fine, and people say well actually it's you know we might argue about it. Again, I don't really care in some ways what the answer is, I just think it's a fair thing to know what it is that's being requested of all parties. So it may be the debtors say it's not an issue the way we read it, we'll make a representation or Judge, we've asked for what we've asked for, and it may or may not implicate these folks, in which case these folks are essentially asking for a carve out. I just want to know from a case in controversy standpoint I have to decide.

MR. WALL: Well we'll take you up on that invitation.

THE COURT: That's fine.

MR. KAROTKIN: Your Honor, we want to discuss it during the break.

THE COURT: Yeah, that's fine. Again, I'm not even saying that there is a right answer, but my job is to, more than half of my job is to identify what the issue is that I'm being asked to decide.

MR. WALL: And clearly if that is resolved, than it paves the way for him to, we can just proceed with the adversary proceeding on, in normal process, meet and confers, all those old fashioned things like that so that we can

actually present you with a plan.

THE COURT: No, I understand that. All right. Thank you.

MR. WALL: Thank you.

THE COURT: All right. I think that's all that we were going to discuss unless the debtors have anything else that they want to add.

MR. PEREZ: Your Honor, just one housekeeping matter.

THE COURT: All right.

MR. PEREZ: Your Honor, we have five witnesses that are all present in the courtroom. I don't believe there's going to be any cross-examination. Would it be possible to release the witnesses?

THE COURT: Yeah, let me --

MR. PEREZ: They may stay.

THE COURT: That's a very fair point. There are not only witnesses that, declarations provided by the debtors, there have been declarations provided by the committee, I do not understand that there's been any intent expressed to chambers to cross-examine any of those witnesses. If there is such an intent, speak now or forever hold your peace, and we can allow these folks to go on about their daily lives. All right. I do not see anyone rising, in which case I will say those witnesses are released from today's hearing.

MR. PEREZ: Thank you very much, Your Honor. We

appreciate it.

THE COURT: Certainly. All right. So it is now 25 minutes before 1:00. The one remaining objection to be discussed is the United States Trustee's. It would seem to be a good time to take a break for lunch, and then come back. So why don't we say a quarter to 2:00 and I'll see you all then.

(RECESS 12:35 PM to 1:53 PM)

THE COURT: Good afternoon. Please be seated. All right. I believe we have one objection left to address. Are there any preliminary matters that we need to address before turning to that objection which is that of the U.S. Trustee's Office?

MR. PEREZ: Your Honor, at the break counsel for Bendis (phonetic) and Fenoma (phonetic), which are both Brazilian governmental agencies, wanted me to clarify that the change that we put in for the governmental carve out and I think it's at 10.8 would not cover Bendis or Fenoma which are both Brazilian. It wasn't intended to do that, somebody could read the language to be a little broader than that, but I just wanted to put that on the record.

THE COURT: All right. Thank you. Anything else? All right. So let's turn to the objection of the U.S. Trustee's Office which is loosely set around two issues, one is payment, payments that are contemplated which to different parties as well as releases. So I thought we'd address the

release issue first and maybe I can hear from all parties on releases first, run that issue to the ground and then we can turn to the payments.

MR. KAROTKIN: I think, Your Honor, based on conversations we had with Ms. Golden, we can address the release and exculpation objection pretty quickly. I think they've agreed to withdraw it.

THE COURT: All right.

MR. KAROTKIN: Based on an understanding of the provisions in the plan, and Ms. Golden can confirm that.

THE COURT: All right. So let me hear from the U.S. Trustee's Office on that.

MS. GOLDEN: Good afternoon, Your Honor, for the record, Susan Golden for the U.S. Trustee. Your Honor, we had objected to the releases and exculpations unless and until the debtors made a more fulsome record that they have complied under the Second Circuit standards of Metromedia as well as the Dryer decision. The debtors in their omnibus reply to the objection and confirmation memo have indeed supplemented their record and now the U.S. Trustee basically leaves it up to Your Honor to make the determination as to whether or not they met their burden.

THE COURT: All right. Do you have any position on whether such finding is appropriate? I certainly have seen cases where people say well no, what we need is the finding,

but we perfectly are fine with the finding based on this record. Or there are times when people say, we understand that you need to make a finding and we disagree that a finding is appropriate here.

MS. GOLDEN: We would be okay if you made a finding, if you deem it appropriate.

THE COURT: All right. Thank you. All right. With that said, I think we can move on to the second set of issues.

MR. KAROTKIN: The chairman letter, Your Honor?

THE COURT: In any order you'd like to take.

MR. KAROTKIN: Why don't we, why don't we do that first? As you know, Your Honor, we've submitted a comprehensive memorandum of law addressing the Trustee's objection to the what I'll call the chairman letter, the chairman letter agreement, which establishes that it neither contravenes section 503(2) of the Bankruptcy Code nor the intent and purpose of that section as explained in the legislative history and the case law. And as you requested I believe at a previous hearing, we've also addressed and demonstrated in our memorandum of law how sections 503(c)(2) and section 1129(a)(4) are easily harmonized and that is the different times during the administration of a chapter 11 case when one applies and then the other takes over. I think it's clear, Your Honor, that based on the case law in this district the General Register case, the Dana case the Lehman Brothers

case, all of which are detailed in our memorandum, the obligations under the chairman letter agreement are not administrative expenses under section 503, they are clearly not obligations of a debtor in possession payable regardless of whether a plan is confirmed. Instead, it's very clear that they are obligations payable by new AAG, the new merged company, and again very clear that that obligations under the letter agreement only take effect and only become payable, Your Honor, if the plan is confirmed, if the plan goes effective, and if the merger itself is actually consummated.

In addition, I would point out there are not obligations particularly in this case, Your Honor, where the interest of any party are being sacrificed or prejudiced. Certainly not here with this plan basically a fully consensual plan where the recoveries for creditors and existing stockholders are as I described earlier are quite extraordinary. And I'll also point out that the overwhelming vote of creditors and stockholders in support of the plan eliminates any contention or any cognizable claim, Your Honor, that the compensated provided in the chairman letter agreement, an agreement by the way negotiated with the full input of the creditors committee, that that compensation improperly diverts family from creditors or other stakeholders who effectively, Your Honor, under this plan are likely to be paid 100 cents on the dollar, plus interest, including post-petition interest.

And I think for today's hearing it's important to put things into context, and to go back to what transpired and recall what transpired in the spring when Your Honor considered, excuse me, the approval of the chairman letter in contention with the motion to approve the merger agreement. And in your decision in April, your memorandum of decision where you cited to the decisions in Journal Register and Dana you expressed concern with the timing, the timing of when in the context of that motion we were asking you to approve the chairman letter agreement as part of the approval of the merger, that timing rather than the approval of that agreement in the context of a plan with the notice, the voting, the disclosure requirements that are part of the plan process. You yourself raised those concerns. And I think it's important to know what you said in your prior opinion when you just --

THE COURT: Let me just back up one second, and I remember when I put this footnote in thinking that I thought I was pretty clear about what I meant, but that's often not the case for everybody else. When I said I was reserving decision on what would happen to the plan, I actually just meant that, meant I had not, I was being presented it in one context, I was addressing cases in that context. So I just, I mentioned that to the extent that parties wanted to start talking a lot about what I previously said or didn't say just as a sort of a cautionary note, I was giving it where I thought and I think

Journal Register was one of the cases that was cited, so I think I distinguished Journal Register and then said essentially there's an issue raised by Journal Register meaning what's appropriate or not under a plan, and I have no opinion about that. So I just want to make that very clear to all parties because I suppose you could read the tea leaves however you wanted, and my intent was to not read those tea leaves at all for purposes of how it would come up today.

MR. KAROTKIN: Okay. But going back to what you expressed in your opinion in distinguishing what was before you then to the Journal Register case, you said that by presenting their request as part of a proposed plan of confirmation, the debtors in Journal Register took the proposed incentive payments outside the coverage of section 503 and placed them within the confines of section 1129(a). I think there yourself, as I'll get to later on, alluded to in those provisions are in fact harmonized. And now we are precisely in the same situation here, we are now including the chairman letter agreement as part of the disclosure statement, as part of the plan process.

I think we have addressed the concerns as to timing that you expressed earlier, and I think under those circumstances, it's very clear that 503(c), to the extent it may have applied back then during the pendency of the administration of the case, is no longer applicable and section

1129(a)(4) governs because now, Your Honor, we are in the context of a plan again in the context of the protections afforded by the plan process that 1129(a)(4) provides the voting, the disclosure and again subjecting that letter to your approval as reasonable under section 1129(a)(4). And I think that we demonstrated in our brief and in the declarations again the only evidence on the reasonableness issue that's before Your Honor, that the value created under Mr. Horton's stewardship and based on the overwhelming voting in favor of the plan, and as I mentioned earlier, the lack of prejudice to any party in interest, that that agreement certainly is reasonable within the context and purview of section 1129(a)(4).

THE COURT: You had mentioned the lack of prejudice as well as the vote and the involvement of the committee. Am I to understand your argument that those all come in the context of your argument are reasonableness under 1129?

MR. KAROTKIN: I think they, they certainly come into play on that issue as well as, Your Honor, the intent and purpose of 503(c) which was directed as again we've explained in our papers to the concerns raised in the Enron case, the WorldCom case, the Polaroid case, of what I think Senator Kennedy said was executives lining their pockets during the administration of the case at the expense, at the expense of other parties in interest.

THE COURT: Well, the reason why I asked that question was really to set up the following question, which is if that's the case, and you raise it in the context of sort of also addressing 503. How am I to understand that argument, because what happens if the vote is 90 percent versus 51 percent? If the committee is involved and supports it, or there's a case where there is no committee or the committee doesn't have a view or the payment here is you know 100 percent and is the case, or 20 percent, what would you have me do as it pertains to 503 in terms of understanding any of that and processing any of that if I'm looking at 503?

MR. KAROTKIN: In the context of a plan?

THE COURT: Well, I had said you're asking me to consider those arguments in the context of reasonableness under 1129. And you said yes, but also when addressing the concerns about raised by for example, the often quoted comment by Senator Kennedy about lining pockets at the expense of essentially creditors and stakeholders. But what I'm saying is that's really a 503 argument. So to the extent that you're -- I'm just trying to understand what you're tethering this to. If, how would it enter into a 503 analysis at all, and does it in your view, it's a completely different thing, you're talking about 1129 and it doesn't enter into 503 because it simply doesn't apply. But when you mentioned Senator Kennedy's comment in talking about the issues, I'm just trying to

understand whether you're asking me to take, to take notice of these facts as they pertain to 503.

MR. KAROTKIN: Well not directly because again, as we've explained, 503 does not apply here anymore, it is not, we are not seeking approval of administrative expense claim. And the concern again that Senator Kennedy raised was during the context of a case where executives were lining their pockets at the expense of third parties, okay. The fact is that's not happening here, it didn't happen here, we're not in that situation. And just by the way, in terms of reasonableness and whether any of the intent and purpose of section 503 is being violated, it's not even a close call. To the extent that those considerations were involved, it's not even a close call. It's just not happening.

