

STEVEN K. HOFFMAN*
DANIEL M. ROSENTHAL*
James & Hoffman, P.C.
1130 Connecticut Avenue, N.W., Suite 950
Washington, D.C. 20036
Telephone: (202) 496-0500
Facsimile: (202) 496-0555
skhoffman@jamhoff.com
dmrosenthal@jamhoff.com

JEFFREY B. DEMAINE (SBN 126715)
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, California 94108
Telephone: (415) 421-7151
Facsimile: (415) 362-8064
jdemaine@altshulerberzon.com

Attorneys for Defendant
Allied Pilots Association

**Admitted pro hac vice*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

AMERICAN AIRLINES FLOW-THRU)
PILOTS COALITION, *et al.*,)
)
Plaintiffs,)
)
v.)
)
ALLIED PILOTS ASSOCIATION, *et al.*,)
)
Defendants.)

Case No. 3:15-cv-03125-RS

**COMPENDIUM OF EXHIBITS IN SUPPORT
OF DEFENDANT ALLIED PILOTS
ASSOCIATION'S MOTION IN LIMINE TO
EXCLUDE EVIDENCE**

Date: March 29, 2018
Time: 1:30 p.m.
Courtroom: 3 - 17th Floor
Judge: Hon. Richard Seeborg

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- Exhibit 1. Excerpts from the reporter’s transcript of the December 12, 2017 deposition of Wayne Klocke
- Exhibit 2. Excerpts from the reporter’s transcript of the December 12, 2017 deposition of John Schleder
- Exhibit 3. Excerpts from the reporter’s transcript of the December 22, 2017 deposition of Gavin Hugh MacKenzie
- Exhibit 4. Excerpts from the reporter’s transcript of the December 8, 2017 deposition of Beth A. Holdren
- Exhibit 5. Excerpts from the reporter’s transcript of the November 28, 2017 deposition of Plaintiff Gregory Cordes
- Exhibit 6. Excerpts from the reporter’s transcript of the November 30, 2017 deposition of Plaintiff Dru Marquardt
- Exhibit 7. Excerpts from the reporter’s transcript of the November 27, 2017 deposition of Plaintiff Doug Poulton
- Exhibit 8. Excerpts from the reporter’s transcript of the November 29, 2017 deposition of Plaintiff Stephan Robson
- Exhibit 9. Excerpts from the reporter’s transcript of the November 29, 2017 deposition of Plaintiff Philip Valente III
- Exhibit 10. Excerpts from the reporter’s transcript of the December 21, 2017 deposition of Mark Leslie Burdette
- Exhibit 11. Excerpts from Plaintiffs’ Responses to APA’s First Set of Interrogatories to Plaintiffs, served on December 27, 2016
- Exhibit 12. Excerpts from Plaintiffs’ Responses to APA’s First Set of Requests for Admission to Plaintiffs, served on December 27, 2016
- Exhibit 13. Arbitrator John B. LaRocco’s March 13, 2008 Opinion and Award (Deposition Exhibit 1027)

EXHIBIT 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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IN THE MATTER OF:

AMERICAN AIRLINES FLOW-THRU
PILOTS COALITION, et al.,

Plaintiffs,

v.

ALLIED PILOTS ASSOCIATION,
et al.,

Defendants.

Case No.
3:15-cv-03125-RS

Tuesday,
December 12, 2017

Washington, DC

DEPOSITION OF:

WAYNE KLOCKE

called for examination by Counsel for the
Plaintiff, pursuant to Notice of Deposition, in
the law offices of the Air Line Pilots

Association Legal Department, located at 1625

Massachusetts Avenue, NW, when were present on

behalf of the respective parties:

APPEARANCES:

On Behalf of the Plaintiffs:

CHRISTOPHER KATZENBACH, ESQ.
Altshuler Berzon LLP
177 Post Street
Suite 300
San Francisco, CA 94108
(415) 421-7151
ckatzenbach@altshulerberzon.com

On Behalf of the Defendants:

STEVEN K. HOFFMAN, ESQ.
DANIEL M. ROSENTHAL, ESQ.
James & Hoffman, P.C.
1130 Connecticut Avenue, NW
Suite 950
Washington, DC 20036
(202) 496-0500
skhoffman@jamhoff.com
dmrosenthal@jamhoff.com

MARCUS C. MIGLIORE, ESQ.
Air Line Pilots Association, International
1625 Massachusetts Avenue, NW
Washington, DC 20036
(202) 797-4054
marcus.migliore@alpa.org

ALSO PRESENT:

NHAT PHAM, Videographer

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

2 12:50 p.m.

3 VIDEOGRAPHER: We're now on the
4 record. Here begins the video deposition of
5 Wayne Klocke, taken in the matter of American
6 Airlines Flow-Thru Pilots Coalition, et al. v.
7 Allied Pilots Association, et al. Today's date
8 is December 12, 2017. The time is 12:50.

9 This deposition is being held at 1625
10 Massachusetts Avenue, NW, Washington, D.C. Our
11 court reporter is Chad Jackson, on behalf of Neal
12 Gross. My name is Nhat Pham, also on behalf of
13 Neal Gross. Will Counselors please identify
14 themselves and state who you represent?

15 MR. ROSENTHAL: My name is Daniel
16 Rosenthal. I represent the Allied Pilots
17 Association.

18 MR. KATZENBACH: My name is
19 Christopher Katzenbach. I represent the
20 Plaintiffs.

21 MR. HOFFMAN: Steven Hoffman. I also
22 represent the Allied Pilots Association.

1 MR. MIGLIORE: I'm Marcus Migliore,
2 senior managing attorney with the Air Line Pilots
3 Association legal department.

4 VIDEOGRAPHER: Would the court
5 reporter please swear the witness?

6 WHEREUPON,

7 WAYNE KLOCKE
8 was called as a witness by Counsel for the
9 Defendants and, having been first duly sworn, was
10 examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. ROSENTHAL:

13 Q Good afternoon.

14 A Good afternoon.

15 Q Could you state and spell your last
16 name for the record?

17 A Wayne Michael Klocke, K-L-O-C-K-E.

18 Q Thank you. I will state, once again,
19 my name is Daniel Rosenthal. I am here on behalf
20 of the Allied Pilots Association, which is a
21 Defendant in this case. You are testifying today
22 pursuant to a subpoena, is that correct?

1 A Correct.

2 Q I take it you've been involved in
3 depositions before, and you know the rules of the
4 road?

5 A I've administered depositions. I
6 don't believe I've ever been the witness in a
7 deposition.

8 Q As I'm sure you know from your
9 experience, this is under oath, just like you
10 were testifying in court. We're taking a video
11 here today, as you can see. That video
12 ultimately can be, and probably will be, played
13 for the jury of this case, which is taking place
14 in San Francisco. So your testimony today will
15 be essentially the same as testimony in court.
16 You understand that?

17 A I understand.

18 Q Is there anything that would prevent
19 you from being able to testify accurately and
20 completely today?

21 A No.

22 Q I will do my best to ask you clear and

1 concise questions. If there's anything I ask
2 that you don't understand, just ask me to repeat
3 it or rephrase it, and I'll try to make a better
4 question.

5 A I'll do so.

6 Q Let's get into your background to
7 start. Where are you currently employed?

8 A Air Line Pilots Association,
9 International.

10 Q Is that also referred to as ALPA?

11 A It is.

12 Q Do you work out of this building,
13 where they are currently?

14 A No, my primary office is in Euless,
15 Texas.

16 Q When did you start working with the
17 Air Line Pilots Association?

18 A That would be the end of February of
19 1996.

20 Q What was your educational background
21 prior to that point?

22 A I had a bachelor's degree from the

1 University of Iowa and a law degree from the
2 University of Iowa. I studied economics, social
3 sciences undergrad, and didn't have any
4 particular area of emphasis in law school,
5 administrative law was an area I studied more
6 than a few others.

7 Q When did you graduate from law school?

8 A In 1976, December.

9 Q What were you doing between '76 and
10 '96?

11 A I worked for a consulting company in
12 Chicago in 1977. That continued until 1985, and
13 I took employment with the City of Springfield,
14 Illinois as a corporation counsel. In 1986, I
15 entered private law practice with a firm in
16 Springfield. I eventually became a partner in
17 that firm. Then that firm dissolved, and I
18 continued my law practice with another firm there
19 in Springfield.

20 Then I accepted employment with the
21 Illinois Fraternal Order of Police as an in-house
22 labor counsel. Began that in Springfield,

1 Illinois, then eventually transferred to
2 Countryside, Illinois, a Chicago suburb, and did
3 the same work there for the Illinois Fraternal
4 Order of Police, FOP, until I was hired by ALPA
5 and actually performed very similar work for ALPA
6 to that which I had performed for the FOP.

7 Q When you started working for ALPA,
8 were you licensed to practice law?

9 A Yes.

10 Q In what state or states?

11 A Illinois and Wisconsin. I was active
12 in both states, at that time. I've since only
13 remained active in Illinois. I'm still licensed
14 in Wisconsin, and I could be active there if I
15 chose to be, but I'm inactive, mainly for dues
16 purposes.

17 Q Now let's focus specifically on your
18 time at ALPA. When you started -- let's work
19 backwards. Currently, what is your position at
20 ALPA?

21 A I'm a senior labor relations counsel.

22 Q What is involved in being a senior

1 labor relations counsel?

2 A I represent ALPA and the pilots that
3 they represent in contract negotiations and
4 grievances, primarily.

5 Q Is there a particular group of pilots
6 that you work with currently?

7 A While with ALPA, I've worked with
8 several groups of pilots, the PSA pilots and the
9 Hawaiian pilots. I've represented a Compass
10 pilot. Currently, and primarily, I work for the
11 Envoy pilots, MEC. That was formerly American
12 Eagle. I've done that since I moved to Texas in
13 1998.

14 Q If I understand correctly, in 1998,
15 you started working with the pilots at the
16 carrier that was then called American Eagle, now
17 called Envoy?

18 A I did some grievance work, several
19 arbitrations, in '96 and '97, for American Eagle
20 pilots. Since I've moved to Texas, I've been --
21 95 percent or more of my work has been for the
22 Eagle, now Envoy, pilots.

1 Q Let me get a little bit more about a
2 detailed sense of the work that you've done with
3 ALPA, starting with the collective bargaining
4 process. Have you been involved in the
5 collective bargaining process while at ALPA?

6 A Oh, absolutely. There are different
7 aircraft types. I participate in the
8 negotiations of the rates for any new equipment.
9 I've handled the amendment rounds that existed
10 under the 1997 collective bargaining agreement
11 between ALPA and American Eagle Airlines. I've
12 handled the negotiations during the AMR
13 bankruptcy.

14 That also included American Eagle.
15 That was in the 2012 time frame. I handled
16 negotiations that came after that, in connection
17 with the merger of, for lack of a better word,
18 between U.S. Airways and American Airlines. The
19 new management group had certain interests that
20 required modifications of our contract. I
21 participated in all of those negotiations.
22 Negotiations is probably -- it's been a

1 consistent focus of mine, a consistent thing that
2 I spend time on, probably 30-40 percent of my
3 time since 1998.

4 Q Since 1998, if there's a negotiation
5 between Eagle, now Envoy, and ALPA, you would
6 typically be attending negotiating sessions and
7 that kind of thing?

8 A There might be an exception on some
9 what I characterize as a minor letter of
10 agreement, but the answer to your question is
11 yes, any contract, any significant letter of
12 agreement, I either attended the negotiations or
13 reviewed the document and provided input to the
14 pilots or both.

15 Q You also mentioned grievance and
16 arbitration. Again, focusing on the time period
17 when you were working with American Eagle, now
18 Envoy, what has been your role, with respect to
19 grievance and arbitration?

20 A I have heavy involvement in grievance
21 and arbitration. When I'm not negotiating or
22 speaking with pilots about routine

1 representational matters, such as an aircraft
2 incident or some unusual aviation event, I'm
3 involved in arbitrations and grievance
4 preparation, first step hearings, system board
5 submissions, and the actual system board
6 proceedings.

7 Q Can you estimate how many grievance
8 arbitrations you've been a part of?

9 A Hundreds. Not all of them have gone
10 to decision. There was a period where we were
11 doing 10 or 12 cases per year, probably a
12 ten-year period where that was practically the
13 norm. Then for every case that is decided in
14 arbitration, there are two or three that settle
15 prior to the arbitration, in an approximation. I
16 haven't studied the number precisely.

17 Q I understand. As you may know, the
18 focus of the case that brings us here today is an
19 agreement that I'll refer to as the Eagle
20 flow-thru agreement or the flow-thru agreement.
21 Are you familiar with that agreement?

22 A Yes. I did not negotiate that

1 agreement. It was negotiated before 1998, when I
2 moved to Texas.

3 Q Have you been involved -- although you
4 weren't involved in negotiating it, have you been
5 involved in implementing the Eagle flow-thru
6 agreement?

7 A Yes. There were a number of issues
8 that arose after 9/11, with respect to the
9 flow-thru agreement, Letter 3, Supplement W. I
10 was involved in all of those.

11 Q Just for the jury, explain -- you just
12 mentioned Letter 3 and Supplement W. What does
13 that refer to?

14 A That is the flow-thru agreement. That
15 particular agreement has expired now.

16 Q Letter 3 is how it was referred to in
17 the context of the CBA or collective bargaining
18 agreement between ALPA and Eagle, is that right?

19 A Yes.

20 Q Supplement W was how it was referred
21 to in the agreement between American and the
22 Allied Pilots Association?

1 A Yes.

2 Q We've heard a lot of testimony about
3 the details of the agreement, which we're not
4 going to get into right now, but can you give us
5 just a quick summary, a couple of sentences, what
6 did that agreement do?

7 A It allowed commuter jet captains to
8 flow up from Eagle to American Airlines, and it
9 allowed furloughed American Airlines pilots to
10 flow down into commuter jet captain positions at
11 Eagle. It was known as career opportunities and
12 furlough protection, if I remember correctly. It
13 was career opportunities for the Eagle pilots,
14 and furlough protection for the American pilots.

15 Q You mentioned that there were a number
16 of issues that arose, particularly after 9/11.
17 Did the flow-thru agreement contain a mechanism
18 for resolving disputes that arose under the
19 agreement?

20 A It did. I would describe it as a
21 grievance process with a single neutral. I think
22 we selected neutrals from a five-member panel.

1 The panel, at one point, may have been larger
2 than five. As long as it's an odd number, you
3 can select one.

4 Q Who could initiate an arbitration
5 under that mechanism?

6 A Any of the four parties.

7 Q Four parties being?

8 A American, the APA -- that is the
9 Allied Pilots Association -- American Eagle and
10 ALPA.

11 Q I think, based on what you said
12 earlier, you were involved in a number of these
13 disputes, arbitrations under the flow-thru
14 agreement.

15 A I was.

16 Q I kind of just want to, for the jury,
17 lay out how the process worked. How would a
18 party initially initiate one of these
19 arbitrations?

20 A I don't remember the exact terminology
21 that's specified, but I did so on several
22 occasions. I would look at the dispute process

1 to see what was required, and we would send a
2 letter to the other parties, notifying them of
3 the existence of a dispute. I would characterize
4 it as a notice of dispute or a grievance letter.

5 We would make sure we had proof that
6 was served on the other parties. Then the
7 dispute process required a meeting of the parties
8 regarding the dispute that had been filed or
9 raised. Then that meeting would occur, usually,
10 within a week or two weeks after the dispute. If
11 the dispute was not resolved -- I think -- I
12 can't remember a case where it was resolved at
13 that first meeting, but if it was not resolved,
14 then we would pick an arbitrator.

15 Q How would the parties pick an
16 arbitrator?

17 A We would strike from a list. The
18 order of striking in most cases, since there were
19 four parties, was determined, that I remember, by
20 drawing straws. I, myself, drew straws on at
21 least two occasions. The short straw struck
22 first.

1 Q Once an arbitrator had been selected,
2 what would happen at that point?

3 A The party raising the dispute, or the
4 parties, collectively, would contact the
5 arbitrator to ask for hearing dates.

6 Q Then once -- let's fast-forward to the
7 hearing process. What would take place in a
8 hearing in one of these disputes under the
9 flow-thru agreement?

10 A You would set the location. The
11 parties would be present. The parties would make
12 opening statements. There would be some
13 discussion of -- perhaps a stipulation of what
14 the issue was to be submitted to the arbitrator
15 and to be resolved or decided by the arbitrator.
16 Then the party raising the dispute would proceed
17 with its case, in terms of presenting argument,
18 evidence, exhibits, testimony, witnesses.

19 Q Would the four parties, ALPA, APA,
20 American and Eagle, all participate in those
21 hearings?

22 A Yes, at least to some extent. There

1 may have been a case or two where ALPA was
2 ambivalent or didn't care about the outcome, but
3 we had the opportunity to participate and to be
4 present to hear all the testimony and to present
5 any evidence that we chose to. That same rule
6 applied to all the parties. The arbitrators that
7 we utilized were all prominent arbitrators and
8 were very cognizant of due process requirements,
9 in my opinion.

10 Q Then what would happen after the
11 hearing was over?

12 A Typically, there would be briefs, and
13 then a decision, a written decision from the
14 arbitrator. All the parties had the opportunity
15 to submit briefs and almost always did so.

16 Q Do you have a sense of how many
17 arbitrations, under the flow-thru agreement, you
18 participated in?

19 A Roughly eight, possibly more.

20 Q What, specifically, was your role?
21 Would you be the lead spokesperson on behalf of
22 ALPA at those arbitrations?

1 A Yes. When I give you that number, I'm
2 consolidating the Casher cases. There were four
3 separate grievances. I'm consolidating that into
4 one proceeding because they were consolidated.

5 Q In these arbitrations, under the
6 flow-thru agreement, how would you describe
7 ALPA's role or its purpose in participating in
8 these arbitrations?

9 A ALPA wanted to protect the interests
10 of the pilots that it represented, the American
11 Eagle pilots. It wanted to enhance their career
12 advancement opportunities, and it wanted to
13 enforce the agreement. I would say ALPA filed
14 more grievances than any other party. The APA
15 filed three initially, but I think the remainder,
16 perhaps with one exception, of the grievances
17 were filed by ALPA.

18 Q You said that ALPA wanted to protect
19 the pilots that it represented. Who,
20 specifically, was included in that group of
21 pilots that ALPA represented?

22 A All of the pilots on the American

1 Eagle pilot seniority list.

2 Q What was your understanding of APA's
3 role in the arbitrations?

4 A My understanding, based on what I
5 observed, was that they were doing the same thing
6 as ALPA was doing, but on behalf of the American
7 Airlines pilots that they represented.

8 Q I take it you're aware that under the
9 flow-thru agreement, a pilot could be in a
10 situation where he or she had a seniority number
11 at American Airlines, but was still flying at
12 American Eagle, is that right?

13 A I'm acutely aware of that, yes. I
14 personally know many of those pilots who were in
15 that situation for a number of years, when
16 American stopped hiring after 9/11.

17 Q For those pilots, would they be
18 represented by ALPA in the arbitrations, or would
19 they be represented by APA?

20 A They were still -- if I understand
21 your question correctly, we're talking about
22 pilots who were still flying at Eagle.

1 Q Correct.

2 A They were represented by ALPA.

3 Q Are you aware -- scratch that. Based
4 on your involvement and experience in the
5 arbitrations, were ALPA's positions, in fact,
6 designed to advance the interests of pilots
7 within ALPA's Bargaining Unit at Eagle?

8 A ALPA's positions were consistent with
9 and supported and designed to advance the
10 interests of the pilots on the American Eagle
11 pilot seniority list, if that's what you're
12 asking.

13 Q Yes. Based on your perceptions of the
14 positions that the other parties were taking, did
15 it appear to you that APA's positions were
16 advancing the interests of pilots within the APA
17 Bargaining Unit?

18 A Yes. The companies, of course, didn't
19 represent pilots, and they had their own
20 financial and business interests that varied
21 somewhat from those of ALPA and the APA. Those
22 are harder for me to categorize.

1 Q Focusing on the unions, ALPA and APA,
2 is it fair to say that both sides were fighting
3 vigorously on behalf of their Bargaining Units?

4 A Absolutely.

5 Q They were hard-fought proceedings, is
6 that right?

7 A In general. There were some that were
8 very contentious, yes.

9 Q Is it fair to say that ALPA sometimes
10 won, APA sometimes won?

11 A That's fair, yes.

12 Q Once an award was issued by an
13 arbitrator, did ALPA abide by those awards?

14 A Yes. I don't think we ever challenged
15 an award. They were final and binding, as far as
16 I understood, and we abided by the awards, yes.

17 Q Was it your perception that the other
18 parties also abided by the awards?

19 A Yes.

20 Q Did ALPA ever file a claim stating
21 that one of the parties was failing to abide by
22 an award?

1 A Not that I remember. In the remedy
2 hearing in FLO-0108, there may have been some
3 discussion about that, but I don't believe we
4 ever filed a claim that someone was not adhering
5 to the award.

6 Q You just referred to one of the
7 arbitrations, 0108, by name, so I just want to
8 establish, at this point, there was a numbering
9 system for referring to these different
10 proceedings, is that right?

11 A There was. We called them FLO cases.
12 I actually picked that designator because we
13 wanted to differentiate them from our other group
14 grievances. They were clearly, from our
15 perspective, group grievances, but they were
16 particularly on the topic of flow, sometimes
17 involving flow up or flow back. Both issues were
18 the subject of grievances, and those were all FLO
19 cases, yes.

20 Q I've seen them written FLO dash, and
21 then usually a four-digit number.

22 A Yes. For example, 0108, as I

1 understand it, after the dash -- that was my
2 assistant's doing, but 0108 probably would have
3 been the first grievance filed in 2008.

4 Q For the remainder of the time that I'm
5 going to talk to you, I'm going to ask you about
6 some of those specific proceedings. They pretty
7 much all occurred after 9/11, as you mentioned
8 earlier, and they relate to something else that
9 happened, which I just want to establish some
10 background for before we move forward.

11 A There was one case that at least arose
12 before 9/11, according to my recollection, and
13 that was before Arbitrator Goldberg. It involved
14 -- we didn't think that pilots were flowing up in
15 the correct Eagle senior order.

16 We wanted them to take their positions
17 on the AA seniority list exactly in an order
18 consistent with their relative positions on the
19 Eagle seniority list, but because some pilots
20 were finishing training earlier, they were
21 getting their AA numbers earlier and, we called
22 it jumping pilots who had been junior to them at

1 Q It is dated September 15, 2003. The
2 first issue stated on the first page there is
3 whether American pilots furloughed between May 1,
4 2003 and August 30, 2003 had displacement rights,
5 pursuant to Sup. W. Did I read that correctly?

6 A You did.

7 Q Do you know whether that group of
8 pilots being referred to there included former
9 TWA pilots?

10 A I would expect that it did.

11 Q Let me give you a document I'll mark
12 as 1022.

13 (Whereupon, the above-referred to
14 document was marked as Exhibit 1022
15 for identification.)

16 Q Take a look at this, tell me if it
17 looks familiar to you.

18 A It does.

19 Q What is it?

20 A It's a decision, a four-party decision
21 by Arbitrator Richard Bloch in the case that was
22 first filed in the prior exhibit.

1 Q I see your name on the front, first
2 page, as, it looks like, a recipient of this
3 cover letter from Richard Bloch, which contained
4 the opinion. Is that right?

5 A Yes, that's right.

6 Q The grievance number, which is on the
7 second page, is FLO-0203. Does that sound right
8 to you?

9 A Yes. Consistent with what I said
10 earlier, I would think that was the second case
11 that was filed or docketed in 2003.

12 Q What's the date on this decision?

13 A The hearings were in January of 2004,
14 and the date is June 6, 2004, on the final page.

15 Q Do you recall that this, as I was
16 suggesting earlier, this arbitration, FLO-0203,
17 one of the issues raised was whether former TWA
18 pilots had a right to flow down into positions at
19 Eagle?

20 A I recall that being an issue, and it
21 was determined -- my recollection is that they --
22 without reading the decision is that the

1 determination was that they did have the right to
2 flow down.

3 Q What was ALPA's position on that
4 issue, if you recall?

5 A We opposed that, if I remember
6 correctly.

7 Q Why did you oppose that?

8 A Because they have not generated slots
9 for us. They hadn't been hired. They just had
10 merged into the operation on the American side.
11 They assumed positions on the American seniority
12 list without creating an opportunity for Eagle
13 pilots.

14 The idea was that when American hired
15 -- the idea behind Letter 3, Supplement W, from
16 our perspective, was that when American
17 hired/acquired pilots, it would create an
18 opportunity for an Eagle pilot. We were to fill
19 one out of every two new hire class positions
20 under the letter.

21 Q That position that you described was
22 the position that ALPA presented in this

1 arbitration?

2 A There may have been other procedural
3 issues, but that's the core position that I
4 remember.

5 Q Before we get to these proceedings,
6 I'm going to ask you some questions which may
7 seem repetitive, but I just want to have the
8 record be crystal clear on these points. In this
9 particular proceeding, FLO-0203, did ALPA
10 represent the Eagle pilots in that proceeding?

11 A Yes.

12 Q Which union represented the American
13 pilots?

14 A The Allied Pilots Association, APA.

15 Q Do you recall what position APA took
16 on the issue of former TWA pilots flowing down to
17 Eagle in that proceeding?

18 A My recollection is that they took the
19 position that the former TWA pilots had that
20 right.

21 Q You took a different position.

22 A Yes, we did.

1 Q Did it strike you, as a participant in
2 that proceeding, that although you disagreed with
3 the APA's position, that APA's position was
4 frivolous or completely baseless?

5 A No.

6 Q Did it seem to you that APA was acting
7 in bad faith when it took that position?

8 A No, not at all. It was the position
9 I expected them to take.

10 Q You said that Arbitrator Bloch -- just
11 tell us again. What's your recollection of what
12 Arbitrator Bloch ultimately decided on that
13 issue?

14 A Again, the former TWA pilots have the
15 right to flow down and to fill captain positions
16 at Eagle. There may have been some restriction
17 on that. As I sit here, I remember there was, in
18 this case, an attrition vacancy issue. We had
19 some success with some portion of the issue. As
20 I sit here right now, I don't remember what part
21 that was.

22 Q Just asking you about the arbitrator

1 for a moment. Richard Bloch was the arbitrator
2 in this proceeding. What was his reputation as
3 an arbitrator at that time?

4 A He's arbitrated professional sports
5 cases. I think he had a case involving Terrell
6 Owens and the Philadelphia Eagles, if I remember
7 correctly. He was a member of the National
8 Academy of Arbitrators, very highly respected.

9 Q I think those will be all the
10 questions I have about that particular
11 proceeding. The next issue I want to talk to you
12 about, which you've already alluded to, is the
13 issue of whether TWA pilots coming to American
14 would be deemed to be new hires who would
15 generate slots for Eagle pilots to flow up to
16 American. Are you familiar with that issue?

17 A I am.

18 Q Was that issue resolved through an
19 arbitration on the flow-thru agreement?

20 A Yes, it was.

21 Q Actually, my understanding is there
22 were a few different arbitrations that all

1 revolved around that issue.

2 A Multiple arbitrations touched that
3 issue, in particular two, one with Arbitrator
4 LaRocco, and the other with Arbitrator Nicolau.

5 Q Let's start with the LaRocco
6 proceeding. Does the label FLO-0903 ring a bell
7 for you on that one?

8 A Not in particular. If you could show
9 me a document, perhaps I'll be able to remember.

10 Q Sure. We'll label this 1023.
11 (Whereupon, the above-referred to
12 document was marked as Exhibit 1023
13 for identification.)

14 Q Take a look at this and let me know if
15 it looks familiar to you.

16 A This is supposed to be the submission
17 and a corrected submission to Arbitrator LaRocco
18 on American Eagle MEC letterhead, from my office,
19 concerning this case, FLO-0903, involving TWA new
20 hires. That's how we characterized them.

21 Q Were you involved in this proceeding?

22 A From the very beginning, yes.

1 Q We've mentioned the name of the
2 arbitrator, LaRocco. Is it LaRocco or LaRocco,
3 do you know?

4 A You'd have to ask him. I say LaRocco.

5 Q What was his reputation as an
6 arbitrator at this time?

7 A Again, outstanding, highly respected,
8 another member of the National Academy. He's
9 difficult to schedule because he's much in
10 demand. He continues to be, and he was at that
11 time. We did one of the hearings in -- more than
12 one. We went to California more than once in
13 this case to accommodate his schedule.

14 Q Again, apologize for the repetition,
15 but which union represented the Eagle pilots in
16 this FLO-0903 proceeding?

17 A The Allied Pilots Association.

18 Q Which union represented the American
19 pilots?

20 A The Allied Pilots Association, the
21 APA.

22 Q On the issue of whether the former TWA

1 pilots were new hires, what was ALPA's position
2 on that question?

3 A Our position was that all, or at least
4 some, of them were new hires and should generate
5 opportunities. I'll just provide a little more
6 detail. That, at least in my mind, logically
7 flowed from the earlier decision that they could
8 flow down. My thinking, initially, was that if
9 they could place pilots at risk, they should
10 create the opportunity, or should have created
11 the opportunity for Eagle pilots.

12 Q What do you recall was APA's position
13 on the issue of whether the former TWA pilots
14 were new hires?

15 A The APA was adamant that they were
16 not.

17 Q What do you recall was APA's
18 explanation for why it believed that to be the
19 case?

20 A I don't think I recall -- I'm not
21 going to speculate about what their position was.

22 Q Let's look at the opinion, which will

1 Q I'll hand you a document marked as
2 1027 and ask you to take a look at that.

3 (Whereupon, the above-referred to
4 document was marked as Exhibit 1027
5 for identification.)

6 A It's another award from Arbitrator
7 LaRocco. This is an FLO-0106, and it's dated
8 March 13, 2008.

9 Q Your name is, again, on the cover as
10 the representative of ALPA.

11 A It is, yes.

12 Q Does this appear to be a decision in
13 which Arbitrator LaRocco addresses that issue
14 that we were just speaking about?

15 A Yes. He ruled that Letter 3,
16 Supplement W does not contain a right of recall
17 for AE flow-thru pilots who hold AA seniority
18 numbers, but were not furloughed. I guess he
19 ruled that you can't be recalled if you're not
20 furloughed.

21 Q Do you recall what position APA had
22 taken on that issue?

1 where we were at, at that stage of the
2 proceedings.

3 It wasn't that we agreed with it; it
4 was identifying, in a complex process, what was
5 going to -- what was feasible, what was factually
6 feasible. It wasn't what we necessarily sought
7 or desired; it was what was feasible.

8 Q Do you recall how much time passed
9 between this email exchange and when Arbitrator
10 Nicolau actually issued his award finally?

11 A Four or five days.

12 Q Do you recall if, when he issued his
13 award, it aligned with what the parties had put
14 together as this document in Exhibit 1006?

15 A I don't have a recollection of that.
16 Again, I haven't looked at that document in
17 years. However, I've looked at the award many
18 times. I just can't tell you whether it -- to
19 what extent it aligned.

20 Q I will hand you Exhibit 1039 and ask
21 you to take a look at that. Tell me if you
22 recognize it.

1 (Whereupon, the above-referred to
2 document was marked as Exhibit 1039
3 for identification.)

4 A I do recognize it. This is the
5 Nicolau opinion and award with respect to remedy.
6 It says it's issued on April 9th. I thought I
7 got it on April 10th. It's the award on remedy.

8 Q Just for the record, the Bates stamp
9 is APA007803. The last few pages of this,
10 Exhibit 1039, contain the actual reward, is that
11 right?

12 A That's right, based on discussion, in
13 more general terms, about his understanding of
14 the facts and his decision, but then the award is
15 the nuts and bolts of it.

16 Q The Plaintiffs in this case claim that
17 this award was actually not an award, but rather
18 a secret and collusive settlement agreement
19 between the parties. Have you heard that claim
20 before?

21 A I've heard the word collusion used.
22 I think I've generally heard that claim, not the

1 way you just stated it, but I have heard that,
2 yes.

3 Q Do you know if there's previously been
4 a lawsuit claiming that was the case and seeking
5 to overturn the award?

6 A There's been a lawsuit seeking to
7 overturn the award, yes.

8 Q Are the Plaintiffs right that this was
9 a product of collusion between the parties?

10 A In my experience, and in my opinion,
11 no, not at all.

12 Q Why do you say that?

13 A Because, as I've tried to describe
14 here, there were dozens of competing interests.
15 You have multiple parties, multiple issues,
16 dozens of possible outcomes. We all worked -- at
17 least for ALPA, I worked -- and I think, from
18 what I saw, the others did -- as hard as we could
19 to represent our respective clients and parties.
20 This is where the arbitrator ended up. We could
21 only persuade him so far, and this is what he
22 decided.

1 He says in the award that it's his
2 decision. We all knew that no matter what we
3 agreed to on the facts, what we stipulated to on
4 the facts, or what continued to be in dispute, he
5 would retain the authority to decide. I think he
6 did that.

7 Q Plaintiffs also claim that ALPA
8 reached what they describe in the settlement in
9 order to benefit the ALPA officers, at the
10 expense of ALPA members, who are not officers.
11 Have you heard that claim before?

12 A I haven't heard that claim before.

13 Q What is your reaction to that?

14 A I disagree with it completely. I was
15 instrumental in this award, and it's not anything
16 I did. I'm not aware of any particular benefit
17 to an officer that is derived from this award.
18 You're dealing with classes of employees, and
19 you're dealing with dates of hire and seniority
20 numbers. To that extent, the numbers don't lie.
21 An officer is just one number on a sheet of
22 paper, and he's in order. Nobody was given

1 preferential treatment as a result of this award.

2 Q Is it fair to say that even after --
3 you alluded to this earlier -- even after
4 Arbitrator Nicolau issued his award, the parties
5 continued to dispute how it would be put into
6 effect?

7 A Yes, there were disputes that arose
8 regarding the supplemental sick bank that Eagle
9 pilots have and whether that would transfer over
10 to American. There was a dispute regarding
11 insurance deductibles, whether -- if you
12 transferred from Eagle to American mid-year,
13 whether you should have some sort of credit for
14 your insurance deductibles that you had to
15 restart on the American health plan.

16 I think we were successful in that
17 one. There were, by my recollection, at least
18 six of these issues. Of the two I just
19 mentioned, I think we were unsuccessful on the
20 first one, ALPA, and successful on the second
21 one.

22 Q Let me just have you authenticate a

C E R T I F I C A T E

This is to certify that the foregoing transcript

Deposition of: Wayne Klocke

In the matter of: American Airlines v ALPA

Before: US District Court

Date: 12-12-17

Place: Washington, DC

were duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings; and that I am neither counsel for, related to, nor employed by any of the parties to this action in which this deposition was taken; and further that I am not a relative nor an employee of any of the parties nor counsel employed by the parties, and I am not financially or otherwise interested in the outcome of the action.



Court Reporter

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EXHIBIT 2

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called for examination by Counsel for the Defendant, pursuant to Notice of Deposition, in the offices of the Air Line Pilots Association Legal Department, located at 1625 Massachusetts Avenue, NW, when were present on behalf of the respective parties:

APPEARANCES:

On Behalf of the Plaintiffs:

CHRISTOPHER KATZENBACH, ESQ.
Altshuler Berzon LLP
177 Post Street
Suite 300
San Francisco, CA 94108
(415) 421-7151
ckatzenbach@altshulerberzon.com

On Behalf of the Defendants:

STEVEN K. HOFFMAN, ESQ.
DANIEL M. ROSENTHAL, ESQ.
James & Hoffman, P.C.
1130 Connecticut Avenue, NW
Suite 950
Washington, DC 20036
(202) 496-0500
skhoffman@jamhoff.com
dmrosenthal@jamhoff.com

MARCUS C. MIGLIORE, ESQ.
Air Line Pilots Association, International
1625 Massachusetts Avenue, NW
Washington, DC 20036
(202) 797-4054
marcus.migliore@alpa.org

ALSO PRESENT:

NHAT PHAM, Videographer

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WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
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1020 Flow-thru Agreement for American Eagle Pilots.26
1003 Flow-thru Agreement for American Eagle Pilots Copy Attached to American Contract.27

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

2 9:58 a.m.

3 VIDEOGRAPHER: Good morning. We are
4 on the record. Here begins the video deposition
5 of John Schleder, taken in the matter of American
6 Airlines Flow-Thru Pilots Coalition, et al. v.
7 Allied Pilots Association, et al.

8 Today's date is December 12, 2017.
9 The time is 9:58. This deposition is being held
10 at 1625 Massachusetts Avenue, NW, Washington, DC.