THE COURT: All right. Well, there's a quote from a case in Judge Gerber's decision in Adelphia that I'd like you to address. In his analysis -- and this is the case at 441 Bk Rptr 6, he talks about 503(b) saying you know you can satisfy 503(b) but that does not provide in words or substance, it is the only way in which fees of this character may be absorbed by the estate. And then he has a footnote 18, and footnote 18 says that is so even though from time to time the Code does exactly that, and he says see e.g., section 503(c) of the Code which provides in substance that payments of the character that it covers can only be made if its rigid requirements are

satisfied. So what's your reaction to that language in Adelphia?

MR. KAROTKIN: Number one, I think that is clearly not the holding in Adelphia, I think that is, Judge Gerber was not addressing the issue of 503(c) to his opinion, so it doesn't go to the heart of his decision, and I think that in terms of doing an evaluation of 503(c)(2) in the context that we're doing it here today he was not doing that. And to the extent that he was suggesting or determining that somehow 503(c)(2) applied forever, we would disagree with that, particularly in view of the case law, in view of the purer words of the statute which make it abundantly clear when you look at section 530(c) 2, which again is in the context of the allowance of administrative expenses claims, and the lead-in language, Your Honor, to section 503(c)(2) says and I quote, notwithstanding subsection (b). So we're talking about the context of an administrative expense claim, that's the only thing that section deals with and it's difficult for me to conceive how this could be an administrative expense claim because it bears no resemblance to what are typically administrative expense claims in the context of a chapter 11.

THE COURT: Well do you agree with the notion or the characterization of the Lehman decision as essentially a question about whether 503 was the only way to allow certain kinds of expenses? And the reason why I say that is because

under your view, I think, the label administrative expenses means you don't even have to go through the Lehman analysis, doesn't it? It says, you know, in Lehman they say, well Lehman is not the world, Lehman is a particular authorization court approval regardless of whether people agree or don't agree, and it's one way to do it, but there are others. But if you just rely simply on the label of administrative expenses and say well 503 is about administrative expenses and this is all (a)(4) and therefore it's done, I'm just wondering what, how you read the Lehman analysis and other cases like it in terms of why you need to get there if it's just a matter of the labels in the statute.

MR. KAROTKIN: Well I think our case is different form Lehman in that we have statutory language that is absolutely clear. Lehman, I think was a little different. In Lehman it wasn't an administrative expense claim, it was the allowance of compensation in the context of the chapter 11 case. Here we have very clear statutory language as to in what situation 503(c)(2) applies, and that is not the case here. This is not an obligation of the debtor in possession, this is an obligation of a new company, albeit, yes with certain of the assets of a debtor in possession. But again, it has the assets of another company, US Airways, the stockholders of which voted to approve this transaction. And this payment, our proposed payment does not have the accoutrements of an expense of

administration. Expenses of administration, Your Honor, are payable regardless of whether a plan of reorganization is confirmed. They are ongoing obligations, they're paid in full, they're not subject to a condition precedent like that, and we have a unique -- it's just a different circumstance here.

THE COURT: Well, the Adelphia, and I'm checking here, I mean Adelphia was talking about reimbursement of fees under provision in the confirmed and effective chapter 11 plan, and that's where Judge Gerber goes through his analysis talking about whether (b) is the only way something can happen or it's essentially a nonexclusive way. And so I guess just to see if I can ask a more clear question, if that's, if your view about this administrative expenses being sort of the one stop shopping view, then how do you understand the Adelphia decision trying to sort of do that analysis of (b) and figuring out whether (b) is 503(b) is somehow the exclusive way to do it, because after all it's, are they administrative expenses if they're a person to a plan, that's 1129. Right? So how do you understand that case then?

MR. KAROTKIN: They're administrative expenses pursuant to a plan and allowable under that section. But what Judge Gerber was saying and what Judge Peck (phonetic) was saying is that's not an exclusive remedy, and if in the plan process the parties are agreeable to a different consensual arrangement, that was okay with him, he felt that that 503 was

not exclusive. But again we're dealing with a particular type of severance or compensation under section 503(c)(2) which as I indicated before is very clearly circumscribed to a particular situation. It's not about obligations of a different entity, it's about administrative expenses, again the purpose of which is directed to a pendency or what happens during a pendency of a case. And the legislative history is very clear as to what section 503(c)(2) was directed to and it very logically harmonized with when section 1129(a)(4) takes over in the context of a payment to be made under even a different transaction.

THE COURT: Well you mentioned this being the obligations of a new entity. Doesn't the plan provide that this has to happen for it to be effective?

MR. KAROTKIN: Yes.

THE COURT: So how am I to understand that fact in light of what you just said? We had some discussion the last time this issue came up in the context of you know if the new company wants to make a payment, they can make a payment, what essentially why am I being asked to approve it. And here it's part and parcel of the payments that need to be made for the plan to become effective, that's the way it's built in. So I think I expressed some skepticism in my earlier decision about so the payment of a, you know, it's an obligation of the new entity because it was being asked to be authorized and it's

still being asked to be authorized as part of the plan going effective.

So now that's something I'm struggling with, I mean wasn't Journal Register all about payments that were contemplated in the future as part of an incentive program that the secured creditor wanted to fund and have in place for emergence, saying well we want to incentivize people who are going to come in, are going to be there, and as were come out, we want those things in place, as opposed to a backward looking payment?

MR. KAROTKIN: No. In fact, Your Honor, if you look at the facts of Journal Register, all the incentive payments, all of the targets were based on historical performance which had already happened during the chapter 11 case, totally and completely based on that, no forward looking at all.

THE COURT: So they were being, can you tell me where that is in the record because I expect some time looking for that kind of clarity and I will confess that I didn't find it, so I'm happy if somebody can point out where I missed it, because it talks about a post emergence incentive plan. And when I saw that title that I saw some language that seemed to be a bit fuzzier than that but didn't give me the clarity that you seem to have in understanding it.

MR. KAROTKIN: Well, if I refer, if you have the decision in front of you?

THE COURT: Yes I do.

MR. KAROTKIN: If you look at page 527, there's a subheading entitled incentive plan.

THE COURT: Yes.

MR. KAROTKIN: And then there's some indention where --

THE COURT: Right.

MR. KAROTKIN: It says the post emergence incentive plan was designed to incentivize those employees that were critical to the company's efforts to implement the initial stages o the business plan and to expeditiously confirm and consummate a plan of reorganization. And then it goes to the performance exemptions.

THE COURT: All right.

MR. KAROTKIN: And if you look at little i, it says the shut down objective which was achieved upon the shutdown of substantially all of the publications cited, if you look at number 2, it says the cost reduction objective which was achieved upon the targeted reduction. And if you look at number 3, the emergent, the emergence objective which will be earned upon consummation of a plan, all historic.

THE COURT: All right.

MR. KAROTKIN: Making it even closer to what we have here. And not even taking into account, Your Honor, the critical role that Mr. Horton will play going forward.

THE COURT: Well you say that in your brief, but it's the same agreement that I've had in front of me before, and the title of that agreement was severance, and I know he's being compensated for his other positions and other responsibilities with the merged entity, and that's fine. But I am a little uncomfortable with characterizing with relying on anything other than the agreement to characterize what the payment is.

MR. KAROTKIN: Okay. Well, first of all, Mr. Codina's (phonetic) declaration addressed that issue that it was based on future performance because the board was very concerned with Mr. Horton and his expertise being available to --

THE COURT: But that's why they hired him, right, for a job in the post-emergent entity. So I didn't see, and I was looking for it, I didn't see a cite to this severance agreement that is the chairman's letter agreement that had that in there, which again it was characterized as severance, and I didn't see a set of revised agreement, it's the same agreement that I addressed earlier.

MR. KAROTKIN: It's the same agreement, but that agreement provides for services to be rendered to the newly merged entity. He will be the chairman of the board, he will be involved in the integration effort. The board of directors of AMR corporation, again as reflected in Mr. Codina's declaration, the board was concerned about the ability of the

new company to realize the synergies which really were, you know, the fundamental of the deal, and in their view Mr. Horton was critical to being involved in the transition process post closing to assure that those synergies were realized. And he will be staying on, assuming we have a closing here and be engaged in those activities. Again, directly involved in the transition process, Mr. Horton again as set forth in Mr. Cordino's declaration has a lot of experience that would be necessary to the new company including customer relationships. He is the chairman of One World which is critical to the revenue generating capacity going forward, as well as other duties that he'll continue to perform. So and again as I think Mr. Butler indicated at the hearing back in March and Mr. Butler and his committee were actively engaged in the negotiation of this agreement, I think that he made it very clear, and I'm sure he will elaborate on that again today, that this was indeed forward looking as well, and was not simply severance. Is there a severance element of it? Yes, there is. But again, that's not precluded by the statute.

THE COURT: Well when you say that, you mean, you're referring to 1129 I suppose. You're not saying it's, that severance component would be fine under 503(c).

MR. KAROTKIN: I'm not saying that. That severance component would not be fine under 503(c)(2) if we were asking you to approve that payment during the pendency of this case in

the context of a severance program. That's what I'm saying.

THE COURT: Right.

MR. KAROTKIN: This is a different situation. And I think the cases make it clear the this is not an administrative expenses, it's a different situation, and make it clear, and I think as you recognize in your opinion, when, you know, based on -- I don't mean to go back to what you said, but based on Journal Register, and again they did it in the context of a plan, and as you indicated, that moved it from 503(c)(2) to 1129(a)(4). That is how the statute is harmonized, and it's perfectly consistent with the legislative history, because again what Senator Kennedy was concerned about was abuses during the pendency of the case. And if they want to just to continue or if Congress wanted this to be binding in the circumstances of a plan or post-confirmation, they knew how to do that. They did it with section 1114. 1114, they put into 1129 and said you must continue those payments under 11299(a)(13). They knew how to do that if they wanted to. They didn't do that here. And there's good reason why they didn't do it because there were other protections involved in, again, as you alluded to in your opinion, the plan process, the voting process, the confirmation process and review under section 1129(a)(4).

THE COURT: All right.

MR. KAROTKIN: And again, you had asked us to

harmonize it. I think that you in your opinion harmonized it as well. And it's quite easy to harmonize when one takes over from the other. And again, it's very consistent with the intent and purpose of the statute.

And what I'll also point out, Your Honor, as to the reasonableness in this issue under section 1129(a)(4), the only evidence in the record are the declarations of Mr. Codina and Mr. Frisky as to reasonableness. And I think that they clearly demonstrate that under the circumstances here, again as referred to in Mr. Codina's affidavit, Mr. Horton's role in stewarding the restructuring effort of the company, bringing it to the position of financial strength when the negotiations started for strategic alternatives, so that the company could negotiate from the position of strength. Mr. Horton's role in negotiating the merger agreement, which substantially increased the consideration going to the debtors' stakeholders from the initial offer made by US Airways. Mr. Horton's insistence on the labor mitigation process, that labor mitigation being accomplished before the board made a decision on the merger so that there could be more assurances that the synergies, again which were the [indiscernible] of this deal could be realized, and Mr. Horton's involvement, again, with the ongoing entity to assure that the integration process went smoothly. And it --

THE COURT: What's your response to the U.S. Trustee's mention of the agreement that he had signed before or

at the time he became the CEO which was shortly before the bankruptcy was filed about what compensation he'd be entitled to and how that's different than what's proposed to be paid here?

MR. KAROTKIN: I'm not sure what they're referring to. I know they were referring to the S4 and some chart in the S4. The fact of the matter is that Mr. Horton, his agreements had expired, his employment contract has expired, and I'm not sure what they're trying to compare it to.