11 Our court reporter is Chad Jackson, on
12 behalf of Neal Gross. Nhat Pham, also on behalf
13 of Neal Gross.

14 Will counsel please identify
15 yourselves and state who you represent?

16 MR. HOFFMAN: My name is Steven
17 Hoffman. I represent the Defendant, Allied
18 Pilots Association.

19 MR. ROSENTHAL: I don't have a mike
20 on, so hopefully you can hear me. But my name is
21 Daniel Rosenthal. I also represent the Allied
22 Pilots Association.

1 MR. MIGLIORE: And I'm Marcus
2 Migliore -- go ahead. Go ahead, Chris.

3 MR. KATZENBACH: Chris Katzenbach, and
4 I represent the plaintiffs.

5 MR. MIGLIORE: And I'm Marcus
6 Migliore, Senior Managing Attorney with the
7 Airline Pilots Association Legal Department.

8 VIDEOGRAPHER: Would the court reporter
9 please swear the witness.

10 COURT REPORTER: All right, please
11 raise your right hand. Do you solemnly swear or
12 affirm to tell the truth, the whole truth, and
13 nothing but the truth?

14 MR. SCHLEDER: I do.

15 MR. HOFFMAN: All right, thank you.

16 WHEREUPON,

17 JOHN SCHLEDER
18 was called as a witness by Counsel for the
19 Defendant and, having been first duly sworn,
20 assumed the witness stand, was examined and
21 testified as follows:

22 DIRECT EXAMINATION

1 BY MR. HOFFMAN:

2 Q Could you please state your full name
3 and spell the last name for the record?

4 A John Schleder. S-C-H-L-E-D-E-R.

5 Q And, Mr. Schleder, are you currently
6 employed?

7 A I am.

8 Q By what?

9 A I am employed by the Air Line Pilots
10 Association.

11 Q As what?

12 A I am the MEC Coordinator, and Senior
13 Labor Relations Counsel for the United MEC.

14 Q All right. Mr. Schleder, we've just
15 introduced ourselves. My name is Steven Hoffman.
16 Along with Mr. Rosenthal, we represent the Allied
17 Pilots Association, the Defendant in this case.
18 This deposition is by subpoena, is that correct?

19 A That's my understanding, yes.

20 Q Yes. And it will be -- it is being
21 videotaped for presentation to the jury in this
22 case, just as if you were present at trial. You

1 understand that.

2 A I do.

3 Q I will try to make my questions clear.

4 But if, for any reason, you have trouble
5 understanding any of the questions, I'd ask you
6 to let me know, and I'll rephrase. That fair
7 enough?

8 A That is fine.

9 Q Okay. Mr. Schleder, is there any
10 reason -- due to illness or medication you're
11 taking -- that you would not be able to testify
12 honestly and truthfully today?

13 A No, there is not.

14 Q Okay. My information is that you're
15 a licensed lawyer. Is that correct?

16 A That's correct. In the State of
17 Illinois.

18 Q Okay. And when and where did you get
19 your law degree?

20 A From DePaul University in 1979.

21 Q Okay, and you were licensed in
22 Illinois about when?

1 A In 1979.

2 Q Okay. Now you mentioned the Air Line
3 Pilots Association, which is your employer.

4 A That's correct.

5 Q For the jury, what is ALPA? And what
6 if -- can we call it ALPA?

7 A Sure. That's --

8 Q Okay.

9 A -- the acronym that everybody knows us
10 by.

11 Q What is this organization?

12 A We are the representative of the
13 pilots for 38 different airlines, I believe it
14 is. And we have approximately 58,000 members,
15 United, Delta being two of the largest.

16 Q Okay. And you are currently with the
17 United ALPA group.

18 A Yes, that's correct.

19 Q Okay. Staying at the local level, how
20 is ALPA structured?

21 A Oh ALPA is structured with -- the
22 members elect status representatives, which would

1 be first officer, or a captain. They elect those
2 representatives to what they call the Local
3 Executive Council.

4 The Local Executive Council is
5 comprised of all the members of that council, and
6 the officers would be the captain rep and the FO
7 rep.

8 The also elect the Secretary-Treasurer
9 for each Local Executive Council -- or LEC, as we
10 call them.

11 So three officers together, and then
12 they form the body of the Master Executive
13 Council.

14 So it's the status representatives --
15 the FO rep and the captain rep -- who sit as
16 members of the Master Executive Council.

17 The Master Executive Council is
18 comprised of all of the Local Executive
19 Councils -- or LECs -- within the system. As in
20 the case of United, I believe they have 11 bases.
21 So they would have 20 -- excuse me -- ten bases
22 changed.

1 So they have 20 representatives on the
2 Master Executive Council. So the Master
3 Executive Council then sits and elects officers,
4 which are called the Master Executive Officers --
5 or MEC officers -- and they have a chairman, a
6 vice chairman, a secretary and a treasurer --
7 some of the smaller MECs in ALPA, and smaller in
8 terms of number of pilots who are members of that
9 particular MEC.

10 The secretary/treasurer duty is
11 combined. On the larger ones, they're split, and
12 I, quite honestly, don't know what the numerical
13 determination is for whether they have separate
14 or not.

15 Q Okay. And what is it that -- let's
16 start with the LEC. What is it the LEC does?

17 A So, what the LEC does, is there are
18 local representatives for the pilots in that
19 base.

20 So if a pilot were to need a
21 representative because they got in trouble,
22 disciplinary, aero-medical, with the FAA in terms

1 of alleged violation of a regulation, or simply
2 have a question with a contract or a grievance
3 kind of dispute, they would go to the LEC
4 representatives, they would be their initial
5 contact for assistance.

6 Q Okay. What does the MEC do?

7 A So what the MEC does, is it governs
8 the relationship with the employer. And it is --
9 like I said, it's comprised of all the LECs. So
10 they're the ones that set the agenda for
11 negotiations.

12 They're the ones that take grievances
13 to the system Board of Adjustment, which is our
14 arbitration panel. They are the ones to which
15 all of the labor counsel at ALPA works for, and
16 they assign the work, so whether it's an FAA
17 matter, an NTSB matter, whatever it happens to
18 be, that's how it works through the MEC office.

19 Q Now you mentioned contract. Is that
20 the same as a collective bargaining agreement?

21 A That's correct.

22 Q And for the jury's information, what

1 is a collective bargaining agreement?

2 A So, a collective bargaining agreement
3 is an agreement to define the terms and
4 conditions of employment, including wages and a
5 whole lot of related things that deal with
6 pilots' relationship with the employer.

7 Q Okay, and how does one of those come
8 to be?

9 A Well, under the Railway Labor Act, as
10 the certified representative -- ALPA being the
11 certified representative of the Pilots, a
12 particular airline -- we have the right and the
13 obligation to sit and bargain a collective
14 bargaining agreement with the employer, to
15 improve working conditions and wages of all of
16 the members.

17 Q Okay, and so each of the ALPA MECs
18 negotiates a collective bargaining agreement with
19 whatever employer is involved?

20 A That's essentially correct. What they
21 do is, the MECs create committees to do their
22 work. The MECs will create a Negotiating

1 Committee. The Negotiating Committee will
2 actually sit and do the bargaining with the
3 company's Negotiating Committee.

4 They will reach an agreement -- a
5 tentative agreement -- that is then, in fact,
6 brought to -- brought back -- excuse me -- to the
7 Master Executive Council. They then approve it,
8 and then send it out to the membership for
9 verification.

10 Q And the membership gets the vote up or
11 down. Correct?

12 A Correct.

13 Q Okay. Just to finish off the picture
14 of ALPA, you talked about locally at individual
15 airlines, what the structure is. What is the
16 structure above that?

17 A So, above the MECs they have national
18 officers, they have an executive council and an
19 executive board, and they govern the relationship
20 of ALPA, as an institution.

21 Q And we're at the ALPA headquarters in
22 Washington today. Correct?

1 A That is correct.

2 Q And is that where the national
3 officers are located?

4 A Yes. They have offices in this
5 building.

6 Q Okay. Now, would you take us through
7 your personal ALPA employment history? Just give
8 us the overview.

9 A Well, I started with ALPA on
10 February 1, 1988. I came -- when I initially
11 came to work, I was assigned to work with a
12 regional or feeder railroads. I think at the
13 time they were called feeder carriers, or
14 commuter carriers.

15 I worked with -- oh, I don't know, at
16 least a dozen, if not more, different airlines at
17 the time, and I was the labor relations counsel
18 at that time. They called us contract
19 administrators.

20 And I would work with the Negotiating
21 Committee on negotiating the agreements, and the
22 grievance committee on enforcing the agreements.

1 I would also represent pilots in FAA matters --
2 the time the FAA took a lot of disciplinary
3 matters against pilots for alleged violations of
4 regulations.

5 I'd represent -- or I'd assist pilots
6 in representation for the NTSB if there were an
7 accident or an incident. I'd assist pilots in
8 issues related to their aero-medical licensing.
9 We would work closely with the aero-medical
10 department.

11 So we started that in 1988. I worked
12 with a number of the feeder carriers, until
13 October of 2000, at which time I was in --
14 reassigned to work with United MEC, and I've been
15 at the United MEC ever since.

16 I started there, I became a senior
17 labor relations counsel, and then three or four
18 years ago I was made an MEC coordinator. So my
19 job is to oversee the local counsels at the
20 United MEC. There's five of us.

21 Q Okay. Now, if you would -- again, for
22 the jury's benefit -- could you define further,

1 feeder carriers, especially as contrasted with an
2 airline like United?

3 A So, if you're a carrier, or regional
4 carriers, as we're called, they flew essentially
5 smaller aircraft.

6 Q Okay.

7 A The aircraft they flew when I started,
8 was 19-seat airplanes -- the Beech 1900 --
9 generally up to -- I think they turboprops --
10 they were all turboprops at one point in time.

11 Then in the 1990s they started to
12 acquire jet aircraft, up to 70-seat jets. Then
13 in the major airlines, which would be the
14 Uniteds, Deltas -- although at the time it was a
15 number of other carriers -- Northwest, TWA,
16 USAir -- they are the larger carriers, and they
17 would fly jet equipment generally in the 90- to
18 100-seat range, up as large as they make them.

19 Q Okay. Now during the course of your
20 career at ALPA, have you ever been involved in
21 negotiations yourself?

22 A Yes, I have.

1 Q And what role have you played?

2 A I'm generally the chief spokesman for
3 the union from the staff. ALPA structure is a
4 little unique in the sense that we'll have a
5 pilot negotiating committee. They will have a
6 chairman. So the chairman and myself will
7 generally do the speaking on behalf of the union.

8 Q And the chair would be a pilot him- or
9 herself. Correct?

10 A That's correct.

11 Q And how are those people selected to
12 be the chair?

13 A They're elected by the Master
14 Executive Council, Eddie Turon.

15 Q Okay. Now, this case involves
16 American Eagle. Are you familiar with American
17 Eagle?

18 A I am.

19 Q And how did you become familiar with
20 that carrier?

21 A Well, when I first started at ALPA,
22 the first carrier I was assigned to work with was

1 Simmons Airline.

2 Q Okay.

3 A And that later morphed into American
4 Eagle.

5 Q Okay. And how long did you spend at
6 Simmons/American Eagle?

7 A Well, the duties were ongoing from,
8 like I said, 1988 until 2000. I'm not exactly
9 sure how long I spent at Eagle. I know I was
10 there through the '90s.

11 Q Okay.

12 A I may have been there all the way up
13 to 2000. At some point we transitioned to
14 another labor relations council by the name of
15 Wayne Klocke. That was around the late-'90s, or
16 2000.

17 Q Okay. Now do you know when ALPA was
18 first selected to represent the pilots at either
19 Simmons, or later, American Eagle?

20 A Well, it was actually prior to my
21 employment. It's the reason I got hired. They
22 needed somebody to work with them.

1 Q Okay. During that time, did any other
2 labor union represent the pilots at either
3 Simmons or American Eagle?

4 A Well, when I first got onboard, ALPA
5 represented the pilots at Simmons, and I believe
6 your client, APA, represented the pilots at
7 Nashville Eagle at the time.

8 Q Okay.

9 A We had two more Eagle carriers --
10 Wings West, which was based in Los Angeles, and I
11 believe it was called Prinair -- no, excuse me,
12 Executive Airlines, based in San Juan, Puerto
13 Rico.

14 And quite honestly, I don't remember
15 who represented them at the time. I know they
16 came into the fold, and they all became part of
17 American Eagle.

18 Q Okay. So American Eagle, if I get you
19 correctly, was an accumulation of a number of
20 separate airlines.

21 A Correct. It was a combination of four
22 airlines merged into one.

1 Q Okay. Now you said the APA -- the
2 Allied Pilots Association -- at one point
3 represented the pilots in Eagle, but that changed
4 at some point?

5 A Yes. They initially represented the
6 pilots at Nashville Eagle.

7 Q Okay.

8 A And when management made the decision
9 to combine all the Eagles into one carrier, ALPA
10 became the certified representative, because we
11 had the majority.

12 Q Okay. And do you remember
13 approximately when that was?

14 A No, I don't.

15 Q Was there some official designation of
16 ALPA as the representative of the pilots at
17 Eagle?

18 A Yes. I'm sure there was a
19 certification issued by the National Mediation
20 Board.

21 Q Okay. Once ALPA was certified, did
22 the APA then have any ability to represent the

1 Eagle pilots?

2 A No. At that point, ALPA was the
3 designated representative. So we took
4 everything.

5 Q Okay. And the APA -- I don't know if
6 it's on the record -- your understanding is the
7 APA represented the pilots at American Airlines?

8 A That is correct.

9 Q Did ALPA, at any time in your career
10 at ALPA, ever represent the pilots at American
11 Airlines?

12 A Not during my career. Prior to my
13 career, yes.

14 Q Okay. So that would be prior to '88.

15 A Correct.

16 Q But after '88, ALPA has not
17 represented the American pilots.

18 A That's correct. I believe they split
19 off in the 1960s.

20 Q Okay. One question that I missed.
21 During the ALPA career, at one point TWA Airlines
22 was represented by ALPA. Is that correct?

1 A Yes, it is.

2 Q Did you ever work with the TWA MEC?

3 A Pausing only because I worked with
4 about every one of them. I don't know if I had.
5 I don't recall anything specific.

6 Q Okay. Now, during the time that you
7 were connected to the Eagle unit, did you have
8 any dealings with the APA?

9 A Yes, we had some associations with
10 them, some discussions.

11 Q About what?

12 A Well, prior to the negotiation of the
13 1997 -- I think it was -- agreement, not very
14 much contact at all. Although then, when the
15 national Eagle pilots came into the fold, like we
16 might have questions just about how they do
17 things in American. To try and help the pilots
18 at Eagle, we would try and mimic what was done in
19 American.

20 Q All right, so is it fair to say that
21 the Eagle pilots had a collective bargaining
22 agreement with Eagle management?

1 A For what we had -- the short answer is
2 yes.

3 Q Okay.

4 A But what we had is, when I first got
5 employed, we were negotiating the Simmons
6 collective bargaining agreement, for just the
7 Simmons pilots.

8 Q Okay.

9 A That then became the model for the
10 American Eagle contract. And the other carriers,
11 we folded them in, in terms of the collective
12 bargaining agreement. We used the Simmons
13 agreement as the basis, and then we modified it
14 as appropriate.

15 Q So when the Eagle -- or the various
16 pilots from the various specific airlines, we
17 amalgamated into Eagle, was there one collective
18 bargaining agreement covering them all?

19 A Yes.

20 Q And am I correct that that American
21 Airlines had a different collective bargaining
22 agreement with the American pilots?

1 A That is true.

2 Q Okay. Now, you are certainly
3 anticipated where I'm going to go here. We
4 didn't talk specifically about what has become
5 known as the flow-thru agreement. Are you
6 familiar with that term, flow-thru agreement?

7 A Yes, I am.

8 Q And what is it?

9 A The flow-thru agreement at American
10 Eagle was designed to allow pilots at American
11 Eagle to flow up to American Airlines. In other
12 words, to get jobs as pilots at American. The
13 pilots at American Eagle were not as highly
14 compensated. They flew smaller airplanes, the
15 benefits were not as good.

16 So the pilots wanted to move on to the
17 larger equipment, better pay and benefits, better
18 schedules, better life. So as part of the
19 agreement, we negotiated a flow-thru agreement
20 that allowed Eagle pilots to move up to American,
21 and in exchange for that, the American pilots --
22 because they were fearful of a downturn in the

1 economy, wanted some flow protection so that they
2 could, in essence, flow back in the event of a
3 reduction in force.

4 Q Okay. And did you play any role in
5 the negotiation of the flow-thru agreement?

6 A Yes, I did.

7 Q Could you generally tell us what your
8 role was?

9 A Well, again, I was one of the
10 spokespersons for the union. I worked with a
11 couple of other people. It was a complex
12 project, so it brought in a couple of other --
13 one other lawyer, and a couple of other staff
14 people to help.

15 Q But you were attached to the
16 negotiating group for the Eagle pilots. Is that
17 correct?

18 A That's correct.

19 Q But not the American pilots.

20 A That's correct.

21 Q Okay. Let me just get a couple of
22 documents. I'm going to hand you what's been

1 Q Okay. So was the CRJ assignment the
2 top assignment at Eagle at the time?

3 A Yes, it was.

4 Q Okay. So prior to the flow-thru
5 agreement, did the American Airlines pilots have
6 any right to come down and displace Eagle pilots
7 from these jets?

8 A No, they did not.

9 Q And prior to the flow-thru agreement,
10 did the Eagle's pilots have any right to go up to
11 jobs at American?

12 A No, they did not.

13 Q Okay. So this was the essential
14 tradeoff, the flow-down in exchange for the flow-
15 up.

16 A That's correct. Hence the term, flow-
17 thru.

18 Q Correct.

19 A Excuse me.

20 Q So you reach a certain agreement in
21 principle with APA in these discussions?

22 A That's correct.

C E R T I F I C A T E

This is to certify that the foregoing transcript

Deposition of: John Schleder

In the matter of: American Airlines v ALPA

Before: US District Court

Date: 12-12-17

Place: Washington, DC

were duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings; and that I am neither counsel for, related to, nor employed by any of the parties to this action in which this deposition was taken; and further that I am not a relative nor an employee of any of the parties nor counsel employed by the parties, and I am not financially or otherwise interested in the outcome of the action.



Court Reporter

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EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

AMERICAN AIRLINES
FLOW-THRU PILOTS
COALITION, et al.,

Plaintiffs,

VS.

ALLIED PILOTS
ASSOCIATION, et al.,

Defendants.

*
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*
* CASE NO.:
* 3:15-cv-03125-RS
*
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*

ORAL AND VIDEOTAPED DEPOSITION OF

GAVIN HUGH MACKENZIE

DECEMBER 22ND, 2017

ORAL AND VIDEOTAPED DEPOSITION OF GAVIN HUGH
MACKENZIE, produced as a witness at the instance of the
DEFENDANT, and duly sworn, was taken in the above-styled
and numbered cause on the 22nd of December, 2017, from

10:02 a.m. to 1:38 p.m., before Tammy Staggs, CSR in
and for the State of Texas, reported by machine shorthand,
at the Residence Inn by Marriott, 2020 State Highway 26,
Dallas, Texas, pursuant to the Federal Rules of Civil
Procedure and the provisions stated on the record or

GAVIN HUGH MACKENZIE

December 22, 2017

1 attached hereto. That the deposition shall be read and
2 signed under penalties of perjury. That the deposition
3 signature having been waived.

4

5

6 Job: 24281

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GAVIN HUGH MACKENZIE

December 22, 2017

1 A P P E A R A N C E S

2 FOR THE PLAINTIFFS:

3 Christopher Katzenbach, Esq.
4 KATZENBACH LAW OFFICES
5 912 Lootens Place
6 2nd Floor
7 San Rafael, California 94901
8 415.834.1778
9 ckatzenbach@kkcounsel.com
10

11 FOR THE DEFENDANTS:

12 Jonathan Weissglass, Esq.
13 ALTSHULER BERZON, LLP
14 177 Post Street
15 Suite 300
16 San Francisco, California 94108
17 415.421.7151
18 jweissglass@altshulerberzon.com
19

20 ALSO PRESENT:

21 Jeremy Gilliam - Videographer
22
23
24
25

GAVIN HUGH MACKENZIE

December 22, 2017

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December 22, 2017

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

2 THE VIDEOGRAPHER: We are now going on
3 the video record. Today is December 22nd, 2017. The
4 time is approximately 10:02 a.m. The location is 2020
5 State Highway 26, Grapevine, Texas.

6 My name is Jeremy Gillman. I'm the video
7 specialist representing HG Litigation Services.

8 The Civil Action Number is
9 3:15-cv-03125-RS in the matter of American Airlines
10 Flow-Thru Pilots Coalition, et al. vs. Allied Pilots
11 Association, et al. The deponent is Gavin Mackenzie.
12 The video deposition is requested by the defense counsel
13 Altshuler Berzon -- Berzon.

14 Will counsel please identify themselves
15 for the record.

16 MR. KATZENBACH: Chris Katzenbach here
17 for the Plaintiffs and for the witness.

18 MR. WEISSGLASS: Jonathan Weissglass from
19 Altshuler Berzon for Defendant Allied Pilots
20 Association.

21 THE VIDEOGRAPHER: Will the court
22 reporter please swear in the witness.

23 GAVIN HUGH MACKENZIE,
24 Having been first duly sworn, testified as follows:

25 EXAMINATION

GAVIN HUGH MACKENZIE

December 22, 2017

1 BY MR. WEISSGLASS:

2 Q. Can you please state your name for the record?

3 A. My name is Gavin Hugh Mackenzie.

4 Q. As you know, my name is Jonathan Weissglass.

5 We met yesterday, and I'll be asking you some -- some

6 questions. Have you ever been deposed before?

7 A. Yes.

8 Q. How many times?

9 A. Twice.

10 Q. What -- on what occasions were those?

11 A. They were for legal action on -- on -- on real

12 estate property.

13 Q. These were in your personal capacity?

14 A. Yes, my personal capacity.

15 Q. Okay. Given that you were here yesterday and

16 that you've been deposed twice before, I think you know

17 how a deposition works. But let's just make sure that

18 we're on the same page here today. You understand

19 you're testifying under oath, right?

20 A. Correct.

21 Q. And that you're giving testimony under penalty

22 of perjury?

23 A. Correct.

24 Q. And I'll be asking a series of questions. The

25 reporter will be taking down my questions and your

GAVIN HUGH MACKENZIE

December 22, 2017

1 A. Because they were a party to a four-party
2 agreement. And that four-party agreement established my
3 seniority number at American Airlines. It was on their
4 seniority list. The APA -- American Airlines pilot's
5 system seniority list.

6 Q. You have never paid any dues or fees to APA,
7 correct?

8 A. No.

9 Q. So that is correct?

10 A. That's correct.

11 Q. And, in fact, you were never asked to pay any
12 dues or fees to APA while you were at Eagle; is that
13 correct?

14 A. That's correct.

15 Q. Has APA ever stated that it represented pilots
16 at Eagle with American seniority numbers?

17 A. Not to my knowledge.

18 Q. Do you believe that APA ever acted as a joint
19 collective bargaining representative with ALPA of any of
20 the Eagle pilots?

21 A. Yes.

22 Q. When?

23 A. Predominantly when the TWA pilots flowed back
24 down to American Eagle. APA was highly involved in
25 negotiating terms for the TWA pilots, including:

GAVIN HUGH MACKENZIE

December 22, 2017

1 no harm because those pilots were going to come and
2 retain the right to a new-hire class.

3 Q. What position did American take in this
4 arbitration?

5 A. I believe that American was -- was neutral.

6 Q. Okay. What --

7 A. I don't think they actually advocated a
8 position. I don't think they even called any witnesses
9 or anything. I honestly don't remember them making any
10 statement about it.

11 Q. And do you remember what position Eagle took,
12 if any?

13 A. Well, Eagle was the moving party. They filed
14 the grievance.

15 Q. So they supported ALPA?

16 A. Absolutely.

17 Q. Okay.

18 A. Or ALPA supported them because Cathy McCann
19 filed a grievance.

20 Q. Depending on how you look at it?

21 A. That's right.

22 Q. Yes. Okay.

23 Okay. So now let's -- let's -- let's go
24 to Arbitration 0108. This is the one before Arbitrator
25 George Nicolau. And -- and can you just lay out for me

GAVIN HUGH MACKENZIE

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1 what you think the issue was in this arbitration?

2 A. Well, the issue was identified and was very
3 simple. It was a very narrow issue. After LaRocco in
4 0903, American placed 244 -- well, they determined it
5 through cali- -- but 244 TWA pilots into training
6 classes at American without calling an Eagle pilot in
7 the one-out-of-two ratio that Letter 3 required.

8 And they tried to get Mr. LaRocco, ALPA
9 did, to make a determination what seniority numbers did
10 it generate for the Eagle pilots. And Mr. LaRocco said:
11 That's -- that was not a question I was asked. That's
12 not within the jurisdiction of the arbitrator. And he
13 basically said: The parties knew from the beginning
14 what the stipulated disagreement was, and to now add
15 something would be unfair.

16 So the issue was then placed before
17 George Nicolau. And the issue was: There were 244 TWA
18 pilots brought to class. No Eagle pilots. What is the
19 solution? What is the remedy?

20 Q. And what was the remedy that Arbitrator
21 Nicolau ordered?

22 A. Well, it was a convoluted remedy that, in my
23 mind, was not really a remedy. It was some type of a
24 settlement-mediated type of agreement somewhere. I
25 mean, the whole thing just -- just went completely off

GAVIN HUGH MACKENZIE

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1 the rails. Even Arbitrator Nicolau said: This is a
2 narrow question. But the remedy that he issued was not
3 narrow at all. It went completely off the reservation
4 of Letter 3, Supplement W, and incorporated terms that
5 were not in Letter 3, plus provisions that were not in
6 Letter 3, plus additional rights that were not in Letter
7 3.

8 So -- and -- and the actual core issue
9 about the 244 pilots that should have transferred to
10 American three years earlier, he, basically, just
11 delayed them for another three years, excepting for 35.
12 So he never resolved the issue that in his equity
13 decision he said: No, those 244 pilots should have
14 transferred to American beginning in June of 2007. He
15 never actually corrected that.

16 He, actually, furthered the harm by
17 pushing 209 of those pilots or maybe even more, but he
18 pushed them out another three -- two to three years. I
19 mean, how did that resolve the narrow question, was: If
20 those pilots, which you had already determined, should
21 have transferred to American Airlines?

22 Q. What position did ALPA take in this
23 arbitration?

24 A. It's hard for me to say exactly what position
25 ALPA took because there was -- in the -- in the final

GAVIN HUGH MACKENZIE

December 22, 2017

1 remedy meeting in Washington, there was so much stuff
2 that was off the record, that it's hard to know what
3 real position anybody took in those discussions or those
4 talks or whatever you want to call it.

5 Q. Now, you have no personal knowledge of what
6 occurred during the arbitration before Arbitrator
7 Nicolau, correct?

8 A. That's correct.

9 Q. Now, you've mentioned that you believe that
10 there was some sort of a settlement or agreement among
11 -- among the parties; is that right?

12 A. That's correct.

13 Q. And -- and why do you believe that?

14 A. Well, as I said, Arbitrator Nicolau initially
15 stated that it was going to be a very narrow issue. A
16 narrow question that was placed before him. And when
17 you go into his remedy opinion and award, as I said, he
18 includes and addresses things that were no where even
19 close to what the question was he was asked.

20 And when I, initially, looked at his
21 remedy and got to the end and he said: this is my award,
22 he was a single, neutral arbitrator. Whose else award
23 would it be? And who was he addressing when he said:
24 This is my award?

25 Although the parties remained -- I'm

GAVIN HUGH MACKENZIE

December 22, 2017

1 going to paraphrase. But although the parties remained
2 far apart on the issues, the award that follows is my
3 award, I think is what he said. Well, who else's award
4 would it be other than his? And the parties knew it was
5 his award, if that was his award. So who was Nicolau
6 writing to? And who was that addressed to?

7 So that was the first thing that got my
8 attention. And then when you go look at the -- the
9 actual terms -- and Nicolau was all over the map. And
10 so it was: Hold on a moment. Some of these terms I've
11 seen before.

12 So then when I went back to the
13 four-party agreement in 0903 -- before they couldn't
14 reach a resolution, they had to go to LaRocco for his
15 remedy determination -- some of those exact terms were
16 in that document. Maybe not in the exact vernacular
17 that was in the Nicolau remedy, but the same terms were
18 in that four-party agreement. So somehow Mr. Nicolau
19 got these four-party agreement terms, and he included
20 them in his 09 -- 0 -- 0108 remedy years later.

21 There was something not right about that
22 whole thing. And as I said -- and the transcript that
23 we got afterwards where they were off the record --
24 there was no record discussions. There was going to be
25 briefs, and then suddenly there were no briefs. And

GAVIN HUGH MACKENZIE

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1 then after coming back off the record, Mr. Nicolau said:
2 Well, I understand all of the issues, but he had
3 previously stated that they were going to make the
4 arguments in the briefs and there was no briefs. There
5 was no witnesses called.

6 I had a concern in that -- you know,
7 maybe no one else was concerned. But in that last
8 meeting, in his remedy decision, the actual attorneys
9 that argued the case were different to the attorneys
10 that attended that March 30th meeting. Why suddenly
11 were these much more senior attorneys in each property
12 suddenly at that March the 30th remedy hearing?

13 So all of that stuff indicated to me that
14 there was something other here than Mr. Nicolau making a
15 remedy on a very narrow question that was very obvious
16 that the pilots had been violated. And he already
17 determined the pilots were violated -- or the contract
18 was violated, I should say.

19 Q. Do you believe that the entire remedy award
20 was agreed to by the parties or only portions?

21 A. I think eventually they all just accepted what
22 was going to be this jumbled together remedy award, even
23 though they may not have liked bits and pieces of it.
24 But each party got something that they had been wanting
25 for years and years and years in that remedy award.

GAVIN HUGH MACKENZIE

December 22, 2017

1 Which was kind of strange when it was only supposed to
2 be 244 pilots. Suddenly, every party got -- got
3 something that they wanted. And how was that a remedy
4 award on a very narrow question?

5 Q. So do you -- then do you believe that the
6 agreement was that each party would get something and
7 would have to live with what the other parties got?

8 A. Now, I'm saying that in hindsight after
9 listening to Mark Burdette yesterday when he said that
10 he was very vocal with Arbitrator Nicolau. I'm not sure
11 that -- when in arbitration you become vocal with the
12 arbitrator, other than just presenting your arguments.

13 I don't know what he -- but he said he
14 got vocal. And then he said that he was in a room, and
15 he was addressing Arbitrator Nicolau, but no notes were
16 taken. I mean, I heard the testimony. You know, I was
17 right here. So I didn't know that, but it kind of
18 explained some of the other. Because what seems like,
19 from Mark Burdette's testimony, meant he called --
20 Nicolau called in each of the parties and discussed with
21 them what they could live with and what they couldn't
22 live with.

23 And I think that goes back to the -- that
24 transcript we received when -- when Harry Rissetto said
25 to Arbitrator Nicolau: George, you know, we had a

GAVIN HUGH MACKENZIE

December 22, 2017

1 dinner last night with the four parties. And maybe it's
2 something that, you know, we can consider today. And
3 then all of a sudden, everybody starts scrambling. Jed
4 Gallagher thought -- wanted to go off the record. Wayne
5 Klocke wants to go off the record. It's kind of
6 strange.

7 Q. Is there anything wrong with going off the
8 record in an arbitration?

9 A. No, but -- but not in -- in the way that it
10 occurred and in that -- in that transcript that we got.
11 It's not that -- that was too -- after they're going to
12 do briefs and everything, and then as soon as -- as soon
13 as they say that: George, there's something we
14 discussed last night with the principals -- the four
15 parties -- everybody is suddenly: Oh, that should be
16 off the record. That should be off the record.

17 I can -- I can understand you want to go
18 off the record on -- on certain things, if there's going
19 to be some discussion between attorneys and -- attorneys
20 and clients. But that was an indication, to me, that
21 something wasn't an up-and-up remedy decision.
22 Something else had occurred.

23 Q. Now, there -- there's nothing wrong with the
24 parties trying to settle an arbitration, right?

25 A. No, but then you need to tell people that it's

GAVIN HUGH MACKENZIE

December 22, 2017

1 a settlement.

2 Q. So your issue is not whether or not there was
3 a settlement. It's just that if there was a settlement,
4 it should be announced as a settlement; is that right?

5 A. Right up in the beginning so that everybody
6 knew exactly what was the situation. And then people
7 could take appropriate action, depending on if they
8 believed they got harmed in that settlement.

9 Q. What -- what sort of action are you referring
10 to?

11 A. Well, I mean, if -- if I'd have known what I
12 know now, I -- I guaranty you, discussing with the Eagle
13 pilots, they would most probably have filed a DFR
14 against ALPA for not representing the interests of the
15 American Eagle pilots. And all they wanted was 824
16 additional numbers. That would have been a DFR case.

17 Initially, we accepted the fact there was
18 an arbitrator's award and -- and justice were to be
19 sought, and as far we had decided that he exceeded his
20 jurisdiction, we -- we filed to vacate the arbitrator's
21 award and were not successful in that.

22 But what we have subsequently learned --
23 as they said: Look, this is a settlement. This is how
24 you people are going to be further harmed and damaged.
25 We would have said to ALPA: What arguments did you

GAVIN HUGH MACKENZIE

December 22, 2017

1 that. ALPA should have at least objected to it unless
2 there was an agreement.

3 Q. Any other basis for your belief that the award
4 was in agreement?

5 A. No. As I said, the 824 positions, the fact
6 never cured -- never corrected the 244 bringing back the
7 pilots that originally, you know, caused the grievance.
8 And then changing the order of transfer to American from
9 Letter 3, one out of every two, to a seniority-based
10 system. I don't think -- off the top of my head right
11 now, I can't think of anything else. There may be, but
12 I don't...

13 Q. Can you turn back to page 10 of Exhibit 1039,
14 please? Now, about two-thirds of the way down the page
15 the arbitrator says -- and you've referenced this
16 already -- quote, (as read): The award that follows is
17 my award. It does not represent the agreement of any of
18 the four parties, unquote.

19 Do you see that?

20 A. Yes.

21 Q. Was the arbitrator lying when he said that?

22 A. I believe so.

23 Q. What reason would Arbitrator Nicolau have to
24 misrepresent an agreement as his independent decision?

25 A. To protect the parties. The unions. And I've

GAVIN HUGH MACKENZIE

December 22, 2017

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

AMERICAN AIRLINES
FLOW-THRU PILOTS
COALITION, et al.,

Plaintiffs,

VS.

ALLIED PILOTS
ASSOCIATION, et al.,

Defendants.

*
*
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* CASE NO.:
* 3:15-cv-03125-RS
*
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*

REPORTER'S CERTIFICATION

DEPOSITION OF GAVIN HUGH MACKENZIE

DECEMBER 22ND, 2017

I, Tammy Staggs, Certified Shorthand Reporter
in and for the State of Texas, hereby certify to the
following:

That the witness, GAVIN HUGH MACKENZIE, was duly
sworn by the officer and that the transcript of the oral
deposition is a true record of the testimony given by
the witness;

That the original deposition was delivered to
Mr. Jonathan Weissglass.

GAVIN HUGH MACKENZIE

December 22, 2017

1 That a copy of this certificate was served on
2 all parties and/or the witness shown herein on
3 _____, 20____.

4 I further certify pursuant to FRCP Rule
5 30(f)(1) that the signature of the deponent:

6 __ was requested by the deponent or a
7 party before the completion of the deposition and that
8 the signature is to be before any notary public and
9 returned within 30 days (or ____ days per agreement of
10 counsel) from date of receipt of the transcript. If
11 returned, the attached Changes and Signature Page
12 contains any changes and the reasons therefore:

13 _X_ was not requested by the deponent or a
14 party before the completion of the deposition.