THE COURT: Well I think there was some reference to what he would get during the change of control, and that the chairman's agreement then when it was entered into said, here's what we propose he'd get, and or what we agree he gets, but we find that this doesn't constitute, he's not covered by the change of control provision. And as I understand and the U.S. Trustee's office can straighten me out when they come up, their argument is that well, it would appear to be covered by the change of control provision notwithstanding efforts to subsequently carve it out, and certainly if he took over in the bankruptcy just before the bankruptcy was filed, this is something that was fairly easy to predict or contemplate at that time.

MR. KAROTKIN: I think that's just misinformation. The fact of the matter is there was no change of control agreement that would have been tripped by the merger in

existence.

THE COURT: I don't think we're talking about change, maybe it's a label problem here. I'm not talking about a change of control agreement, but rather an agreement about what his compensation should be that was entered into when he became, at or around the time he became the CEO that had a clause relating to what he would be paid if there was a change of control. Maybe it's terminology I just want to make sure we're talking about the same thing.

MR. KAROTKIN: To the extent there wasn't, that agreement it had expired.

THE COURT: When did that expire?

MR. KAROTKIN: It, I think it expired before the negotiations and the merger even took place.

THE COURT: I don't think I have that fact anywhere mentioned in front of me. And I guess I'm wondering why the chairman's letter agreement then would say that this doesn't constitute a change of control for purposes of that agreement.

MR. KAROTKIN: I don't know that, I don't recall, I don't have it in front of me, I don't know that it says that, but I'm not aware, Your Honor, of an agreement in effect that provide Mr. Horton with change in control benefits at that time.

THE COURT: At the time the chairman's letter agreement was entered into.

MR. KAROTKIN: That's correct.

THE COURT: All right.

MR. KAROTKIN: Now he did have some vested, vested equity awards of that this would supplant, but not change of control rights. But again, I think that you would have to look at it, to compare it to what he would have gotten in a different circumstance, I don't really think goes to the issue of reasonableness because you have a different transaction here, you have a completely different set of circumstances where because of Mr. Horton's activities, we're looking at, Your Honor, a merger of an excess of $11 billion. And based on his contribution to that effort, and the future services that he's going to render and continues to render now by the way in connection with the transition process, and based on market metrics, again in the declaration of Mr. Frisky, hardly unreasonable, hardly outside the metrics that are set forth in that declaration as well as the declaration of Mr. Becker submitted by the creditors committee. And in fact if you look at what happened in the Northwest case or the Delta case, I would say that his compensation is a lot less than what those gentlemen received.

THE COURT: Well those were, cases were not in bankruptcy, right?

MR. KAROTKIN: That's -- well the merger happened after bankruptcy and what Mr. Frisky's affidavit reflects or

does not reflect I should say, is the compensation that those individuals received when they came out of bankruptcy which was in addition to what they got in the merger context.

THE COURT: Well certainly there's an argument made that this is going to be paid by the new entity, and again I think I raised the question of why it's then even necessary for me to weigh in on it. I assume you have the same answer to that as you did before, which is this is an agreement, you want court approval so that you can pay it. But I suppose when you're drawing comparisons to what happened in other instances where a bankruptcy court approval was not sought, I guess that becomes the, why that matters, that this was going to be done by the company after it emerged from bankruptcy, then it would be something that would come in front of me.

MR. KAROTKIN: I think it was important to those involved to secure Mr. Horton's involvement and commitment to this transaction in order to realize the values that again were the underlying basis for the deal, and to make sure that those values were realized, and he was important to that and aligning his interest, Your Honor, with the interest of the future stockholders of this company was very important. And again, the economic terms of this deal were not negotiated by the debtors, the economic terms were negotiated by the future stakeholders, Mr. Butler's clients, who determined that this was important to them as well because they were the ones who

were largely going to have the benefit of these synergies.

THE COURT: Let me just loop back to our earlier discussion, then I just want to get the U.S. Trustee's objection in front of me. Their reference is to the executive termination benefit agreements entitled AMR existing severance agreements, and I think they're referenced in the SEC form S4s, one was dated June 10th, 2013, the amended S4, and there was a table about what was to happen and there was also dealing with essentially benefits of up to I guess it was 6.4 million, and then there was a reference to an event of change of control. I couldn't tell from that whether there was any timing issues that went along with that, because there's something that's said in the U.S. Trustee's pleadings about if he had been terminated as, on December 31st, 2012, which implies there was some time in question, but nobody explained that to me. And I don't think the debtors addressed this, this issue at all in their pleadings, although I think I had asked parties to just because I heard it referenced at the last hearing that we had on this issue. So with that additional clarity, I assume your answers are the same.

MR. KAROTKIN: Yes. My answers are the same because I don't think this chart is relevant to the decision. Again, this chart -- if you're looking at page 15?

THE COURT: Yes.

MR. KAROTKIN: And if you look at the last sentence

of the, of the single spaced language below the chart, it says the merger does not constitute a change in control, excuse me, for purposes of these plans or agreements. So this is, this would not be triggered. And --

THE COURT: Well was this operative or not?

MR. KAROTKIN: Now, it's my understanding, Your Honor, it's my understanding that this was not operative.

THE COURT: And why wasn't it operative?

MR. KAROTKIN: As I said, it's my understanding that the agreements on which these calculations are based had expired. And for SEC reporting purposes, I'm told that nevertheless you had to include this type of information.

THE COURT: All right. I'm not sure that does a whole lot for me in terms of clarity, but I'll take it for what it's worth.

MR. KAROTKIN: But again, in terms of the situation before you, even assuming that this is what he got is really in my view not relevant to the reasonableness of his compensation in these circumstances.

THE COURT: All right. Do you want to address the other payments that are at issue here? I figure they're related and they deal with the same, some of the same issues, mainly the same issues.

MR. KAROTKIN: Sure. What the U.S. Trustee, as you said has objected to, is the consensual provisions in the plan

with respect to the payment of the reasonable professional fees of the individual members of the creditors committee and the indentured trustees. That is addressed at length in our responsive pleading as well as in the pleading filed by the creditors committee, and I think the Kramer Levin firm has also submitted something on behalf of the indentured trustees. I really don't think there's any need to belabor the issue. Your Honor is familiar with the decisions in Adelphia and in the Lehman case, and Judge Peck most recently in Lehman has an exhausted analysis of that exact issue in his detailed recent opinion as to why he authorized and approved it. I will note that that is on appeal to the District Court. These provisions were fully disclosed in the plan, fully disclosed in the disclosure statement.

As I said before, creditors voted overwhelmingly to accept the plan with those provisions. I don't think the U.S. Trustee has raised the basis for you to reach a different decision that Judge Peck reached or that Judge Gerber reached. They provided nothing new to the mix as to precisely what was considered by, by your brethren in the Southern District, and we would submit that it's appropriate to reach the same result.

THE COURT: All right. Well, as to the indentured trustee, there do appear to be several other alternative basis for payments. And obviously, courts are always interested in trying to narrow contested issues where they can. And

certainly the indentured trustee filed something saying that this a solvent bankruptcy case, they're entitled to fees to be paid in full as a general unsecured claim. There's also a notion about substantial contribution in something that can be requested. So what are your thoughts on either of those issues as a way to address the concerns here and moot out the objection?

MR. KAROTKIN: I think that the indentured trustees are entitled to their fees as part of their claim. And so to the extent it's [indiscernible] they could receive that as part of the distribution that goes to unsecured creditors which would be in stock, rather than cash. This is sort of an easy way to address it without giving them stock. So I think from an economic standpoint it's pretty much a wash. I think from -- so that I think addresses the indentured trustees.

I think it also may be interesting to point out and I don't know if Mr. Butler will address this, he has indentured trustees on his committee as well, three indentured trustees. I think with respect to the unions who are also on his committee, it's my recollection, Your Honor, that in connection with approving the union settlement agreements, if I recall correctly, the reimbursement of their fees was part of that as well, so it may be covered there, and I think Mr. Butler could address that a little bit better than I could.

I think that again perhaps as to Boeing, who is a

member of the committee, Boeing's contracts were assumed, and although I don't know for sure, I would expect that to the extent they had damage claims they might include attorneys' fees which would be payable under that as well. So I don't really think the economics here are that significant.

THE COURT: All right. Let me hear from the committee at this point, anybody else who wants to speak in favor, and then I'll hear from all those who want to speak against.

MR. BUTLER: Your Honor, good afternoon, Jack Butler from Skadden on behalf of the committee. I've got a couple of specific points on the chairman's letter agreement, Your Honor. But in terms of the majority of the argument, this is a particular topic that's been exhaustively briefed and argued in this Court over the last number of months and I'm not going to repeat all of those arguments. I think the Court clearly understands the committee's views on those issues already. But I do think there are two or three things that are irrelevant for today, in part to respond to some of the questions you asked Mr. Karotkin.

First, there are actually three sources of evidence that are uncontroverted in this hearing that are important for the record. In addition to Mr. Frisky and Mr. Codina's declarations, which are ECF 9519 and 9518, there is a declaration of Mr. Becker, the committee's compensation

consultant at 9513. And what's I think important about Mr. Becker's declaration, Your Honor, is that was actually the, it gives the Court and frankly the public sort of great insight into what the committee was thinking about, the committee's professionals were thinking about when we negotiated this. Because as we've represented to Your Honor, Your Honor, I can represent to you as an officer of the Court, it was in fact the committee's professionals who put this number on the table that ended up here. In fact, the number was slightly reduced by American's board of directors when they approved it. But the number was initiated from us. The negotiations occurred over the course of a weekend or so, started with the numbers from us, and with a clear understanding that those numbers were intended to be one number that included everything. And I grant you, and I can't, I'm not, you know, I understand what the Court wrote in its prior opinions, I understand the Court's reservations today, I can read English like Your Honor can, I know what the chairman's letter agreement says and how it's titled. But I can tell you, and I think there's evidence in the record, I can tell you what was negotiated. And from our perspective, there needed to be one number that covered everything. And I will give Mr. Horton credit that he has lived up to his word in that point.

So for example, as we got closer to confirmation, and based on what was going on in the market place, a series of

prepetition equity awards surfaced and options and everything surfaced that actually based on the trading values at that point, who knows what they'll ultimately be, but the trading was, were worth millions of dollars to Mr. Horton. And, you know, we called him up and said Mr. Horton, this was a one size fits all number, and he promptly waived us, and you'll see in the disclosure or in the docket, he basically said if I get the chairman's letter agreement, I won't collect on those independent things I have, because he understood it was one size fits all. And he did what would we would expected him to do and he did it faithfully.

And so I want the Court to understand how we decided this. You know, this is a Court trying to find the truth of the matter, and I just want the Court to understand the truth here, the real facts. And the insight into how we arrived at the number and the comparisons we used are really laid out in Mr. Becker's report. And I'll note that it's dated February 17th, and I think that's the last date that he finally, you know, released it in its final form. It was obviously a draft we used that weekend leading up to the merger announcement of February 14th over the prior week. But this was the analysis that we used. Trying to figure out what is reasonable, and from the committee's perspective, we really wanted one number that fits all, because you know, this is a complex company and these management compensation programs as this, by this equity

award thing I just spoke of, you know, sort of proves the point. There's all this stuff out there and sometimes something pops up no one told you about before, it's undisclosed and it appears and we didn't want that. We did not want a situation where that something could pop up. We didn't want a situation where as chairman of the board in the reorganized company, he was paid additional premiums and additional agreements and consulting agreements and so forth, we didn't want that. We didn't want the number disguised, we didn't want it broken up in little buckets. We wanted there to be one number, we wanted it to be out there publicly, we wanted people to understand the reasoning behind it, we wanted it to be entirely conditioned on the effective date. You know, and those were all, and we wanted it paid half in stock and half in cash. Those were the committee's requirements. And I want the, just the Court to understand that when it comes to the issue of reasonableness, under 1129(a)(4) and we believe 503 is not applicable here at all as our papers suggested, Your Honor has to parse through whether this is a reasonable payment under 1129(a)(4). I think the uncontroverted testimony of Mr. Becker and Mr. Frisky and Codino certainly informed the Court and the Court's opportunity to make that finding.