15 That the amount of time used by each party at
16 the deposition is as follows:

17 Mr. Christopher Katzenbach - (0:46)

18 Mr. Jonathan Weissglass - (2:24)

19

20

21

22

23

24

25

GAVIN HUGH MACKENZIE

December 22, 2017

1 That pursuant to information given to the
2 deposition officer at the time said testimony was taken,
3 the following includes counsel for all parties of
4 record:

5 FOR THE PLAINTIFFS:

6 Christopher Katzenbach, Esq.

7

8 FOR THE DEFENDANTS:

9 Jonathan Weissglass, Esq.

10

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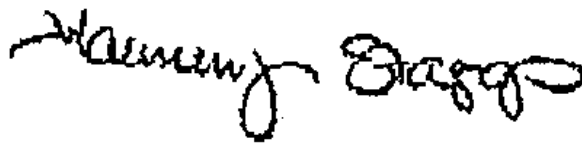
23 That \$_____ is the deposition officer's
24 charges to the Defendant for preparing the original
25 deposition transcript and any copies of exhibits;

GAVIN HUGH MACKENZIE

December 22, 2017

1 I further certify that I am neither counsel
2 for, related to, nor employed by any of the parties or
3 attorneys in the action in which this proceeding was
4 taken, and further that I am not financially or
5 otherwise interested in the outcome of the action.

6 Certified to by me this 9th day of
7 January, 2018.

8
9 

10 _____
11 Tammy Lea Staggs
12 CSR 7496
13 Expiration Date: 12/31/2019
14 Firm No. Dallas: 69
15 1.888.656.DEPO
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EXHIBIT 4

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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- - - - -  
AMERICAN AIRLINES FLOW-THRU      )  
PILOTS COALITION, et al.,        )  
                                   )  
                                Plaintiffs )  
-vs-                               )  
                                   )  
ALLIED PILOTS ASSOCIATION,       )  
et al.,                          )  
                                   )  
                                Defendants )  
- - - - -
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CASE NO.:
3:15-cv-03125-RS

DEPOSITION OF: BETH A. HOLDREN

DATE: DECEMBER 8, 2017 (Friday)

TIME: 9:30 a.m.

LOCATION: The Hotel Roanoke & Conference Center
110 Shenandoah Avenue, NW
Roanoke, Virginia 24016

REPORTER: Lisa M. Hooker, RPR
Registered Professional Reporter #29505
540.314.4547 lhooke@aol.com

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A P P E A R A N C E S

FOR THE PLAINTIFFS:

KATZENBACH LAW OFFICES
Attorneys at Law
912 Lootens Place, 2nd Floor
San Rafael, California 94901

(415) 834-1778
(415) 834-1842
ckatzenbach@kkcounsel.com

BY: CHRISTOPHER W. KATZENBACH,
ESQ.

FOR THE DEFENDANT, ALLIED PILOTS ASSOCIATION:

JAMES & HOFFMAN, PC
Attorneys at Law
1130 Connecticut Avenue, NW
Suite 950
Washington, DC 20036

(202) 496-0500
(202) 496-0555
skhoffman@jamhoff.com
dmrosenthal@jamhoff.com

BY: STEVEN K. HOFFMAN, ESQ.
DANIEL M. ROSENTHAL, ESQ.

FOR BETH A. HOLDREN AND AMERICAN AIRLINES, INC.:

O'MELVENY & MYERS, LLP
Attorneys at Law
Two Embarcadero Center
28th Floor
San Francisco, California 94111

(415) 984-8906
chollinger@omm.com

BY: CHRIS A. HOLLINGER, ESQ.

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1 VIDEOGRAPHER: We're on the Record,
2 December 8th, 2017 at 9:30. This is the deposition
3 of Beth Holdren in the matter entitled American
4 Airlines Flow-Thru Pilots Coalition, et al. versus
5 Allied Pilots Association, et al. This is in the
6 US District Court, Northern District of California,
7 San Francisco Division, Case Number
8 3:15-cv-03125-RS.

9 The deposition is being taken by the
10 defense and is taking place in Roanoke, Virginia.
11 Would the court reporter please administer the
12 Oath.

13
14 BETH A. HOLDREN
15 having been sworn by the Registered Professional
16 Reporter, Lisa M. Hooker, to tell the truth, the
17 whole truth, and nothing but the truth, testified
18 as follows:

19
20 VIDEOGRAPHER: Thank you, please begin.

21 MR. KATZENBACH: Should we have everyone
22 identified on the Record?

23 MR. ROSENTHAL: Yes, that is a good
24 idea. My name is Daniel Rosenthal; I represent the
25 Allied Pilots Association.

1 MR. HOFFMAN: And I am Steven Hoffman; I
2 also represent the Allied Pilots Association.

3 MR. KATZENBACH: I'm Chris Katzenbach and
4 I also -- I represent the Plaintiffs in this
5 matter.

6 MR. HOLLINGER: Chris Hollinger, I
7 represent Ms. Holdren and American Airlines,
8 although the latter is no longer a Party.

9
10 EXAMINATION

11 BY MR. ROSENTHAL:

12 Q Okay, good morning, Ms. Holdren.

13 A Good morning.

14 Q Could you just start by spelling your
15 name for us?

16 A Last name is spelled H-O-L-D-R-E-N.

17 Q Got it, thank you, so just a few
18 preliminary points before we get started, so I take
19 it you understand this is a deposition under Oath.
20 It's essentially just as if we were in a courtroom,
21 although, obviously, we are not in a courtroom, but
22 this, the video that we're taking here, can be
23 played in court, probably will be played by one
24 Party or another for the jury in San Francisco. Is
25 there anything that would impede your ability to

1 testify truthfully today?

2 A No.

3 Q So I will be asking you a series of
4 questions. If at any point I ask a question that
5 doesn't make sense or is unclear, just ask me to
6 rephrase it or repeat it. The attorneys on the
7 other side of the table may ask you questions after
8 that at some point, and throughout the deposition,
9 Parties may object, and when a Party objects,
10 unless Mr. Hollinger instructs you not to answer,
11 you should go ahead and go forward with answering
12 the question. Does that make sense?

13 A Yes.

14 Q And for -- for the good of the court
15 reporter as well as the jury that will perhaps be
16 watching this at some point, we should try to avoid
17 talking over each other and making sure that all
18 answers are spoken out loud; does that make sense?

19 A Yes.

20 Q Okay. Now before we get into the
21 questions, let me just ask you, did you submit a
22 Declaration in this case?

23 A Yes, I did.

24

25

1 (The document was marked as Holdren
2 Deposition Exhibit Number 1012.)

3

4 BY MR. ROSENTHAL:

5 Q Okay. I'm handing the witness a
6 document; I guess that we are supposed to put
7 Exhibit stickers on these; I didn't realize that,
8 and so we'll mark this as Exhibit 1012. Does this
9 look like the Declaration that you submitted in
10 this case?

11 A Yes, it does.

12 Q And to the best of your knowledge, is
13 everything that you said in here still true and
14 accurate?

15 A Yes.

16 Q Thank you. Now I'd like to just go over
17 your background and work history, so I guess let's
18 start -- let's start from the beginning. So where
19 did you receive your education?

20 A My highest education is high school.

21 Q Okay, and where was that?

22 A Chesapeake High School in Maryland.

23 Q And at some point after that, you started
24 working in the airline industry?

25 A I did.

1 Q When did that happen?

2 A 1987.

3 Q How did you get into that?

4 A I thought it would be fun to work for an
5 airline, so I started with Piedmont Airlines in
6 1987 as a gate agent.

7 Q Got it, and what kind of airline was
8 Piedmont Airlines?

9 A It was a mainline carrier.

10 Q And so what was your next position after
11 that?

12 A I've actually remained with the airline
13 through three mergers, and that resulted in what is
14 ultimately now American.

15 Q So at one point the airline that you were
16 working for was US Airways, I take it?

17 A Yes, Piedmont merged with US Air which
18 became US Airways, and then US Airways merged with
19 America West and then America West merged with --
20 I'm sorry, and then that became US Airways, and
21 then that -- or remained US Airways but with the
22 merger of America West, and then in December of
23 2013, the merger was finalized between US Airways
24 and American and became American.

25 Q And when did you start working in labor

1 relations?

2 A 1997.

3 Q Was that --

4 A I'm sorry, 1999.

5 Q 1999?

6 A It was 1999.

7 Q Okay, so was that after the Piedmont/U.S.
8 Airways merger?

9 A Yes.

10 Q But before the US Airways/America West
11 merger, I take it?

12 A That's right.

13 Q And what was your position at that time?

14 A Manager of Labor Relations.

15 Q What were your responsibilities in that
16 position?

17 A In that position, I was responsible for
18 the administration of the Fleet Service Agreement
19 initially.

20 Q And what are -- what is fleet service?

21 A Those are the baggage handlers.

22 Q Okay, and so what was your next position
23 after that?

24 A I became Director of Labor Relations -
25 Ground, excuse me, where I was responsible for the

1 Fleet Service Agreement still, but in addition to
2 the Passenger Service Agreement which are the
3 ticket agents and gate agents, maintenance and the
4 related groups to maintenance, maintenance training
5 specialist, etc.

6 Q And when did you start working as the
7 Director to Labor Relations?

8 A That was in -- I don't know the exact
9 date, but it was in 2002.

10 Q Got it, and in your -- I guess for both
11 of those positions, the manager position and the
12 director position, did those -- did those positions
13 I take it involve participating in collective
14 bargaining?

15 A Yes.

16 Q Were all of the work groups, the ground
17 work groups, unionized at that time?

18 A At that time, yes.

19 Q And so what was -- at that time, what was
20 your role in the collective bargaining process?

21 A I attended the negotiations. I would
22 occasionally lead when Al Hemingway who was my
23 director was not available, but for the most part,
24 he was the primary negotiator during that time. I
25 maintained our proposals, and notes, and helped to

1 prepare proposals internally.

2 Q And what responsibilities, if any, did
3 you have with respect to after a Collective
4 Bargaining Agreement was reached, were you involved
5 in administering it, interpreting it, that sort of
6 thing?

7 A Yes, implementation initially, and then
8 the ongoing administration of that Collective
9 Bargaining Agreement to make sure that the Company
10 personnel were adhering to what we had agreed to,
11 and hearing any grievances that the Union may have
12 regarding their interpretation of the agreement and
13 working through dispute resolution.

14 Q And so after the Director - Ground
15 Services position, what was your next role?

16 A In October of 2004, I became Managing
17 Director of Labor Relations - Flight where I had
18 responsibility for the pilot agreement as well as
19 the dispatchers, flight crew training instructors,
20 and the flight simulator engineers.

21 Q And did you continue to be involved in
22 collective bargaining at that time?

23 A Yes.

24 Q Did you then occupy that -- that lead
25 negotiator position that you said that Mr.

1 Hemingway, I believe, had occupied in your prior
2 position?

3 A Not for all matters; for some matters,
4 but Al Hemingway was then the VP of Labor Relations
5 and he was involved in many of the pilot
6 negotiations as well --

7 Q Okay.

8 A -- initially in 2004.

9 Q So there were some circumstances in which
10 you said you would serve as the lead negotiator?

11 A Yes, not -- not many, until the -- in the
12 2011 to 2012 time frame, I was leading negotiations
13 on a more regular basis, but up until that time, Al
14 Hemingway as the VP of Labor Relations was still
15 very involved with pilot matters.

16 Q Got it, and in 2011-2012 when you started
17 leading negotiations more regularly, had your title
18 changed at that point or were you still Managing
19 Director of Flight?

20 A I was still Managing Director of flight.

21 Q Okay. And so throughout that period -- I
22 guess let me just finish the time line. Did you
23 continue to serve as Managing Director of Flight
24 after that, or was there another position that you
25 held?

1 A No, I maintained the position of Managing
2 Director - Flight from October of 2004 until I
3 retired from American on September 1 of this year,
4 of 2017.

5 Q Okay. So for the period, that period,
6 October, 2004 until September, 2017, did you
7 continue to participate in collective bargaining in
8 the same manner that you described earlier with
9 respect to your director position?

10 A I took a -- more of a lead role in 20 --
11 like I said, 2012 time frame until I retired in
12 2017. Al Hemingway was not involved in pilot
13 negotiations in that time period.

14 Q Okay.

15 A So...

16 Q And did you continue to be involved in
17 the implementation and administration roles that
18 you described earlier?

19 A Yes.

20 Q Let me kind of dive a little deeper into
21 the collective bargaining aspect of this, and I
22 want to focus primarily on the time from when you
23 started working as the lead negotiator more often
24 which sounds like it was around 2011-2012, so
25 focusing on that period, can you tell us in a

1 little more detail kind of how the collective
2 bargaining process worked and specifically kind of
3 what you did during the process?

4 A In -- in 2005 when America West and US
5 Airways merged, we began negotiations for a single
6 agreement related to that merger and those
7 negotiations continued until they were finally
8 recessed, I believe was the right term, in January
9 of 2012, I believe. The 2011-2012 time period, I
10 had been actively involved in those, but then there
11 came a time in early 2012; it was actually April of
12 2012, that we at US Airways reached out to the APA
13 to negotiate what was termed as a Conditional Labor
14 Agreement which laid out the base agreement for the
15 pilots in the event that there was a merger between
16 US Airways and American.

17 We did reach agreement; I believe it was
18 April 13th of 2012 on that Conditional Labor
19 Agreement, and I was lead negotiator for -- for
20 that process, one of the lead negotiators, along
21 with Scott Kirby, our president at the time. After
22 reaching agreement with the APA for that
23 Conditional Labor Agreement, USAPA, which was the
24 pilot union representing the US Airways pilots,
25 wanted what they termed as a seat at the table as

1 well and asked us to negotiate with them over
2 matters that would affect their pilots in the event
3 of a merger and we did that beginning in -- I
4 believe it was May, 2012 and continued those
5 discussions.

6 Some of those discussions were
7 coordinated with the APA as well to modify the
8 initial Conditional Labor Agreement, but those
9 negotiations, they actually resulted in a TA in
10 August of 2012, but the USAPA board did not support
11 that TA that was reached with the negotiating
12 committee and sent their negotiators back to modify
13 that agreement, but while we were in those
14 discussions with both the APA and USAPA, we, the
15 Company, signed a nondisclosure agreement with
16 American to stop talking to the unions and to
17 instead work with American on merger related
18 matters.

19 There came a time in late 2012, at the
20 urging of the unsecured creditors committee, the
21 unsecured creditors committee was obviously part of
22 the bankruptcy process; American was in bankruptcy
23 at the time, and the bankruptcy judge and the
24 unsecured creditors committee were interested in
25 comparing what a -- a merger plan between US

1 Airways and American looked like as -- in
2 comparison to what American was putting in front of
3 the bankruptcy court as a stand-alone plan, and so
4 the parties were tasked -- and when I say "the
5 parties," there were four parties, American,
6 management, US Airways management, the APA, and
7 USAPA were all tasked in late 2012 to get together
8 and negotiate what -- what was again an agreement
9 that would have gone into effect in the event of a
10 merger between American and US Airways. I was very
11 much a part of that process along with counsel from
12 O'Melveny in addition to Paul Jones who was counsel
13 for the Company and our president, Scott Kirby
14 again.

15 We did reach agreement on an MOU, and
16 that MOU laid out the -- the terms of a base
17 agreement that would be applicable to all pilots in
18 the event of a merger between American and US
19 Airways, and that was to be the 2012 agreement that
20 had been negotiated between American and the Allied
21 Pilots Association. During bankruptcy, they had
22 negotiated an agreement that had rather deep
23 concessionary cuts which was intended to go along
24 with their stand-alone plan, and the base agreement
25 that we negotiated in the four party process was to

1 use that 2012 bankruptcy agreement but to modify it
2 by giving the pilots back \$87 million a year, so it
3 was \$87 million better than that stand-alone plan
4 in terms of an agreement for the pilots, and then
5 we also made other certain modifications to that
6 2012 bankruptcy agreement, and that base agreement,
7 as I call it, was -- was identified in the MOU as
8 the Merger Transition Agreement, and that Merger
9 Transition Agreement was the base Collective
10 Bargaining Agreement that was to be applicable to
11 all pilots in the event of a merger.

12 That MOU also defined a subsequent
13 process which was the joint collective bargaining
14 process, Joint Collective Bargaining Agreement,
15 which was to be negotiated in a manner that --
16 these are my words, not appearing in any document,
17 it was a "move the deck chairs around" process
18 initially, because the -- the unions in our
19 December 2012 negotiations, where we were hurried
20 and trying to come up with this base agreement,
21 asked for that subsequent process because they
22 wanted to be able to have the time to take what
23 they viewed as best practices from any one of the
24 existing agreements and to, you know, come up with
25 what would be the final agreement for all pilots.

1 The parties in the -- the Joint
2 Collective Bargaining Agreement had the ability to
3 consensually agree to provide improvements to
4 pilots, but in the event that we couldn't reach
5 agreement on the final JCBA, as we were calling it,
6 and the matter went to an arbitrator who would then
7 determine what the final provisions of a JCBA would
8 be, that -- that arbitrator only had the
9 jurisdiction to remain within the economics of the
10 Merger Transition Agreement, so it was -- it was a
11 built-in process that provided an incentive to the
12 parties to reach agreement on a Joint Collective
13 Bargaining Agreement outside of going to
14 arbitration because that would be the only way that
15 the -- the pilot group would receive additional
16 benefits over and above the economics of the Merger
17 Transition Agreement.

18 Q So let me just clarify, when you say that
19 the arbitrator would have had to remain within the
20 economics, does that mean that the result of the
21 arbitration would have to impose no greater costs
22 on the Company than the existing agreement?

23 A Yes, that's correct.

24 Q Okay, and then -- yes, just a couple of
25 terms that you used that we should say what they

1 are for the Record, so I think you used the term
2 "TA." Can you tell us what that is?

3 A Yes, that's a Tentative Agreement.

4 Q Okay, and you also used the term "MOU."
5 What is that?

6 A That's Memorandum of Understanding.

7 Q And I take it, often when you use that
8 word, you are referring to the -- a specific
9 agreement which is the one that was reached between
10 American, APA, US Airways, and USAPA that you
11 described earlier?

12 A That's correct.

13 Q Okay, and we're going to talk more about
14 the JCBA process, the details of the proposals back
15 and forth in a minute, but what I would like to
16 establish right now is -- I guess I will put it
17 this way: How would you describe your job
18 description, your roles and responsibilities, in
19 negotiating the JCBA?

20 A I was the Company's lead negotiator.

21 Q And what does that mean; what does a lead
22 negotiator do?

23 A What that means is that we -- the Company
24 had a team assembled of representatives from
25 various departments within the Company. We had

1 representatives from Flight; we had Lyle Hogg who
2 was the VP of Flight for US Airways pre-merger. We
3 had Jim Eaton who was a representative from Legacy
4 American - Flight, so we had various
5 representatives from groups who were invested in
6 the outcome of the JCBA.

7 We brought in subject matter experts from
8 crew scheduling, crew planning, our benefits area.
9 We had representatives there from our finance
10 department; we had counsel there from O'Melveny,
11 and -- and the team also consisted of more people
12 who were on my staff who provided support in
13 preparing proposals and -- and valuating the
14 proposals we would receive from the Union, so as
15 the chief negotiator, I kept that process on track,
16 assembling all the necessary subject matter experts
17 and the necessary analysis to determine whether a
18 proposal was viable and how we would respond to
19 those proposals. I would present our committee's
20 recommendations to the senior team when appropriate
21 and support moving forward with certain proposals
22 or not.

23 Q Who was the senior team?

24 A The senior team would consist of the CEO,
25 the COO; it's -- it's the entire executive team.

1 Q So the COO at that time was Doug Parker;
2 is that correct?

3 A Yes.

4 Q And who was the COO?

5 A Robert Isom.

6 Q Okay.

7 A Scott Kirby was still with the Company as
8 president, and then Steve Johnson is -- is in
9 charge of labor relations. He was my boss as well
10 as Paul Jones, and then, of course, Derek Kerr who
11 was our CFO. He had an interest in how much money
12 we were spending.

13 Q And were these gentlemen that you just
14 named ones that you had been working with for some
15 period of time already when you were negotiating
16 with the Joint Collective Bargaining Agreement?

17 A Yes.

18 Q So you said that you would, as the chief
19 negotiator, you would present recommendations to
20 the senior team; is that -- did I understand that
21 correctly?

22 A Well, as a committee -- as a
23 committee, we would either support or not support
24 positions. For example, when the Union would
25 propose items that -- well, let me say this another

1 way. When we entered into the joint collective
2 bargaining process, JCBA process, we were given a
3 general guideline by the senior team on what the
4 end result should be, and that is the -- the fair
5 pay. Our CEO was very vocal about the fact that we
6 were going to come in with Delta Plus 3, I believe
7 it was at that point in time, so --

8 Q Can you just maybe break that down a
9 little more. Delta Plus 3, what does that mean?

10 A Let me give a little bit more of a
11 background. Prior to the merger with American when
12 US Airways was in the -- the bargaining process for
13 a single agreement, we could not put pay proposals
14 on the table that were equal to the other legacy
15 carriers because US Airways stand-alone without a
16 merger with American did not have the revenue
17 generating capability that the legacy carriers had,
18 and our CEO, Doug Parker, made a commitment to the
19 unions and to our employees that once we are in a
20 position where we have the ability to generate
21 revenue like the other legacy carriers, then we
22 will take care of our employees by paying them what
23 the other legacy carriers pay, and so the direction
24 that I received from Doug Parker going into the
25 joint collective bargaining process is that we will

1 put pay rates on the table for pilots that will
2 equal the Delta pay rates plus three percent, and
3 so we had a very defined pay structure that we were
4 proposing that was pretty well-known because Doug
5 Parker has regular meetings with the employees and
6 he made that commitment early on and he stuck with
7 that commitment post merger, and as far as other
8 improvements for pilots in the Joint Collective
9 Bargaining Agreement, we did focus on providing
10 improvements primarily in pay because, as a
11 reminder, going back to the fact that this process
12 initially was supposed to be pretty close to the
13 economics of the MTA sans Doug Parker's committee
14 to pay the Delta Plus 3 percent in terms of pay
15 rates, so as the Union made proposals, for example,
16 they made a 25 -- they submitted a 25-page proposal
17 regarding scheduling that would have provided
18 quality of life issues that would have addressed
19 some desires of their pilots, but when the Company
20 evaluates that proposal, it actually has a -- it
21 had a major impact, would have had a major impact
22 on the Company's productivity, and it would have
23 costed the Company a considerable amount of money
24 and would have also required programming that --
25 for IT systems that -- it was just not feasible.

1 We knew that in programming the
2 commitments we made for the Merger Transition
3 Agreement, at the point in time that we were in
4 JCBA negotiations which was 2014, we already had IT
5 work that was going to take us into April of 2016,
6 and we were rejecting those proposals from the
7 Union on the basis that we would not even begin
8 programming for years in the future; it was --
9 those proposals cost way more than the economics of
10 the MTA, and we were already committed to giving
11 improved pay rates and we weren't looking to spend
12 a considerable amount of money outside of what it
13 cost to give them the pay rates, so when -- that is
14 a very long-winded way to say that when there were
15 proposals such as what I just described regarding
16 scheduling, and we saw the committee, the Company's
17 committee, through finance and announced this, we
18 had finance that saw that -- that created this, you
19 know, enormous cost to the Company, and
20 productivity, that is not a proposal that we ever
21 went to the senior team recommending that we
22 accept.

23 Q Got it.

24 A It was way outside of our direction; we
25 had our credibility to maintain with our senior

1 team, and although we briefed them on the, you
2 know, where we are with the Union proposals, you
3 know, at a given point in time, that's -- that
4 briefing is very different from, you know, going to
5 bat for, hey, I think we should spend this extra,
6 whatever it may be, \$300 million a year. Those are
7 not the kind of recommendations we were making.

8 Q So as chief negotiator, it sounds like
9 you had the authority to decide what to take to the
10 senior team?

11 A Yes, in part. We were -- as the chief
12 negotiator, I was keeping the senior team advised
13 on exactly where we were and in -- in what the
14 Union was proposing, and we together would decide
15 whether to engage or not, but that we were getting
16 correction from the senior team that -- that was
17 within a certain ballpark, and if those proposals
18 were way outside of that ballpark, it was more of a
19 briefing and not a recommendation.

20 Q I see.

21 A When we were getting here in this
22 ballpark, what I was advising the -- the senior
23 team on was what I believed as the negotiator at
24 the table and the interaction that I was having
25 with the Union was something that they could accept

1 based on feedback they were providing at the table
2 to get us to a final deal, and I would be able to
3 advise the senior team with -- without this, that,
4 or whatever, I don't believe we're going to have an
5 agreement. If I tried to take something that was
6 way outside of the ballpark to -- to the senior
7 team, that -- we wouldn't have had a long
8 discussion.

9 Q Okay, let's switch gears a little bit, so
10 we're going to come back and talk a little more
11 about the detail about negotiating the Joint
12 Collective Bargaining Agreement a little bit later,
13 but what I would like to do is talk to you a little
14 bit about the -- kind of the general terms and
15 conditions of employment for pilots with respect to
16 pay and that sort of thing, so before we get into
17 that, let me just ask you, are you, based on your
18 jobs that you've held that you've talked about, are
19 you familiar with the terms and conditions of
20 employment for pilots at US Airways during that
21 period, let's say 2004 up until the merger in 2013?

22 A Yes.

23 Q And are you familiar with the terms and
24 conditions of employment for pilots at American
25 from that, the merger, up until you retired in

1 2017?

2 A Yes.

3 Q What about the terms and conditions of
4 employment for pilots at American that were there
5 before the merger; did you become familiar with
6 those in the course of your job?

7 A Some, yes, some that were maybe part of a
8 dispute, but -- but yes, in general.

9 Q Okay, and what about kind of industry
10 trends outside US Airways and American, maybe pilot
11 contracts at Delta or United, did you become
12 familiar with those over the course of your work?

13 A Yes, I -- I can say that I don't have any
14 of these agreements totally memorized, but yes, I
15 had a general knowledge of what was going on in the
16 industry as it relates to pilots.

17 Q And how did you develop that?

18 A Part of our -- our research when we go
19 into negotiations is understanding what the
20 industry comparisons are. During negotiations,
21 the -- the pilots -- or the Union raises certain
22 issues as they present a proposal. They will, as
23 part of their presentation of the proposal, remind
24 us how that might place our pilots as it relates to
25 Delta or United pilots. Sometimes they do that;

1 sometimes they don't, but we -- we, the Company,
2 look at industry comparisons as well to understand
3 where our pilots are compared to those in the
4 industry; you know, as our pilots may propose
5 certain items, for example, if they are proposing
6 something that is way outside the norm of what
7 Delta and United pilots have, we may remind them of
8 that as well.

9 Q And are these Collective Bargaining
10 Agreements public documents that anyone can look
11 up, or how does that work?

12 A I don't know that they're necessarily
13 public. The -- many carriers post the Collective
14 Bargaining Agreements for their employees to view.
15 I can't say that those employees wouldn't share
16 them at some point outside of the Company, but I
17 don't know that I would say that they are readily
18 available to the public.

19 Q Got it. Okay, so let's start with some
20 kind of basic background on how pilots are paid,
21 and we'll focus first on how it worked at US
22 Airways from 2004 up until the merger, so how would
23 you kind of generally describe how a pilot's pay
24 rate was determined?

25 A Pilots are generally paid based on the

1 equipment that they fly, and the equipment that
2 they fly or can hold is determined by their
3 seniority, so they bid for certain pieces of
4 equipment and that -- that drives their pay rate.
5 Generally, the larger equipment types generate more
6 pay. I say "generally" because, at US Airways,
7 that was the case; there were different pay rates
8 for different groups of aircraft, and the larger
9 the aircraft, the larger the pay rate.

10 At America West, there was one pay rate
11 for the equipment that they operated, but there
12 wasn't -- there weren't many pieces of equipment
13 generally there, and they -- they intentionally
14 kept the pay rate the same to reduce training costs
15 and churn, so it -- it differs by carrier slightly,
16 but generally, the equipment that you fly generates
17 the level of pay that you receive.

18 Q And so if two pilots are both at the same
19 airline are both flying, let's say the Boeing 737,
20 does that mean that those two pilots will have the
21 same rate of pay?

22 A Yes.

23 Q What about if they're -- the time that
24 they've worked at the Company is different, does
25 that affect their rate of pay?

1 A Yes, their longevity with the Company
2 will -- will determine what level within that pay
3 scale they'll be paid.

4 Q Okay, so I guess is there sort of a grid
5 that, where you look at what equipment they fly and
6 then look at their longevity and that tells you
7 their pay rate?

8 A Yes, that's correct.

9 Q And so you mentioned longevity; how would
10 you define longevity?

11 A Longevity is the Length of Service within
12 the mainline operation. Once you -- once you start
13 work for the Company, and, of course, we're a
14 mainline Company, you begin to accrue service
15 credit for that -- for the time that you are flying
16 in that operation. There are certain circumstances
17 where you may stop accruing that Length of Service
18 credit; it may be for extended leaves, for
19 furlough, but generally, it's a credit for the time
20 you are operating aircraft in that operation.

21 Q Okay, so if I'm a pilot and I've been a
22 commercial airline pilot for a long time, 30 years,
23 and I come to US Airways, does that mean that I --
24 do I get placed with 30 years of longevity or I get
25 placed with zero years of longevity?

1 A If you're new to US Airways, then you
2 start to receive your Length of Service or
3 longevity credit from the day you start at US
4 Airways.

5 Q Okay.

6 A And operate those aircraft, the mainline
7 aircraft.

8 Q So it doesn't matter what experience you
9 have before coming to US Airways?

10 A That's correct.

11 Q And is -- is that also how it worked at
12 American after the merger?

13 A Yes.

14 Q Do you know if other -- other than US
15 Airways and American, if other carriers use a
16 system that's similar to that?

17 A Yes, and when you talk about how that
18 worked after American, that is how it worked for
19 people who came to the Company from other
20 operations. It's not the way it worked for
21 obviously pilots who were on the property in the
22 mainline operation when they were merged after the
23 merger.

24 Q We'll get into that --

25 A Okay.

1 you are talking about that Delta and United
2 eventually agreed to, as you understand it, that
3 pilot coming back from furlough would be placed at
4 the seven year mark?

5 A Correct.

6 Q Okay, so now let's talk a little bit more
7 about mergers. So it sounds like based on what you
8 said earlier, you've been involved in several
9 different mergers; is that correct?

10 A Three different mergers, yes.

11 Q And tell us again which those were.

12 A Piedmont and US Air, through a name
13 change, US Airways and America West, and then US
14 Airways and American.

15 Q And then in which of those three mergers
16 were you involved in negotiating the employment
17 issues that arose from the merger?

18 A In the America West and US Airways merger
19 and in the US Airways and American merger.

20 Q And I think you already talked us through
21 most of the elements of the American/US Airways
22 merger. You mentioned that there was a negotiation
23 -- well, several different negotiations; we don't
24 have to go into that again at this point, so I
25 would like to talk about how -- what happened with

1 longevity in mergers, and let's focus on the
2 American/US Airways merger, so would a pilot, let's
3 say, from -- who had been working at US Airways and
4 then the merger happened and they were then working
5 at American, what would happen to their longevity
6 at that point?

7 A They were part of the pre-merger mainline
8 operation at US Airways and part of the -- the post
9 merger airline, they would bring their longevity
10 with them. They wouldn't have a loss of mainline
11 longevity because of the merger.

12 Q Okay, so just to kind of put it in terms
13 of an example like we were doing before, if a pilot
14 had been at US Airways, let's say, for five years
15 prior to the merger and then the merger happens,
16 they're still placed at that five year point on the
17 pay scale?

18 A Correct.

19 Q And why -- why did the Company agree to
20 do it that way?

21 A Because we merged the -- the mainline
22 operations, and pilots had no interruption of
23 service in doing that.

24 Q Do you know -- well, yes, let me put it
25 like this. Do you know if that is -- within the

1 industry, if that is how longevity is typically
2 treated in a merger?

3 A Yes.

4 Q Do you have any knowledge, even though
5 you weren't at American at the time, of whether
6 that's what happened when American bought some of
7 the assets of TWA?

8 A I don't know all of the specifics of how
9 that seniority was handled. I'm not sure.

10 Q Okay. Let me put it this way: Would it
11 surprise you if there -- to learn of a corporate
12 transaction where a pilot was not allowed to retain
13 pre-merger longevity?

14 A Yes.

15 Q That -- because that was outside of the
16 norm of the industry?

17 A Yes.

18 Q Other than a corporate transaction such
19 as the American/US Airways merger, did an airline
20 that you worked for ever give a pilot longevity
21 credit for time flying at a different airline other
22 than the airline that -- that they were ultimately
23 working at?

24 A No.

25 Q Why not?

1

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(The deposition concluded at 3:22 p.m.)

3

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(SIGNATURE WAIVED)

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C E R T I F I C A T E

COMMONWEALTH OF VIRGINIA

COUNTY OF ROANOKE

I, Lisa M. Hooker, Notary Public in and
for the Commonwealth of Virginia, at Large, do
hereby certify that the Deposition of BETH A.
HOLDREN was by me reduced to machine shorthand in
the presence of the witness, afterwards transcribed
under my direction by means of Computer, and that
to the best of my ability the foregoing is a true
and correct transcript of the Deposition as
aforesaid.

I further certify that this Deposition
was taken at the time and place in the foregoing
caption specified.

I further certify that I am not a
relative, counsel or attorney for either party or
otherwise interested in the outcome of this action.

IN WITNESS WHEREOF, I have hereunto set
my hand at Roanoke, Virginia, on this the 4th day
of January, 2018.

Lisa M. Hooker
Lisa M. Hooker
Notary Public

My commission expires October 31, 2019.
Notary Registration Number: 165043

EXHIBIT 5

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

---oOo---

AMERICAN AIRLINES FLOW-THRU
PILOTS COALITION, et al.,

Plaintiffs,

vs.

No. 3:15-CV-03125-RS

ALLIED PILOTS ASSOCIATION, et al.,

Defendants.

_____/

VIDEOTAPED DEPOSITION OF GREGORY CORDES

Taken before NICOLE HATLER

CSR No. 13730

November 28, 2017

Job: 23609

GREGORY CORDES

November 28, 2017

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13	Exhibit 1006	E-mail chain subject RE:	141
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19	Exhibit 1010	Allied Pilots Association	156
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GREGORY CORDES

November 28, 2017

1 VIDEOTAPED DEPOSITION OF GREGORY CORDES

2

3

4 BE IT REMEMBERED, that pursuant to Notice, and on
5 the 28th day of November 2017, commencing at the hour of
6 10:49 a.m., in the offices of Altshuler Berzon LLP, 177
7 Post Street, Suite 300, San Francisco, California 94108,
8 before me, NICOLE HATLER, a Certified Shorthand
9 Reporter, State of California, personally appeared
10 GREGORY CORDES, produced as a witness in said action,
11 and being by me first duly sworn, was thereupon examined
12 as a witness in said cause.

13 ---oOo---

14 APPEARANCES

15 For the Plaintiffs:

16 CHRISTOPHER W. KATZENBACH, ESQ.
17 Katzenbach Law Offices
18 912 Loutens Place, 2nd Floor
19 San Rafael, CA 94901
(415) 834-1778
CKatzenbach@KKcounsel.com

20 For the Defendants:

21 JEFFREY B. DEMAINE, ESQ.
22 Altshuler Berzon LLP
23 177 Post Street, Suite 300
24 San Francisco, CA 94108
(415) 421-7151
JDemaine@altshulerberzon.com

24

25

GREGORY CORDES

November 28, 2017

1 THE VIDEOGRAPHER: We are on the record. The
2 time is 10:49 a.m. The date is November 28th, 2017.

3 This is the video deposition of Gregory Cordes
4 in the matter of American Airlines Flow-Thru Pilots
5 Coalition vs. Allied Pilot Association. The case number
6 is 315-CV-03125-RS.

7 This deposition is being held at 177 Post
8 Street, suite 300, San Francisco, California. The court
9 reporter is Nicole Hatler. I am Mariah Nieves, the
10 videographer. We are here with First Legal Deposition
11 Services.

12 This deposition is being videotaped at all times
13 unless all counsel have agreed to go off the record.

14 Would all present please identify themselves,
15 beginning with the witness.

16 THE WITNESS: Gregory Cordes.

17 MR. KATZENBACH: Christopher W. Katzenbach for
18 the plaintiffs.

19 MR. DEMAINE: Jeffrey B. Demain for the defendant
20 Allied Pilots Association.

21 THE VIDEOGRAPHER: Thank you.

22 Will the court reporter please swear in the
23 witness?

24 //

25 //

GREGORY CORDES

November 28, 2017

1 GREGORY CORDES

2 sworn as a witness

3 testified as follows:

4 MR. DEMAIN: Thank you.

5 EXAMINATION BY MR. DEMAIN:

6 Q. Good morning, Mr. Cordes.

7 A. Good morning.

8 Q. I think I introduced myself to you before. I'm
9 Jeffrey Demain. I'm going to be representing the Allied
10 Pilots Association in this deposition. I wanted to
11 start out with some -- just basic questions and then
12 instructions about depositions so you'll understand
13 better what we're doing here today.

14 So first question is, have you ever been deposed
15 before?

16 A. One time.

17 Q. Okay. And how long ago was that?

18 A. Oh, about five years -- six years ago.

19 Q. What kind of case was it?

20 A. An auto accident my wife had been in.

21 Q. I see. And have you ever testified in court
22 before?

23 A. No.

24 Q. How about in an arbitration?

25 A. Yes.

GREGORY CORDES

November 28, 2017

1 A. No.

2 Q. Okay. Have you always, at American, bid the
3 highest status and -- and category that you were
4 entitled to bid?

5 A. That's another interesting question. As a first
6 officer on the triple seven, I can actually make more
7 money than I can as a captain on the 737. So that being
8 the case, I've chosen to do the first officer triple
9 seven. It's -- technically, the pay rate is less, but
10 there's ways to get other time into your schedule that
11 more than makes up for the difference.

12 Q. I see.

13 A. By --

14 Q. So you could, right now, bid a captain's seat on
15 the -- on the 737; is that right?

16 A. I could.

17 Q. Okay. But you -- but you haven't done that?

18 A. I haven't.

19 Q. Okay. Is it also common at American for pilots
20 to bid lower than the highest status and category they
21 can -- they were entitled to get for what I'll call
22 lifestyle reasons?

23 A. Yes.

24 Q. Okay. Were you ever furloughed at -- at Eagle?

25 A. No.

GREGORY CORDES

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1 Q. Were you ever furloughed at American since
2 you've come to American?

3 A. I was never furloughed at American. I was not
4 allowed to transfer to American when I should have, but
5 never technically furloughed once I was already on the
6 property.

7 Q. Okay. And what do you understand the meaning of
8 the term "furlough"? What's your understanding of
9 the -- of the meaning of the term "furlough"?

10 A. Well, the term "furlough" has been used pretty
11 arbitrarily with respect to everything that we're doing
12 here, and it would mean, generally, a pilot who had been
13 working for a particular company and then released from
14 his position to the street.

15 Q. In other words, laid off?

16 A. Laid off. Yeah. In this case, it becomes
17 blurry. You've got pilots that have been working for
18 TWA, LLC that were never technically American pilots,
19 but they've been classified as furloughees.

20 Q. Okay. But --

21 A. And -- yes.

22 Q. But the question about them in this case, as I
23 understand it, is not whether they were furloughed or
24 not, but whether they were furloughed from TWA, LLC or
25 furloughed from American Airlines, correct? I mean,

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1 Q. Okay. I'm going to go through a list of people
2 and ask you the same questions about each person, and
3 then after that, why don't we take a break. We'll take
4 a lunch break, if that's okay with everyone. Good.

5 Okay. So the first --

6 MR. KATZENBACH: Which is okay, the lunch break
7 or the asking the questions?

8 MR. DEMAIN: The asking the questions I don't
9 put up for a vote.

10 MR. KATZENBACH: Okay.

11 BY MR. DEMAIN:

12 Q. Okay. So let's go through each of these names
13 and I'll ask you a series of questions.

14 The first one is Keith Wilson, W-I-L-S-O-N. Do
15 you know him?

16 A. Not personally.

17 Q. Okay. Have you ever communicated with him about
18 the topics or the issues in this lawsuit?

19 A. Through letters, yes.

20 Q. Okay. And were those letters produced in this
21 litigation?

22 A. Yes.

23 Q. Okay. Do you have any reason to believe he's
24 hostile to flow-thru pilots?

25 A. I have been excluded from any information coming

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1 from APA, so it's difficult for me to ascertain that
2 now. It's -- I -- so I don't know.

3 Q. Okay. The next one -- and I'm not sure if I'm
4 pronouncing this correctly -- is Neil Roghair, N-E-I-L
5 R-O-G-H-A-I-R. Do you know him?

6 A. I do know who he is. I've met him before and
7 talked to him briefly about some of the contractual
8 stuff.

9 Q. Have you communicated with him about any of the
10 subjects of this litigation?

11 A. Other than the letters I've sent, I don't recall
12 ever having sent him anything directly.

13 Q. Okay. Do you have any reason to believe that
14 he's hostile to flow-thru pilots?

15 A. There again, they have made it very clear they
16 did not want to talk to me, so I don't know.

17 Q. The next one is Norm Miller, M-I-L-L-E-R. Do
18 you know him?

19 A. I don't.

20 Q. Okay. Have you communicated with him about the
21 subjects of this litigation?

22 A. I don't know who Norm Miller is. He may be
23 somebody who was on one of the letters I sent, but I --
24 I don't know.

25 Q. Okay. Unless he was on one of the letters,

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1 you -- you have no recollection of communicating with
2 him?

3 A. No, I don't.

4 Q. Do you have any reason to believe he's hostile
5 to flow-thru pilots?

6 A. I don't know him. And once again, obviously,
7 there's hostility coming from APA. It's hard for me to
8 say, other than a couple of people that have been very
9 vocal about it over the years, it's -- it's more --
10 it -- it's occurring, but it's difficult for me to say
11 because now they've been very careful not to say
12 anything.

13 Q. So you don't -- you don't know if he's hostile
14 to flow-thru pilots?

15 A. I don't even know him.

16 Q. Okay. The -- the -- you said a couple of people
17 have been very vocal about it. Who are they?

18 A. Boy, there's all the way back to the head of
19 APA, back -- the president back -- was it -- was it Boyd
20 Hill? Wasn't he part of the -- he was vocal about
21 the -- the flow-thru pilots there -- the American Eagle
22 pilots being inferior and all this, you know, the
23 defenders of the profession and it was -- but --

24 Q. Was that back in the era when there was a
25 dispute about whether American pilots or Eagle pilots

GREGORY CORDES

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1 would fly the commuter jets?

2 A. That's correct.

3 Q. Okay. So that's back in the '90s?

4 A. Yeah, yeah. That -- that's -- that --

5 Q. Anyone else you can remember being vocal about
6 it, as you put it?

7 A. You know, there's -- boy, a lot of it is stuff I
8 have heard from other pilots that he said this, that,
9 you know. And so --

10 Q. But not that you've heard directly from the
11 person who was -- it's attributed to?

12 A. No. They would not talk with me.

13 Q. Okay. Excuse me. Let me keep going through the
14 list. The next one is Dave Brown. Do you know him?

15 A. You know, I know a Dave Brown, but I think it's
16 a different one. So no. I think it's a different one.

17 Q. Okay. Have you communicated with him about the
18 subjects of this litigation?

19 A. Can you -- what is his position and maybe I
20 can --

21 Q. He was involved in the 2015 Collective
22 Bargaining Agreement negotiations.

23 A. I see.

24 Q. But that, I think you called the JCBA?

25 A. Okay. I don't recall having any direct

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1 communications with him. We did send some letters to
2 the negotiating committee, also.

3 Q. Okay. Do you have any reason to believe that
4 he's hostile to flow-thru pilots?

5 A. I don't know who is, specifically, hostile, once
6 again. So -- I don't know him, though.

7 Q. Okay. The next one -- I think you did say you
8 know Brian Smith, correct?

9 A. Uh-huh.

10 Q. Okay. So we'll talk about him later.

11 A. Okay.

12 Q. The next one is Carey Giles, G-I-L-E-S. Do you
13 know her?

14 A. No.

15 Q. Okay. Have you ever communicated with her about
16 the topics of this litigation?

17 A. What -- what is her position?

18 Q. She was also on the negotiating committee in the
19 2015 negotiations.

20 A. Okay. So other than them receiving letters, not
21 that I would know of.

22 Q. Okay. Do you have any reason to believe she's
23 hostile to flow-thru pilots?

24 A. I don't know.

25 Q. So that would be a no?

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1 A. That's no.

2 Q. Okay. A couple more. Jeff Thurstin,
3 T-H-U-R-S-T-I-N. Do you know him?

4 A. No.

5 Q. Do you -- have you communicated with him on the
6 topics of this case, other than the letters you sent to
7 the negotiating committee?

8 A. Not that I know of.

9 Q. Okay. Do you have any reason to believe that
10 he's hostile to flow-thru pilots?

11 A. No. As I say, I don't know him. So --

12 Q. Okay. Finally, Allison Clark, A-L-L-I-S-O-N
13 C-L-A-R-K, do you know her?

14 A. I don't know her.

15 Q. Have you ever communicated with her about the
16 topics of this case?

17 A. Not that I know of.

18 Q. And do you have any reason to believe she's
19 hostile to flow-thru pilots?

20 A. I -- I don't know.

21 Q. Okay. Good.

22 MR. DEMAIN: So let's go off the record now and
23 we'll take a lunch break. We'll talk about what time --
24 excuse me -- to come back and we'll resume them.

25 THE VIDEOGRAPHER: The time is 1:02 p.m. We are

GREGORY CORDES

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1 Q. Do you still have those documents?

2 A. I don't know if I have them, but they're
3 probably available somewhere.

4 Q. Okay. Same question. Same time period. Did
5 you ever hear APA officials refer to Eagle pilots as
6 scabs?

7 A. I have heard that.

8 Q. You've heard the word "scab" used?

9 A. I have heard Eagle pilots referred to as scabs.
10 That was actually kind of common at one point, probably
11 heavily amongst rank and file. And so, it's difficult
12 for me to nail down a specific APA representative that
13 said that.

14 Q. Okay. So you don't recall whether you've heard
15 any APA representatives refer to Eagle pilots as scabs?

16 A. I do not recall. And there's a very good chance
17 I would not have even known they were an APA
18 representative.

19 Q. Okay. Same question, but the term is job
20 stealers. During the -- during the period since the
21 negotiation of the flow-thru agreement, have you ever
22 heard any APA officials refer to Eagle pilots as job
23 stealers?

24 A. I don't recall that specific term, but -- but
25 other terms that that -- the gist of that comment or

GREGORY CORDES

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1 that phrase being the meaning of -- you know.

2 Q. Okay.

3 A. So I don't remember -- I -- I can't say I
4 remembered somebody saying that exact term.

5 Q. Okay. But words --

6 A. I did -- I do remember hearing scab quite a few
7 times.

8 Q. Okay. But words to the effect of job stealer --

9 A. That's correct.

10 Q. -- such as American pilots -- excuse me -- that
11 Eagle pilots are stealing the jobs of American pilots?

12 A. That's correct. Stuff like that.

13 Q. Now, are you saying you heard that from rank and
14 file pilots or are you saying you recall hearing that
15 from APA officials?

16 A. You know, once again, I -- I -- I never made
17 that distinction over those years. And often, that
18 occurred, a lot of that was before I was actually at
19 American. So I don't know who all those APA players
20 were at that point.

21 Q. So for example, as you sit here today, you
22 couldn't tell me the names of any APA officials who
23 you've heard made those comments or you read them making
24 those comments?

25 A. No. I can't say that. I can tell you about

GREGORY CORDES

November 28, 2017

1 being in the crew bus and, you know, getting the -- the
2 snide remarks and the scowls and, you know, being in the
3 cockpit and having guys say, "Oh, you guys can't fly in
4 weather," you know, and it's things like that.

5 Little --

6 Q. Digs?

7 A. Yes.

8 Q. Okay. But you don't know that any of those
9 people were APA officials, correct?

10 A. I do not know that.

11 Q. Okay. Just give me a second here, if you would.

12 A. Sure.

13 Q. Okay. I'd like to go on now to a different
14 topic, Letter G. If you will look at the exhibits for
15 Exhibit 1004, it's a one-page document that says Letter
16 G at the top. Okay. You have this in front of you.
17 And I'm not going to ask you any detailed questions
18 about the terms of it. If I do, I'll give you more of a
19 chance to review it. I'm just wondering, are you
20 familiar with this document?

21 A. I am.

22 Q. Okay. And can you tell us what it is, what your
23 understanding of what it is?

24 A. If you don't mind, let me just read it for a
25 second here.

GREGORY CORDES

November 28, 2017

1 REPORTER'S CERTIFICATE

2

3

4 I, NICOLE HATLER, a Shorthand Reporter, State of
5 California, do hereby certify:

6 That GREGORY CORDES, in the foregoing deposition
7 named, was present and by me sworn as a witness in the
8 above-entitled action at the time and place therein
9 specified;

10 That said deposition was taken before me at said
11 time and place, and was taken down in shorthand by me, a
12 Certified Shorthand Reporter of the State of California,
13 and was thereafter transcribed into typewriting, and
14 that the foregoing transcript constitutes a full, true
15 and correct report of said deposition and of the
16 proceedings that took place;


17 IN WITNESS WHEREOF, I have hereunder subscribed my
18 hand this 12th day of December 2017.

19

20

21

22


NICOLE HATLER, CSR NO. 13730
State of California

23

24

25

EXHIBIT 6

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

---oOo---

AMERICAN AIRLINES FLOW-THRU
PILOTS COALITION, et al.,

Plaintiffs,

vs.

No. 3:15-CV-03125-RS

ALLIED PILOTS ASSOCIATION, et al.,

Defendants.

_____/

VIDEOTAPED DEPOSITION OF DRU MARQUARDT

Taken before NICOLE HATLER

CSR No. 13730

November 30, 2017

Job: 23613

DRU MARQUARDT

November 30, 2017

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9	(No exhibits were marked.)	
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DRU MARQUARDT

November 30, 2017

1 VIDEOTAPED DEPOSITION OF DRU MARQUARDT

2

3

4 BE IT REMEMBERED, that pursuant to Notice, and on
5 the 30th day of November 2017, commencing at the hour of
6 9:32 a.m., in the offices of Altshuler Berzon LLP, 177
7 Post Street, Suite 300, San Francisco, California 94108,
8 before me, NICOLE HATLER, a Certified Shorthand
9 Reporter, State of California, personally appeared DRU
10 MARQUARDT, produced as a witness in said action, and
11 being by me first duly sworn, was thereupon examined as
12 a witness in said cause.

13 ---oOo---

14 APPEARANCES

15 For the Plaintiffs:

16 CHRISTOPHER W. KATZENBACH
17 Katzenbach Law Offices
18 912 Loutens Place, 2nd Floor
19 San Rafael, CA 94901
(415) 834-1778
CKatzenbach@KKcounsel.com

20 For the Defendants:

21 JEFFREY B. DEMAINE, ESQ.
22 Altshuler Berzon LLP
23 177 Post Street, Suite 300
24 San Francisco, CA 94108
25 (415) 421-7151
JDemaine@altshulerberzon.com

DRU MARQUARDT

November 30, 2017

1 THE VIDEOGRAPHER: We are on the record. The
2 time is 9:32 a.m. The date is November 30th, 2017.
3 This is the video deposition of Dru Marquardt in the
4 matter of American Airlines flow-thru pilots Coalition
5 vs. Allied Pilots Association. The case number is
6 315-CV-03125-RS.

7 This deposition is being held at 177 Post
8 Street, suite 300, San Francisco, California. The court
9 reporter is Nicole Hatler. I am Mariah Nieves, the
10 videographer. We are here with First Legal Deposition
11 Services.

12 This deposition is being videotaped at all times
13 unless all counsel have agreed to go off the record.

14 Would all present please identify themselves
15 beginning with the witness.

16 THE WITNESS: Dru Marquardt.

17 MR. KATZENBACH: Christopher W. Katzenbach for
18 the plaintiffs.

19 MR. DEMAINE: Jeffrey B. Demain for the
20 defendant, Allied Pilots Association.

21 THE VIDEOGRAPHER: Thank you.

22 Will the court reporter please swear in the
23 witness.

24 //

25 //

DRU MARQUARDT

November 30, 2017

1 DRU MARQUARDT

2 sworn as a witness

3 testified as follows:

4 EXAMINATION BY MR. DEMAIN:

5 Q. Good. Good morning. I introduced myself
6 before. I'm Jeffrey Demain. I'm going to be
7 representing Allied Pilots Association here, the
8 defendant in the case, and I'm going to be asking you a
9 series of questions. The beginning now, I want to ask
10 you a couple questions and then give you some
11 instructions for how the deposition is -- is going to
12 go. First of all, have you ever been deposed before?

13 A. No. First time.

14 Q. And have you ever testified in court before?

15 A. No.

16 Q. Okay. Let me tell you a bit about how we do the
17 deposition. I'm going -- I'm going to ask you a series
18 of questions. You've already sworn to tell the truth,
19 so you're under oath under penalty of perjury. I'm
20 going to ask you a series of questions, and you're going
21 to provide me with answers to the questions under oath
22 and penalty of perjury. When I'm done asking
23 questions -- when I finish all my questions, then your
24 attorney will have the opportunity to ask you questions,
25 if he has any, and then we'll keep going back and forth

DRU MARQUARDT

November 30, 2017

1 Q. The 154?

2 A. Yes.

3 Q. Okay. Let me just -- if you could focus for
4 right now on the period of time when you worked for
5 Eagle, starting with -- was it Wings West?

6 A. Yes.

7 Q. Okay. So that whole period of time, while you
8 were working for Eagle and Wings West, did you have any
9 other outside employment, whether in the aviation
10 industry or elsewhere?

11 A. No.

12 Q. Okay. Were you ever unemployed for any period
13 of time from when you started with Wings West through --
14 through your conclusion at Eagle?

15 A. No.

16 Q. Okay. You were never furloughed from Eagle?

17 A. No.

18 Q. Okay. And can you describe to me what your
19 understanding of the term "furlough" is in the aviation
20 industry?

21 A. That's when you work for, in this case, an
22 airline company, flying their aircraft -- revenue
23 aircraft, and you get laid off, basically, with the
24 promise or the hope to get recalled.

25 Q. Okay. And is that generally -- is that term

DRU MARQUARDT

November 30, 2017

1 generally understood to mean that in the airline
2 industry?

3 A. Yes.

4 Q. Have you -- now focusing on the period of time
5 since you've been flying for American, were you ever
6 furloughed from American?

7 A. No.

8 Q. And were you ever unemployed for any period of
9 time when you worked for -- since you've been working
10 for American?

11 A. No.

12 Q. Have you had any outside employment, either in
13 the aviation industry or elsewhere since you started
14 working for American?

15 A. No.

16 Q. When you started working for Wings West and
17 then -- yeah.

18 When you started working for Wings West, where
19 were you living at that time?

20 A. In the Boulder Creek area.

21 Q. Is that --

22 A. Santa Cruz.

23 Q. -- near Santa Cruz?

24 It's beautiful down there.

25 A. Yeah. I love it. Yeah.

DRU MARQUARDT

November 30, 2017

1 A. It was RAPA, Regional Airline Pilots
2 Association.

3 Q. Okay. And when all of those unions were
4 combined into Wings West, what -- I'm sorry.

5 When all those airlines, including Wings West,
6 were combined into Eagle, what -- what union started
7 representing the Eagle pilots?

8 A. It was ALPA.

9 Q. Okay. And they represented all of the Eagle
10 pilots, correct?

11 A. Yes.

12 Q. Okay. Now you're at American. The union that
13 represents the American pilots is APA, correct?

14 A. Yes.

15 Q. And they represent all of the American pilots;
16 is that right?

17 A. Yes.

18 Q. Okay. When did APA start functioning as your
19 union representative, to your knowledge?

20 A. The date? I don't recall.

21 Q. Was it when you started at American Airlines?

22 A. Yes.

23 Q. Okay. Started training at American Airlines?

24 A. Correct.

25 Q. Okay. And when is your understanding of when

DRU MARQUARDT

November 30, 2017

1 ALPA ceased being your representative?

2 A. When I started training at American.

3 Q. Okay. Whether you -- you said that you think
4 you first got your American seniority number in 1997,
5 correct?

6 A. Yes.

7 Q. Okay. At that point, ALPA was your
8 representative; is that correct?

9 A. Yes.

10 Q. Okay. And APA was not your representative,
11 correct?

12 A. Correct.

13 Q. Okay. When you were at ALPA, did you do any --
14 excuse me.

15 When you were at Eagle, did you do any union
16 work with -- with ALPA, for example, being a union
17 officer or serving on any committees?

18 A. No.

19 Q. Okay. Since you've been at American, have you
20 done any union -- similar union work with APA?

21 A. No.

22 Q. Have you, at any point, communicated with any
23 ALPA officers or committee members -- board members
24 regarding the issues in dispute in this case?

25 A. You said ALPA?

DRU MARQUARDT

November 30, 2017

1 A. Some of it was through the American Airline
2 flow-thru pilots Coalition, you know, whatever --
3 whatever's coming through that. You know, we weren't
4 going to be part of the SLI.

5 Q. Did you ever, not -- not just with reference to
6 the seniority integration, but -- but for any purpose,
7 have you ever looked at, you know, visited the APA
8 website and read things on the APA website?

9 A. Yes.

10 Q. Okay. How frequently would you say you've done
11 that?

12 A. Oh, every month or so.

13 Q. Okay.

14 A. Looking through things.

15 Q. How about have you ever gotten any like
16 newsletters or anything else like that from APA?

17 A. No.

18 Q. Okay. I'm going to go through a list of names
19 now and ask you the same questions about each name.
20 These are all people associated with APA. And so, I'm
21 just going to take them one at a time and ask you, I
22 think, four -- three or four questions about each name.
23 You ready?

24 A. Okay.

25 Q. Okay. So the first one is Keith Wilson. The

DRU MARQUARDT

November 30, 2017

1 question is, do you know -- do you know Keith Wilson?

2 A. No.

3 Q. Have you ever communicated with Keith Wilson, to
4 your knowledge?

5 A. No.

6 Q. Did you have any reason to believe that Keith
7 Wilson is hostile to flow-thru pilots?

8 A. I would not know.

9 Q. Next one, I'm not sure if I'm pronouncing this
10 right, so I'm going to say and then -- I'm going to say
11 and then spell. It's Neil, N-E-I-L, Roghair or Roghair.
12 It's R-O-G-H-A-I-R. Do you know him?

13 A. No.

14 Q. Have you ever communicated with him?

15 A. No.

16 Q. Did you have any reason to believe he's hostile
17 to flow-thru pilots?

18 A. No.

19 Q. Third one is Norm Miller. Do you know him?

20 A. No.

21 Q. Ever communicated with him?

22 A. No.

23 Q. Have any reason to believe he's hostile to
24 flow-thru pilots?

25 A. No.

DRU MARQUARDT

November 30, 2017

1 Q. Next one is Dave Brown. Do you know him?

2 A. Name sounds familiar. Was he a Los Angeles
3 domicile --

4 Q. Don't know the answer -- I don't know the answer
5 to that question.

6 A. No, no.

7 Q. Okay. Ever communicate with him, to your
8 knowledge?

9 A. No.

10 Q. Any reason to believe he's hostile to flow-thru
11 pilots?

12 A. No.

13 Q. Next one is Brian Smith. Do you know him?

14 A. No.

15 Q. Ever communicate with him?

16 A. No.

17 Q. Any reason to believe he's hostile to flow-thru
18 pilots?

19 A. No.

20 Q. Okay. And the next one is a woman, Cary Giles,
21 G-I-L-E-S. Do you know her?

22 A. No.

23 Q. Ever communicate with her, to your knowledge?

24 A. No.

25 Q. Any reason believe that she is hostile to

DRU MARQUARDT

November 30, 2017

1 flow-thru pilots?

2 A. No.

3 Q. Next one is Jeff Thurstin, T-H-U-R-S-T-I-N. Do
4 you know him?

5 A. No.

6 Q. Ever communicate with him?

7 A. No.

8 Q. Any reason to believe he's hostile to flow-thru
9 pilots?

10 A. No.

11 Q. The last one is also a woman, Allison Clark,
12 C-L-A-R-K; Allison with two Ls. Do you know her?

13 A. No.

14 Q. Ever communicate with her?

15 A. No.

16 Q. Any reason to believe she's hostile to flow-thru
17 pilots?

18 A. No.

19 Q. Okay. Okay. I want to ask you a series of
20 questions about a -- about some allegations that have
21 been made, but I just want you to respond from your
22 personal knowledge. In other words, I just want to know
23 whether you -- you ever heard anyone say this -- anyone
24 say certain things with your own ears or witnessed
25 someone saying something, you know, with your -- with

DRU MARQUARDT

November 30, 2017

1 your eyes, I guess, or -- or read something, you know,
2 yourself. I'm not interested in what you've heard from
3 other people or what -- sort of the general atmosphere
4 was going on. I'm interested in your own personal
5 knowledge. Do you understand the distinction I'm trying
6 to make?

7 A. Yes.

8 Q. Okay. So did you ever hear anyone say or any --
9 any American pilot say or did you ever read anything
10 that an American pilot wrote saying that Eagle pilots --
11 sorry -- that American pilots were more qualified to fly
12 regional jets with than Eagle pilots?

13 A. Yes. I've heard that.

14 Q. Okay. And who did you hear that from?

15 A. Just fellow pilots, you know, hearing that.

16 Q. And -- and when -- when would that have been?
17 Let me withdraw that.

18 When was that?

19 A. Pretty much, I've heard it the whole time I've
20 been at Eagle, to tell you the truth. That we're --
21 they're superior, you know.

22 Q. And did you -- do you recall the names of any
23 pilots you heard that from?

24 A. No.

25 Q. Do you know whether any of them were officers or

DRU MARQUARDT

November 30, 2017

1 board members of APA?

2 A. Don't recall.

3 Q. As opposed to rank and file pilots?

4 A. More than likely, rank and file.

5 Q. Were these guys you were flying with?

6 A. Yes.

7 Q. Have you heard that since you came to American?

8 A. No.

9 Q. Okay. Again, your own personal knowledge here,
10 have you ever heard any person -- pilots referring to
11 Eagle pilots as scabs?

12 A. Yes.

13 Q. When was that?

14 A. It was back when, you know, we were flying
15 regional jets, pretty much right around there. We were,
16 you know, flying more routes.

17 Q. Would that have been in the late '90s?

18 A. Yes.

19 Q. Okay. And it was in -- in 1997 there was a
20 controversy about whether the regional jets would be
21 placed at American or placed at American Eagle; is that
22 right?

23 A. Yes.

24 Q. And there was -- the American pilots wanted the
25 regional jets to be placed at American --

DRU MARQUARDT

November 30, 2017

1 A. Yes.

2 Q. -- is that right?

3 A. That's correct.

4 Q. And the Eagle pilots wanted the regional jets to
5 be placed at Eagle; is that true?

6 A. Yes.

7 Q. Okay. And the jets were placed at Eagle,
8 correct?

9 A. Right. Correct.

10 Q. And the American pilots weren't happy about
11 that?

12 A. Correct.

13 Q. Okay. Since that time -- since the late --
14 and -- and who -- who did you hear refer to -- again,
15 with your own ears, who did you hear refer to Eagle
16 pilots as scabs?

17 A. Just fellow pilots.

18 Q. Okay. And that was about the placement of the
19 regional jets?

20 A. Yes.

21 Q. Okay. Did you ever hear that -- did you ever
22 hear an APA officer or board member call Eagle pilots
23 scabs?

24 A. No.

25 Q. Okay. So these would have been rank and file

DRU MARQUARDT

November 30, 2017

1 pilots?

2 A. I believe so. Yes.

3 Q. And did -- did you hear that, let's say, after
4 the late '90s or was this a late '90s phenomenon?

5 A. Pretty much just late '90s.

6 Q. Okay. How about, did you ever hear any American
7 pilots refer to Eagle pilots as job stealers?

8 A. No.

9 Q. Okay. Or words to those effect --

10 A. No.

11 Q. -- to that effect? Okay.

12 Have you ever experienced attitude from American
13 pilots that you would consider to be condescending to
14 you because you were an Eagle pilot?

15 A. Yes.

16 Q. And when was that?

17 A. It was pretty much all the time I was at Eagle,
18 you know. What comes to mind is any time you're walk --
19 we have similar uniforms. Any time you were walking in
20 the terminal, you know, usually you say "hi" to fellow
21 pilots and just remember right off they would look at
22 either your cap, if you had the Eagle or AA or on your
23 tie you had the Eagle or AA, and it would be, you know,
24 looking for some information of who you were with. If
25 you were Eagle, it was just like, you know, no -- no

DRU MARQUARDT

November 30, 2017

1 "hi" or nothing.

2 Q. I see.

3 A. Yeah.

4 Q. And would you -- would you say hello to the
5 American pilots --

6 A. Yes.

7 Q. -- as you were walking by them and when you said
8 hello, would they respond to you?

9 A. That's when you got the eye, Oh, who are you?
10 And if it was Eagle -- if you're Eagle, no.

11 Q. Now, were these all the American pilots or just
12 some?

13 A. Majority, I would say, not -- not all.

14 Q. Okay. And do you know whether that -- whether
15 you ever got that attitude from any American -- sorry --
16 any APA officers or board members?

17 A. No. I don't recall that.

18 Q. Okay. So this would have been rank and file
19 pilots?

20 A. Yes.

21 Q. Was that also a sort of late '90s phenomenon or
22 did that continue on?

23 A. Yeah. It started when we were flying the
24 regional jets, you know, we were flying more routes and
25 more American routes. The -- and they just looked at us

DRU MARQUARDT

November 30, 2017

1 as, you know, taking -- taking their jobs.

2 Q. Did it taper off after that?

3 A. Yeah. Yeah, it did. Yeah.

4 Q. Okay. Can you understand why American pilots
5 would have been upset about not getting those regional
6 jets to fly?

7 A. Somewhat.

8 Q. And why is that?

9 A. Well, I mean, granted, we're flying, you know,
10 typically 35, 45-seat planes, you know, it's not a
11 lot -- not a lot of revenue, but typically, they would
12 be on routes that were, you know, low in volume. But if
13 we were starting to fly more routes that, you know, with
14 more aircraft, you know, I could see the concern for
15 that.

16 Q. That it would diminish the amount of flying that
17 the American pilots would get to do?

18 A. Possibly. Yeah.

19 Q. Okay. I mean, is it fair to say that the
20 regional jets were sort of limited resource as a zero
21 sum game. Whoever got them, the other people lost out
22 on those opportunities?

23 A. Yes.

24 Q. Okay. And if -- if American pilots had gotten
25 them, then Eagle pilots would have lost out on that

DRU MARQUARDT

November 30, 2017

1 flying, right?

2 A. Yes.

3 Q. Okay. You said that you had reviewed for the
4 deposition some documents regarding the -- the equity
5 disposition. Is that -- do you recall that?

6 A. Yes.

7 Q. Okay. Let's talk about the equity distribution
8 for a few minutes. As I understand it, as a consequence
9 of American going into bankruptcy, or in the bankruptcy
10 process, the American pilots were given some stock in
11 American Airlines; is that correct?

12 A. Yes.

13 Q. And that's -- when we're referring to the
14 equity -- the equity distribution, we're referring to
15 that stock?

16 A. Yes.

17 Q. And then that stock then was a block of stock
18 that had to be distributed among the American pilots?

19 A. Yes.

20 Q. And that's what you were referring to as the
21 equity distribution?

22 A. Yes.

23 Q. Okay. Do you believe that the flow-thru pilots
24 were discriminated against in the -- in the equity
25 distribution --

DRU MARQUARDT

November 30, 2017

1 REPORTER'S CERTIFICATE

2

3

4 I, NICOLE HATLER, a Shorthand Reporter, State of
5 California, do hereby certify:

6 That DRU MARQUARDT, in the foregoing deposition
7 named, was present and by me sworn as a witness in the
8 above-entitled action at the time and place therein
9 specified;

10 That said deposition was taken before me at said
11 time and place, and was taken down in shorthand by me, a
12 Certified Shorthand Reporter of the State of California,
13 and was thereafter transcribed into typewriting, and
14 that the foregoing transcript constitutes a full, true
15 and correct report of said deposition and of the
16 proceedings that took place;

17 That before completion of the proceedings,
18 review of the transcript [X] was [] was not requested.

19 IN WITNESS WHEREOF, I have hereunder subscribed
20 my hand this 14th day of December 2017.

21

22

23

24

25

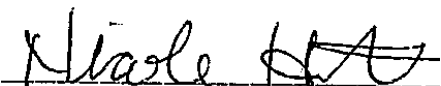

NICOLE HATLER, CSR NO. 13730
State of California

EXHIBIT 7

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

---oOo---

AMERICAN AIRLINES FLOW-THRU
PILOTS COALITION, et al.,

Plaintiffs,

vs.

No. 3:15-CV-03125-RS

ALLIED PILOTS ASSOCIATION, et al.,

Defendants.

_____/

VIDEOTAPED DEPOSITION OF DOUG POULTON

Taken before NICOLE HATLER

CSR No. 13730

November 27, 2017

Job: 23606

DOUG POULTON

November 27, 2017

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I N D E X

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E X H I B I T S

PAGE

DEFENDANTS'

Exhibit 1001	Plaintiffs' Second Amended Complaint for Damages and Equitable Relief for Breach of Duty of Fair Representation filed January 22nd, 2016	13
Exhibit 1002	Defendant Allied Pilots Association's First Set of Requests for Production of Documents to Plaintiffs dated November 23rd, 2016	16
Exhibit 1003	Flow-Thru Agreement, Supplement W, Letter Three	82
Exhibit 1004	Letter G	82

DOUG POULTON

November 27, 2017

1 VIDEOTAPED DEPOSITION OF DOUG POULTON

2

3

4 BE IT REMEMBERED, that pursuant to Notice, and on
5 the 27th day of November 2017, commencing at the hour of
6 1:15 p.m., in the offices of Altshuler Berzon LLP, 177
7 Post Street, Suite 300, San Francisco, California 94108,
8 before me, NICOLE HATLER, a Certified Shorthand
9 Reporter, State of California, personally appeared DOUG
10 POULTON, produced as a witness in said action, and being
11 by me first duly sworn, was thereupon examined as a
12 witness in said cause.

13 ---oOo---

14 APPEARANCES

15 For the Plaintiffs:

16 CHRISTOPHER W. KATZENBACH, ESQ.
17 Katzenbach Law Offices
18 912 Loutens Place, 2nd Floor
19 San Rafael, CA 94901
20 (415) 834-1778
21 CKatzenbach@KKcounsel.com
22
23
24
25

DOUG POULTON

November 27, 2017

1 For the Defendants:

2 JEFFREY B. DEMAINE, ESQ.
3 Altshuler Berzon LLP
4 177 Post Street, Suite 300
5 San Francisco, CA 94108
6 (415) 421-7151
7 JDemain@altshulerberzon.com

8 DANIEL ROSENTHAL, ESQ.
9 (Telephonic)
10 James & Hoffman, P.C.
11 1130 Connecticut Avenue, N.W., Suite 950
12 Washington, D.C. 20036
13 (202) 496-0500
14 DMRosenthal@jamhoff.com
15
16
17
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25

DOUG POULTON

November 27, 2017

1 THE VIDEOGRAPHER: We're going on record. The
2 time is 1:15 p.m. The date is November 27, 2017. This
3 is the video deposition of Doug Poulton in the matter of
4 American Airlines Flow-Through Pilots Coalition vs.
5 Allied Pilots Association. The case number is
6 3:15-CV-03125-RS.

7 This deposition is being held at 177 Post
8 Street, suite -- suite 300, San Francisco, California
9 94108.

10 The court reporter is Nicole Hatler. I am
11 Saechao, the videographer. We are here with First Legal
12 Deposition Services.

13 This deposition is being videotaped at all times
14 unless all counsel have agreed to go off the record.

15 Would all present please identify themselves
16 beginning with the witness?

17 THE WITNESS: Doug Poulton.

18 MR. KATZENBACH: Chris Katzenbach.

19 MR. DEMAINE: Jeffrey Demain, attorney for the
20 Allied Pilots Association. And also on the phone we
21 have Daniel M. Rosenthal, who is also an attorney for
22 the Allied Pilots Association.

23 THE VIDEOGRAPHER: Will the reporter please
24 swear in the witness?

25 //

DOUG POULTON

November 27, 2017

1 DOUG POULTON

2 sworn as a witness

3 testified as follows:

4 MR. DEMAIN: Thank you.

5 EXAMINATION BY MR. DEMAIN:

6 Q. Mr. Poulton, I introduced myself before, but let
7 me just say for the record. I am Jeffrey Demain. I'm
8 going to be representing the Allied Pilots Association,
9 the defendant in this lawsuit. You're one of the
10 plaintiffs in the lawsuit.

11 I'm going to start out with just a -- some
12 background questions and some instructions on -- on how
13 we have to conduct ourselves in the deposition. So
14 first of all, my first question is, have you ever been
15 deposed before in a lawsuit?