I'll also address at least the committee's view on why it's important to do this through 1129(a)(4) in terms of Your Honor saying, well this is being paid, you know, at

closing by the new company, why do I have to weigh in. Well the fact is if you look at the words of 1129(a)(4), Your Honor, you can read those to suggest that the issuer of securities under the plan you confirm can't make any payments for services on account of what occurred in the case unless you found them reasonable under 1129(a)(4), you can see the plain words of the statutes. And so we believe that even if you were going to leave this to the new board to decide, the new board would be at risk in terms of saying can we actually do this, are we permitted by Judge Lane, with respect to his opinions and his views, are we permitted, if this isn't addressed somehow in the confirmation order, are we permitted to make that decision, because I think the 1129(a)(4) says at least how we read it, says that. So I think 1129(a)(4) is important to be considered here.

You've asked us to harmonize two things in our briefing. One, how 1129(a)(4) related to 503(c), and you also asked us to harmonize how it related to the prior agreements. Now while I agree with Mr. Karotkin, I don't know that it matters whether those agreements were effective or not effective, we actually addressed them in paragraph 63 and 64 of our brief, excuse me, paragraphs 62 and 63 of our brief, you know, and laid out the range of compensation paid under those agreements as they had been disclosed. But the reality was as we said in paragraph 63, that that comparison whether the

agreements were in effect or not in effect, that comparison entirely ignored the unprecedented context in which the chairman letter agreement was negotiated, which was this public company merger situation that delivers tremendous value to economic stakeholders and which is conditioned on the occurrence of that event actually occurring. And all I can tell you, Your Honor, on that point is that you know the committee initiated these discussions through its professionals, we analyzed this in terms of what we thought was reasonable under all the circumstances, we wanted a one pot to cover everything. It's not a mistake in that in the, if you look at both Mr. Becker's report and the addendum and you look in the merger documents, for Mr. Horton's service as non-executive chairman of the board, he is paid the same thing just regular directors are, he gets no premium. That was because under our construct, he wasn't entitled to get any premium. Now everybody, every non-executive director of every public company in America gets paid more money than just a regular independent director does, I think with almost without consequence, I mean, excuse me, without exception. That didn't happen here because we said no premium, no separate consulting agreement, just this. Just this.

And so I just want Your Honor to understand that's the fact, that's the truth, whether people when they were drafting this thing, you know, in 48 hours over a weekend to

attach it to an agreement, whether the particular lawyers who were drafting it drafted it correctly to encompass all of that, I understand Your Honor's, you know, skepticism of that, I can only tell you what happened because I was sitting in the room and did it. And I just wanted you to understand the context of reasonableness. In terms of the, how do you think about the statutory construction and how do you think about harmonization, you asked a question about 503, and I don't think 503 applies, I think our briefing talks about that. But then you, how do you make, you know, how do you work your way through some of these opinions that are out there and some of the comments, commentary that's out there. And frankly some of the commentaries are just dicta, right, and it wasn't central to the decision of the decision maker. But at least how I've come to think of it is a belief that, you know, when you look at 503, that 503 is a non-exclusive provision meaning there are other ways to address issues that may be affected by 503. But 503 is a non-exclusive provision to deal with the things that are within its scope. But that doesn't stand for the proposition that 503 has unlimited scope, and that it applies to every possible payment in the world. I don't think that's what 503 does, I don't think that's what the legislative history says.

And so while I don't want to play the game of how you label something, because when you start doing that, you can get

gamesmanship in transactions and that's not what this is about. I think Your Honor is trying, I believe earnestly to try to get to the substance of this transaction and what is the substance of the transaction. And the substance of this transaction was a payment to an individual for a composite of services to her as a plan payment after disclosure to stakeholders and a vote by stakeholders and only in connection with consummation of the plan. If this plan is not consummated, forget the confirmation order being entered. If Your Honor enters the confirmation order it will be very clear that this chairman's letter agreement is not effective and cannot be paid unless the merger actually closes. So --

THE COURT: Well how do you read then, I'll ask you the same question that I asked debtors' counsel, how do you read that footnote in Judge Gerber's opinion? I mean you had said that there's a lot of language out there and maybe you just chalk it up to that, but where he's talking about how to understand 503 and 1129.

MR. BUTLER: Your Honor, I actually, I spend a lot of time studying these things too as Your Honor does, I tried to figure out how that, that comment related to any of the rest of Judge Gerber's opinion, and there's really no other connection to it. I think he was musing and shared a musing as to how he might think about those things in that context, you know, in its dicta, it happens to be dicta we don't agree with. I don't

know there's any support for the dicta actually. And particularly when you look to statutory construction, I mean the U.S. Trustee's objection is based in large part on, you know, their interpretation of the statute and statuary construction. And this is a good time for me to say and we've said it before, I think the U.S. Trustee who is sitting here who knows me pretty well and knows I dislike more than almost anything else standing up here and disagreeing with the U.S. Trustee in major hearings, it is not where I'd like to be. We work very hard to try to work with the U.S. Trustee's office, they have a very important responsibility and we have a lot of respect for what they do. But this is just a difference in program policy. We just disagree with them on these policy issues. And it cannot meet, we think, that under 1129(a)(4)(s) it's constructed by Congress that you cannot make plan payments, that there is some prohibition against plan payments under the Bankruptcy Code. We just don't believe that's in fact what's there. And we also believe, and I think the thing that should be probably more persuasive than anything else to Your Honor, is I think Judges particularly at the trial court level try very hard to discern you know what Congress intended by looking sort of at examples, and looking at the statutory construction of the Bankruptcy Code. And if you look at 1129, and you if you look at frankly as an analogy 1328 in the chapter 13 context which by the way is the opinion that,

Espinosa case, the Supreme Court case that they cite in their brief. What you find are two startling and striking examples of where Congress decided that they were going to instruct the bankruptcy courts and those of us who practice in connection with the Code that there are certain things we're going to have to do no matter what. So in addition to what Mr. Karotkin talked about which is 1128(a)(13) a clear example of what Congress said, yeah 1114 has its own section of the Code and you got to do what you got to do under 1114. But guess what, you don't get out of bankruptcy, you don't get out, cannot consummate a plan unless you comply with 1128(a)(13) and deal with that. So it's not only important during the case, it's in fact part of the criteria to get out.

Well the court did the same, Congress did the very same thing with discharge, with the discharge provisions in section, under chapter 13. If you look at 1325(a)(1) and then you look down at 1325(a)(2) which incorporates 523, I think it's (a)(8) you find that lo and behold Congress basically said you got to file 523 during the case and oh, by the way, you can't get out, you can't confirm a plan if that, if the plan seeks to, seeks a discharge of this particular type of indebtedness, because we're going to incorporate that into 1328, we're going, that's important enough to us as a Congress, we are not going to let you do it, period. And oh, by the way Espinosa stands for the case of a court where that provision

was included anyways on an uncontested basis, nobody really cared, the Court confirmed it, it ultimately, you know, it ultimately that plan was ultimately appealed. I see no major stakeholder cared about it, and ultimately the Supreme Court said, eh, eh, eh, the statute says what it says. Right. You can't, that is part of the getting out part of the statute. And so when you're looking to ask us to harmonize things, I think part of the way we think about harmonization is to try to distinguish when, when does, you ask yourself the question, does Congress know how to instruct the bankruptcy court and the practitioners before it on when it has clear black and white requirements for emergence. And the answer to that question is yes, we can point to two very clear examples of it that are in the statute and a Supreme Court case on point. So we know that they know how to do it. Should they do it in connection with 503(c)? They did not. Having had the ability to do it, and maybe in some future Congress they will, but they didn't. The policy certainly seems to be as Mr. Karotkin argued it before, Your Honor, which is that the however the, you know, 503(c), the amendments came and [indiscernible] and so forth came to pass, and some of these other amendments came to pass, whatever the reasons were for them. When you look at the legislative history, you find that as to management compensation, there were clear limitations put on what could be done in the context of a chapter 11 case during the administration of the case.

That is different than what happens under a plan.

So I think, Your Honor, we tried hard, we put in a lot of information in our briefs on this point, but we've tried very hard to explain to answer the questions you asked about harmonization and why it is we think you're entitled and ought to, to go through this. Now you asked -- so that's all I'm going to say about the chairman's letter agreement unless Your Honor has any other questions.

THE COURT: That's fine.

MR. BUTLER: With respect to the professional fees issue, this more than anything else is, you know, is probably more starkly a program policy difference between the U.S. Trustee and the committee, because unlike the chairman's letter agreement where you actually have to harmonize and distinguish 503(c) from 1129(a)(4) and sort of explain how that works, you know, in connection with the, with 503, there is no prohibition in 503 with respect to the payment of these kinds of expenses. There is, there was at one point a reference to these in an earlier version of the statute and it was removed. But there, but while, so while there was a presumption for payment at one point, you know, during the course of the case, there was certainly, that was something that was taken out in, but there was no prohibition put in even under 503.

So again, trying to make this argument short, I will say the same kind of arguments apply that, but they've got kind

of this exclamation point to it, and that is there is no prohibition in 503, and so the harmonization of this, can you do under 1129(a)(4) something that's not prohibited anywhere else in the Code. I mean, you know, you don't even get to the issue of harmonizing because it's not prohibited. And so I think, Your Honor, I think the analysis is actually much more straightforward in connection with the these items which we talk about at some length.

Now you asked I think an interesting question which I want to close on which is, you know, can we narrow this dispute, which is, you know, by trying to find ultimate sources of recovery for different of the members of the committee. And I guess I'll address that in two respects, Your Honor. Number one, I don't think actually it narrows the dispute at all, because what's being argued and objected to is just a fundamental principal question, can you do this, even for one member of the committee as opposed to the five or six we have declarations for, that we have evidence for. So I don't think, you know, knocking off one or two people changes the legal question before the Court. The question is are these permissible plan payments or aren't they. We think they are under the law of this district, we think they are under any reasonable analysis of the Code. And frankly when you start looking for alternative sources of recovery, I think there would be, my sense is that people would have a real concern

about those. For example, indentured trustees, you know, I don't think would believe that they would need to demonstrate a substantial contribution to the case, for example, to get paid fees that are provided for in their indentures. I think they would find that to be an anathema, that's just not, that's not how their indentures are written, that's not what they were trying to do. And then I want to get to the real practical point about this, which is indentured trustees have charging liens against proceeds that come under their indentures, virtually every indenture is written that way. Maybe someone makes a mistake and it's not under some, I don't think that's true in this case and that's true of all the indentures here. So these expenses will get paid, and the question is not only the form of the currency they're paid in, but also depending upon exactly how much is paid in connection, how much is available at the end of the day to be paid, whether or not they diminish the recovery to bondholders. And it's for that reason that typically every debtor I think I've ever represented in a public company situation and most chapter 11 plans I'm aware of in this and other districts say, look, because that's the case, we are not going to, it's just not good business policy for the debtors and for companies, we're not going to diminish bondholder recovery by the payment of these professional fees, and these expenses. We're going to pay them as part of the plan. And so you see these indenture payment provisions in

almost every plan of any size. And it's for that practical reason which you don't want, you know, the company isn't going to want and certainly the [indiscernible] doesn't believe it's in our client's interest either to have the charging liens triggered in connection with this kind of a situation.

And again, we're asking you to make this decision in the context of this plan, not any plan, not some hypothetical plan, but the plan that's before the Court in connection with this plan and the evidence in connection with this plan and the recoveries anticipated under this plan if in fact it's consummated. We think that it's more than reasonable, Your Honor, as an 1128(a)(4) format matter to make the payments to the indentured trustees under their section which is, they have, remember there's multiple sources of recovery for them here, and they're not actually asking for payment under section 6.23, they're asking for payment under the separate indentured trustee provision in article 2 of the plan.

So unless Your Honor has any further questions about that, that's all I've got.

THE COURT: No, thank you.

MR. BUTLER: Thank you very much, Your Honor.

THE COURT: Thank you.

MR. KAROTKIN: May I say something?

THE COURT: Sure.

MR. KAROTKIN: Going back to the chart on page 15.

THE COURT: Right.

MR. KAROTKIN: And perhaps I can explain this a little better after speaking with my client. Mr. Horton had an employment agreement that expired in 2012. And part of that employment agreement, in connection with that employment agreement, the company made a commitment to give them a change in control payment. Neither the employment agreement nor the change of control agreement were assumed as part of the chapter 11 for SEC reporting purposes, the company has reported what you see in this chart as payable to Mr. Horton under a change in control, under a change in control which meets the definition of change in control as reflected below here in U.S. Trustee's submission.

THE COURT: All right.

MR. KAROTKIN: And it is true, the last sentence, that this merger, this particular merger would not trigger that change in control payment.

THE COURT: Well I guess it would be your view that it says here, doesn't constitute change of control for purposes of these plans or agreements, but am I right to say that even if it did, because the agreement is expired, no payment would be due and owing?

MR. KAROTKIN: It would be a prepetition claim.

THE COURT: Okay.

MR. KAROTKIN: And therefore, under the plan would

evaluate it, the current plan would evaluate 100 cents. Is that correct? And I apologize for not being able to clarify it earlier.

THE COURT: That's all right. That's helpful. All right.

MS. CATON: Good afternoon, Your Honor, Amy Caton from Kramer Levin Naftalis and Frankle on behalf of Bank of New York Mellon and Law Debentures Indentured Trustees for approximately 2 billion in airport revenue bonds, 400 million of which are unsecured. As Your Honor has probably heard from us in the past, we were heavily involved in the plan negotiations between the ad hoc committee members and some of the other mutual funds that reached the settlement that was embodied by the plan. And we watched the intricate balancing of the intercreditor issues there, and it was a very hard fought settlement with very careful crafting of the complex intercreditor deals that are contained in the plan. And for that reason, we strongly support the plan and the compromises contained therein including the severance payment to Mr. Horton, the payment of committee fees, and of course the payment of indentured trustee fees.

One issue that I just wanted to talk for a minute about the payment of indentured trustee fees where the U.S. Trustee has objected to those, and a few issues that are particular to indentured trustees which I think Mr. Butler and

Mr. Karotkin hit on quite nicely. We think that the Court has ample authority under Lehman and Adelphia and 1129(a)(4) to approve the payments of those fees. But beyond that, we also have the carefully crafted intercompany settlement that contains a provision that says that those fees are supposed to be paid, and that's in section 6.1 of the plan support agreement which was approved by Your Honor on June 4th. And the reason why I bring that up is I think it's important to note that this was not just included in the plan, this was also included in the original settlement agreement.

The second point I wanted to raise is that as Mr. Butler noted, the indentured trustees have unsecured claims for those fees, for their fees, and some are specifically allowed by stipulation, and others have not yet been. But under Oval v. Fidelity, which is 586 F.3d 143, the Second Circuit held that an unsecured claim for postpetition fees that was authorized by a valid prepetition contract is allowable under section 502(b) and deemed, and is deemed to, sorry prepetition. So here the indentured trustees do have unsecured claims for their fees.

Now these claims are currently being paid in cash, and under this plan, it appears that unsecured creditors are being paid in full. And so they could be paid in stock arguably, but that's going to create a lot more sort of difficulties for the indentured trustees, more expense for the

debtors in terms of actually dealing with the indentured trustees that fees that arise from the liquidation of that stock. And so it really makes sense in this situation to pay those fees in cash.

Lastly, Your Honor asked us briefly to address the issue of substantial contribution. We really would prefer not to go down that path, but of course we believe that Law Debenture and Bank of New York have made a substantial contribution to this case, and if in their participation of a plan negotiations and their participation throughout this case, and we think that our fees could be reimbursed on that basis as well.

Finally, because this would be my only opportunity up here at the podium today, I did want to mention just briefly on the issue of whether the confirmation order should be entered today. As I've said a few times now, the intercreditor settlement was actually quite difficult to reach, and it was negotiated among a lot of sophisticated parties. And what's happened in these past several days since the DOJ's complaint was filed is that there's been a lot of volatility in the stock and the bonds. And what this does is it creates the opportunity for new parties to come in to this case with perhaps a different set of expectations. And I think if Your Honor blesses the settlement under the context of this plan and enters a confirmation order that some of the mischief that

could be potentially brought about when a confirmation order isn't actually entered while we're waiting for whatever does happen on the merger, some of that mischief may be quelled. And so for that reason we would urge Your Honor on a weighing of the balances of the interest of actually entering a confirmation order sooner rather than later to enter one sooner rather than later.

THE COURT: Thank you.

MS. GOING: Good afternoon again, Your Honor, Kristin Going, Drinker Biddle and Read on behalf of Manufacturers and Traders Trust Company as indentured trustee for 10 series of special facility revenue bonds that total approximately 1.2 billion dollars in principal amount, they're all unsecured. Your Honor, as we set forth in our joinder, we do have a contractual right to payment of indentured trustees' fees and expenses that's set forth in each of our bond, the relevant bond documents for each series. And we do believe that you're correct when you stated earlier that our contractual right to payment does moot the U.S. Trustee's objection. The U.S. Trustee did not acknowledge the fact that we had a separate and independent contractual right to payment, and I think as the Second Circuit has set forth in United Merchants and Manufacturers Inc. at 674 F.2d 134, and that's Second Circuit, 1982, that a 503 analysis is separate and apart from a contractual obligation between the parties. And again, as you

are well aware, this current plan contemplates 100 cent recovery to unsecured creditors. And so our unsecured claim for fees and expenses wouldn't necessarily be paid 100 percent and the section 2.4 is, merely memorializes our right to that payment and also provides for a practical resolution because in this plan with the payment of unsecured claims in stock, if the trustees were to be paid their unsecured claim with the stock that would just necessitate some maneuvering and it would actually impact the bondholders by preventing them from getting to complete the stock distribution that they would otherwise get on the effective date because the indentured trustee would necessarily have to hold stock back and then sell the stock and there would be some question as to, you know, how much the stock was required to be held back to pay the actual fees. But if they're paid in real dollars then we eliminate that practical problem. Thank you.

THE COURT: All right. Thank you.

MR. WARNER: Good afternoon, Your Honor, I'm Michael Warner with Cole Schotz, I represent Hewlett Packard Enterprise Services. I'll be extremely brief. HP Enterprise Services we call that, HPES, was invited by the United States Trustee to participate on the creditors committee. That's how it started. And from that moment forward, Rory Ross, who is the senior vice president and deputy general counsel of HPES has participated from the beginning to this day representing HPES and all

creditors on the committee. We are one of two trade creditors, traditional trade creditors. I think that's an important fact. We've been extremely active in the case, including participation on both the labor subcommittee and the fleet subcommittee, and a search committee for the post confirmation board of directors. We have filed Mr. Ross's declaration which has now been admitted into evidence, it's 9506 on the docket. It's uncontroverted, it addresses what Mr. Ross believes are the expenses HP has incurred and that those expenses are reasonable. Mr. Ross's declaration is detailed in not only the services he performed, but the services his professionals have performed to assist him in performing his duties as a member of the committee. We have filed a responsive pleading to the U.S. Trustee's objection as well as Mr. Ross's affidavit which is at 9505, so I'm not going to repeat that.

What I do want to do is say that I adopt everything that the creditors committee has said with respect to the expense reimbursement as if we made those statements ourselves. I want to -- all the positions and arguments of the debtor on the issues of expenses we also adopt, and I think that's important. I really do want to conclude by saying there is no evidence to the contrary that these fees and expenses that have been incurred by HPES as a member of this committee are reasonable.

THE COURT: All right. Thank you. All right.

Anyone else before we hear from the U.S. Trustee's office. All right.

MS. GOLDEN: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MS. GOLDEN: Good afternoon, Your Honor. Again, Susan Golden for the United States Trustee. Your Honor, the U.S. Trustee's objection to the plan is really very straightforward, and I think it can be boiled down quite simply. May the Court approve, the Court approve the plan when it contains provisions which might otherwise not be allowed under the Bankruptcy Code if they were sought prior to confirmation. In order for the Court to confirm the plan, Your Honor must make the finding that the plan complies with the applicable provisions of the Bankruptcy Code, and here there are three provisions that are at issue. The first is the approval of the severance agreement for Mr. Horton, which does not comply with section 503(c)(2). The second is the provision allowing the reimbursement of the attorneys' fees for the creditor committee members as members acting in the capacity of individual members. And the noncommittee member indenture trustee fees, without requiring compliance with section 503(b). At the hearing approving the disclosure statement, Your Honor did ask the parties to see if they could harmonize the various provisions of the Bankruptcy Code to see whether what is in play here could somehow be read together. In this situation,

the Code is clear, what has been specifically accepted from the Code under one section cannot be allowed and approved by the Court under a more general provision. Section 1123(b)(6) allows the plan proponent to include terms that are not inconsistent with the applicable provisions of the Code. Section 1129(a)(1) authorizes the court to confirm a plan only when it complies with the applicable provisions of the Code through section 103(a), one of the applicable provisions in 503. And here both the Horton severance and the payment for the committee members' attorneys' fees and the indentured trustees are prescribed by the parameters of section 503(c) in the Horton case, and section 503(b) in the case of the committee members and the indentured trustees. The debtors are attempting to use section 1129(a)(4) in order to pass these payments through the estate. But as we said in our papers and I will do my best not to reiterate everything that we said there, as I know that Your Honor has read everything, 1129(a)(4) is a general statute which provides that the court exercise substantive control over the fees and costs related to the chapter 11 case and that the payments should be disclosed and approved as reasonable. It does not in and of itself give authority to do anything, and that is what Judge Gerber said in Adelphia. Nowhere does 1129(a)(4) purport to authorize the payments that are otherwise prohibited or do not comply with other sections of the Code. To the contrary, how can any

payment be approved as reasonable if it violates express Code provisions. I'm going to discuss the Horton severance first and I will also address Journal Register.