16 A. No.

17 Q. Have you ever testified in court before?

18 A. No.

19 Q. So let me tell you a little bit about the
20 deposition process since you've never been through it
21 before. As I think you've just seen, the deposition is
22 under oath under penalty of perjury. Although there's
23 no judge or jury in this room, we all have to treat the
24 proceedings with the same formality that we would treat
25 a courtroom proceeding as if we were all in front of a

DOUG POULTON

November 27, 2017

1 might have to do with days off, another one might have
2 to do with ease of commute. So you might fly an
3 airplane that pays a lot less, that has a less rosy
4 schedule, but it's closer to you. You could drive to
5 the airport versus, you know, for example, somebody who
6 lives in the LA basin could maybe hold captain on a wide
7 body in New York, but they fly a narrow body in Los
8 Angeles because --

9 Q. That's -- that's exactly what I'm asking. Have
10 you ever done that at American? Have you ever -- for
11 any lifestyle reason, have you ever bid less than the
12 highest status and category you were entitled to get?

13 A. Sure.

14 Q. Okay.

15 A. Yeah, yeah.

16 Q. And do you know other pilots at --

17 A. I don't know of any other ones that don't.

18 Q. Okay. Good enough. That's fine.

19 Were you ever furloughed at Eagle or at
20 American?

21 A. Not in so many words.

22 Q. Okay. And what does it mean to be furloughed,
23 if you understand that term?

24 A. I do understand that term. It means that --
25 that the seniority list, as it -- as it existed

DOUG POULTON

November 27, 2017

1 Q. Do you understand a term called "being
2 displaced" or "displacement," separate from furlough?

3 A. Yes.

4 Q. What's your understanding of that term?

5 A. Being displaced means that sometimes -- let's
6 say your domicile and equipment and seat has been
7 downsized, they -- they require a lot less. Say I'm on
8 the 737 as a captain, let's say Los Angeles decided that
9 they don't need 260 737 captains in LA. They're only
10 going to need 100, and they're moving all those
11 airplanes to Phoenix, say, or Chicago or wherever,
12 they're just moving them. So now there's going to be a
13 bid run, and -- and unless you're one of the really
14 senior 100 guys, you're going to get sent to somewhere.
15 So you better figure out where it's going to be, and
16 you're going to have to be a captain on another
17 airplane, you're going to be on an FO on another
18 airplane, you're going to have to do some fishing.

19 Q. Okay. FO. You just referred to FO, first
20 officer?

21 A. First officer. Yes.

22 Q. Okay. So in a displacement, you're still an
23 employee of the airline, and you're still a pilot for
24 the airline, but you may be flying a different status, a
25 different category of equipment, or out of a different

DOUG POULTON

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1 domicile than you were before you were displaced?

2 A. Maybe for a heck of a lot less money.

3 Q. Okay.

4 A. Yep.

5 Q. Okay. Were you -- forgive me if I've asked
6 this. I don't think I have. Were you ever displaced
7 from your position at Eagle?

8 A. No.

9 Q. Okay. Do you know of any Eagle pilots who were
10 displaced from their positions at Eagle?

11 A. Yeah.

12 Q. And was that -- was that a yes?

13 A. Yes.

14 Q. Okay. Do you know of any pilots who were
15 displaced from their positions at Eagle after all of the
16 predecessor airlines were combined into a single carrier
17 known as Eagle in the mid-'90s?

18 A. No, not off the top of my head.

19 Q. Okay.

20 A. The displacements I'm aware of were the ones
21 that are caused by -- that were caused by flowbacks.

22 Q. When you say "flowbacks," do you mean people --
23 pilots flowing down from American Airlines to take
24 positions at Eagle?

25 A. Well, in some cases they weren't even American

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1 THE WITNESS: Okay.

2 BY MR. DEMAIN:

3 Q. Let me ask the question.

4 Your understanding is that APA began
5 representing you when you showed up at American for your
6 initial training in June of 2010?

7 A. I agree with that.

8 Q. Okay. You received -- I know we -- we talked
9 about this a bit before. You received a seniority
10 number on the American seniority list at some point
11 before you showed up for your initial training at
12 American in June of 2010, correct?

13 A. Yes.

14 Q. Okay. But in that period of time when you had
15 your American seniority number, but you hadn't yet shown
16 up to do your training at American, your understanding
17 is that APA was not your collective bargaining
18 representative at that time, correct?

19 A. Correct.

20 Q. Do you believe that at any point relevant to
21 this lawsuit, APA acted as a joint collective bargaining
22 representative with ALPA of any of the Eagle -- Eagle
23 pilots? In other words, that they were representing the
24 Eagle pilots at the same time.

25 MR. KATZENBACH: Again, you're asking for his

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1 A. It -- it is not the position, but like any
2 forum, you're going to read things that might give one
3 an opinion about how a certain group of people feel, and
4 it's -- some of it was quite alarming.

5 Q. Okay. Let me -- I'm going to ask you a series
6 of questions about a series of names of people. I'm
7 going to ask you whether you -- whether you know them
8 and various other questions. So I'm going to ask you
9 the same questions about each person. So let's go
10 through the list, if we can.

11 The first is Keith Wilson, K-E-I-T-H,
12 W-I-L-S-O-N, who was an official with APA.

13 A. What's the question?

14 Q. Do you know him?

15 A. Not personally, no.

16 Q. Okay.

17 A. I don't believe we've ever met.

18 Q. Have you communicated with him about any of the
19 topics of this case?

20 A. No.

21 Q. Do you have any reason to believe that he is
22 hostile to flow-thru pilots?

23 A. I think the evidence will clearly show that he
24 doesn't give a rat's you-know-what about flow-thru
25 pilots and never has.

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1 Q. What do you base that on?

2 A. At every turn when it came to getting anything
3 amongst of the pilots and the integrated seniority list
4 is a perfect example. Virtually nobody spoke for the
5 flow-thru pilots. They were the last and least. They
6 got shuffled behind everybody else, including TWA, who
7 wasn't even there when the Flow-Thru Agreement got
8 signed. So I think you can argue that APA hasn't
9 represented the flow-thru pilots at all --

10 Q. Okay.

11 A. -- even not that they're there.

12 Q. I'm asking specifically about Keith Wilson
13 though. Was he --

14 A. Keith Wilson, I don't think he's any different
15 than any of the upper echelon of -- of APA.

16 Q. Do you know if he was involved in the seniority
17 integration that you just spoke about?

18 A. I don't know that.

19 Q. Okay.

20 A. I know there was a committee. I don't know if
21 he was on the committee.

22 Q. Okay. That's --

23 A. But there were -- there were attempts to try and
24 get a flow-thru pilot on that integrated seniority --
25 that seniority list committee, and, no, can't have any

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1 of those guys.

2 Q. Okay. They -- the committee that we were
3 talking about, that's what we referred to as AAPSIC?

4 A. Yeah, it is. Yes.

5 Q. Okay. The next one, I'm not sure if I'm
6 pronouncing the name correctly, so I'm going to say the
7 name and spell it. The next is Neil Roghair, N-E-I-L
8 R-O-G-H-A-I-R. So the question is, do you know him?

9 A. Not personally. No.

10 Q. Have you ever communicated with him about the
11 topics of this case?

12 A. No.

13 Q. Do you have any reason to believe he's hostile
14 to flow-thru pilots?

15 A. Only that he's been part of the same upper
16 echelon of APA that hasn't represented us so far.

17 Q. Okay. Next person is Norm Miller, M-I-L-L-E-R.
18 Do you know him?

19 A. No.

20 Q. Have you ever communicated with him about the
21 topics of this case?

22 A. No.

23 Q. Do you have any reason to believe he's hostile
24 to flow-thru pilots?

25 A. No.

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1 Q. Next one is Dave Brown, B-R-O-W-N. Do you know
2 him?

3 A. No.

4 Q. Have you ever communicated with him on the
5 topics of this case?

6 A. No.

7 Q. Do you have any reason to believe he's hostile
8 to flow-thru pilots?

9 A. No.

10 Q. The next one is Brian Smith, S-M-I-T-H. Do you
11 know him?

12 A. No.

13 Q. Do you -- have you communicated with him about
14 the topics of this case?

15 A. No.

16 Q. Do you have any reason to believe he's hostile
17 to flow-thru pilots?

18 A. No.

19 Q. We're almost done. Three more. Cary Giles,
20 C-A-R-Y, G-I-L-E-S. Do you know him?

21 A. No.

22 Q. Have you ever communicated with him on the
23 topics of this case?

24 A. No.

25 Q. Do you have any reason to believe he's hostile

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1 to flow-thru pilots?

2 A. No.

3 Q. Wait until I finish the question, just to make
4 it easy for the court reporter.

5 Next one, Jeff Thurstin. It's J-E-F-F,
6 T-H-U-R-S-T-I-N. Do you know him?

7 A. No.

8 Q. Have you ever communicated with him on the
9 topics of this case?

10 A. No.

11 Q. Do you have any reason to believe he's hostile
12 to flow-thru pilots?

13 A. No.

14 Q. Finally, Allison, A-L-L-I-S-O-N, Clark, C-L-R --
15 excuse me -- C-L-A-R-K. Do you know her?

16 A. No.

17 Q. Have you ever communicated with her about the
18 topics of this case?

19 A. No.

20 Q. Do you have any reason to believe she is hostile
21 to flow-thru pilots?

22 A. No.

23 Q. Okay. Give me just a second. Okay. I'm going
24 to ask you some questions about statements, and I'm
25 going to ask you the same questions twice but with a

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1 kinds of airplanes.

2 Q. Who from APA made these statements?

3 A. Who was negotiating for APA then, I don't know.

4 Q. Do you have personal knowledge that someone --
5 in other words, did you hear from someone or see in
6 print someone was negotiating for APA making statements
7 that APA -- that American pilots were more qualified to
8 fly regional jets than Eagle pilots and that Eagle
9 pilots were inferior pilots?

10 A. I can't cite you rhyme and verse on that, but
11 I'm -- I'm sure I did, as all Eagle pilots did.

12 Q. Did you hear this personally from these people
13 or are you -- from the APA spokespersons or officers or
14 are you saying you heard about it?

15 A. I heard about it.

16 Q. Okay. And would this have been -- you said it
17 was around the time there was a question about who was
18 going to fly regional jets. That was before or around
19 the time of the negotiation with the Flow-Thru Agreement
20 in the late '90s, correct?

21 A. It was.

22 Q. Okay. So since then -- since that time, so
23 after the Flow-Thru Agreement was negotiated, did you
24 hear APA spokespersons or officers make statements
25 similar to the ones we've been discussing?

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1 A. No.

2 Q. Okay. Are you aware of APA spokespersons or
3 officers referring to Eagle pilots as scabs?

4 A. I've heard that said.

5 Q. Heard it said?

6 A. I've heard it -- I've heard that somebody said
7 that that was said. I -- I haven't heard anybody say
8 that, and I would -- anybody that said it in my
9 presence, they would -- they'd get a little word from
10 me.

11 Q. Okay.

12 A. Scab has a very specific meaning to a union
13 member.

14 Q. Yes. I understand.

15 Okay. So you've never personally heard any APA
16 officer or spokesperson make such a statement?

17 A. No. But you might see something of the likes of
18 that in CNR or, you know, there's -- there's been things
19 said that are hard to ignore, you know.

20 Q. Right. But -- but as you --

21 A. No. I haven't heard any APA spokesperson say
22 the word "scab."

23 Q. Okay. And as you said, any pilot can post
24 something on CNR?

25 A. They can.

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1 Q. Yeah. Okay.

2 A. I don't, but you can. Yeah.

3 Q. Have you ever or are you -- have you -- have you
4 ever heard pilots -- I'm sorry. Let me -- let me back
5 up.

6 Similar question. Are you aware of APA
7 spokespersons or officers referring to Eagle pilots as
8 job stealers?

9 A. Well, yes. But this was during the time when
10 there was quite a pitch for -- for -- to prevent Eagle
11 from ever getting jets. You know, this is -- this is a
12 different time.

13 Q. So this is before the negotiation --

14 A. Yeah.

15 Q. -- of the Flow-Thru Agreement?

16 A. Yeah. But even after that, you know, I was
17 reminded many times when I was an FO as -- for -- for
18 American, flying a 737, that many of those routes I flew
19 on the CRJ700 --

20 THE REPORTER: That many of the?

21 THE WITNESS: The routes that I flew on a CRJ700
22 out of Chicago and out of Dallas were flown by 727 crews
23 at American years before.

24 BY MR. DEMAIN:

25 Q. Great.

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1 A. So --

2 Q. And who were you reminded --

3 A. I was reminded by -- by the captains that I flew
4 with.

5 Q. Okay. But not APA officers or spokespersons?

6 A. Not APA officers. No.

7 Q. Okay. Do you believe that the demeanor and
8 attitude of American pilots toward Eagle pilots has been
9 condescending, in general?

10 A. It used to be more so, but -- a little bit. But
11 I understand that everybody has to prove themselves.
12 You know, this -- there's -- there's a lot of egos
13 running around cockpits, and everybody has something to
14 bring to the table. And, you know -- I'm rambling.
15 Forgive me. I gotta stop doing that.

16 Q. Okay. Well, let's move on. I'd like to ask you
17 a few questions about the equity distribution process.
18 Are you familiar with that incident?

19 A. Yes.

20 Q. Okay. And -- and --

21 MR. KATZENBACH: Or event.

22 BY MR. DEMAIN:

23 Q. And my -- correct me if I'm wrong, but my
24 understanding of the incident is that because American
25 was in bankruptcy, at some point American pilots got

DOUG POULTON

November 27, 2017

1 REPORTER'S CERTIFICATE

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3

4 I, NICOLE HATLER, a Shorthand Reporter, State of
5 California, do hereby certify:

6 That DOUG POULTON, in the foregoing deposition
7 named, was present and by me sworn as a witness in the
8 above-entitled action at the time and place therein
9 specified;

10 That said deposition was taken before me at said
11 time and place, and was taken down in shorthand by me, a
12 Certified Shorthand Reporter of the State of California,
13 and was thereafter transcribed into typewriting, and
14 that the foregoing transcript constitutes a full, true
15 and correct report of said deposition and of the
16 proceedings that took place;

17 IN WITNESS WHEREOF, I have hereunder subscribed my
18 hand this 12th day of December 2017.

19

20

21

22

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25

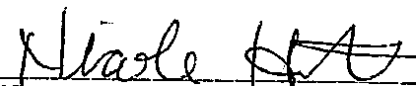

NICOLE HATLER, CSR NO. 13730
State of California

EXHIBIT 8

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

---oOo---

AMERICAN AIRLINES FLOW-THRU
PILOTS COALITION, et al.,

Plaintiffs,

vs.

No. 3:15-CV-03125-RS

ALLIED PILOTS ASSOCIATION, et al.,

Defendants.

_____/

DEPOSITION OF STEPHAN ROBSON

Taken before NICOLE HATLER

CSR No. 13730

November 29, 2017

Job: 23632

STEPHAN ROBSON

November 29, 2017

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I N D E X

PAGE

EXAMINATION BY MR. WEISSGLASS

5

(No exhibits were marked.)

STEPHAN ROBSON

November 29, 2017

1 DEPOSITION OF STEPHAN ROBSON

2

3

4 BE IT REMEMBERED, that pursuant to Notice, and on
5 the 29th day of November 2017, commencing at the hour
6 of 2:34 p.m., in the offices of Altshuler Berzon LLP, 177
7 Post Street, Suite 300, San Francisco, California 94108,
8 before me, NICOLE HATLER, a Certified Shorthand
9 Reporter, State of California, personally appeared
10 STEPHAN ROBSON, produced as a witness in said action,
11 and being by me first duly sworn, was thereupon examined
12 as a witness in said cause.

13 ---oOo---

14 APPEARANCES

15 For the Plaintiffs:

16 CHRISTOPHER W. KATZENBACH, ESQ.
17 Katzenbach Law Offices
18 912 Loutens Place, 2nd Floor
19 San Rafael, CA 94901
(415) 834-1778
CKatzenbach@KKcounsel.com

20 For the Defendants:

21 JONATHAN WEISSGLASS, ESQ.
22 Altshuler Berzon LLP
23 177 Post Street, Suite 300
24 San Francisco, CA 94108
25 (415) 421-7151
JWeissglass@altshulerberzon.com

STEPHAN ROBSON

November 29, 2017

1 THE VIDEOGRAPHER: We are on the record. The
2 time is 2:34 p.m. The date is November 29th, 2017.
3 This is the video deposition of Stephan Robson in the
4 matter of American Airlines Flow-Thru Pilots Coalition
5 vs. Allied Pilot Association. The case number is
6 315-CV-03125-RS.

7 This deposition is being held at 177 Post
8 Street, suite 300, San Francisco, California. The court
9 reporter is Nicole Hatler. I am Mariah Nieves, the
10 videographer. We are here with First Legal Deposition
11 Services.

12 This deposition is being videotaped at all times
13 unless all counsel have agreed to go off the record.

14 Would all present please identify themselves,
15 beginning with the witness.

16 THE WITNESS: Stephan Robson.

17 MR. KATZENBACH: Christopher W. Katzenbach for
18 the plaintiffs.

19 MR. WEISSGLASS: Jonathan Weissglass for
20 defendant Allied Pilots Association.

21 THE VIDEOGRAPHER: Thank you.

22 Would you court reporter please swear in the
23 witness?

24 //

25 //

STEPHAN ROBSON

November 29, 2017

1 STEPHAN ROBSON

2 sworn as a witness

3 testified as follows:

4 EXAMINATION BY MR. WEISSGLASS:

5 Q. Mr. Robson, my name is Jonathan Weissglass, and
6 as I mentioned, I am counsel for the Allied Pilots
7 Association, and I'll be asking you some questions
8 today.

9 A. Uh-huh.

10 Q. Have you ever been deposed before?

11 A. I think my ex-wife had me do it once.

12 Q. Okay. This was in a divorce proceeding?

13 A. Yes.

14 Q. Okay. Obviously, this is a very different
15 proceeding, but -- but the rules of a deposition are
16 similar. But let me just make sure we're on the same
17 page with them.

18 A. Okay.

19 Q. Do you understand that you're testifying today
20 under oath?

21 A. Yes.

22 Q. And do you understand that you're giving
23 testimony under penalty of perjury?

24 A. Yes.

25 Q. So I'll be asking a series of questions; the

STEPHAN ROBSON

November 29, 2017

1 first officer?

2 A. First officer. Yes. I'm sorry. I should
3 have -- my definitions.

4 Q. Right. Right. So -- so -- okay. That makes
5 sense.

6 Do you know of any other pilots at American who
7 bid below the highest status and category?

8 A. No, I do not.

9 Q. Okay. Do you understand what it means to be
10 furloughed in the airline industry?

11 A. Yes.

12 Q. And what is that?

13 A. A furlough is a company that is shrinking, that
14 no longer needs the amount of pilots that it has, in
15 other words, then. So they furlough a pilot, meaning he
16 has no job but still regains -- I guess he holds a
17 seniority number until they call him back, put it in a
18 nutshell.

19 Q. Right. And have you ever been furloughed?

20 A. No, I have not.

21 Q. Do you know of any pilots who have been
22 furloughed at Eagle?

23 A. Yes.

24 Q. Roughly how many?

25 A. Not many.

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1 Q. And that's the limit of your communications with
2 them?

3 A. Yes, it is.

4 Q. Okay. Do you ever go on the APA website?

5 A. Yes, I do.

6 Q. On a regular basis or infrequently?

7 A. Every now and then just to keep up.

8 Q. Okay. I'm going to go through a list of APA
9 officials and ask you some questions about each. I'm
10 going to start with, do you know Keith Wilson?

11 A. No.

12 Q. Okay. I take it then that you haven't
13 communicated with -- with Mr. Wilson?

14 A. No, I have not.

15 Q. Okay. Do you have any reason to believe that
16 Mr. Wilson is hostile to flow-thru pilots?

17 A. I have -- I have different feel -- do I have
18 specifics? I mean, no. I can't. Do I believe that
19 possibly? Yeah. My heart, I do believe so. Yes.

20 Q. But you can't point to any particular basis for
21 that belief?

22 A. Well, I go back to Letter G.

23 Q. Okay. Other than Letter G, is there anything
24 else that would be a basis for suspicion that Mr. Wilson
25 is hostile to flow-thru pilots?

STEPHAN ROBSON

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1 A. No. Just from -- from other pilots saying what
2 was heard -- what was said thirdhand-type things.
3 That's about it.

4 Q. And this is thirdhand about Letter G?

5 A. Yeah, yeah.

6 Q. Okay. We'll get to Letter G later on,
7 obviously.

8 A. Yeah, uh-huh.

9 Q. It's an issue for this, but I want to keep going
10 through the -- the --

11 A. Okay.

12 Q. -- officials.

13 There's a fellow named Neil Roghar, R-O-G-H-A-R.
14 Do you know him?

15 A. No.

16 Q. Have you communicated with him about this case?

17 A. No.

18 Q. Do you have any reason to believe that he is
19 hostile to flow-thru pilots?

20 A. I believe he thinks the same way that Wilson
21 because they both served in the same administration.

22 Q. Okay. So you would -- besides what you said
23 about Mr. Wilson, you have nothing else to say about
24 Mr. Roghar's --

25 A. No.

STEPHAN ROBSON

November 29, 2017

1 Q. -- hostility?

2 A. No.

3 Q. Okay. Do you know Norm Miller?

4 Have you had any -- sorry. You have to respond
5 verbally.

6 A. No, I do not. I'm sorry.

7 Q. Okay. Have you had any communications with
8 Mr. Miller?

9 A. No.

10 Q. Do you have any reason to believe Mr. Miller is
11 hostile to flow-thru pilots?

12 A. No.

13 Q. Do you know Dave Brown?

14 A. No.

15 Q. Have you ever communicated with him?

16 A. No.

17 Q. Do you have any reason to believe Mr. Brown is
18 hostile to flow-thru pilots?

19 A. No.

20 Q. Do you know Brian Smith?

21 A. No.

22 Q. Have you had any communications with him?

23 A. No, I have not.

24 Q. Do you have any reason to believe Mr. Smith is
25 hostile to FTPs?

STEPHAN ROBSON

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1 A. No.

2 Q. Do you know Carey Giles?

3 A. No.

4 Q. Have you had any communications with him?

5 A. No, I have not.

6 Q. Do you have any reason to believe Mr. Giles is
7 hostile to FTPs?

8 A. No.

9 Q. Do you know Jeff Thurstin?

10 A. No.

11 Q. Have you had any communications with him?

12 A. No, I have not.

13 Q. Do you have any reason to believe Mr. Thurstin
14 is hostile to FTPs?

15 A. No.

16 Q. Do you know Allison Clark?

17 A. No, I do not.

18 Q. Have you ever communicated with her?

19 A. No, I have not.

20 Q. Do you have any reason to believe Ms. Clark is
21 hostile to FTPs?

22 A. No.

23 Q. I'd like you to take a look at Exhibit 1005.
24 They should be in numerical order.

25 A. They are.

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1 Q. Take a look at page -- and this is -- this is
2 Plaintiffs' response to APA's interrogatories, and this
3 is the -- the document that -- that Plaintiffs were --
4 wherein Plaintiffs responded to some questions that APA
5 asked, and it's the -- the document that you just signed
6 before we started this deposition verifying the
7 response.

8 A. Okay.

9 Q. And if you look at page four, the first bullet
10 point there, and this is -- this is a response to
11 Plaintiffs to our first interrogatory, which is set
12 forth on page three. And you can take a look at that
13 for context if you want, but on that first bullet point,
14 Plaintiffs say that, "APA and its represented pilots
15 claim that American pilots were more qualified to fly
16 regional jets than Eagle pilots and that Eagle pilots
17 were inferior." Do you see that?

18 A. Yes, I do.

19 Q. Have you heard APA or pilots represented by APA
20 make statements like that?

21 A. Yes, I have.

22 Q. And who have you heard make such statements?

23 A. Gentleman's name is Ed White.

24 Q. And is that --

25 A. He was a negotiator back under the Jim Selvich

STEPHAN ROBSON

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1 years, which was going back now to 1997, '6, I forget
2 which contract.

3 Q. And do you remember precisely what Mr. White
4 said?

5 A. Basically what I'm reading right here. Okay?
6 And yes. That attitude that it was inferior. And if
7 you go back further, I think there was Bob Baker, who
8 was vice president of offset at one point before we even
9 got the jets that, "Can you imagine flying with Eagle
10 pilots on a dark stormy night?" And I think that that's
11 a documented something -- back in the day.

12 Q. And that -- so that was before 1996?

13 A. Yes.

14 Q. Okay. Other than those two statements, are
15 there any other statements to the effect of what we see
16 on page 4 of Exhibit 1005?

17 A. That I personally have heard?

18 Q. Correct.

19 A. Okay.

20 MR. KATZENBACH: You're referring to the first
21 bullet point?

22 MR. WEISSGLASS: I'm sorry. Referring to the
23 first bullet point. Thank you.

24 THE WITNESS: Okay. From American Airlines line
25 pilots, yes, I have. And I can probably count tens of

STEPHAN ROBSON

November 29, 2017

1 them. Okay? Because I used to have to commute on their
2 jump seats and listen to this. So I mean, these are
3 only rank and file type guys, but it comes from
4 someplace.

5 BY MR. WEISSGLASS:

6 Q. Okay. So you heard some number of rank and file
7 pilots at American Airlines make comments similar to
8 what's in bullet point -- the first bullet point there?

9 A. Absolutely correct.

10 Q. Okay. And during what time period did you hear
11 those comments?

12 A. This was before we got the jets, and I believe
13 we got the jets in, what, 1997, 1998 is when they came.
14 Somewhere around there.

15 Q. Okay.

16 A. So --

17 Q. So all of these comments that you're referring
18 to pertinent to bullet point -- the first bullet point
19 were prior to about 1998?

20 A. Yes, sir.

21 Q. Okay. Now, let's take a look at the third
22 bullet point in which Plaintiffs claim that
23 APA-represented pilots have referred to Eagle pilots as
24 scabs. Have you heard such statements?

25 A. Once again, from rank and file, yes, I have.

STEPHAN ROBSON

November 29, 2017

1 REPORTER'S CERTIFICATE

2

3

4 I, NICOLE HATLER, a Shorthand Reporter, State of
5 California, do hereby certify:

6 That STEPHAN ROBSON, in the foregoing deposition
7 named, was present and by me sworn as a witness in the
8 above-entitled action at the time and place therein
9 specified;

10 That said deposition was taken before me at said
11 time and place, and was taken down in shorthand by me, a
12 Certified Shorthand Reporter of the State of California,
13 and was thereafter transcribed into typewriting, and
14 that the foregoing transcript constitutes a full, true
15 and correct report of said deposition and of the
16 proceedings that took place;

17 That before completion of the proceedings,
18 review of the transcript [X] was [] was not requested.

19 IN WITNESS WHEREOF, I have hereunder subscribed
20 my hand this 13th day of December 2017.

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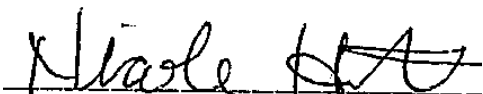

NICOLE HATLER, CSR NO. 13730
State of California

EXHIBIT 9

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

---oOo---

AMERICAN AIRLINES FLOW-THRU
PILOTS COALITION, et al.,

Plaintiffs,

vs.

No. 3:15-CV-03125-RS

ALLIED PILOTS ASSOCIATION, et al.,

Defendants.

_____/

DEPOSITION OF PHILIP VALENTE III

Taken before NICOLE HATLER

CSR No. 13730

November 29, 2017

Job: 23611

PHILIP VALENTE III

November 29, 2017

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I N D E X

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EXAMINATION BY MR. DEMAIN

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E X H I B I T S

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PAGE

10 DEFENDANTS'

11 Exhibit 1011 Declaration of Philip Valente III 64
12 in Opposition to APA's Motion for
13 Summary Judgement

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PHILIP VALENTE III

November 29, 2017

1 DEPOSITION OF PHILIP VALENTE III

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3

4 BE IT REMEMBERED, that pursuant to Notice, and on
5 the 29th day of November 2017, commencing at the hour
6 of 9:05 a.m., in the offices of Altshuler Berzon LLP, 177
7 Post Street, Suite 300, San Francisco, California 94108,
8 before me, NICOLE HATLER, a Certified Shorthand
9 Reporter, State of California, personally appeared
10 PHILIP VALENTE III, produced as a witness in said
11 action, and being by me first duly sworn, was thereupon
12 examined as a witness in said cause.

13 ---oOo---

14 APPEARANCES

15 For the Plaintiffs:

16 CHRISTOPHER W. KATZENBACH, ESQ.
17 Katzenbach Law Offices
18 912 Loutens Place, 2nd Floor
19 San Rafael, CA 94901
(415) 834-1778
CKatzenbach@KKcounsel.com

20 For the Defendants:

21 JEFFREY B. DEMAINE, ESQ.
22 Altshuler Berzon LLP
23 177 Post Street, Suite 300
24 San Francisco, CA 94108
25 (415) 421-7151
JDemaine@altshulerberzon.com

PHILIP VALENTE III

November 29, 2017

1 THE VIDEOGRAPHER: We are on the record. The
2 time is 9:05 a.m. The date is November 29th, 2017.
3 This is the video deposition of Philip Valente III in
4 the matter of American Airlines Flow-Thru Pilots
5 Coalition vs. Allied Pilot Association. The case number
6 is 315-CV-03125-RS.

7 This deposition is being held at 177 Post
8 Street, suite 300, San Francisco, California. The court
9 reporter is Nicole Hatler. I am Mariah Nieves, the
10 videographer. We are here with First Legal Deposition
11 Services. This deposition is being videotaped at all
12 times unless all counsel have agreed to go off the
13 record.

14 Would all present please identify themselves,
15 beginning with the witness.

16 THE WITNESS: Philip Valente III.

17 MR. KATZENBACH: Christopher W. Katzenbach,
18 attorney for the plaintiffs.

19 MR. DEMAINE: Jeffrey B. Demain, attorney for the
20 defendant, Allied Pilots Association.

21 THE VIDEOGRAPHER: Thank you.

22 Will the court reporter please swear in the
23 witness?

24 //

25 //

PHILIP VALENTE III

November 29, 2017

1 PHILIP VALENTE III
2 sworn as a witness
3 testified as follows:

4 MR. DEMAINE: Thank you.

5 EXAMINATION BY MR. DEMAINE:

6 Q. Mr. Valente, as I've just said on the record, my
7 name is Jeffrey Demaine. I'm representing the defendant,
8 the Allied Pilots Association, and we have -- first of
9 all, let me thank you for coming today for your
10 deposition. I'm going to start out with some just basic
11 questions and instructions about the deposition process.
12 So the first question is, have you ever been deposed
13 before?

14 A. Yes.

15 Q. How many times?

16 A. Once.

17 Q. Okay. And what was -- was that in a legal case?

18 A. Divorce.

19 Q. Divorce. Okay. And how -- how long ago was
20 that?

21 A. It would be 21 years ago.

22 Q. Okay. So I'll probably go ahead now and give
23 you some instructions because it's been --

24 A. Thank you.

25 Q. -- been a long time.

PHILIP VALENTE III

November 29, 2017

1 worked for Eagle -- first of all, while you were working
2 at Eagle, did you ever have any other income generating
3 work while you were working at Eagle?

4 A. As an airline pilot?

5 Q. Or anything.

6 A. I did -- well, I had -- I worked for a gentleman
7 in Raleigh doing computer networking for a small
8 business.

9 Q. I see. And how -- what period of time was that?

10 A. Right after a divorce in '94 through '98.

11 Q. Okay. Any other either part-time or full-time
12 work --

13 A. No.

14 Q. -- in addition to Eagle?

15 Were you unemployed at any period of time from
16 when you started at Eagle in 1991 until you came to
17 American in September of 2013?

18 A. I wouldn't say unemployed, but underemployed,
19 yes.

20 Q. Meaning you weren't flying as many hours as --
21 as you would have liked?

22 A. Not as many hours and not in the captain's seat,
23 which I qualified on.

24 Q. Yes. Okay. Were you ever furloughed from
25 Eagle?

PHILIP VALENTE III

November 29, 2017

1 A. No.

2 Q. Okay.

3 A. I was -- I was displaced.

4 Q. Okay. We'll get to --

5 A. Okay.

6 Q. -- I'll ask you questions about that.

7 Okay. You were never laid off from Eagle?

8 A. I was never unemployed from American Eagle.

9 Q. Yes. Okay. Where did you live when you started
10 working for Eagle?

11 A. Raleigh, North Carolina.

12 Q. And did you -- the rest of the time while you
13 were working for Eagle, did you stay in the Raleigh area
14 or did you move around from time to time?

15 A. I left my family in Raleigh and I -- I commuted.
16 When Raleigh closed as a base, I commuted to all the
17 other bases I flew in.

18 Q. But where were you living? Where was your
19 residence?

20 A. Raleigh. Raleigh, North Carolina.

21 Q. I see. Are you still living there?

22 A. Yes.

23 Q. Okay. And so, you've lived there continuously
24 from when you started at Eagle until present?

25 A. Correct.

PHILIP VALENTE III

November 29, 2017

1 Q. Okay.

2 A. And to me, that never made any sense. You know,
3 being a narrow body captain as opposed to a wide body
4 FO, it's -- by the time you add the open time in, it's a
5 pay cut.

6 Q. Okay. But people do that?

7 A. Correct.

8 Q. Okay. Have you ever been furloughed at
9 American?

10 A. No.

11 Q. Okay. What do you understand the term
12 "furlough" to mean?

13 A. Reduction in staff causing someone to -- the
14 company to reduce the need for staffing, forcing
15 somebody to be removed from their job.

16 Q. Okay. When you say "removed from their job,"
17 are you talking about a layoff?

18 A. They're -- lay off. Yeah.

19 Q. Okay. And is that generally understood in the
20 airline industry that that's what furlough means?

21 A. Yes.

22 Q. Okay. Okay. Keeping in mind the distinction
23 between furlough and displacement, do you know any
24 pilots at Eagle who were furloughed from Eagle after --
25 at any time after the Flow-Thru Agreement was agreed to?

PHILIP VALENTE III

November 29, 2017

1 get-togethers where there are no other -- he doesn't
2 know if somebody is an Eagle pilot, there have been --
3 from what I understand, there have been some statements
4 made that would lead you to believe that he's not real
5 fond of us.

6 Q. But you weren't present at those get-togethers?

7 A. I was not.

8 Q. You just heard about them from other people?

9 A. Correct.

10 Q. Okay. Let me go on to the next person, and I'm
11 not sure if I'm pronouncing the name -- the last name
12 correctly, so I'll spell it as well. It's Neil,
13 N-E-I -- N-E-I-L, Roghair, R-O-G-H-A-I-R. Do you know
14 that person?

15 A. I recognize the name, but I can't -- can't
16 remember the -- the -- I can't put the name with any --
17 with any specifics right now.

18 Q. Okay. Have you ever spoken to him, to your
19 knowledge?

20 A. I recognize the name, but I can't remember in
21 what regard.

22 Q. Okay. And do you recall if you've ever written
23 to him about the -- communicated in writing with him
24 about the topics of this case?

25 A. I don't recall. I probably have as part of

PHILIP VALENTE III

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1 the -- the -- the -- I recognize the name, but I can't
2 make the connection --

3 Q. Okay.

4 A. -- right now.

5 Q. Do you have any reason to believe that he's
6 hostile to flow-thru pilots?

7 A. I -- I -- because I can't associate the name and
8 the face, I -- at this point, I --

9 Q. You just don't know?

10 A. I don't know.

11 Q. Okay. Let's go on to the next one. Norm
12 Miller, do you know him?

13 A. I can't connect the name with a face, and I --
14 so I'm going to have to say I -- I don't know him.

15 Q. Okay. So you don't --

16 A. I -- I -- probably --

17 Q. Again, I'm not asking you to speculate.

18 A. I'm horrible -- I'm horrible with names. So
19 it's -- it's -- right now, I'm not making the
20 connection. But --

21 Q. Okay. So you -- can you recall whether you've
22 ever spoken with him?

23 A. At this -- not right now.

24 Q. Okay. Can you recall whether you've ever
25 communicated in writing with him on any of the subjects

PHILIP VALENTE III

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1 of this litigation?

2 A. Again, I -- I'm going to have to say right now,
3 not being able to make the association, I -- I don't
4 know.

5 Q. Okay. Do you have any reason to believe that he
6 is hostile to flow-thru pilots?

7 A. I can't make the association right now. Do
8 we --

9 Q. The next one is Brian Smith. Do you know him?

10 A. The name is familiar, but I can't recall the --
11 the connection right now.

12 Q. Do you -- do you recall ever speaking with him?

13 A. At this point, I -- in time, I don't remember.

14 Q. Okay. Do you recall communicating with him in
15 writing about any of the topics in this case?

16 A. I don't remember.

17 Q. And do you have any reason to believe he's
18 hostile to flow-thru pilots?

19 A. Right now, I can't make the connection between
20 the name and the event. So I -- I can't recall at this
21 time.

22 Q. Okay. The next one is Cary Giles, C-A-R-Y
23 G-I-L-E-S. Do you recall her?

24 A. Again, the -- the name rings, but I can't make
25 the connection.

PHILIP VALENTE III

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1 Q. Okay. Do you recall ever talking to her?

2 A. I can't make the connection right now.

3 Q. Do you recall ever communicating with her in
4 writing about the -- any of the subjects of this
5 litigation?

6 A. Can't recall at this time.

7 Q. And do you recall -- sorry.

8 Do you have any reason to believe that she is
9 hostile to flow-thru pilots?

10 A. I can't make the connection right now, so I --

11 Q. So you -- so you don't recall?

12 A. I don't recall.

13 Q. Okay. Are you -- are you -- you -- you don't
14 have, at this point, a reason to believe that she's
15 hostile to flow-thru pilots?

16 A. At -- I can't make that connection with the name
17 right now.

18 Q. Yeah. So you just don't know?

19 A. I don't know.

20 Q. Okay. The next one is Jeff Thurstin,
21 T-H-U-R-S-T-I-N. Do you know him?

22 A. The -- the -- again, it's a name that -- that
23 clicks, but I can't connect the face or the event with
24 the person.

25 Q. Okay. So you don't recall speaking with him?

PHILIP VALENTE III

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1 A. I don't -- I don't recall. I -- again, it's --
2 at this point, I don't recall.

3 Q. And you don't recall communicating with him in
4 writing on any of the topics of this case?

5 A. I -- I don't recall.

6 Q. Okay. And do you have any reason to believe
7 he's hostile to flow-thru pilots?

8 A. I -- because I can't make the connection with
9 the name and the face, I -- I can't recall right now.

10 Q. Or you just don't know?

11 A. I don't -- yeah.

12 Q. Okay. Finally, Allison Clark, A-L-L-I-S-O-N
13 C-L-A-R-K. Do you know her?

14 A. Again, another name that rings a bell, but I
15 can't make the association.

16 Q. So you don't recall speaking with her?

17 A. I don't recall.

18 Q. And you don't recall communicating with her in
19 writing on any of the topics -- the subjects of this
20 litigation?

21 A. I -- I don't recall.

22 Q. Okay. Do you have any reason to believe that
23 she's hostile to flow-thru pilots?

24 A. I don't know.

25 Q. Okay. Do we need a break? Should we take a few

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1 were -- that -- that I believe that there was also votes
2 ongoing to whether the parties would adopt the flow-thru
3 agreements as part of the contract, and that may be
4 confusing --

5 MR. DEMAINE: All right.

6 MR. KATZENBACH: -- as to -- as to, you know,
7 when this might have occurred in relation -- so when you
8 say "decided" or "finalized," right, that has -- that
9 has a somewhat broader concept --

10 MR. DEMAINE: Okay.

11 MR. KATZENBACH: -- than they signed. I mean --

12 BY MR. DEMAINE:

13 Q. Let me ask you this: Was the strike of 1997,
14 was that before the Flow-Thru Agreement was negotiated?

15 A. No. The negotiations for the Flow-Thru
16 Agreement had started before the strike of '97.

17 Q. Okay. Was the Flow-Thru Agreement signed after
18 the strike of '97?

19 A. The Flow-Thru Agreement was signed after the
20 strike of '97.

21 Q. Okay. And when did this informational campaign
22 at the Miami airport take place relative to the strike
23 of '97 and the signing of the Flow-Thru Agreement?

24 A. Before the strike.

25 Q. Okay. Now, as best you can recall, tell me what

PHILIP VALENTE III

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1 BY MR. DEMAIN:

2 Q. Let me withdraw the question. Let me withdraw
3 the question.

4 THE REPORTER: Okay. One at a time. This is
5 not on the record.

6 THE WITNESS: I'm sorry.

7 BY MR. DEMAIN:

8 Q. Okay. No. Let me withdraw the question. I'll
9 ask a new question. Okay.

10 Isn't it true that at the time, at American,
11 there were more pilots with experience flying nonturbo
12 prop jets than there were at Eagle?

13 A. As a function of their numbers, yes. They had
14 over 10,000 pilots and we had maybe 4,000 at that point
15 in time.

16 Q. Okay. Let me go on and read paragraph 11 from
17 your declaration into the record. And again, please
18 follow along and correct me if I make any mistakes.
19 Okay?

20 "I have interacted with American pilots since
21 then on a regular basis. This has often occurred when I
22 am traveling on jump seats on aircraft while I was
23 commuting to the airport from which the flight I would
24 be working would leave. Based on conversations with
25 many of them, the mentality of these American pilots

PHILIP VALENTE III

November 29, 2017

1 that Eagle pilots are inferior has continued. American
2 pilots would regularly say that the Eagle pilots should
3 never have gotten the regional jets because Eagle pilots
4 just don't have the expertise and skills operating these
5 airplanes. While I am paraphrasing the comments
6 American pilots made to me, this is close to the
7 specific words they used.

8 I could also perceive their demeanor and
9 attitude towards me as condescending, as if my
10 background at Eagle and as an FTP made me any inferior
11 second-class pilot. The underlying message in
12 conversations with American pilots when discussing the
13 flow-thru pilots was that the FTPs were lucky to be at
14 American, among the superior pilots of American
15 Airlines?"

16 Okay. Did I read that correctly?

17 A. Yes.

18 Q. Okay. These conversations that you're
19 describing with American pilots that you've had, is this
20 true of every American pilot you've met --

21 A. No.

22 Q. -- or only some of them?

23 A. No.

24 Q. Okay.

25 A. A percentage of them.

PHILIP VALENTE III

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1 wide range of opinion among the American pilot group as
2 to the skills of the Eagle pilots?

3 A. I think there's a -- a majority of their pilots
4 believe that flow-thru pilots are substandard.

5 Q. But there --

6 A. Greater than half.

7 Q. But there are at least 40 percent, you said
8 before, who don't share that belief, right?

9 A. Correct.

10 Q. So there's a variety of opinion?

11 A. Correct.

12 Q. Okay. Tell me the names of any APA officers you
13 have personally heard voicing the opinions that you
14 characterize in paragraph 11 of your declaration, if
15 any.

16 A. I would not say the exact words, but the -- the
17 way -- the manner in which Keith Wilson answered the
18 questions at that dinner echoed -- and the -- the -- his
19 unwillingness to -- to engage on this topic supported
20 this -- this statement.

21 Q. Okay. And I'll ask you about that dinner.
22 That's -- we're going to get to those paragraphs.

23 A. Okay.

24 Q. Other than Keith Wilson, can you tell me the
25 name of any --

PHILIP VALENTE III

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1 A. I --

2 Q. Let me finish the question, just for the record.

3 Can you tell me the -- the name of any other APA
4 officers who you've heard voice -- you personally have
5 heard voice these sentiments?

6 A. I -- I believe Jim Sovich (phonetic) did at one
7 point, but I -- I believe I -- I believe Jim Sovich did,
8 who was the APA president after the Flow-Thru Agreement
9 was signed.

10 Q. Where did you hear him say this?

11 A. I'm going to have to retract that, because I
12 think it was in an arbitrated -- in one of the Eagle
13 grievances, and I was not there personally.

14 Q. So you just heard about it?

15 A. Yeah.

16 Q. Okay. Any other APA officers that you're --
17 that you -- who you have personally heard say something
18 like this?

19 A. Unfortunately, I never got names, but I --
20 they -- I -- I should have and I -- I did not.

21 Q. Okay. And --

22 A. I can't put a name with it.

23 Q. Okay. Now, regardless of the name, did you ever
24 have a conversation with someone who -- who was an --
25 who was an American pilot who said things like this, who

PHILIP VALENTE III

November 29, 2017

1 you knew to be an APA officer, but you just didn't know
2 the name?

3 A. The gentleman at that informational picketing.
4 And again, I -- that would be the most -- having the
5 full statement or the full definition in 11, that would
6 be the only time, face to face, with -- or that was
7 sitting there listening in the -- in the terminal as
8 they were talking to a passenger.

9 Q. Okay. And again, you don't know what, if any --

10 A. I don't know.

11 Q. -- any, official position he had --

12 A. Correct.

13 Q. -- with APA, correct?

14 A. Correct.

15 Q. Correct?

16 A. Correct.

17 Q. Let's go on. I'll read paragraph 12. "As other
18 examples of the attitude of American pilots: (A) After
19 the APA-threatened strike in 1997 was resolved, the
20 American pilots viewed the Eagle pilots, us, as 'job
21 stealers.' I recall some American pilots using that
22 phrase. (B) At the Washington Dulles airport in late
23 1999, an American first officer said to me that the
24 Eagle pilots were nothing better than 'scabs.'" Did I
25 read that correctly?

PHILIP VALENTE III

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1 MR. DEMAINE: Okay. Let's -- let's take a break.
2 We'll go off the record.

3 THE VIDEOGRAPHER: The time is 11:39 a.m. We
4 are off the record.

5 (A recess was held from 11:39 a.m. to 11:56 a.m.)

6 THE VIDEOGRAPHER: The time is 11:56 a.m. We
7 are on the record.

8 MR. DEMAINE: Thank you.

9 BY MR. DEMAINE:

10 Q. Mr. Valente, right before we went off the
11 record, you were telling us about an incident in the
12 Washington Dulles airport involving the computer. And I
13 just want to ask you, is that the same incident that's
14 set forth in paragraph 12 in your declaration that's
15 Exhibit 1011 under subsection B of paragraph 12?

16 A. Yes.

17 Q. Okay. And when did that occur?

18 A. Shortly after the -- the contract was signed.
19 The -- the new -- AA resolved their agreement and
20 letter -- our contract was resolved. So --

21 Q. Does that mean 1997 or 1998?

22 A. In the beginning of '98, but it was right at
23 that time when things were finally resolving and things
24 should have gone back to normal, but they were not.

25 Q. Okay. And any -- you spoke about another first

PHILIP VALENTE III

November 29, 2017

1 officer and then two captains. The -- the first officer
2 and one of the captains were American pilots?

3 A. There were two American first officers and one
4 American captain and there was me, at the time an
5 American Eagle pilot, and my American Eagle captain.

6 Q. I see. Okay. So there were two American first
7 officers and one American captain?

8 A. Correct.

9 Q. Got it. Do you know whether any of them -- any
10 of those three, the American pilots, were APA officers?

11 A. I doubt any of them were. I don't know.

12 Q. Okay. Other than the two incidents that you've
13 told us about and that are just -- that are listed in
14 paragraph 12 of your declaration, were -- did you ever
15 hear any other American pilots refer to Eagle pilots as
16 job stealers, scabs, or words to those effect?

17 A. Yeah. Any time we go through -- we would go
18 through Dallas, they would -- walk by and you'd get the
19 scab, scab.

20 Q. In what period of time?

21 A. This was after the -- the issue was resolved
22 and our contracts were in place, our '97 contract and
23 their contract as a byproduct of the -- the -- I think
24 that was -- I don't know whether they classified it as
25 contract '97 or contract '98.

PHILIP VALENTE III

November 29, 2017

1 Q. And how long did that continue for?

2 A. Oh, years. Years.

3 Q. Until when?

4 A. There's still that attitude.

5 Q. When did -- but I'm talking about when you
6 actually hear it.

7 A. Oh, they stopped using the word "scab" within
8 two years, but they use the term "job stealer" all the
9 time. And now, even some of the TWA guys use that job
10 stealer.

11 Q. When is -- when is the last time you've heard
12 that?

13 A. Right after I came over to American. I was
14 confronted -- we were discussing the issue in the crash
15 pad and one of the guys was, ironically, one of the TWA
16 staplees, and he -- he explained to me that I was a job
17 stealing MF, and that if it weren't for me, he would
18 have had a job far earlier.

19 Q. Okay. Have you ever heard any APA officers use
20 the term "job stealers," the term "scab," or words to
21 those effect -- to that effect?

22 A. I don't know if any of the people that used it
23 were officers.

24 Q. Okay. Let me -- let me read the following two
25 paragraphs of your declaration into the record. I'm

PHILIP VALENTE III

November 29, 2017

1 Q. Okay. Other than his body language, can you
2 tell me what it was -- can you think of any words that
3 he said that you felt, let's say, were more welcoming to
4 the TWA guys than to the flow-thru pilots?

5 A. I don't -- I don't recall.

6 Q. Okay. Now, let's go on to -- do you want to
7 talk about Keith Wilson next and what he said?

8 A. You're driving the train.

9 Q. Okay. Let's -- let's go on to Keith Wilson. He
10 spoke at the meeting. What did he say?

11 A. He -- he came in quickly. His face to face with
12 the group was incredibly limited. There was brief
13 pleasantries and then he got into his -- just a standard
14 brief, and the tone was basically, Suck it up and get
15 through whatever -- do whatever you need to do to get
16 through and -- it was very strange. I -- I've never
17 been at an event that was hosted by a union that was so
18 cold, for lack of a -- for lack of a better way of
19 describing it. It wasn't welcome. It was, I'm here
20 because I have to and listen to what I have to say and
21 then adios.

22 Q. Okay.

23 A. And that's -- that's what he did. I mean, he --
24 very few questions and then he left.

25 Q. But he didn't say, "I'm only here because I have

PHILIP VALENTE III

November 29, 2017

1 REPORTER'S CERTIFICATE

2

3

4 I, NICOLE HATLER, a Shorthand Reporter, State of
5 California, do hereby certify:

6 That PHILIP VALENTE III, in the foregoing deposition
7 named, was present and by me sworn as a witness in the
8 above-entitled action at the time and place therein
9 specified;

10 That said deposition was taken before me at said
11 time and place, and was taken down in shorthand by me, a
12 Certified Shorthand Reporter of the State of California,
13 and was thereafter transcribed into typewriting, and
14 that the foregoing transcript constitutes a full, true
15 and correct report of said deposition and of the
16 proceedings that took place;

17 That before completion of the proceedings,
18 review of the transcript [X] was [] was not requested.

19 IN WITNESS WHEREOF, I have hereunder subscribed
20 my hand this 13th day of December 2017.

21

22

23

A handwritten signature in black ink, appearing to read "Nicole Hatler", is written over a horizontal line.

24

NICOLE HATLER, CSR NO. 13730
State of California

25

EXHIBIT 10

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

AMERICAN AIRLINES FLOW-THRU)	
PILOTS COALITION, et al.,)	
)	
Plaintiffs,)	
)	
VS.)	C.A. NO. 3:15-cv-03125-RS
)	
ALLIED PILOTS ASSOCIATION,)	
et al.,)	
)	
Defendants.)	

VIDEOTAPED DEPOSITION OF
MARK LESLIE BURDETTE
DECEMBER 21, 2017
VOLUME I

VIDEOTAPED DEPOSITION OF MARK LESLIE BURDETTE,
produced as a witness at the instance of the Defendant,
and duly sworn, was taken in the above-styled and
numbered cause on the 21st of December, 2017, from 10:06
a.m. to 12:48 p.m., before Cinnamon Boyle, CSR in and
for the State of Texas, reported by machine shorthand,
at the offices of Residence Inn by Marriott, 2020 State
Highway 26, Grapevine, Texas, pursuant to the Federal
Rules of Civil Procedure.

Job: 24218

MARK LESLIE BURDETTE

December 21, 2017

1 A P P E A R A N C E S

2 FOR THE PLAINTIFFS:

3 CHRISTOPHER W. KATZENBACH, ESQ.
4 KATZENBACH LAW OFFICES
5 912 Lootens Place
6 2nd Floor
7 San Rafael, California 94901
8 (415) 834-1778
9 ckatzenbach@kkcounsel.com

10 FOR THE DEFENDANTS:

11 JONATHAN WEISSGLASS, ESQ.
12 ALTSHULER BERZON LLP
13 177 Post Street
14 Suite 300
15 San Francisco, California 94108
16 (415) 421-7151
17 jweissglass@altshulerberzon.com

18 FOR MARK BURDETTE AND AMERICAN AIRLINES:

19 CHRIS HOLLINGER, ESQ.
20 O'MELVENY & MYERS LLP
21 Two Embarcadero Center
22 28th Floor
23 San Francisco, California 94111
24 (415) 984-8906
25 chollinger@omm.com

ALSO PRESENT:

Justin McAdams - Videographer

Gavin Mackenzie

MARK LESLIE BURDETTE

December 21, 2017

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MARK LESLIE BURDETTE

December 21, 2017

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

2 THE VIDEOGRAPHER: Going on the record
3 December 21st, 2017. The time is 10:06 a.m. This is
4 the videotaped deposition of Mark Burdette in the case
5 American Airlines Flow-Thru Pilots Coalition and all
6 others versus Allied Pilots Association and all others,
7 Case No. 315CV03125RS, filed in the United States
8 District Court, Northern District of California, San
9 Francisco Division.

10 Would counsel like to state their
11 appearances for the record or shall we move on?

12 MR. KATZENBACH: No. I think we should
13 take appearances -- go -- on.

14 MR. HOLLINGER: Chris Hollinger from
15 O'Melveny & Myers on behalf of Mr. Burdette and American
16 Airlines.

17 MR. WEISSGLASS: Jonathan Weissglass from
18 Altshuler Berzon for Defendant Allied Pilots
19 Association.

20 MR. KATZENBACH: Christopher W.
21 Katzenbach for the Plaintiffs.

22 MR. MACKENZIE: Gavin Mackenzie for the
23 Plaintiffs.

24 THE VIDEOGRAPHER: Now will the reporter
25 please swear in the witness.

MARK LESLIE BURDETTE

December 21, 2017

1 MARK LESLIE BURDETTE,
2 having been first duly sworn testified as follows:

3 EXAMINATION

4 BY MR. WEISSGLASS:

5 Q. Could you please state and spell your name?

6 A. Yes. It's Mark Leslie Burdette. It's
7 M-a-r-k, L-e-s-l-i-e, Burdette, B-u-r-d-e-t-t-e.

8 Q. My name is Jonathan Weissglass, and I
9 represent the Allied Pilots Association. I'm going to
10 be asking you a few questions today.

11 Do you understand that you're testifying
12 under oath as if you were in court?

13 A. I do.

14 Q. And are you testifying today pursuant to a
15 subpoena?

16 A. Yes, I am.

17 Q. Do you understand that the testimony you --
18 you deliver today can be produced as evidence in
19 court?

20 A. Yes, I do.

21 Q. And so today's proceedings should be treated
22 with the same formality as a court proceeding. Do you
23 understand?

24 A. I do understand that, yes.

25 Q. Is there anything that would impede your

MARK LESLIE BURDETTE

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1 ability to testify truthfully today?

2 A. No.

3 Q. If you don't hear or understand a question,
4 please ask me to repeat it or rephrase it. Otherwise, I
5 will assume you heard and understand the question. Does
6 that make sense?

7 A. Yes, it does.

8 Q. Could you tell me what your educational
9 background is?

10 A. Yes. My educational background, I got my BA
11 in physics from Colgate University in 1970. I have done
12 some -- since then some individual coursework and that
13 kind of thing, but that's my degree.

14 Q. Are you currently employed?

15 A. I'm currently self-employed as a arbitrator
16 and mediator.

17 Q. What kind of work do you do?

18 A. I -- I do -- I arbitrate labor cases -- both
19 contract and employee discipline and discharge,
20 primarily in the airline industry, but I'm also doing
21 some work for the Dallas Area Rapid Transit Authority.

22 Q. How long have you been self-employed in this
23 manner?

24 A. Since I left American in 2013.

25 Q. And when you say you left American, does that

MARK LESLIE BURDETTE

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1 mean you were employed by American Airlines?

2 A. I was employed by American Airlines from 1991
3 until 2012. I retired in March of 2012, and stayed on
4 as a consultant for approximately a year after that and
5 through 2013.

6 Q. And you frequently refer to American Airlines
7 -- by shorthand as American; is that right?

8 A. Yes.

9 Q. Can you tell me what position you started at,
10 at American?

11 A. Yes. When I was hired in 1991, at American, I
12 came from 24 years at Trans World Airlines. And when I
13 was hired at American, I was hired as the managing
14 director for employee relations Eagle and
15 International.

16 Q. What was your responsibility in that
17 position?

18 A. I was responsible for the labor relations and
19 contract negotiations, contract administration for, at
20 that time, four of the Eagle carriers that were wholly
21 owned by American.

22 Q. And when you say "Eagle," are you referring to
23 an airline known as American Eagle?

24 A. Yes.

25 Q. And is -- what -- what is American Eagle's

MARK LESLIE BURDETTE

December 21, 2017

1 relationship to American Airlines?

2 A. American Eagle -- well, in 1991, at the time
3 -- it -- American wholly owned the four subsidiaries,
4 which comprised American Eagle, or the American Eagle
5 brand, and American Eagle was the commuter carrier that
6 provided feed traffic to American at its major hubs.

7 Q. And is American Eagle often referred to simply
8 as Eagle?

9 A. Yes.

10 Q. Has Eagle ever merged into American
11 Airlines?

12 A. No.

13 Q. So Eagle has always been a separate carrier
14 for American?

15 A. Yes, it's been a separate carrier.

16 Q. And does that remain true today?

17 A. Yes. It's -- has a new name today. It's now
18 called Envoy, but it is a -- it's completely separate
19 now from -- from American. There was a divestiture of
20 the -- of the stock to the shareholders of American, and
21 so it's -- it's now currently independently owned.

22 Q. And in your -- the position that you started
23 in 1991, how long did that position last?

24 A. For three years.

25 Q. And what position did you take on next?

MARK LESLIE BURDETTE

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1 A. The next position that I had was managing
2 director of employee relations for the ground employees
3 represented by the Transport Workers Union.

4 Q. What did you do in that position?

5 A. Similar work. I was responsible for the
6 negotiation and administration of the nine labor
7 agreements that covered the ground employees.

8 Q. And how long did you hold that position?

9 A. For approximately three years.

10 Q. So now we're up to about 1997; is that
11 right?

12 A. That's correct.

13 Q. And what position did you take on next?

14 A. My next position was as the managing director
15 for labor policy and strategic planning. And I -- that
16 was a -- a very broad-based sort of a -- a role. I was
17 responsible for basically doing industry benchmarking
18 for the various labor groups. And also for the
19 arbitration unit, the arbitration unit reported to me.
20 So all of our grievances that went to arbitration were
21 done under my oversight. And in addition to that, I had
22 responsibility for the administration of the drug and
23 alcohol program at American.

24 Q. How long did you hold that position?

25 A. For about three years. And then I became the

MARK LESLIE BURDETTE

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1 managing director of employee relations for flight --
2 and was responsible for the contract administration --
3 the pilot agreements with American and in dealings and
4 negotiations with the Allied Pilots Association.

5 Q. Well -- and what is the Allied Pilots
6 Association?

7 A. That's the collective -- it's the union that
8 represents the pilots of American Airlines.

9 Q. Is the Allied Pilots Association often simply
10 referred to as APA?

11 A. Yes, it is.

12 Q. What was your next position at American?

13 A. My next position at American was as vice
14 president of employee relations. And in that role, I
15 was responsible for the oversight of all of the labor
16 agreements in the -- in the company, covering basically
17 80,000 employees, as well as responsible for the
18 unrepresented agent group.

19 Q. During what years did you hold that
20 position?

21 A. From 2000 until I left in -- wait. Sorry.
22 Hold on.

23 From 2004 until I left in 2012. So over
24 eight years.

25 Q. You mentioned that prior to working for

MARK LESLIE BURDETTE

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1 American you worked at Trans World Airlines; is that
2 right?

3 A. That's correct.

4 Q. What -- what years were you at Trans World
5 Airlines?

6 A. From 1970 until 1991.

7 Q. Is -- is that airline often known as TWA?

8 A. Yes, it is.

9 Q. What -- what positions did you hold at TWA?

10 A. Well, I had quite a few positions at TWA. I
11 started out as a -- as an analyst in the marketing
12 methods and standards department, doing time and motion
13 studies and developing staffing standards. I went from
14 there to being the manager of dining and commissary in
15 Chicago at O'Hare Airport, which was, at that time,
16 TWA's largest hub.

17 I went from that position to being a
18 regional manager of labor relations in Chicago. Then I
19 went to St. Louis in 1979, as TWA was implementing its
20 hub, as the manager of ramp dining and commissary. And
21 during that period of time, I was also detailed to the
22 negotiations with the passenger service agents that had
23 just become unionized with the International Association
24 of Machinists, so I negotiated with -- with that group.

25 And then I was also involved in --

MARK LESLIE BURDETTE

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1 ultimately, in negotiating with the IM for the mechanic
2 and related employees. I was at -- and after St. Louis,
3 I became the general manager at the Kansas City Airport
4 for TWA. And during -- while in that role, I was also
5 detailed to the negotiations for the agent group.

6 Q. Are you familiar with the term "main line
7 carrier" or "main line airline" as -- as used in the
8 airline industry?

9 A. Yes, I am.

10 Q. What does it mean?

11 A. It -- it generally refers to the carriers that
12 provide service between larger cities with -- with
13 larger aircraft and is contrasted, as opposed to a
14 regional carrier, which typically operates smaller
15 aircraft from less populated cities.

16 Q. And is that definition generally understood in
17 the airline industry?

18 A. I think so.

19 Q. Is American considered a main line carrier?

20 A. Yes.

21 Q. Why is that?

22 A. Because it operates larger aircraft, and it
23 has been in -- I mean, it historically has been a main
24 line carrier that's served the larger population centers
25 of the United States with larger aircraft.

MARK LESLIE BURDETTE

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1 seniority list but had not yet started training at
2 American?

3 A. Yes.

4 Q. And did -- and why did you expect APA to
5 advocate for the American pilots and ALPA to advocate
6 for the Eagle pilots?

7 A. That was basically a part of their duties of
8 representing the pilots, was to advocate for them to
9 achieve the best outcome for the pilots that they
10 represented.

11 Q. Do you remember a remedy arbitration under the
12 flow-through agreement that was before arbitrator George
13 Nicolau?

14 A. I do.

15 Q. What was your role in that?

16 A. I participated in that arbitration, and I --
17 ultimately, I wound up in some discussions with
18 Arbitrator Nicolau because of the way that he had
19 handled the case and the -- and what he had done. And I
20 was pretty vocal with him about American's feelings
21 about the -- the arbitration and the way the case had
22 gone.

23 Q. Let's back up a minute.

24 Who were the parties to the
25 arbitration?

MARK LESLIE BURDETTE

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1 A. The parties were American Airlines, the Allied
2 Pilots Association, ALPA and American Eagle.

3 Q. Do you recall the issues in the arbitration?
4 I know it's been a while.

5 A. Yeah, it has been a while. God, I -- I recall
6 the outcome pretty well because we were not at all --
7 happy with the -- with the outcome and felt like
8 Arbitrator Nicolau had gone way farther than was really
9 called for in resolving the grievance. But I believe
10 the issue that -- that Nicolau was deciding was -- was
11 this -- the issue of the number of seats in the -- what
12 constituted a new hire class. I might have that
13 confused with another decision, but...

14 Q. Okay. Well, let's take a look at Exhibit 1039
15 from a prior deposition.

16 A. Okay.

17 Q. Do you recognize this exhibit as Arbitrator
18 Nicolau's remedy award?

19 A. Give me just one minute, please.

20 Q. Sure.

21 A. Yes, I do.

22 Q. And you notice it says -- there's a caption at
23 the top, and it says -- there's a -- a designation
24 FLO-0108 remedy. Do you see that?

25 A. Yes, I do.

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1 rulings?

2 A. Yes, I do recall that. And I remember fairly
3 vividly having the conversation with Arbitrator Nicolau
4 about that.

5 Q. And did the -- did that conversation take
6 place on or off the record?

7 A. It was off the record, I believe. I remember
8 sitting across the table from Arbitrator Nicolau and --
9 and arguing with him about his -- his decision and
10 telling him what the implications of all that were going
11 to be.

12 Q. And were the other parties to the arbitration
13 present in that discussion?

14 A. I don't recall that they were.

15 Q. Okay. Were there some discussions that all
16 the parties had about remedy with Arbitrator Nicolau?

17 A. I don't recall that all four parties had
18 discussions about it -- and there may have been after
19 the -- as we were departing, you know, some -- some
20 conversations about, you know, wow, can you believe what
21 he did or something like that, but it was -- I mean, not
22 on the record.

23 Q. Is Exhibit 1039 an agreement of the four
24 parties to the arbitration?

25 A. No.

MARK LESLIE BURDETTE

December 21, 2017

1 Q. Did the positions of the parties on the key
2 issues addressed in Arbitrator Nicolau's award remain
3 far apart at the time that he entered the award?

4 A. Yes.

5 Q. And following the award that's set forth in
6 Exhibit 1039, did the parties continue to have
7 disagreements as to the implementation of the award?

8 A. Yeah, I think so, yes.

9 Q. Now, the Plaintiffs in this lawsuit have
10 alleged that the remedy award in -- set forth in Exhibit
11 1039 was actually a settlement among the parties, that
12 they jointly convinced Arbitrator Nicolau to disguise as
13 an arbitration award. To your knowledge, is that
14 allegation true?

15 A. No, absolutely not. I'm familiar with what is
16 referred to as directed awards by arbitrators, but this
17 was not one of those. As I indicated earlier, the
18 company -- American was not at all pleased with -- with
19 his award.

20 Q. Turning to another topic, are you familiar
21 with the term "length of service" as used in the airline
22 industry?

23 A. I am.

24 Q. What does it mean?

25 A. It means -- it -- it basically is the amount

MARK LESLIE BURDETTE

December 21, 2017

1 UNITED STATES DISTRICT COURT
 2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 3 SAN FRANCISCO DIVISION
 4
 5 AMERICAN AIRLINES FLOW-THRU)
 6 PILOTS COALITION, et al.,)
 7 Plaintiffs,)
 8 VS.) C.A. NO. 3:15-cv-03125-RS
 9 ALLIED PILOTS ASSOCIATION,)
 10 et al.,)
 11 Defendants.)

11 REPORTER'S CERTIFICATION
 12 DEPOSITION OF MARK LESLIE BURDETTE
 13 DECEMBER 21, 2017
 14

15 I, Cinnamon Boyle, Certified Shorthand Reporter in
 16 and for the State of Texas, hereby certify to the
 17 following:

18 That the witness, MARK LESLIE BURDETTE, was duly
 19 sworn by the officer and that the transcript of the oral
 20 deposition is a true record of the testimony given by
 21 the witness;

22 That the deposition was submitted on
 23 _____, 2018 to the witness or to the
 24 attorney for the witness for examination, signature and
 25 return to me by _____, 2018;

MARK LESLIE BURDETTE

December 21, 2017

1 That the amount of time used by each party at the
2 deposition is as follows:

3 CHRISTOPHER W. KATZENBACH, ESQ. - 01:39

4 JONATHAN WEISSGLASS, ESQ. - 00:43

5 CHRIS HOLLINGER, ESQ. - 00:00

6 That pursuant to information given to the
7 deposition officer at the time said testimony was taken,
8 the following includes counsel for all parties of
9 record:

10 FOR THE PLAINTIFFS:

11 CHRISTOPHER W. KATZENBACH, ESQ.
12 KATZENBACH LAW OFFICES
13 912 Lootens Place
14 2nd Floor
15 San Rafael, California 94901
16 (415) 834-1778
17 ckatzenbach@kkcounsel.com

18
19 FOR THE DEFENDANTS:

20 JONATHAN WEISSGLASS, ESQ.
21 ALTSHULER BERZON LLP
22 177 Post Street
23 Suite 300
24 San Francisco, California 94108
25 (415) 421-7151
jweissglass@altshulerberzon.com

26
27 FOR MARK BURDETTE AND AMERICAN AIRLINES:

28 CHRIS HOLLINGER, ESQ.
29 O'MELVENY & MYERS LLP
30 Two Embarcadero Center
31 28th Floor
32 San Francisco, California 94111
33 (415) 984-8906

MARK LESLIE BURDETTE

December 21, 2017

1 chollinger@omm.com

2 I further certify that I am neither counsel for,
3 related to, nor employed by any of the parties or
4 attorneys in the action in which this proceeding was
5 taken, and further that I am not financially or
6 otherwise interested in the outcome of the action.

7 Certified to me by this 19th day of January,
8 2018.

9

10

A handwritten signature in black ink, appearing to read "Cin Boyle", is written over a horizontal line.

11

CINNAMON BOYLE

12

CSR 6394

13

Expiration Date: December 31, 2019

14

Firm No. Dallas: 69

15

1-888-656-DEPO

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1-888-656-3275 Toll Free Fax

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25

EXHIBIT 11

CHRISTOPHER W. KATZENBACH
(SBN 108006)

Email: ckatzbach@kkcounsel.com

KATZENBACH LAW OFFICES

912 Lootens Place, 2nd Floor

San Rafael, CA 94901

Telephone: (415) 834-1778

Fax: (415) 834-1842

Attorneys for Plaintiffs AMERICAN AIRLINES
FLOW-THRU PILOTS COALITION,
GREGORY R. CORDES, DRU MARQUARDT,
DOUG POULTON, STEPHAN ROBSON,
and PHILIP VALENTE III on behalf of themselves and all
others similarly situated

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

AMERICAN AIRLINES FLOW-
THRU PILOTS COALITION, Et Al.,

Plaintiffs,

vs.

ALLIED PILOTS ASSOCIATION, Et
Al.,

Defendants.

Case No.: 3:15-cv-03125 RS

PLAINTIFFS' RESPONSE TO
ALLIED PILOTS ASSOCIATION'S
FIRST SET OF INTERROGATORIES
TO PLAINTIFFS

Rule 33, FRCP

PROPOUNDING
PARTY:

Defendant ALLIED PILOTS ASSOCIATION
(herein "APA")

RESPONDING PARTY:

Plaintiffs AMERICAN AIRLINES FLOW-THRU
PILOTS COALITION, GREGORY R. CORDES,
DRU MARQUARDT, DOUG POULTON,
STEPHAN ROBSON, and PHILIP VALENTE III

SET NO.:

One (1)

General Objections

1
2 1. Plaintiffs object to the Instructions as a whole to the extent that they
3 require plaintiffs to provide a response to these Interrogatories beyond the response
4 required by Rule 26(b)(5) or Rule 33(b) of the Federal Rules of Civil Procedure
5 and therefore are unreasonable and unduly burdensome.

6 2. Plaintiffs object to Instruction E as unduly burdensome and as
7 Instruction E is a new set of interrogatories that would cause these Interrogatories
8 to exceed the limitation on the number of interrogatories and subparts allowed
9 under Rule 33(a)(1). Plaintiffs further object to Instruction E as the information
10 sought would require preparation of a document describing trial preparation
11 matters and mental impressions, conclusions, opinions and legal theories and
12 therefore violates the privilege for work-product and trial preparation materials
13 under Rule 26(b)(3)(A) and (B).

14 3. Plaintiffs object to these Interrogatories to the extent that they seek to
15 limit plaintiff's proof at trial or on motion; plaintiff responds to these
16 Interrogatories on the basis of his present knowledge only, after reasonable
17 investigation, and subject to further discovery and investigation.

18 4. Plaintiffs object to the use of contention interrogatories before
19 plaintiffs have been able to complete substantial discovery on the facts in this case.

20 5. Where an interrogatory asks for "facts" upon which a contention or
21 similar matter is based or relied upon, Plaintiffs object to any construction of the
22 interrogatory as requiring Plaintiffs to identify evidence or present argument,
23 analysis, opinion or reasoning as construing an interrogatory in such a manner
24 would require preparation of a document describing trial preparation matters and
25 mental impressions, conclusions, opinions and legal theories and therefore would
26 violate the privilege for work-product and trial preparation materials under Rule
27 26(b)(3)(A) and (B) and would be unduly burdensome. In responding to these
28

interrogatories, where an interrogatory asks for facts on which a contention is based, Plaintiffs will respond stating what those facts are or are believed to be, but not all the evidence that might be presented to prove those facts. In addition, in cases where a fact may be shown as an inference from other facts, the responses include persons believed to have knowledge of the facts that provide a basis for such an inference.

6. Plaintiffs have provided names and addresses of persons with knowledge of the facts in their initial disclosures. Those names and identifying information are attached to these responses. Plaintiffs object as unduly burdensome any requirement to restate this identifying information in response to any interrogatory where that information has previously been provided.