Section 503(c)(2) sets forth very clear parameters for the court to consider before approving the proposed payment. That section states that there should neither be allowed nor paid a severance payment to an insider unless the criteria are met. Because section 503(c) speaks to both allowance and payment, it applies with equal force regardless of whether the payment is to be made by the debtor prior to plan confirmation or whether the successor of the debtor is directed to make the payment after emergence. The debtors argue that because the payment would be approved as part of the plan by the new company that it is not an administrative expense, it does not fall within section 503 and should not, and should, excuse me, be approved by the court.

We see the relevant issue as why the payment is being made, not who is paying it, or when it is paid. The obligation should Your Honor approve it arises and would be incurred now. It would be allowed now. In this bankruptcy case, as a part of this plan, a consideration for work done preconfirmation to preserve and maximize the estate of the debtors. This is not a post confirmation obligation. It is a plan obligation which would bind the new company. As Your Honor stated in his April merger decision, the fact that the new entity would pay is a

legal fiction since it relates to Mr. Horton's tenure and work while employed at AMR, and a new company would be bound to honor it.

The U.S. Trustee posits that it is the new company therefore that should take this up post effective date. The debtors have cited and discussed earlier today the Journal Register case, and in their papers they state that Judge Robert's decision is in essence on all fours. At the merger hearing, you had asked me whether the U.S. Trustee had a position on Journal Register, and I said that yes, we disagreed with it. And we do for the reasons that I just stated. Section 503(c) speaks to both allowance and payment and applies with equal force regardless of whether it is made during the bankruptcy case or by the reorganized debtor after emergence. However, assuming just for the sake of argument that Journal Register does provide guidance on the issue, the facts belying that holding are not what is before Your Honor, it is not on all fours and should not be followed here. Journal Register was a gifted case where the incentive plan was authorized on the basis that the payments would be made after the effective date from assets owned by secured lenders. The incentive plan required the employees to reach certain benchmarks in order to receive their awards, and as Mr. Karotkin did point out, those benchmarks were reached prior to confirmation. However, Journal Register dealt with performance by covered insiders who

were remaining employed by the reorganized company. There was no expected future performance for which Mr. Horton would receive this money. He is being paid strictly for work already performed. He is not remaining as an employee or executive of the new American Airlines. And regardless of what the debtors and the committee say now, this is a severance payment and it does exceed the 503(c)(2) limitations. It is not an alignment award as had been alluded to by Mr. Karotkin in the declarations of I think of Mr. Frisk and Mr. Codina because what is being aligned, he is not continuing as an employee, he's going to become a chairman of the board. Is it customary? That's for the new board to decide how much they want to pay their chairman. If they want to give him $20 million for his service, that's for the new board to take up. You also noted earlier and the U.S. Trustee certainly agrees, the agreement is called a severance agreement. Mr. Horton is represented by Wachtel, the Debtors by Weil, the committee by Skadden, so it is clear that sophisticated counsel structured this deal and at the very least they know the difference between calling something a severance agreement and calling something by another name to reflect the true nature of that agreement. And this issue has been argued, discussed, negotiated, both privately and before Your Honor for months and that agreement has not been amended.

The debtors and the committee also concede in their

papers that this payment is for the hard work Mr. Horton did bringing this complex case to this point, which in essence is saying that it is an expense that is necessary for Mr. Horton's work to preserve and realize value for the debtors' estates, which is the textbook definition of an administrative expense as articulated by Judge Gropper in Journal Register.

I also want to note that all of the hard work that Mr. Horton did was his job as the CEO of an international airline which is in bankruptcy. And if he didn't do his best to work hard and maximize the value of the estate, it would have been a breach of his duties.

The fact that the debtors and the committee are now trying to say that this payment will also compensate him for his new role as chairman of the board is disingenuous, belied by the facts, belied by their own prior statements, and by the severance agreement itself. This is a severance payment, it is an administrative expense, it does not comply with section 503(c)(2) and it should be denied and severed from the plan.

The debtors and the committee also argued that because no one with an economic interest objected, the consent of the parties makes this okay under 1129(a)(4) and it does not because one cannot consent to violate the Code. In fact, when the Code does permit parties to alter the payment scheme by agreement, it does so explicitly. For example, section 1129(a)(7)(a)(i) provides that a creditor may consent to a

violation of the best interest test. And section 1129(b)(i) provides that the absolute priority rule is not applicable for classes that vote in favor of the plan. The rules of statutory construction do not change even if the parties consent to the allowance of the payment under 1129(a)(4) because the court is not relieved of its duty to deny plan provisions that do not comply with the Code.

Finally, it is not clear what consent means here. Would creditors have voted differently if this payment was not in the plan? Probably not. This was probably not a dispositive issue for the creditors seeking to keep their job and allowing the airline to continue. In terms of the vote, if it's not permitted by law, the vote is irrelevant. And here section 503(c)(2) applies, it prohibits the payment as proposed and the consent of the parties do not alter that.

THE COURT: What is your view about what's been contemplated by 1129 in terms of allowing payments for services during a case? So you say this isn't it because it's covered by 503(c), but certainly that provision has got to allow something, it's in there, so what is it that you think that it needs?

MS. GOLDEN: Generally provisions that in the past before the door was open for these kind of requests to go through 1129(a)(4) were typically, for example, investment bankers for a plan proponent who is not a debtor or the

committee for example, they would fall into the category, fees payable to the financing institutions.

THE COURT: Well would you claim that those had to be dealt with under substantial contribution?

MS. GOLDEN: I think that that the investment banking financial advisor fees that would come under that in terms of the -- let me just think about that for one second.

THE COURT: Because what I am trying to understand, this clearly means something, and so it talks about payments for things done during the case, and when I start thinking about what that will mean I start thinking about bumping into the other provisions in your view that would implicate 503 in one way or the other. So that's why I'm asking the question because it says any payment made that's being made by the proponent for services or for costs and expenses in or in connection with the case or connection with the plan or incident to the case, and incident struck me because it is, incident is a fairly loose word. And so that's, that's where, I'm trying to figure out what 1129(a)(4) is supposed to mean then without bumping into 503 in every occasion. Because I think Congress would also know how to right 1129(a)(4) and say except as prohibited by 503. So I don't even necessarily need you to identify particular things, but I'm just trying to get a sense of what your reading of the scope of that provision is.

MS. GOLDEN: Our reading of the scope of that

provision is that it really works in conjunction with other provisions and that if it is not prohibited by another section of the Bankruptcy Code, than one could at least make a tenable argument that it might be allowed under 1129(a)(4).

THE COURT: All right.

MS. GOLDEN: I mean another example, would be a liquidating trustee that would come in under a plan. But we do not view 1129(a)(4) as an authority in and of itself to allow payments to pass through the estate.

THE COURT: All right. Well what you just said seems to lead to the question I think I've asked everybody, is just how you understand that footnote 18 in Judge Gerber's decision. I'm not saying you advocate that line, so you don't have to, you don't have to issue a disclaimer at this point.

MS. GOLDEN: Let me start by saying and I know this will come as a shock, we disagree also with the Adelphia decision.

THE COURT: I know that. But I'm just saying what you just said seems to have, rings somewhat familiar to me in the context of reading that footnote, and I know you disagree with that decision in terms of the authorization of those fees there. But in terms of distinguishing different buckets you can still say all of these are prohibited, but one bucket is distinguishable from another bucket. So based on what you just said I take it, is it a safe statement to say that you think

none of these should be paid but you think that because 503(c) is a prohibition that it is a stronger case, would you agree with that or disagree with that?

MS. GOLDEN: I don't know what you, I don't understand what you mean by stronger case.

THE COURT: Well you just -- let me give one more shot and then I'll abandon, we can move on. When you said that what does 1129(a)(4) mean, you said you know it basically you look to see what people are looking for where it's not prohibited in other sections of the Code. And that sounds an awful lot like or echoes certainly, we'll put it that way, that footnote 18. So I, while you don't agree with the decision, I'm trying to figure out whether you have any common ground in Judge Gerber's way of looking at things or not. Do you distinguish the strength of your argument between any of these different requests for payment I guess is another way to ask the same question.

MS. GOLDEN: In connection with all three requests for payment, by that I mean the Mr. Horton severance payment, the committee member fees, and also the indentured trustee fees, no. We think that the legal analysis itself is the same. While they go into different provisions of 503, the analysis is still the same. That it should be reviewed within the bucket of 503 either b or c, and if it's prohibited or inconsistent with those specific sections of the Code, it should not be

allowed through 1129(a)(4).

THE COURT: All right. So then let me get back to my original question which is what do you think 1129(a)(4) covers?

MS. GOLDEN: As I said, I think that it covers and I know that it is written broadly, and I know that often it is on a case by case basis, but I think it really covers more I won't say mundane, but more items that are, that come under the plan like a liquidating trustee who would not be really part of the bankruptcy case, but would need authorization for its reasonable fees to be paid going forward. I think that that would be a reasonable example. I think the DIP lenders, that certain of the financing provisions may fall under that provision as part of exit financing, but not things that really were coming through the entire case and then being sucked in to 1129(a)(4) to allow them to be paid when they wouldn't ordinarily be paid otherwise. Through that provision.

THE COURT: Well but what in that, what in 1129, I hear your characterization and I understand you're trying to answer my question, so I'm not holding it against you even though this question may sound like I am.

MS. GOLDEN: That's good.

THE COURT: Your characterization about how to understand it meaning something that you know is not throughout the entire case, but rather so you know, more of a kind of a one time thing or looking forward thing, I'm trying to

understand where that's rooted in, and maybe you just say it's kind of how it works out in the course of when you sort through all the provisions of the Code, and maybe you have an understanding of, I'm just trying to get your sense of where that comes from and maybe it's just your, your sort of general characterization if that's what it says, fine.

MS. GOLDEN: And I apologize that I can't adequately articulate it, but --

THE COURT: That's okay, I can't either and I think I've been trying to ask questions to get parties' views about how to understand these different provisions, so that's really all I'm trying to do.

MS. GOLDEN: I appreciate that, Your Honor.

THE COURT: That's actually though a good segue into the other provisions because we certainly have spent enough time on the chairman's letter.

MS. GOLDEN: Well, Your Honor, if I may, just one more point on the chairman's letter in connection with his pre-employment contracts. And you had raised it in both Mr. Karotkin and Mr. Butler also responded, and I could briefly respond to that. The U.S. Trustee believes that the pre-employment contracts whether they're still valid or whether their terms have expired are relevant because it really does go to reasonableness. Now, let me just say that if those agreements were still in effect, the U.S. Trustee's substantive

objection would remain in the sense that anything above what 503(c)(2) would allow Mr. Horton to receive is all that we would look at to what he could receive. Anything above that, we would object to. However, the contracts as we read them and we pulled them from the SEC website and I certainly take Mr. Karotkin's statement that they have expired. But the one agreement would have allowed Mr. Horton to receive approximately six and a half million dollars if he was terminated without cause. The other agreement for various change of control provisions, and the merger was not one of them, but it did include reorganization and some other things, would have given Mr. Horton approximately 15 million dollars. Now Mr. Horton is asking for $20 million. And it does go to reasonableness because why should Mr. Horton, and I heard everything that Mr. Butler said, why should Mr. Horton receive anywhere between 5 and 14 million dollars more as a severance payment in bankruptcy than he would have received when the company had not yet filed. And if you --

THE COURT: Well I will say I think at this point the agreement has expired, I think I'm probably in the land of conjecture, but I'll take everybody's comments and characterizations of these agreements for what they're worth.

MS. GOLDEN: On to the committee member fees, and then I will address the indentured trustee fees which are a little different because the indentured trustees are not also

members of the committee. I know that NY, BNY Mellon is not and I'm not sure whether the other one is -- you are a committee member. Okay.

THE COURT: Let's start with them if you don't mind. I understand that, clearly not going to resolve this issue in its entirety but I think there is a benefit to trying to resolve as much as possible so those folks who may no longer be in the crosshairs can go out about their business. And so I always try to do that wherever I can, it won't absolve me from needing to make a decision at the appropriate time, but if the indentured trustee has other sources for payment, under this plan and this plan only, that are the same as what it seeks here, common sense dictates that I should try to fix this objection and make this get resolved. So what thoughts do you have on that?

MS. GOLDEN: I appreciate that and I certainly understand your desire to reconcile and try and come up with some resolution. Let me just say that I think that the overall tenure generally at least with, is that the U.S. Trustee objects to the payment of all of this. The U.S. Trustee does not object to the payments, the U.S. Trustee objects to the parties not wanting to --

THE COURT: You object to --

MS. GOLDEN: -- not wanting to use the appropriate statutory standards in which to receive payment.

THE COURT: No, I understand that. You're not trying to let the perfect be the enemy of the good. And there's plenty of opportunity to fight about all the rest of it, which we have done and have many, all of us had many interesting discussions. This one just seems to be something that should be able to get resolved even if parties find a way to say everyone reserves their rights to exactly how its characterized, because if the folks are entitled to their money six different ways to Sunday, then I just -- otherwise they're going to get whatever I decide is likely to be appealed, Lehman was appealed and they'll then be caught up in an appeal, and it would seem to be something that would be really a shame to implicate parties who are entitled to the same payment via another mechanism and say well they might as well just spend more time with their lawyers.

MS. GOLDEN: Let me just raise really two points on that. The first point is that the U.S. Trustee believes that if the indentured trustees can make the case that they did make a substantial contribution and I know Ms. Caton who represents BNY included it in her papers and also mentions it to Your Honor, if they make an application for substantial contribution and Your Honor which we view as a legal decision granted the U.S. Trustee, would certainly just do a general reasonableness view. The second issue which is the contractual issue which both Ms. Caton and the attorney for the other indentured

trustee mentioned. The Oval case and the First Merchants case that were mentioned, yeah, the attorney fees in both those cases are treated as unsecured claims despite the fact that the attorney work was done post petition. And that's what they are. They're unsecured claims. And what's happening is that it appears that they are trying to elevate those claims into admin claims in order to be paid.

THE COURT: In another case that might matter, but under this plan, again, I just -- when a case shows up, I often wish that it were different, and I don't get to choose. But when an opportunity, the facts present an opportunity that's really what I'm trying to get at here. I understand another case, I wouldn't have even have asked this question and gone down this road. And depending on how everything works out, we may have other discussions in the future. But under this plan, it is contemplated that unsecureds get paid 100 cents in some kind of value, and so I'm just having trouble understanding why we need to fight about this if it's a matter of how the parties characterize the appropriateness of the payment. I, they can pop up and comment, but I would strongly suspect that they don't care how its characterized. So --

MS. GOLDEN: Well from our view we realize that its 100 percent case.

THE COURT: I know you do and I understand why.

MS. GOLDEN: And stock isn't cash. And the other

unsecured creditors are not getting paid 100 cents on the dollar.

THE COURT: Then I give up. Let's just go on to the rest of the argument then.

MS. GOLDEN: Okay. Fair enough.

THE COURT: I surrender my common sense to legal proceedings. Proceed.

MS. GOLDEN: Thank you. Well thank you I think.

THE COURT: I just think that there are times when people, when really when confronted with facts that make it a law review article rather than a real dispute that people should be able to figure that out. You know, I'm never in a negotiating room so I can't pretend to know who is being reasonable or unreasonable, and I'm not going to attempt to recreate that scenario in my mind. But I think this particular dispute is more than a bit, well I'll just stay away from characterizing, so let's get on with the rest of the argument.

MS. GOLDEN: Your Honor, Ms. Caton just wants to make a brief remark.

MS. CATON: Yes, one brief comment, Your Honor. Indentured trustees really aren't set up to sell stock, and especially with stock that's being distributed over a period of 120 days, its complicated, it's going to cost more than it's worth, that's why we're asking for the payment in cash.

THE COURT: I understand. I understand.

MS. CATON: Thank you, Your Honor.

MS. GOLDEN: And Your Honor, I guess that brings us to the individual committee member fees.

THE COURT: All right.

MS. GOLDEN: And I think that this argument falls along the same lines as the Horton argument. Section 503(b)(3) and (b)(4) provide that creditors must show that they perform one of several specified actions for the benefit of the estate or which resulted in a substantial contribution to the case. And they must also show that their legal fees were necessary and reasonable. However, in the case of creditors who serve on a committee, there is an absolutely prohibition. Section 503(b)(3)(f) is the exclusive code provision for the payment of the actual and necessary expenses of the individual committee members. The expenses are usually held to be travel, meals, lodging and the like which are just normally incurred in the course of their committee duties. Section 503(b)(4) expressly excludes by its terms the compensation of attorneys or accountants for an entity whose expenses are reimbursable under section 503(b)(3)(f). Section 503(b)(4) which prior to 2005 allowed the payments being sought here was amended by Congress to expressly carve out committee member legal fees from the types of expenses that can be recovered no matter how beneficial or reasonable they were.

And I do take issue with Mr. Butler's statutory

interpretation that once that provision was taken out of the Code its silence means that you can still come up with a way to get it somehow else, some way else. Obviously, Your Honor, as I said before, and as everyone knows, the U.S. Trustee disagrees with the Adelphia decision. However, I will note that the fees in Adelphia were not for official creditor committee attorney expenses, they were for the fees of an ad hoc creditors committee. And ad hoc committees are not included in that prohibition. And while the U.S. Trustee believes and believed that the matter should have been resolved in this substantial contribution standard, the facts are not the same as they are here where each of the individual members are part of the official committee.

In terms of Lehman, I will be extremely straightforward. We disagree with Lehman, it is on appeal, the requests here, there was really nothing particularly distinguishable about what is being asked of you that was being asked of Judge Peck. And that's where we are on that, I'm not going to try and sugar coat that.

THE COURT: All right.

MS. GOLDEN: I think, Your Honor, that really covers it. One final issue on the committee member fees, and I think, I don't normally like to bring up an equitable argument, but here I will. The committee --

THE COURT: Well I brought one up and I had no

success with it, so best of luck to you.

MS. GOLDEN: The committee members here had the benefit of Skadden, I think the Togut firm, financial advisors, and investment bankers, and to the degree they needed to consult their own individual attorneys for matters that related to their particular claim, not as a committee member but as an unsecured creditor who may have a particular interest, that should be borne by that particular committee member unless they prove that they have made a substantial contribution. And it is certainly not fair to all of the other unsecured creditors out in the case who may have consulted their attorneys for matters that related specifically to their claim that are not automatically carved in to this provision without having to make the case for substantial contribution, because they would have to come before you to make that case.

As to the indentured trustee sitting on the committee, to the degree that that indentured trustee is seeking fees and expenses as a committee member, the position is the same as we would take with any other committee member regardless of the fact that they happen to be an indentured trustee. And I hope that that clarifies that. And with that, unless Your Honor has any other questions for me.

THE COURT: No I don't. Thank you.

MS. GOLDEN: Thank you.

THE COURT: All right.

MR. WARNER: If I may clarify something the U.S. Trustee just said. I just don't want the record to go unclear. I'm counsel for Hewlett Packard Enterprise Services, Michael Warner. The expenses incurred by HPES that are detailed in Mr. Ross's declaration are only expenses incurred in connection with Mr. Ross's service on the committee. Any professional services provided to HPES in addition to those on the committee relating to HPES's significant contract work are not included in the request today.

THE COURT: All right.

MR. WARNER: Not included in the declaration as what he believes are reasonable. It's completely separate intentionally.

THE COURT: All right. Let me ask Mr. Butler if he can clarify. I assume that's part of the case for all of the others.

MR. BUTLER: It is Your Honor.

THE COURT: That's what I thought was the case. All right.

MS. GOLDEN: Your Honor, if what counsel says is accurate to the degree that any of the fees being sought are for the necessary and reasonable cost incurred with being a committee member, as I said, meals, lodging, transit, phone, whatever, the U.S. Trustee does not have an objection to those other than just doing a general reasonableness review in regard

to fee applications. We're really looking at the individual separate attorney fees, not the expenses and fees incident to their service.

THE COURT: All right. You need to level set here on exactly what the scope of the objection is on the committee fees, individual committee member fees.

MS. GOLDEN: To the degree that the committee members are seeking expenses, incident to their work on the committee, and that would be travel to committee meetings if for some reason they incurred some sort of expense of telephonic communications, lodging, things of that nature, in order to perform their duties as committee members for meetings or sitting on subcommittees or whatever, these generally are put forth in a separate fee application which often gets attached to committee counsel's application or at least comes to us through a committee counsel. And those fees that are really the routine daily costs incurred for sitting on a committee as a committee member, the U.S. Trustee takes no issue with.

THE COURT: All right. So then what is it that you do object to in this application since it's clearly not fees that have been sought which are anything relating to individual committee members individual parochial interests?

MS. GOLDEN: Okay. That is what, if that is in fact the case for all of the committee members that are seeking this, that they're only looking for the fees incident to their

sitting on the committee and not seeking attorney fees for their counsel, for their own parochial interest, that is not the, the U.S. Trustee does not object to that. It is for the attorney fees for their individual, for advice on their individual claims or issues that they could have just gone to Skadden for as committee members that they didn't. Those are the issues that we take issue with and believe that there should be an application.

THE COURT: So let me ask Mr. Butler if he can clarify what whether, what the scope of the live case in controversy is as to the committee here on this --

MR. BUTLER: Your Honor, I can explain what section 623 of the plan does and what the scope of it is. The scope of 623 and the declarations that are now into evidence cover the following items. They cover and its contemplated under the plan that there would not be separate fee applications, there are these declarations that were filed, and by the way for the purpose of reasonableness, I would say this on the record because we had this conversation with American, even if Your Honor finds that these are 1129(a)(4) payments and approve them, the issue of the actual payment of them and the settlement of each of those expenses is going to be done between American and the individual committee members and American, individual reasonable [indiscernible] that's a separate commercial matter between them, and the committee

members understand that. I just wanted to indicate that to Your Honor. But the scope of the expenses are they are their normal out of pocket expenses, all the things that were suggested on the record already, plus the attorneys, the fees for their professionals that they retained individually in connection with their service on the committee. You know, this was a very complex case and in, you know, Skadden and Togut, we represent the committee as a committee, we answer all the questions people ask for the committee, we represent the committee in every capacity under our retention agreement, but I will tell you I think virtually every one of the nine members, I'm not sure there's anyone that was not included, virtually every one of the members although not all are seeking reimbursement, retained separate counsel who came to every committee meeting, I mean were in the room and were part of this process. And what they're seeking is for example, HP, as they came on the record, Mr. Warner represents them as to their individual claims and as to their service on the committee. The declaration that Mr. Ross submitted only relates to his, Mr. Warner's fees, as they relate to committee matters.