Responses To Interrogatories

Interrogatory No. 1: If YOU contend that APA's conduct in the negotiation of the Flow-Through Agreement evidences hostility, discrimination, OR similar animus toward the Flow-Through Pilots, state the facts upon which YOU base that contention.

Response: Objection. Plaintiffs object to this interrogatory as vague and ambiguous as to what is meant by the phrase “conduct in the negotiation of” as Plaintiffs cannot ascertain the scope of this phrase or to what it applies. Plaintiffs further object to this “contention” interrogatory because it is premature in light of the status of discovery. Plaintiffs object to this interrogatory to the extent that the information is equally available to APA as to Plaintiffs, in particular as to information derived from the records and files in the listed arbitrations, and APA can obtain that information from such records itself more conveniently, and with less burden and expense than this interrogatory imposes on Plaintiffs. Plaintiffs further object to this

1 interrogatory as it is seeking mental impressions, conclusions, opinions or
 2 legal opinions privileged under Rule 26(b)(3). Answer. Plaintiffs contend
 3 (a) APA opposed all flying of regional jet aircraft by pilots who were not
 4 employed by American Airlines (“American”) under the APA contract and
 5 (b) APA was hostile to regional jet pilots at the American Eagle (“Eagle”) carriers because APA viewed these pilots as taking work belonging to APA-
 6 represented pilots at American. At the time of the negotiation of the Flow-
 7 Through Agreement (“FTA”), this hostility manifested itself in various
 8 ways, including the attitude of APA and pilots at American:

- 10 • APA and its represented pilots claimed that American pilots were
 11 more qualified to fly regional jets than Eagle pilots and that Eagle
 12 pilots were inferior. This attitude has continued to date.
- 13 • In its negotiations with American, APA negotiated to limit and restrict
 14 the job opportunities for pilots, including flow through pilots
 15 (“FTPs”), at the American Eagle airlines by limiting the size and
 16 number of jet aircraft that could be flown by pilots at American Eagle.
 17 Plaintiffs believe that APA’s justification for restricting job
 18 opportunities at American Eagle was that APA believed that flying
 19 regional jet aircraft at American Eagle took work APA believed
 20 should be given to American pilots rather than pilots at American
 21 Eagle. APA used American’s corporate structure to impose the
 22 restrictions on American Eagle through the common ownership of the
 23 carriers by AMR Inc.
- 24 • APA-represented pilots have referred to Eagle pilots as “scabs” or
 25 “job-stealers.”
- 26 • The FTA was initially negotiated without the participation of the
 27 Eagle pilots’ Master Executive Council (MEC). Plaintiffs believe that
 28

Interrogatory No. 1. Plaintiffs believe that the persons conducting the negotiations of the Flow-Through Agreement (“FTA”) would have this knowledge, including Captain Ralph Hunter, APA’s representative in the FTA negotiations who would have knowledge that the FTA was negotiated by APA and American and only thereafter presented to the Eagle pilots’ representatives. Plaintiffs believe that Captain James Sovich, APA President in May 1997, has knowledge of the negotiations of the FTA; Captain Sovich is retired and his address is unknown to Plaintiffs. Plaintiffs believe that the following other persons have knowledge of hostility of APA, or of facts supporting the contention that APA was hostile to Eagle pilots and their ability to flow-up to American; Gregory R. Cordes; Gavin Mackenzie; Philip Valente; Don Carty, American CEO, and Cecil Ewell, American Vice President of Flight, have knowledge of the importance of the FTA and flow-down to Eagle for APA. See also attached Address/Identifying Information Of Persons With Knowledge. In addition, persons participating in APA Pilots Defending the Profession would have knowledge of some of these matters. The names of these persons are on the letter of May 17, 1997 attached to this Response.

Interrogatory No. 3: If YOU contend that APA's conduct in the negotiation of Letters 00 AND PP evidences hostility, discrimination, OR similar animus toward the Flow-Through Pilots, state the facts upon which YOU base that contention.

Response: Objection. Plaintiffs object to this interrogatory as vague and ambiguous as to what is meant by the phrase “conduct in the negotiation of” as Plaintiffs cannot ascertain the scope of this phrase or to what it applies. Plaintiffs further object to this “contention” interrogatory because it is premature in light of the status of discovery. Plaintiffs object to this

interrogatory to the extent that the information is equally available to APA as to Plaintiffs, in particular as to information derived from the records and files in the listed arbitrations, and APA can obtain that information from such records itself more conveniently, and with less burden and expense than this interrogatory imposes on Plaintiffs. Plaintiffs further object to this interrogatory as it is seeking mental impressions, conclusions, opinions or legal opinions privileged under Rule 26(b)(3). Answer. Plaintiffs believe that the following conduct relating to the negotiation of Letter OO and Letter PP evidences hostility, discrimination or animus towards Eagle pilots, including Flow-Through Pilots (FTPs): (a) A “furlough” under the APA/American contract and under the FTA applied only to pilots who had been working for American at the time they were laid-off. The purpose of the flow-down provisions of the FTA was to protect work for American pilots for whom APA had unsuccessfully attempted to obtain the work of flying regional jets. Letter OO and Letter PP changed the understood meaning of a furloughed pilot and expanded the flow-down rights under the FTA to include TWA-LLC pilots who had never flown for American and were not furloughed from American under the contracts’ language. Plaintiffs believe that furloughed American pilots were not opting to flow-down to Eagle to take all the positions at Eagle that were available for flow-down pilots, because AA pilots did not take all available positions, APA desired to expand the flow-down benefit to include TWA-LLC pilots at the expense of Eagle pilots. Plaintiffs believe that APA was motivated by (i) longstanding hostility to the use of jets by Eagle and Eagle pilots, (ii) the desire to curry favor with the large number of TWA pilots who were moving to, or would be moving to, American. (b) Prior to Letters OO and PP, these TWA-LLC pilots had no expectation of flowing down to Eagle jobs because

Supplement CC excluded them from the FTA until pilot J.K. Viele was recalled (Supp. CC, Sec. V.A) and pilot Viele had not been recalled at the time Letters OO and PP were negotiated. Pilot J.K. Viele's seniority was below the seniority of TWA-LLC pilots on the seniority list who had not flown for American. Plaintiffs believe that the terms in Section V.A. of Supplement CC reflect the understanding of APA and American that the TWA pilots furloughed from TWA-LLC were not to be considered as furloughed American pilots who could utilize the flow-down provisions of the FTA. (c) Letters OO and PP modified the terms of the FTA and the flow-down rights in it by expanding the pilots who had access to flow-down to include pilots who did not have such access previously. APA and American did not give the Eagle pilots' representatives notice of the negotiation of Letters OO and PP (or Supplement CC) and did not seek their agreement to these changes. APA was aware that one of the purposes of giving American seniority numbers to FTPs was to give those pilots a vested interest in the terms of the American Airlines pilot contract. Testimony of Ralph Hunter, Transcript of Testimony (March 22, 2001), FLO-0200, at p. 239:11-13. By not giving notice to and by not bargaining with the Eagle pilots' representative, APA and American also violated their duties under the Railway Labor Act (45 USC § 151, First, Second, Seventh and § 156).

Interrogatory No. 4: If YOU contend that APA's conduct in the negotiation of Letters OO AND PP evidences hostility, discrimination, OR similar animus toward the Flow-Through Pilots, IDENTIFY the person(s) YOU believe have personal knowledge of that hostility, discrimination, OR similar animus.

Response: Objection. Plaintiffs object to this interrogatory as vague and ambiguous as to what is meant by the phrase "conduct in the negotiation of" as Plaintiffs cannot ascertain the scope of this phrase or to what it applies.

1 decision by Arbitrator LaRocco that the TWA-LLC Staplees were the
 2 equivalent of “new hire” pilots and their recall ahead of the FTPs violated
 3 the FTA, APA and American agreed to recall TWA pilots ahead of the
 4 FTPs. After the May 2007 decision, both APA and American continued to
 5 assert that the TWA-LLC Staplees were entitled to positions ahead of FTPs.
 6 APA took the position that the TWA-LLC Staplees were still entitled to be
 7 recalled ahead of FTPs because the classes in 2007 and following were not
 8 “new hire” classes. American took the position that all TWA-LLC pilots
 9 should be recalled before FTPs would become entitled to positions as
 10 American.

11 **Interrogatory No. 6:** IDENTIFY the person(s) YOU believe have personal
 12 knowledge that supports the allegation in Paragraph 52(b) of the Second Amended
 13 Complaint filed in the ACTION that “APA agreed with AAL to have TWA-LLC
 14 Staplees, who were below FTPs on the AAL pilot seniority list, placed into new-
 15 hire classes beginning in June 2007 ahead of the FTPs.”

16 **Response:** Objection. Plaintiffs object to this interrogatory because it is
 17 premature in light of the status of discovery. Plaintiffs object to this
 18 interrogatory to the extent that the information is equally available to APA
 19 as to Plaintiffs, in particular as to information derived from the records and
 20 files in the listed arbitrations, and APA can obtain that information from
 21 such records itself more conveniently, and with less burden and expense
 22 than this interrogatory imposes on Plaintiffs. Plaintiffs further object to this
 23 interrogatory as it is seeking mental impressions, conclusions, opinions or
 24 legal opinions privileged under Rule 26(b)(3). Answer. Captain Lloyd Hill,
 25 APA president in 2007; Captain Arthur McDaniels, chairman of that APA
 26 membership furlough committee; Herb Mark, ALPA Eagle MEC Chairman
 27 (current address not known); attorneys representing the parties in FLO-0903.
 28

1 See also attached Address/Identifying Information Of Persons With
2 Knowledge.

3 **Interrogatory No. 7:** If YOU contend that APA's conduct in the arbitration
4 of Case Nos. FLO-0903, 0107, 0108, OR ANY other arbitration conducted under
5 the Flow-Through Agreement evidences hostility, discrimination, OR similar
6 animus toward the Flow-Through Pilots, state, as to EACH such arbitration you
7 identify, the facts upon which YOU base that contention.

8 **Response: Objection.** Plaintiffs object to this interrogatory because it is
9 premature in light of the status of discovery. Plaintiffs object to this
10 interrogatory to the extent that the information is equally available to APA
11 as to Plaintiffs, in particular as to information derived from the records and
12 files in the listed arbitrations, and APA can obtain that information from
13 such records itself more conveniently, and with less burden and expense
14 than this interrogatory imposes on Plaintiffs. Plaintiffs further object to this
15 interrogatory as it is seeking mental impressions, conclusions, opinions or
16 legal opinions privileged under Rule 26(b)(3). **Answer.** At the time of these
17 arbitrations, the FTPs were on the pilot seniority list at American and had a
18 reasonable expectation of flying for American. The FTPs depended on APA
19 to negotiate the terms and conditions of their employment with American.
20 APA was aware that one of the purposes of giving American seniority
21 numbers to FTPs was to give those pilots a vested interest in the terms of the
22 American Airlines pilot contract. Testimony of Ralph Hunter, Transcript of
23 Testimony, FLO-0200 (March 22, 2001), at p. 239:11-13. APA's actions
24 and conduct in these arbitrations consistently favored the TWA-LLC pilots
25 and disfavored the FTPs.

26 a. FLO-0903: (i) Before the May 11, 2007, APA took the position that
27 TWA-LLC pilots who had never flown for American and were
28

1 released from TWA-LLC because of the asset acquisition by
2 American should have the same recall rights as pilots furloughed from
3 American and be recalled ahead of FTPs. This position was contrary
4 to the definition of furlough under the terms of the Basic Agreement
5 between APA and American that required a furlough from American
6 in connection with a reduction in force. This position was contrary to
7 the terms of Supplement CC that did not treat TWA-LLC pilots as
8 equivalent to American pilots as to furlough and flow-down rights.
9 This position expanded the concept of a furlough from American to
10 include the TWA-LLC pilots furloughed from TWA-LLC in a way
11 that benefitted the TWA-LLC pilots at the expense of the FTPs. At
12 the time the TWA-LLC pilots were furloughed from TWA-LLC,
13 TWA-LLC was a separate company from American and operated
14 under a separate FAA certification. (ii) After the May 11, 2007
15 decision finding that TWA-LLC pilots who were furloughed from
16 TWA-LLC were “new hire” pilots for purposes of the FTA, APA
17 continued to favor the TWA-LLC pilots in obtaining jobs at American
18 ahead of FTPs. Notwithstanding LaRocco’s ruling, APA obtained
19 American’s agreement to a settlement of all cases under the FTA that
20 would have given priority in hiring to TWA-LLC pilots ahead of
21 FTPs. (iii) Although APA has asserted that the NMB’s single
22 transportation finding justifies its post-Supplement CC actions that
23 favored TWA-LLC pilots over FTPs, apparently on the theory that the
24 TWA-LLC pilots were then American pilots equal to other American
25 pilots, Plaintiffs believe APA’s position is arbitrary and taken in bad
26 faith. In particular: (1) The terms of Supplement CC, including the
27 terms limiting the flow-down rights of TWA-LLC pilots (including
28

1 Section V.A) were negotiated to become effective only after the NMB
2 made a single carrier finding (Supp. CC, Sections I.G, III.B); these
3 provisions contemplated the effect of the NMB's decision and the
4 NMB's decision itself changed nothing as to them. (2) The NMB's
5 single transportation system finding concerns only representational
6 issues and does not change existing contractual rights or terms or
7 change vested rights. See 14 NMB 291, 301-302 and fn. 2; 14 NMB
8 388, 394-395 (1987); 29 NMB 201, 212 (2002). (3) Supplement CC
9 itself favored American pilots over TWA-LLC pilots, including the
10 ability of less-senior American pilots to flow-down ahead of TWA-
11 LLC pilots. APA was not representing the pilots of a combined
12 American/TWA-LLC unit equally, but was favoring the American
13 pilots in that combined unit. APA advanced the ability of TWA-LLC
14 pilots to flow-down only when it appeared that furloughed American
15 pilots were not taking all available positions at Eagle.

- 16 b. FLO-0107. APA asserted that the expiration of the FTA meant that
17 all FTPs still at Eagle lost their AA seniority numbers and the right to
18 flow-up to American. At the time APA made this argument,
19 Arbitrator LaRocco had already ruled in FLO-0903 that the TWA-
20 LLC pilots furloughed from TWA-LLC were new hire pilots for
21 purposes of the FTA. Plaintiffs believe that APA's position in FLO-
22 0107 was an effort to avoid the consequence of the decision in FLO-
23 0903 and enable the TWA-LLC new-hire pilots to take positions at
24 American ahead of the FTPs. APA's position was contrary to the
25 prior testimony of its officers who had negotiated the FTA that one of
26 the purposes of giving American seniority numbers to FTPs was to
27 give those pilots a vested interest in the terms of the American
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Airlines pilot contract. Testimony of Ralph Hunter, Transcript of Testimony (March 22, 2001), FLO-0200, at p. 239:11-13.

- c. FLO-0108. APA continued to take positions that favored the TWA-LLC pilots and disfavored the FTPs. APA refused to accept LaRocco's decision that, for purposes of the operation of the FTA, TWA-LLC pilots who were furloughed from TWA-LLC were new hire pilots. APA asked that LaRocco's decision should not be credited insofar as it found that TWA-LLC pilots were new hire pilots for purposes of the operation of the FTA. The FTA provided that any decision under its arbitration procedures would be enforceable in Court under the RLA (FTA, Section V.D) and LaRocco's decision was thereby binding on APA.

Interrogatory No. 8: If YOU contend that APA's conduct in the arbitration of Case Nos. FL0-0903, 0107, 0108, OR ANY other arbitration conducted under the Flow-Through Agreement evidences hostility, discrimination, OR similar animus toward the Flow-Through Pilots, IDENTIFY, as to such EACH such arbitration you identify, the person(s) YOU believe have personal knowledge of that hostility, discrimination, OR similar animus.

Response: Objection. Plaintiffs object to this interrogatory because it is premature in light of the status of discovery. Plaintiffs object to this interrogatory to the extent that the information is equally available to APA as to Plaintiffs, in particular as to information derived from the records and files in the listed arbitrations, and APA can obtain that information from such records itself more conveniently, and with less burden and expense than this interrogatory imposes on Plaintiffs. Plaintiffs further object to this interrogatory as it is seeking mental impressions, conclusions, opinions or legal opinions privileged under Rule 26(b)(3). Answer. Plaintiffs believe

1 Brian Smith. See also Attached Address/Identifying Information Of Persons
2 With Knowledge.

3 **Interrogatory No. 11:** If YOU contend that ANY conduct engaged in by
4 APA other than that mentioned above in other Interrogatories evidences hostility,
5 discrimination, OR similar animus toward the Flow-Through Pilots, state, as to
6 EACH such incident of conduct you identify, the facts upon which YOU base that
7 contention.

8 **Response:** Objection. Plaintiffs object to this interrogatory because it is
9 premature in light of the status of discovery. Plaintiffs object to this
10 interrogatory to the extent that the information is equally available to APA
11 as to Plaintiffs, in particular as to information derived from the records and
12 files in the listed arbitrations, and APA can obtain that information from
13 such records itself more conveniently, and with less burden and expense
14 than this interrogatory imposes on Plaintiffs. Plaintiffs further object to this
15 interrogatory as it is seeking mental impressions, conclusions, opinions or
16 legal opinions privileged under Rule 26(b)(3). Answer. In addition to the
17 matters stated in response to the previous interrogatories, Plaintiffs believe
18 that APA exhibited hostility, discrimination or animus towards the FTPs in
19 the following situations:

20 a. In the Seniority List Integration (SLI) arbitration, APA, at times
21 acting through the American Airlines Pilots Seniority Integration
22 Committee (“AAPSIC”), did the following:

- 23 1. APA stipulated to exclude time at Eagle for purposes of any
24 calculation of longevity. APA did not advise the Eagle pilots of
25 this stipulation or meet with them to discuss this stipulation
26 before it was made. This stipulation harmed the interest of
27
28

1 FTPs in the arbitration and placement on the Integrated
2 Seniority List.

3 2. APA initially proposed placing the FTPs given seniority
4 numbers as a remedy in FLO-0108 (about 124 pilots) at the
5 bottom of the seniority list interspersed with certain “Third-
6 List” pilots hired by US Airways after the date the America
7 West-US Airways merger was announced. The effect of this
8 placement would be to move these FTPs below the TWA-LLC
9 Staplees on the new seniority list. APA had no logical basis for
10 this placement of FTPs. APA offered no explanation for this
11 placement when asked. Instead, APA changed this placement
12 in revised proposals after FTPs objected and stated that APA’s
13 action was without rational basis.

14 3. APA refused to provide information to FTPs about the SLI
15 process despite repeated requests for information. APA stated
16 that it would not be responding to these requests because
17 Plaintiffs had instituted this lawsuit. Plaintiffs believe that
18 APA’s refusal to supply information is a breach of its duty and
19 its reliance on the filing of a lawsuit as a reason for not
20 providing information is arbitrary and retaliatory.

21 b. In the remedy phase of FLO-0108, APA entered into a settlement of
22 the case that was disguised as if it were the opinion of the arbitrator.
23 In that settlement, APA sought and obtained terms that were adverse
24 to the interests of FTPs, including (1) limiting the immediate transfer
25 to 35 FTPs and thereafter allowing TWA-LLC pilots who had been
26 recalled ahead of FTPs in violation of the FTA but laid off to be
27 recalled first, (2) requiring further hiring of FTPs based on American
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1 seniority rather than on the priority hiring required by the FTA for
2 FTPs with American seniority numbers who had been held back at
3 Eagle because of training freezes or operational needs, and (3)
4 requiring FTPs to make an irrevocable election to move to American
5 before any job was offered to them.

6 c. In the Equity Distribution process, the APA Equity Distribution
7 Committee excluded Flow-Through Pilots with American seniority
8 numbers who had not yet flowed-up to American from the Pension
9 Silo even if they eventually flowed-up to American. APA excluded
10 FTPs still at Eagle from all benefits if they did not flow-up before
11 August 1, 2013. The August 1, 2013 date was chosen by APA. At
12 the time this date was adopted all, APA anticipated that all TWA-LLC
13 pilots would meet this deadline, while the remaining FTPs at Eagle
14 would not meet this deadline. The FTPs' flow-up had been delayed
15 for years because of APA's favoritism of TWA-LLC pilots and its
16 effort to get the TWA-LLC pilots into positions at American ahead of
17 the FTPs, including its effort to have a "remedy" in FLO-0108 that
18 put the TWA-LLC "new hire" pilots at American before the FTPs
19 with the lowest American seniority, rather than follow the terms of the
20 FTA that required, at a minimum, that FTPs get one out of two new
21 hire positions. APA, asserting the need for fairness for the TWA-LLC
22 pilots, adjusted benefits for TWA-LLC pilots and created a special
23 model for them to increase the TWA-LLC pilots' payout based on the
24 particular circumstances under which the TWA-LLC pilots came to
25 American. APA did not make similar efforts to account for the
26 particular circumstances of FTPs or to make adjustments based on
27 fairness to the FTPs. Instead, APA adopted rules, such as the August
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1 1, 2013 qualification date, that uniquely harmed the FTPs. APA
 2 credited TWA-LLC pilots with years of service for pension accrual
 3 before the TWA-LLC pilots began flying for American, but credited
 4 FTPs with years of service credit only from the point the FTPs began
 5 flying for American and notwithstanding the fact that the delay in
 6 FTPs moving to American was caused by APA's favoritism of TWA-
 7 LLC pilots and violations of the FTA.

8 **Interrogatory No. 12:** If YOU contend that ANY conduct engaged in by
 9 APA other than that mentioned above in other Interrogatories evidences hostility,
 10 discrimination, OR similar animus toward the Flow-Through Pilots, IDENTIFY, as
 11 to EACH such incident of conduct you identify, the person(s) YOU believe have
 12 personal knowledge of that hostility, discrimination, OR similar animus.

13 **Response:** Objection. Plaintiffs object to this interrogatory because it is
 14 premature in light of the status of discovery. Plaintiffs object to this
 15 interrogatory to the extent that the information is equally available to APA
 16 as to Plaintiffs, in particular as to information derived from the records and
 17 files in the listed arbitrations, and APA can obtain that information from
 18 such records itself more conveniently, and with less burden and expense
 19 than this interrogatory imposes on Plaintiffs. Plaintiffs further object to this
 20 interrogatory as it is seeking mental impressions, conclusions, opinions or
 21 legal opinions privileged under Rule 26(b)(3). Answer. See Attached
 22 Address/Identifying Information Of Persons With Knowledge. Gregory R.
 23 Cordes, APA/AAPSIC's attorneys and Plaintiffs' attorneys have knowledge
 24 of the matters involving the SLI arbitration. The attorneys involved in the
 25 remedy hearing in FLO-0108 and Arbitrator Nicolau have knowledge of the
 26 matters concerning the FLO-0108 arbitration. Gavin Mackenzie has
 27
 28

1 Members and it is premature to identify the persons in the Class until the end
2 of the opt-out period. Plaintiffs further object on the basis that the
3 calculation of these damages will be done by an expert and will be disclosed
4 in accordance with the process for disclosure of expert opinions under Rule
5 26(a)(2) and 26(b)(4) and that an expert has not yet performed the
6 calculations of damages. Answer. The exemplars attached were calculated
7 by Gregory R. Cordes.

8 Dated: December 27, 2016. KATZENBACH LAW OFFICES

9
10 By /s Christopher W. Katzenbach

11 Christopher W. Katzenbach
12 Attorneys for Plaintiffs AMERICAN AIRLINES
13 FLOW-THRU PILOTS COALITION, Et Al.
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VERIFICATION

The undersigned is a plaintiff in this action, has read the foregoing Responses to Interrogatories and states under penalty of perjury under the laws of the United States that the facts stated in these Responses are true and correct to the best of his knowledge and belief.

Dated: December 27, 2016.

A handwritten signature in black ink, appearing to read 'Gregory R. Cordes', is written over a horizontal line.

Gregory R. Cordes

EXHIBIT 12

CHRISTOPHER W. KATZENBACH
(SBN 108006)

Email: ckatzbach@kkcounsel.com

KATZENBACH LAW OFFICES

912 Lootens Place, 2nd Floor

San Rafael, CA 94901

Telephone: (415) 834-1778

Fax: (415) 834-1842

Attorneys for Plaintiffs AMERICAN AIRLINES
FLOW-THRU PILOTS COALITION,
GREGORY R. CORDES, DRU MARQUARDT,
DOUG POULTON, STEPHAN ROBSON,
and PHILIP VALENTE III on behalf of themselves and all
others similarly situated

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

AMERICAN AIRLINES FLOW-
THRU PILOTS COALITION, Et Al.,

Plaintiffs,

vs.

ALLIED PILOTS ASSOCIATION, Et
Al.,

Defendants.

Case No.: 3:15-cv-03125 RS

PLAINTIFFS' RESPONSE TO
ALLIED PILOTS ASSOCIATION'S
FIRST SET OF REQUESTS FOR
ADMISSIONS TO PLAINTIFFS

Rule 36, FRCP

PROPOUNDING
PARTY:

Defendant ALLIED PILOTS ASSOCIATION
(herein "APA")

RESPONDING PARTY:

Plaintiffs AMERICAN AIRLINES FLOW-THRU
PILOTS COALITION, GREGORY R. CORDES,
DRU MARQUARDT, DOUG POULTON,
STEPHAN ROBSON, and PHILIP VALENTE III

SET NO.:

One (1)

GENERAL OBJECTIONS AND QUALIFICATIONS

1. The Responses herein are made on the basis of the Responding Party's present knowledge and belief.

2. The qualifications made as to any admission, if not deemed to constitute a qualification under Rule 36 of the Federal Rules of Civil Procedure, should be construed as an objection.

3. The Responding Party generally qualifies and objects to the Requests as follows on the basis that terms used in the Requests are misleading and therefore uncertain as to what matter the Request is seeking an admission: (a) The term "single transportation system" has a technical meaning for purpose of the Railway Labor Act ("RLA") and any admission is only to the technical meaning of that term as used by the NMB in its decisions. (b) The Railway Labor Act ("RLA") does not use the term "exclusive representative" or "exclusive collective bargaining representative" and the RLA does not confer a status of exclusive representative as to all matters involving employees represented by unions under the RLA. (c) A description of APA's representation as the representation of the craft or class of Flight Deck Crew Members at the single transportation system comprised of American Airlines, Inc. and Trans World Airlines, LLC (TWA-LLC) is misleading and confusing as TWA-LLC ceased to exist as a carrier as of about December 2001 and thereafter was operated as an affiliate or subsidiary of American; TWA-LLC's FAA certifications ended in about September 2004; former TWA pilots were integrated into the American pilot seniority list in 2001 and such integration became effective in about April 2002; when TWA-LLC was not a separate carrier from American, it had no employees independently of American; and prior to April 3, 2002, APA was the representative of the TWA-LLC pilots for purposes of the RLA separately from representation of pilots at American.

1 transportation system. Any matter admitted herein is subject to the
 2 following qualifications: (a) the decision of the National Mediation Board
 3 (“NMB”) sets out its findings and conclusions and this admission is without
 4 prejudice to reference to the NMB’s decision itself; (b) the term “single
 5 transportation system” has a technical meaning for purpose of the Railway
 6 Labor Act (“RLA”) and this admission is only to the technical meaning of
 7 that term as used by the NMB in its decisions; (c) the extension of the
 8 certification was for the purposes of representing employees under the RLA
 9 and did not alter contractual terms; (d) the RLA does not use the term
 10 “exclusive representative” or “exclusive collective bargaining
 11 representative” and the RLA does not confer a status of exclusive
 12 representative as to all matters involving employees represented by unions
 13 under the RLA. Except as admitted, denied.

14 **Request for Admission No. 18:** Admit that the Allied Pilots Association
 15 remained the certified exclusive collective bargaining representative under the
 16 Railway Labor Act of the craft or class of Flight Deck Crew Members at the single
 17 transportation system comprised of American Airlines, Inc. and Trans World
 18 Airlines, LLC (TWA-LLC), continuously from April 3, 2002 through September
 19 15, 2014.

20 **Response: Objection.** This Request is not a simple and direct request
 21 limited to singular, relevant facts, but is compound, vague, ambiguous and
 22 misleading. **Answer.** Admitted that the Allied Pilots Association remained
 23 the representative under the Railway Labor Act of the craft or class of Flight
 24 Deck Crew Members at American Airlines, Inc. continuously from April 3,
 25 2002 through September 15, 2014. Any matter admitted herein is subject to
 26 the following qualifications: (a) the RLA does not use the term “exclusive
 27 representative” or “exclusive collective bargaining representative” and the
 28 RLA does not confer a status of exclusive representative as to all matters

1 involving employees represented by unions under the RLA; (b) TWA-LLC
 2 ceased to exist as a carrier as of about December 2001 and thereafter was
 3 operated as an affiliate or subsidiary of American; (c) TWA-LLC's FAA
 4 certifications ended in about September 2004; (d) former TWA pilots were
 5 integrated into the American pilot seniority list in 2001 and such integration
 6 became effective in about April 2002; (e) prior to April 3, 2002, APA was
 7 the representative of the TWA-LLC pilots for purposes of the RLA. Except
 8 as admitted, denied.

9 **Request for Admission No. 19:** Admit that, on August 8, 2014, the
 10 National Mediation Board issued "Findings Upon Investigation" in its Case No. R-
 11 7404, concluding that American Airlines, Inc., and US Airways, Inc. were
 12 operating as a single transportation system known as "New American."

13 **Response:** Admitted that on August 8, 2014, the National Mediation Board
 14 issued "Findings Upon Investigation" in its Case No. R-7404, concluding
 15 that American Airlines, Inc., and US Airways, Inc. were operating as a
 16 single transportation system for representational purposes under the RLA
 17 and that the NMB referred to the carries collectively as "New American."
 18 Any matter admitted herein is subject to the following qualifications: (a) the
 19 decision of the National Mediation Board ("NMB") sets out its findings and
 20 conclusions and this admission is without prejudice to reference to the
 21 NMB's decision itself; (b) the term "single transportation system" has a
 22 technical meaning for purpose of the Railway Labor Act ("RLA") and this
 23 admission is only to the technical meaning of that term as used by the NMB
 24 in its decisions; (c) the carrier operates under the name and is known as
 25 "American Airlines," at the time of the NMB decision was operating under
 26 the names "American Airlines" and "US Airways" and at various times
 27 persons may have referred to the merged system as "New American."
 28 Except as admitted, denied.

1 Flow-Through Agreement does not define what is a “new hire” position and
 2 (b) that arbitrations under the Flow-Through Agreement determined that the
 3 positions offered certain TWA-LLC pilots were “new hire” positions for
 4 purposes of the Flow-Through Agreement. Denied that the terms of the
 5 Flow-Through Agreement put pilots on notice that that jobs at American
 6 were not guaranteed as the Flow-Through Agreement guaranteed positions
 7 at American when American had new hire classes. Denied if the term “on
 8 notice” means that pilots had any actual understanding as to jobs not being
 9 guaranteed, as the understanding at the time the Flow-Through Agreement
 10 was signed was that American would continue to hire new pilots because of
 11 retirement, resignation, death, disability or loss of certification of existing
 12 pilots and because of expansion of operations and the specific expectations
 13 of the negotiators is that all eligible Eagle captains would flow-up to
 14 American before the Flow-Through Agreement expired. Except as admitted,
 15 denied.

16
 17 Dated: December 27, 2016. KATZENBACH LAW OFFICES

18
 19
 20 By s/ Christopher W. Katzenbach

21 Christopher W. Katzenbach
 22 Attorneys for Plaintiffs AMERICAN AIRLINES
 23 FLOW-THRU PILOTS COALITION, Et Al.
 24
 25
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 27
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EXHIBIT 13

In the Matter of the
Arbitration Between:

AIR LINE PILOTS ASSOCIATION,
INTERNATIONAL,

and

AMERICAN EAGLE AIRLINES, INC.,

and

ALLIED PILOTS ASSOCIATION,

and

AMERICAN AIRLINES, INC.

Grievance Under Letter Three/
Supplement W

Case No. FLO-0106
AA Recall

OPINION AND AWARD

Hearing Dates: May 23, 2007 and May 25, 2007
Hearing Location: San Francisco, California
Date of Award: March 13, 2008

JOHN B. LaROCCO
Arbitrator
2001 H Street
Sacramento, CA 95811-3109

APPEARANCES

For the Air Line Pilots Association
Wayne M. Klocke, Esq.
Air Line Pilots Association, Inc.
1001 West Eulless Boulevard, Suite 415
Eulless, Texas 76040

For the Allied Pilots Association
David P. Dean, Esq.
James & Hoffman
1101 17th Street, NW, Suite 510
Washington, D.C. 20036

For American Eagle Airlines, Inc.
Intra L. Germanis, Esq.
Paul Hastings, LLP
875 15th Street, NW
Washington, D.C. 20005

For American Airlines, Inc.
Brian Z. Liss, Esq.
Morgan Lewis & Brockius, LLP
1111 Pennsylvania Avenue, NW
Washington, D.C. 20036

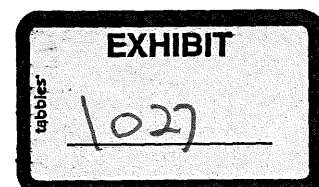


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OPINION

I. INTRODUCTION

On November 16, 2006, the Airline Pilots Association, International (ALPA) filed a grievance invoking the dispute resolution procedures in Section VI of Letter Three/Supplement W, an agreement between four parties: ALPA, American Eagle Airlines, Inc. (AE), Allied Pilots Association (APA), and American Airlines, Inc. (AA). On November 29, 2006, ALPA properly progressed the grievance to the undersigned Arbitrator for a decision on its merits. [ALPA Exhibit 2]

At the May 23, 2007 hearing, the four parties stipulated that the issue is whether AA's order of recall, which excludes some flow-through pilots holding AA seniority numbers, violates Letter Three/Supplement W and, if so, what is the appropriate remedy. [TR 9] The parties also stipulated that in the event that the answer to the issue involves a remedy, the case shall be remanded to the four parties on the property for possible resolution, with the Arbitrator retaining jurisdiction over any dispute with regard to the appropriate remedy. [TR 9]

At the hearing, the parties agreed that upon proper notice, evidence admitted at prior Letter Three/Supplement W arbitrations shall be admitted into the record herein. The parties specifically alluded to the following five arbitration decisions: *Air Line Pilots Association, Allied Pilots Association, American Airlines, and American Eagle Airlines*, Nos. FLO-0201, FLO-0301, FLO-0401, and FLO-0501 (Kasher, 2003); *American Airlines, American Eagle Airlines, Allied Pilots Association and Air Line Pilots Association*, No. FLO-0203 (Bloch, 2004); *Air Line Pilots Association International, American Eagle Airlines, Inc., Allied Pilots Association and American Airlines, Inc.*, No. FLO-0303 (LaRocco, 2004); *American Eagle Airlines, American Airlines, Inc., Air Line Pilots Association International, Allied Pilots*

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Association, Nos. FLO-0403, FLO-0503 (Briggs, 2004); and *Air Line Pilots Association International and American Eagle Airlines, Inc., Allied Pilots Association and American Airlines, Inc.*, No. FLO-0903 (LaRocco, 2007).¹

Subsequent to the hearing, the parties filed opening and reply post-hearing briefs. The Arbitrator received the reply post-hearing briefs on or about August 28, 2007. At various times thereafter, the parties asked the Arbitrator to hold the matter in abeyance. Eventually, the parties submitted the case for a final and binding decision.

II. PERTINENT AGREEMENT PROVISIONS

Letter Three/Supplement W became effective in 1997.² Sections III and IV of Letter Three/Supplement W established pilot mobility between AE and AA. AE pilots may flow through or up to AA, while AA pilots may flow back or down to AE. AA pilot hiring triggers the flow-through process, while an AA pilot furlough triggers the flow-down process. The dispute in this case concerns the operation of the flow-through process in conjunction with AA's recall of pilots from its seniority roster.

The topical heading of Section III of Letter Three/Supplement W states "Employment Opportunities at AA for AMR Eagle, Inc. Pilots." Section III is quoted below in its entirety:

- A. At least one (1) out of every two (2) new hire positions per new hire class at AA will be offered to CJ Captains who are line pilots and who have completed their IOE [Initial Operating Experience] at AMR Eagle, Inc. Such positions will be offered to the CJ Captains who are line pilots in order of their AMR Eagle, Inc. seniority.

¹ These cases will be cited herein according to the name of the Arbitrator and the FLO number, if necessary.