THE COURT: All right.

MS. GOLDEN: And that's what we object to. The latter part of what Mr. Butler just said.

THE COURT: Well but it sounds like that was, is not being requested here.

MS. GOLDEN: No, but I think that Mr. Butler said that it is, the individual professionals for the individual committee members is being requested.

MR. BUTLER: Yes. What's included, what's included in the, what section 623 of the plan chooses to reimburse [indiscernible] expenses, out of pocket expenses and the fees incurred by the individual committee members in connection with their service on the committee.

MS. GOLDEN: And that, the latter part is what we object to. And the former part which are the routine expenses aside from sending them to the internal, the internal accounting department or whoever one sends them to at American Airlines should also be done in an application. I believe that there is a fee examiner in this case to do the --

MR. BUTLER: Actually, I don't mean to put words in Mr. Keach's (phonetic) mouth, but Mr. Keach has informed me as counsel to the committee that the review of committee individual committee members fee, expenses are outside of his scope.

MS. GOLDEN: I stand corrected on that. So it is the latter part of Mr. Butler's comment that we believe that the individual committee members' professionals cannot be reimbursed. They have to make a motion or an application for substantial contribution that they contributed independently of their service on the committee, but they don't get it for

sitting on the committee, and it was written out of the statute.

MR. BUTLER: Your Honor, maybe this is abundantly clear, but just so the record [indiscernible] maybe you've got it down. Let's just, so we lay it out here, let's assume that HP paid Mr. Warner $100 for attorneys' fees and in that bill $10 of it was in connection with committee services and $90 of it was in connection with HP's parochial interests. And $90 is not part of this, it's not covered by 623.

THE COURT: I understand. But they still object to the 10.

MR. BUTLER: Yes.

THE COURT: All right. Thank you.

MR. KAROTKIN: Very briefly, Your Honor, just to respond to a couple of things that Ms. Golden said. She said that we're passing these payments through the estate for Mr. Horton. I mean that's just patently not true. These are not being passed through the estate, they won't be paid until after the merger is closed. The U.S. Trustee continues to ignore the administrative, or the lack of administrative aspect of this payment, and she ignores what the statutory language is just to get where she wants to be, totally ignores the fact, and I think she stated on the record that the chairman letter agreement doesn't address post merger services to be rendered by Mr. Horton which is just not the case at all. He will be

chairman of the board, and as I mentioned earlier, he will be involved in the integration process. And the fact that the U.S. Trustee disagrees with Journal Register, that's very nice, but that's not good enough. Journal Register, where we are now, Your Honor, we are directly on all fours with Journal Register, and that is as I said earlier, being now considered as part of the plan process, and I think that that compels the same result. I'll note that Ms. Golden focuses on the word severance, the word severance, the word severance. That's all well and good for her purposes for Mr. Horton's contract, but she totally ignores section 503 which refers to administrative expenses. It's okay to ignore that, but for purposes of the severance agreement with Mr. Horton or the chairman letter agreement, she can focus on the word severance, I mean she really can't have it both ways.

THE COURT: All right. Anyone else wish to be heard on this topic? All right. What is next for us to address at this hearing?

MR. KAROTKIN: Your Honor, I think we need to address the Alioto situation.

THE COURT: All right.

MR. KAROTKIN: Then perhaps we can take a 10 minute break to do that if you don't mind.

THE COURT: That would be fine, so let's come back, make it ten minutes after 4:00.

MR. KAROTKIN: Okay. I think that after that, I don't think there's anything else to address.

THE COURT: All right. Thank you.

(Break 4:00 PM to 4:18 PM)

THE COURT: Please be seated. All right, I think we're going to get on to the adversary in a second, but I understand the U.S. Trustee wanted to say something.

MS. GOLDEN: Yes, Your Honor, thank you. If you don't mind, I won't go to the podium.

THE COURT: Sure, that's fine.

MS. GOLDEN: The U.S. Trustee heard what Your Honor said in connection with the indentured trustees. We have spoken with counsel to both indentured trustees and we will reach out to them again, you know, in the coming days to see whether we can work out an amicable resolution.

THE COURT: I appreciate that.

MS. GOLDEN: And we will keep the Court apprised if we do.

THE COURT: I appreciate that. And well I made my earlier comment that got some laughter. I did not intend to be at all mean spirited or send a message, I just, you have to find humor in life where it presents itself, so please take it in that spirit.

MS. GOLDEN: I took it in that spirit.

THE COURT: All right. Thank you for that. All

right. So let's address I think the remaining issue. As it was noted earlier, there was a separate order that I issued in the adversary proceeding, I believe that was in response to a pleading made in that adversary about scheduling. So I think that that's and there's sort of a matter to from our earlier discussion, so it makes sense to address that all now.

MR. KAROTKIN: As I understand what counsel wants, he wants the ability to move forward with his adversary proceeding in this court, not in another court, in this court. And what we are prepared to do, Your Honor, is to permit him to go forward in this Court to the extent he's concerned about somehow his claim would be discharged if you were to enter a confirmation order, which it's hard for me to conceive of that happening since the discharge is conditioned on the effective date of the plan, we're prepared to carve him out of sections 10.2, 10.3, 105 to the extent that it relates solely to this adversary proceeding.

THE COURT: All right.

MR. KAROTKIN: 10.6 would not be applicable. Again, that's the injunction provision, solely with respect to the pursuit of this adversary proceeding in this Court.

THE COURT: All right. So let me hear from counsel for the plaintiffs in the adversary as to whether that solves that particular concern of yours.

MR. KAROTKIN: Making progress, how's that.

THE COURT: But that's not the answer to the question. So --

MR. COOK: No, I understand that. I think the other, I get that, that would solve my, I think the other term was a 10.8 but my reading of 10.8 it seemed very broad, I'm not sure that 10.8 might also impact my [indiscernible] claims.

MR. KAROTKIN: 10.8, Your Honor, as we mentioned before only applies to releases of causes of action by the debtors, it has nothing to do with what --

THE COURT: It's not third parties. I think that's been earlier represented so I think you can go by that statement.

MR. COOK: Okay, Your Honor, so to make sure I understand that if there's a carve out it would be a carve out to the Clayton Act claims to 10.2, 10.3, 10.5, and 10.6.

MR. KAROTKIN: As I said solely to the extent related to your adversary proceeding in this Court.

MR. COOK: Yes, as to my adversary, the adversary in the Northern District of California, so the only live action is the one I have here.

MR. KAROTKIN: So I assume you're agreeing with me.

MR. COOK: I'll tell you what I have here.

THE COURT: Lawyers have a talent for making agreements sound very hostile.

MR. COOK: I'm also looking, Your Honor --

THE COURT: I understand Mr. Karotkin's point and I think it's a fair one to say that we're talking about litigation in one forum, and since the adversary was filed here, it would be a carve out of that adversary, and not of the adversary in California, to just clarify that its pursuit of one case and one case only.

MR. KAROTKIN: And this complaint in this case.

THE COURT: Correct.

MR. COOK: This complaint in this case, that's correct.

MR. KAROTKIN: With all the other parties and interest reserving all rights that they have with respect to that action.

THE COURT: Right.

MR. COOK: Well I'm certainly not asking anybody stipulate to entry of judgment this afternoon, Your Honor.

THE COURT: All right.

MR. COOK: We're looking to see if the Court which would expedite our analysis on a going forward basis that the Court would order the turnover of the Hart-Scott-Rodino documents.

THE COURT: Well today is a confirmation hearing, it is not a hearing on the details of the adversary. It is, the reason I set this case at all for a hearing today was to the extent that the request that you had made implicated the

confirmation hearing. So we will talk about that all in the fullness of time, particularly in light of what appears to be an agreement between the parties about how to proceed, and as you mentioned yourself, I think we have a date in September to do some talking. So I imagine parties will talk in advance of that.

What I will want by the time we talked in September is an understanding that notwithstanding your right, the right of private plaintiffs to pursue such claims, how such claims and such a lawsuit should be handled in light of the Department of Justice case. That implicates judicial efficiency, the notion of inconsistent judgments. As I said before, the Department of Justice lawsuit is in the more than capable hands of the District Court in the District of Columbia. And so when you have a right to a separate case, I do have questions about your request to go ahead with the case here, and those are my concerns which are I think very real. And I don't make any promises to what the appropriate, what I find to be the appropriate path in dealing with the case. Although I suspect you would face exactly the same questions were you to talk to the Judge in the Northern District of California.

MR. COOK: I think the, yes, but it's correct, and I think many of these issues will probably be better refined as we get closer to the 9/12 date as I've served everybody as the Court ordered and we'll get the responses and see where we are.

THE COURT: All right. I will leave the parties to work out appropriate language to address that issue. And I appreciate the parties trying to work these things out.

MR. COOK: Thank you, Your Honor.

THE COURT: Thank you. All right. Anything else that we need to address here this afternoon?

MR. KAROTKIN: I think the only other item, Your Honor is your request for a briefing. Do you have timing on that?

THE COURT: Today is the 15th. My thought was to say two weeks, but I'm not wedded to that one way or the other. I'm happy to change that depending on if people have vacation plans, it is that time of the year.

MR. BUTLER: What we have talked to Mr. Karotkin about was the possibility of getting the supplemental submissions in by the end of next week along with a proposed form of confirmation order, and then there's a hearing the following week as to only the form of order if Your Honor had questions, we could deal with it during that hearing. And I know you're probably taking this under advisement, but --

THE COURT: That's fine, you can do it that way, if you want to do it that way. I just want to make sure folks had the opportunity to file whatever they wanted to file. I will say it sounds like the debtors would like to file something, the committee, I will let any party that wants to weigh in on

this particular issue weigh in, that includes obviously the United States government. I will also make it very clear though that no one is obligated to weigh in and there is a separate antitrust lawsuit and there has been no one here from the United States government in connection with that lawsuit nor do they need to be. So I'm not casting any aspersions at all. But what I don't want to do is preclude any party who I decide that they wish to be heard to be heard on the issues. So no one is obligated to say anything other than perhaps the debtors and the committee, and because really this is a request to confirm the plan. So if, two of the drivers for this, if you want to work out a schedule that means the end of next week, I'm fine with that. We can set that as a default subject to you changing your minds based on other considerations.

MR. KAROTKIN: Why don't we do that.

THE COURT: So let's do that, we'll make it the end of next week, so that's the 23rd, and if for some reason you want to change that date, I will change it for everyone, so you would just file a stipulation proposed order on the docket and I would sign it with whatever new date that you would like. So if you go home and speak to your significant other and remind you that you just set a very very bad deadline, then we can fix that problem.

MR. KAROTKIN: You were reading my mind sir.

THE COURT: All right. So I'm going to leave the

hearing open on that one issue and that one issue only so that I would --

MR. KAROTKIN: So you would close the record as to all else.

THE COURT: As to everything else the record is closed, and certainly I don't want any additional briefing to address anything that's on a different topic. I think we've been there and done that. So once I review the pleadings that have been filed we'll either talk about it on the 29th if they do in fact get filed the end of next week, or certainly as soon thereafter as we all get together. Anything else? Thank you very much.

(Hearing adjourned 4:28 PM)

I N D E X

RULINGS

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.

Theresa Pullan

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