² The parties signed Letter Three/Supplement W on May 5, 1997. The four-party agreement is labeled "Letter 3" to the basic agreement between ALPA and AE and it is labeled "Supplement W" to the basic agreement between APA and AA. [Joint Exhibit 1, ALPA Exhibit 1]

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- B. If a CJ Captain is unable to fill a new hire position at AA in accordance with Paragraph III.A. above, due to a training freeze or other operational constraint, (see Paragraph III.J. below), such CJ Captain will be placed on the AA Pilots Seniority List and will count toward the number of new hire positions. The pilot's AA occupational seniority date and number will be established as if he were able to fill such new hire position at AA and had attended the new hire training class referenced in Paragraph III.A. above. Such pilot's length of service for pay purposes, date of hire for pension purposes, and length of service for vacation accrual will be established in accordance with III.C. below. The number of such CJ Captains will not exceed the difference between the number of CJ Captains who are able to fill new hire positions at AA and the number of new hire positions which must be offered to CJ Captains in accordance with Paragraph III.A. above.
- C. A CJ Captain's (1) placement on the AA Pilots Seniority List (except as provided in Paragraph III.B. above which is only applicable for placement on the AA Pilots Seniority List in order to establish an AA occupational seniority date and number), (2) length of service for pay purposes, and (3) "date of hire" for pension purposes will be based on the date such pilot is entered on the AA payroll. Such pilot's length of service for vacation accrual will be based on the cumulative total of the pilot's service at AMR Eagle, Inc. and AA.
- D. If a CJ Captain is placed on the AA Pilots Seniority List per III.B. above, such CJ Captain will receive priority based on his AA seniority in filling a new hire position in the next new hire class, following release from a training freeze or other AMR Eagle, Inc. imposed operational constraint. Such CJ Captains will not count toward the number of new hire positions offered to CJ Captains at AMR Eagle, Inc., under Paragraph III.A. above.
- E. Each of the first 125 AMR Eagle, Inc. pilots who successfully complete transition training as a CJ Captain must fulfill a training freeze for a period of eighteen (18) months from the date said pilot completes IOE. All other pilots who successfully complete transition training as CJ Captains must fulfill a training freeze for a period of two (2) years from the date each pilot completes IOE, unless released from such training freeze by AMR Eagle, Inc.
- F. An AMR Eagle, Inc. pilot may, not later than the completion of IOE for a CJ Captain position or at such time as the pilot is able to demonstrate hardship, elect to forfeit the opportunity to secure a position on the AA Pilots Seniority List as provided by this Supplemental Agreement. Such pilot will hereinafter be referred to as an "Eagle Rights CJ Captain," and will not be eligible for a future new hire position at AA which may otherwise become available under Paragraph III of this Supplemental Agreement. The existence of a hardship for this purpose shall be approved by the ALPA AMR Eagle MEO Chairman and the appropriate management official(s).

- G. A CJ Captain who is awarded a new hire position at AA will be issued the lowest seniority number at AA in the applicable new hire class, subject to AA's policy concerning the assignment of seniority numbers to new hire pilots who have previous service in other employee classifications. AMR Eagle, Inc. pilots will receive their AA seniority number in order of their seniority at AMR Eagle, Inc.
- H. A CJ Captain who accepts a new hire position at AA may bid and will be awarded a bid status vacancy based upon such pilot's AA seniority at the time of his transfer to AA. Such pilot must fulfill a one year lock-in in the bid status which is awarded or assigned. Such pilot will not be required to serve a probationary period at AA.
- I. A CJ Captain who accepts a new hire position at AA must qualify for the initial bid status position which such pilot is awarded or assigned at AA. A pilot who meets the physical requirements at his AMR Eagle, Inc. carrier will be deemed to have met the physical requirements at AA, provided that a pilot who accepts a new hire position at AA must have an FAA First Class Medical Certificate, and must not be on the disability list or the long term sick list. In addition, at the time such pilot accepts a position at AA, he must meet AA's then current criteria for future promotion to Captain at AA.
- J. A CJ Captain who accepts a new hire position at AA may be withheld from such position for operational reasons, provided the pilot is paid the greater of the rate of pay for the CJ Captain flying being performed at the applicable AMR Eagle, Inc. pay rates, or the highest equipment rate of pay for the AA bid status from which withheld up to the applicable AA monthly maximum. Such withholding will be limited to a maximum of six (6) months. [Emphasis added] [ALPA Exhibit I]

The topical heading of Section IV of Letter Three/Supplement W reads "Furlough Protection at AMR Eagle, Inc. for Pilots Furloughed from AA." Section IV is quoted below:

- A. A pilot furloughed from AA may displace a CJ Captain at an AMR Eagle, Inc. carrier provided that the number of CJ Captain positions available to furloughed AA pilots will be limited to the total number of CJ Captain positions at AMR Eagle, Inc. less the number of Eagle Rights CJ Captains.
- B. A furloughed AA pilot may displace
 - 1. A CJ Captain, other than an Eagle Rights CJ Captain, who has not been awarded a seniority number at AA, in reverse order of AMR Eagle, Inc. seniority; and then

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2. A CJ Captain who has accepted a position on the AA Pilots Seniority List pursuant to Paragraph III.B. above, or a CJ Captain who was previously furloughed from AA, in reverse order of AA seniority.
- C. If no CJ Captain position at AMR Eagle, Inc. is available for a furloughed AA pilot, such pilot shall not have any further displacement rights at AMR Eagle, Inc. and shall be furloughed as an AA pilot, with the exception that a furloughed AA pilot who is displaced from CJ Captain status may elect either of the following options:
1. Such pilot may use seniority accrued at AMR Eagle, Inc. to bid a vacancy or displace at such carrier in accordance with the applicable collective bargaining agreement provided that no AMR Eagle, Inc. pilot on the current Eagle seniority list will be furloughed as a result of this provision consistent with Paragraph IV.K. below; or
 2. Such pilot may relinquish his position at the AMR Eagle, Inc. carrier and will receive furlough pay due under the Basic Agreement between AA. and the Allied Pilots Association ("APA"). The rights and obligations of a furloughed AA pilot who relinquishes a position at AMR Eagle, Inc. will be the same as any other furloughed AA pilot, except that such pilot shall have a right of recall for ten years to any vacant CJ Captain position in the reverse order of displacement specified in Paragraph IV.B. above.
 3. When a CJ Captain who has been furloughed under Paragraph IV.C.2. above is offered, by written notice from AMR Eagle, Inc., the opportunity to return to duty as a CJ Captain and such pilot elects, by written notice to AMR Eagle, Inc., not to return to duty, such pilot forfeits the right of recall to AMR Eagle, Inc. Such pilot shall maintain the seniority right of preference for recall to AA under the terms of the Basic Agreement between AA and APA.
- D. Eagle Rights CJ Captains are not subject to displacement by furloughed AA pilots, or any pilot who has been awarded an AA seniority number pursuant to Paragraph III.B. above.
- E. A furloughed AA pilot who accepts a CJ Captain position at AMR Eagle, Inc. and has not completed the 12 month probationary period at AA will be subject to the following provisions.
1. 0-9 months of probation completed at AA when furloughed: the pilot shall complete the remaining months of probation at AMR Eagle, Inc.
 2. 10-12 months of probation completed at AA when furloughed: no further probation required at AMR Eagle, Inc. or AA.

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3. A furloughed AA pilot who fails to satisfactorily complete the probationary period at AMR Eagle, Inc. as specified above must complete the remaining months of the required AA probation period following recall to AA.
- F. The rights and obligations of a furloughed AA pilot who accepts a position as a CJ Captain will be the same as any other furloughed AA pilot, except such pilot shall not be eligible for furlough pay while employed as a pilot at AMR Eagle, Inc. and any time served as CJ Captain will not be counted against the 10 year duration of such pilot's right to reemployment at AA.
- G. A furloughed AA pilot's seniority for bidding purposes at AMR Eagle, Inc. will be based on length of service at AMR Eagle, Inc. accrued following furlough from AA. Such pilot's length of service for pay and benefit purposes shall be the combined length of service at AA and length of service at AMR Eagle, Inc. accrued following furlough from AA. The only pilot who can displace a furloughed AA pilot from the position of CJ Captain is a more senior furloughed AA pilot.
- H. In the event of a reduction in the number of CJ Captain positions at AMR Eagle, Inc., displacements from CJ Captain status will be in the following order:
1. A CJ Captain who has not been awarded a seniority number at AA, in reverse order of AMR Eagle, Inc. seniority; and then
 2. A CJ Captain who has been awarded a position on the AA Pilots Seniority List pursuant to Paragraph III.B. above, or a CJ Captain who was previously furloughed from AA, in reverse order of AA seniority; and then
 3. An Eagle Rights CJ Captain, in reverse order of AMR Eagle, Inc. seniority.
- I. If a CJ Captain on furlough from AA declines a recall to AA, such pilot's position at AMR Eagle, Inc., including such pilot's position as a CJ Captain, will from that time on for all purposes be based solely on the pilot's seniority with AMR Eagle, Inc. accrued following furlough from AA.
- J. A CJ Captain who accepts a recall to AA may be withheld from such vacancy, provided the pilot is paid the greater of the rate of pay for the CJ Captain flying being performed at the applicable AMR Eagle, Inc. pay rates, or the highest equipment rate of pay for the AA bid status from which withheld up to the applicable AA monthly maximum. Such withholding will be limited to a maximum of six (6) months.

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K. No Executive Airlines, Inc. pilot with a seniority number greater than G.A. Cruz's (#200), hired 3/19/97, and no Flagship Airlines, Inc. pilot with a seniority number greater than E.L. Kelley's (#552), hired 6/27/94, and no Simmons Airlines, Inc. pilot with a seniority number greater than M.E. Waggoner's (#829), hired 4/21/97, and no Wings West Airlines, Inc. pilot with a seniority number greater than D.B. Seay's (#414), hired 4/7/97, will be furloughed as a result of a furloughed AA pilot displacing into a CJ Captain position. This number will be reduced in the event that an airline operating entity of AMR Eagle, Inc., is no longer a part of AMR Eagle, Inc. (the "Disposed Operation"). In such event, the number of pilots who will not be furloughed at AMR Eagle, Inc. will be reduced by a number which equals the great of (1) the number of AMR Eagle, Inc. pilots employed at the Disposed Operation on the date of this Supplemental Agreement, or (2) the number of pilots employed at the Disposed Operation on the effective date of the transaction which separates the Disposed Operation from AMR Eagle, Inc. Furlough protections provided by this paragraph will be applicable for a period of five (5) years from the date of this Supplemental Agreement, at which time furlough protection as provided by this paragraph will be extended to all the pilots who are on the AMR Eagle, Inc. system seniority list as of that date. AMR Eagle, Inc. pilots hired thereafter will not be afforded the protections of this paragraph.

1. If there is a reduction in the number of CJ Captains not due to an AA pilot displacing a CJ Captain, the provisions of this paragraph do not apply. [Emphasis added] [ALPA Exhibit 1]

The terms and conditions of the parties' basic collective bargaining agreements [the APA/AA Basic Agreement and the ALPA/AE Basic Agreement] continue to apply except when provisions of Letter Three/Supplement W conflict with provisions of the basic agreements. Section I.C. of Letter Three/Supplement W provides:

C. This Supplemental Agreement supplements and makes certain exceptions to the Basic Agreements between the parties. The provisions of the Basic Agreements will continue to apply, except as modified herein and, in the event of a conflict, the provisions herein shall apply. [Emphasis added] [ALPA Exhibit 1]

Besides the provisions of Letter Three/Supplement W, the parties also cite and rely on certain sections from the APA/AA Basic Agreement. Section 13.D. of the APA/AA Basic Agreement provides:

Seniority shall govern all pilots in case of promotion, demotion, their retention in case of reduction in force, their recall from furlough, their assignment or reassignment due to expansion or reduction in force or schedules, and their choice of vacancies, provided that the pilot is sufficiently qualified for the conduct of the operation to which he is to be assigned. In the event a pilot is considered not to be sufficiently qualified, the Company shall promptly furnish such pilot written reasons therefore. This paragraph shall apply, provided that certain other rules in this Agreement stipulating specific methods and procedures of applying system seniority shall govern such application of system seniority only to the extent of the specific provisions of such rules. [Emphasis added] [Joint Exhibit 1]

Section 17.V.5.b.2. of the APA/AA Basic Agreement states:

Furloughed pilots who are recalled to the employ of the Company shall be allowed a period of twenty-one (21) days to return to the service of the Company after date of postmark of reply-requested telegram or cablegram, or certified return-receipt-requested letter, of such pilot's reassignment to duty with the Company, sent to the last address on file with the Vice President-Flight of the Company. [Emphasis added] [Joint Exhibit 1]

On November 8, 2001, which was after AA entered into a contract to purchase the assets of TransWorld Airlines (TWA), APA and AA entered into Supplement CC of the APA/AA Basic Agreement to govern the seniority integration of former TWA pilots into the AA seniority roster once the National Mediation Board (NMB) designated AA and the acquired airline as a single carrier. Section 2 of Supplement CC, which is entitled "Construction of Modified System Seniority List," provides:

The modified System Seniority List will be constructed by integrating the April 10, 2001 AA Pilot Seniority List (i.e., adjusted for hiring and attrition through April 10, 2001) and the TWA Pilot Seniority List as of April 10, 2001 (i.e., adjusted for hiring and attrition through April 10, 2001) in the following manner:

- A. TWA Pilots J.G. Upp, DOH 12/2/63 through Raymond Camus, DOH 3/20/89 will be inserted in the AA Pilot Seniority List on a ratio of approximately one TWA Pilot to 8.1762556 AA Pilots, commencing immediately following AA Pilot W.H. Elder, DOH 108/85 and ending immediately following AA Pilot B.D. White, DOH 4/9/01.³

³ The ratio of 1 to 8.1762556 specified in Section 2.A. of Supplement CC will henceforth be referred to as the one-to-eight (1:8) ratio.

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- B. The remaining TWA Pilots commencing with TWA Pilot Thereon Clark, DOH 3/23/89, will be placed in seniority order immediately following TWA Pilot Raymond Camus, DOH 3/20/89.
- C. All pilots hired by American after April 10, 2001 who had been assigned to air line flying duty as of October 1, 2001 will be placed on the modified System Seniority List following pilots referred to in Section II.B. above in accordance with their length of service as flight deck crew members at American, in accordance with Section 13 of the Green Book.
- D. After furloughed pilots (if any) have been recalled and new pilot positions become available, American will offer employment, in seniority order, to all pilots who were hired by American after April 10, 2001 but who had not been assigned to air line flying duty as of October 1, 2001. Each such pilot will be placed on the modified System Seniority List on the date he is first assigned to air line flying duty with American in accordance with Section 13 of the Green Book, following all pilots then on the modified System Seniority List. [Joint Exhibit 1]

III. BACKGROUND AND SUMMARY OF THE FACTS

A. AA's Purchase of TWA

On January 9, 2001, AA entered into an agreement with TWA to purchase its assets while TWA was a debtor in bankruptcy. On February 15, 2001, TWA LLC was established to operate the acquired carrier as a subsidiary of AA. AA purchased the assets of TWA on April 10, 2001. [AA Exhibit 1] APA and AA reached a transition agreement on or about July 10, 2001 which announced that TWA LLC pilots would be integrated into the AA seniority roster. [AA Exhibit 1] Later, Supplement CC set forth the precise formula for seniority integration. [Joint Exhibit 1] APA and AA evinced an intent to provide full employment for all of the former TWA pilots. [APA Exhibit 1] Sometime in December 2001, ALPA and TWA LLC entered into an agreement whereby the TWA LLC pilots were afforded the same pay rates and work rules as contained in the APA/AA Basic Agreement.

TWA LLC was a separate entity from AA although APA submits that they operated as a single carrier. The NMB adjudicated the single carrier issue. In its position statement to the

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NMB, APA contended that the NMB lacked jurisdiction to adjudicate or oversee the integration of the TWA LLC pilots into the AA seniority roster. Nevertheless, APA avered that Supplement CC was a fair and reasonable method for seniority integration, especially since TWA was on the brink of a shut-down which would have left TWA pilots unemployed but for the acquisition.⁴ [APA Exhibit 1] On March 5, 2002, the NMB adjudged that AA and TWA LLC operated as a single carrier for the purpose of union representation under the Railway Labor Act. [45 USC § 151, 152 Ninth] On April 3, 2002, the NMB certified APA as the exclusive bargaining representative for the craft and class of cockpit crew members on AA. [AA Exhibit 1] Shortly thereafter, APA and AA implemented the seniority integration formula set forth in Supplement CC. According to AA, all TWA LLC pilots then fell within the scope of the APA/AA Basic Agreement and AA began a transition of TWA LLC pilots to AA which was purportedly completed by the end of 2004. The TWA LLC certification was not retired until October 2004. [AA Exhibit 1]

B. The Flow-Through Process and AE Pilots' Acquisition of AA Seniority

After the four parties entered into Letter Three/Supplement W in 1997, AE CJ flow-through pilots routinely acquired an AA occupational seniority date and number per Sections III.A. and III.B.

James Anderson, a Principal in Employee Relations with AA, testified that an occupational seniority date is determined by the "...scheduled training completion date for the position each pilot is awarded at the beginning." [TR 245] Anderson elaborated that while a new pilot is given an occupational seniority date at the start of AA training, the seniority does not become effective until training is completed. [TR 245, 252] Anderson opined that under Letter

⁴ APA further stated in its position statement to the NMB that AA was the only suitor seeking to acquire TWA, which was just hours away from an involuntary liquidation. [APA Exhibit 1]

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Three/Supplement W, an AE pilot's occupational seniority date is a "placeholder" on the AA seniority list. [TR 256] He contended that AA Employee Relations has always referred to the seniority dates for flow-through pilots as placeholders. [TR 256]

David Ryter, Vice-Chairman of the AE Master Executive Council, declared that AE flow-through pilots Taylor and Spradley were the first two pilots to go to AA. [TR 56] An AA seniority roster shows that Taylor and Spradley have June 24, 1998 occupational seniority dates. [ALPA Exhibit 7] Homer Pugh, Jr., an AE pilot who was MEC Chair in 1997, related that Taylor and Spradley exercised their two years of accumulated AA seniority after serving a training freeze which allowed them to go to a more favorable equipment assignment than if they had exercised their seniority to AA positions immediately upon obtaining their occupational seniority dates.⁵ [TR 82, 89-90] According to Pugh, the AE flow-through pilot attended the next available class after finishing the training freeze.⁶ [TR 101] Pugh explained that AE pilots were given a seniority number based on the Section III.A. new hire class while they exercised their seniority once they moved from AE to AA. [TR 99]

C. AA and TWA LLC Furloughs

In the wake of the tragic and catastrophic events of September 11, 2001, AA and TWA LLC furloughed a substantial number of pilots. The furloughs halted the assignment of AA seniority numbers to AE pilots, who had elected flow-through status, inasmuch as AA has not convened a new hire training class since Summer 2001. More significantly, the furloughs also prevented AE flow-through pilots, who were serving the training freeze at AE, from moving to AA. Based on AA's January 2007 seniority list, 396 pilots currently flying at AE as CJ Captains

⁵ The record does not reflect when these two pilots were trained at AA or when they began flying at AA.

⁶ Pugh related that, under Section III of Letter Three/Supplement W, the first 125 AE flow-through pilots served an 18-month lock-in at AE, while their successors served a two-year freeze at AE. [TR 99-100]

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were previously afforded AA occupational seniority dates and numbers. They appear on the AA seniority list. These pilots never trained or flew at AA.⁷

Anderson declared that, during October 2001, about 500 pilots were furloughed. [TR 249-250] Of the 500 pilots, 386 pilots were flying or were in training at AA while 118 pilots were flying for TWA LLC. [AA Exhibit 3] On November 8, 2001, 208 pilots flying at AA were furloughed. AA subsequently recalled these pilots on May 1, 2002. On the same date (November 8, 2001), 58 pilots who were flying at TWA LLC were furloughed. [AA Exhibit 3] Between December 2, 2001 and July 2, 2003, approximately 992 pilots were furloughed from TWA LLC.⁸ The last group of pilots (numbering 63) was furloughed from TWA LLC on August 1, 2003. On the same date, 139 pilots flying at AA were furloughed. [AA Exhibit 3]

D. AA Recalls Pilots

Ninety-two of the 386 pilots furloughed from AA during October 2001 had not completed training. [TR 250] Anderson explained that AA will not “per se” recall these 92 pilots pursuant to Section 2.D. of Supplement CC, even though the pilots are listed on the AA seniority roster. [TR 251] Aside from this group of pilots, Anderson believes that AA intends to recall former TWA pilots, who never trained or flew at AA, in their order of seniority as they appear on the AA seniority roster. [TR 258] Anderson emphasized that the AE flow-through pilots who never occupied an AA position, are placeholders with their occupational seniority date on the AA seniority list, and so AA intends not to afford them any recall opportunities. [TR 251,256]

⁷ Ryter counted 408 AE flow-through pilots who never flew at AA but acquired AA occupational seniority dates. Due to attrition, only 396 pilots remain. [TR 61-62]

⁸ AA and APA vigorously object to characterizing these layoffs as a “mass furlough.”

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On January 3, 2007, AA recalled 17 pilots. At the time, 103 flow-through pilots still flying at AE held AA occupational seniority dates senior to the most junior pilot among the 17 recalled pilots. [AA Exhibit 2] AA continued to recall groups of pilots on January 31, March 7, April 4, and May 2, 2007. After the May 2, 2007 recall, 158 flow-through AE pilots holding AA occupational seniority dates were senior to the most junior pilot who had been recalled. [AA Exhibit 2] Ryter gave the example of Basset, a flow-through pilot who is still flying at AE. Since Basset is senior to many of the recalled pilots, he would currently be at AA if he had been given an opportunity for recall. [TR 71-72] Ryter stressed that AA's series of pilot recalls has reached pilots junior to Ketterman, the most senior AA pilot to exercise furlough protection under Section IV of Letter Three/Supplement W. [TR 60]

E. The Negotiating History

The parties submitted extensive evidence about the negotiating history of Letter Three/Supplement W, albeit the four party agreement was hastily hammered out without all four parties ever being together at the bargaining table. [*Kasher* arbitration at p.12]

In March 1997, Jim Sovich was President of APA. He left the presidency in July 1997. [TR 119] Before Arbitrator Kasher, Sovich gave the following testimony concerning AA pilot recalls:

- Q. And it doesn't matter if you are an Eagle Pilot with an AA seniority number or a former American furlougee with an AA –
- A. It's reverse order seniority.
- Q. And if the American furlougee is the junior number to the Eagle Pilot who has an AA seniority number, then the American Pilot would go to the street in the hypothetical, correct?
- A. If we had – if we had Eagle Pilots that had American seniority numbers when we were still hiring on the AA side and a year down the road when they were still being withheld from being able to exercise their American numbers, if AA Pilots had furloughed into a CJ position and there were

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subsequent furloughs, if their number at American was higher than the American Pilot that had furloughed in, he gets bumped out.

Q. Okay. Then I think we agree on that. Now, when American –

A. Thank God.

Q. – recalls, does everybody go up in seniority number order?

A. They should. Assuming that American doesn't withhold somebody or Eagle doesn't withhold somebody, they get paid.

Q. So the American furlougee doesn't have priority rights over the Eagle Captain who has an American seniority number?

A. Unless he's being withheld.

Q. So when the recall comes, the Eagle Captains who have seniority numbers senior to the American furlougees can move up to American ahead of the American furlougees?

A. Assuming there's no withholding that takes place. If there's a recall to 727 Miami, if there's a recall to that, then you would go through basic American Airlines, which includes reinstatement rights, which includes – I don't remember how American runs it, per se. They run displacements first; then they have reinstatements; then you also have – I'm trying to think of what it's called – the entitlement. And then they run proffers. So if you just run proffer openings, there's a different – there's a hierarchy of how people are recalled.

Q. Right.

A. But assuming everything else were equal, then seniority reigns. If we're going to recall 500 guys, the first one that goes is the most senior guy. If he's flying as CJ Captain, if he had never flown at American, it's him. If he's flying as a CJ Captain and was furloughed at American, it's still him.

A. [sic] All right. Now, suppose you're going to recall 500, but there were 600 American furlougees and 300 of the American furlougees are on the street and 300 are at Eagle?

A. You'd still –

Q. And they are interspersed with 300 Eagle Captains who also have AA seniority numbers?

A. Mm-hmm.

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Q. Now, American recalls 500 people. Are you saying it would recall the 300 American furlougees who are in CJ Captain positions?

A. I'm saying they would recall, starting with the most senior Pilot. If they are a CJ Captain at the time and they opt not to withhold him – if they withhold him, they have to pay him like a higher-up. But if they opt not to withhold him, he gets the first training slot as a 727 Miami FE; somebody comes off the street that's the most senior guy that wants to go back into a CJ Captain's spot.

Q. So –

A. It's pure seniority issue.

Q. – an Eagle Captain who has never been at American Airlines, was never hired at American Airlines or trained with American Airlines is going to get recall rights to American Airlines ahead of a furloughed American Pilot who's on the street?

A. If he's senior. Not if he's junior. If he's senior, yes. [Emphasis added]
[Kasher TR at 334-338; ALPA Exhibit 3]

Sovich testified herein that if all the provisions of Letter Three/Supplement W were predicated on pure seniority, an AA pilot recall "...should work..." the way he described a recall in his testimony before Arbitrator Kasher. [TR 132] Sovich now asserts that the only AA door open for an AE pilot is through a new hire class per Letter Three/Supplement W, Section III.D. [TR 134] Sovich hypothesized that recalling pilots would not be an issue but for AE's insistence on inserting a training freeze into Letter Three/Supplement W. Otherwise, all flow-through pilots would have been at AA in a new hire training class prior to September 11, 2001 and thus they would now be eligible for recall opportunities. [TR 133, 147-148]

Sovich related that during the 1997 negotiations, APA and AA did not have any discussion of an AA recall and how it might work under Letter Three/Supplement W. [TR 127] Sovich declared that Letter Three/Supplement W was negotiated within the context of the Chair of the Presidential Emergency Board having informed APA that APA-represented pilots would

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not gain the right to fly regional jets. [TR 121] Sovich further recalled that during negotiations, ALPA wanted the AE pilots to be AA pilots while they served the training freeze. Sovich remembered that AE and AA were concerned that such a proposal might convert the two carriers into a single carrier. [TR 136]

In March 1997, Ralph Hunter was APA's Vice President and its lead negotiator regarding Letter Three/Supplement W. [TR 158-160] Hunter testified in the *Kasher* arbitration as follows:

Q. Well, let me ask you, then: We have a situation at present, as I understand it – if your understanding is different, tell me – where we have American Airlines Pilots on furlough status. We, of course, have American Airlines seniority numbers, and we have American Eagle Pilots who have American Airlines seniority numbers who have never yet worked at American Airlines, and American Airlines has just announced a recall of Pilots. It your understanding [*sic*] of Supp. W that the Eagle Pilots can use their seniority numbers to mingle in or intersperse into that recall back to American?

[Objections and rulings omitted] * * * * *

A. I don't recall any discussions where we entered that level of detail. We did not envision a furlough followed by a TWA mix, followed by an expanding RJ Captains' group and then figuring how to bring them all back. We simply did not have that level of detailed discussion.

Q. What is your understanding of how Letter 3/Supplement W should apply in this situation? Should the American Eagle CJ Captains who have seniority numbers at American be allowed to recall to American in seniority order before the recall of former American Pilots who have been furloughed but who have lower seniority numbers?

[Objections and rulings omitted] * * * * *

A. I'll offer the following: We did not have that level of discussion, and on this subject there are arguments, both of them good, that can be made in both directions, so I have no established opinion on that subject.

Q. Am I correct that the Eagle CJ Captains who have AA seniority numbers that have not yet worked at American have never been subject to the green book with the exception, of course, of Supp. W?

[Objections and rulings omitted] * * * * *

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- A. I think the question is highly philosophical, and there are good debates to have on both sides of these issues. I have not formed an opinion as to how I think it should work because the facts of the matter are, we are talking about an individual that has an American Airlines seniority number. It should be no secret to anybody in this room that seniority is pretty sacred. This is an issue, though, that can be debated both ways, and I, quite honestly, have not formed any opinion on it. [Emphasis added] [Kasher TR 550-555]

Hunter testified in this proceeding that since testifying before Arbitrator Kasher, he has developed an opinion about whether AE flow-through pilots who hold AA seniority numbers but have never flown at AA, are eligible for an AA recall opportunity. [TR 165] Hunter declared that he developed his opinion based on the recall rights set forth in the APA/AA Basic Agreement, Arbitrator Kasher's Opinion, and negotiating documents covering the "birth" of Letter Three/Supplement W. [TR 165] Hunter explained each of these three bases for the formation of his opinion.

First, Hunter contended that the sole source of a pilot's recall right is the APA/AA Basic Agreement because recall to AA is not mentioned in Letter Three/Supplement W. [TR 192-193] Second, Hunter related that Arbitrator Kasher adjudged that the AE CJ Captain position was not the lowest bid status for an AA pilot so that an AA furlougee could not be recalled to AE if the furlougee never held a position at AE. [TR 166-167] Hunter conceded that he was disappointed with Arbitrator Kasher's ruling inasmuch as APA had vigorously argued that AA pilots furloughed from AA moved down a "tube" and so, the AA pilots were at AE for a "nanosecond" before being furloughed to the street. [TR 190] Hunter related that, despite APA's arguments, Arbitrator Kasher held that since the AA furlougee was never at AE, the furlougee had no right of recall to AE. Hunter asserted that the *Kasher* ruling "solidified in my mind" that if a pilot was never at a carrier, then the pilot is not able to be furloughed from that

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carrier, and so the pilot cannot be recalled to that carrier. [TR 191, 236] Third, Hunter related that he examined proposals exchanged during the negotiations over Letter Three/Supplement W. Hunter related that ALPA presented APA with a proposal entitled, "Regional Jet Framework." [TR 169, APA Exhibit 3] Hunter states that one of the items in the ALPA proposal was vested bidding rights for an AE pilot once the AE pilot began to accrue AA seniority. [APA Exhibit 3; TR 170] The same concept was later included in an APA proposal. [TR 173; APA Exhibit 4] Hunter claimed that this concept was not ultimately incorporated into Letter Three/Supplement W. [TR 170] Hunter elaborated that AA did not want an AE pilot to use AA seniority to bid into an AA position and so AA's counter proposal only gave an AE pilot the right to subsequent, preferential hiring at AA. [APA Exhibit 5; TR 174-175] Hunter declared that the negotiators adopted AA's proposal, thereby giving the AE pilot who successfully achieves an RJ Captain position the opportunity for a future position at AA by getting on the AA seniority list. [APA Exhibit 5; TR 175] Hunter then concluded that, in his view, Section III.B. of Letter Three/Supplement W carved out an exception that allowed the CJ Captain, who is unable to fill a new hire position at AA due to the AE training freeze, to obtain AA seniority before the pilot actually comes to AA. Hunter opined that an AE pilot cannot use the seniority to bid on an AA position until the AE pilot actually gets to AA. [TR 180, 212] Therefore, in his opinion, the only way an AE pilot comes to AA is through the new hire process, especially since an AA pilot is recalled exclusively under the APA/AA Basic Agreement. [TR 166, 189]

Hunter acknowledged that the AE flow-through pilots holding AA seniority numbers were counted as AA pilots in computing the 1:8 ratio for integrating former TWA pilots into the AA seniority roster. [TR 231-232] Hunter also acknowledged that he testified in the *Briggs* arbitration that the parties did not intend for an AE pilot to be "...harmed by the fact that he was

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locked in at ..." AE. [ALPA Exhibit 8; Briggs TR at 132] Hunter asserted that an AE pilot is not harmed since the AE pilot does not lose an AA seniority number due to the lock-in, but Hunter conceded that the AE pilot is hurt if the pilot has to wait 10 years to get to AA. [TR 219-223]

Pugh, who was a member of the 1997 ALPA team that negotiated Letter Three/Supplement W, could not recall whether Sovich participated in the 1997 Letter Three/Supplement W negotiations, but he remembered that Sovich was present. [TR 96-97] Pugh testified that, during negotiations, ALPA sought full seniority rights for AE pilots once they received AA seniority numbers. [TR 99] While ALPA did not attain this objective for items like compensation, Pugh asserted that Section III.B. provides that an AE pilot fills a new hire position "as if" the pilot had attended a new hire class, so that AE pilots are eligible for a recall to AA. [TR 98, 108] Pugh acknowledged that the AE pilot does not bid for an AA position until after the pilot serves the training freeze and then, the pilot goes to the next available AA training class. [TR 101] Pugh elaborated that the AE pilot exercises AA seniority once the AE pilot is allowed to move from AE to AA. [TR 99]

Michael Costello, Vice President of the AE People Department, testified in the *Kasher* arbitration that the negotiators of Letter Three/Supplement W did not give an AA furloughed pilot the right-of-recall to AE if the furlougee never held a position at AE. Costello specifically testified that he did not understand "...how it was that you could afford a recall opportunity to a pilot who had never been in the position." [Kasher TR at 961] Costello further testified that, during negotiations, when a proposal arose which would have given an AA furlougee a recall right to Eagle CJ positions, Costello replied, "No." [Kasher TR at 961]

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Brent Wiegand, counsel of Employee Relations at AE, recalled that AA informed AE flow-through pilots (at the time Letter Three/Supplement W went into effect) that AA imposed a 10-year time-to-captain requirement. Pugh remembered that someone in AA management told AE pilots that the time-to-captain requirement was 10 years. [TR 82, 104] Wiegand stated that as a result, only those AE CJ pilots who were 50 years of age or younger were eligible to opt for flow-through status. [TR 112] Wiegand declared that a flow-through pilot was not disqualified from coming to AA if the pilot turned 50 while serving the training freeze. [TR 113] According to an AA seniority roster submitted by ALPA, several AE pilots were permitted to begin flying at AA when they were older than 50, provided that they were younger than 50 at the time that they were afforded AA occupational seniority dates and numbers. [ALPA Exhibit 6]

IV. THE POSITION OF THE PARTIES

A. The Position of the Air Line Pilots Association (ALPA)

Letter Three/Supplement W, Section III.B. vests an AE CJ flow-through Captain with an occupational seniority date and number. Section III.B. goes on to unequivocally provide that the "...seniority date and number will be established as if..." the pilot was able to fill a new hire position. Since the AE flow-through pilot has established AA seniority "as if" the AE pilot filled an AA position, the occupational seniority entitles the pilot to participate in a recall of pilots to AA in seniority order. Any other result unjustly erodes the precious value of occupational seniority.

Section III.C. of Letter Three/Supplement W enumerates exclusions to the use of occupational seniority. These exceptions are vacations, pensions, and length of service pay. The presence of express exceptions in Section III.C. means no other exceptions can be implied. The language of Letter Three/Supplement W, Section III manifests the parties' intent that AE flow-

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through pilots would enjoy all benefits attached to occupational seniority unless the benefit was expressly excluded in Section III.C. Since recall is not among the listed exceptions, AE flow-through pilots are entitled to be afforded an opportunity to be recalled to AA.

An AE CJ Captain accepts an AA position when the pilot elects not to declare Eagle Rights status. Per Letter Three/Supplement W, Sections III.B. and III.G., this CJ Captain is “awarded” a new hire position and a number on the AA seniority list. The AE pilot holds the new hire AA position “as if” the pilot was flying at AA. After the AE Captain fulfills the training freeze, the pilot flows through, or physically transfers to, AA per Section III.H. Section III.H. uses the verb “transfer” rather than a phrase such as “filling a position” because the AE CJ Captain has already procured an AA position based on the pilot’s occupational seniority date. Since the flow-through pilot remained at AE merely to satisfy the training freeze, the pilot continuously holds AA seniority “as if he were able to fill” an AA position. Because the AE pilot is treated “as if” filling an AA position, the pilot is absolutely eligible for recall to AA. Otherwise, AE flow-through pilots would be impermissibly treated the same as Eagle rights pilots.

Arbitrator Kasher rejected APA’s notion that all AA furlougees held an AE position for a nanosecond. AA furlougees who are unable to exercise their AA seniority to actually occupy an AE CJ Captain position never fill an AE position and thus, never acquire AE seniority. In contrast, AE CJ flow-through Captains are assigned AA seniority numbers when they forego Eagle rights status and, after a training freeze, the AE pilot simply transfers to AA. So the fact that some AA furlougees do not have recall rights to AE does not vitiate a flow-through pilot’s right to recall to AA inasmuch as the flow-through pilot holds AA seniority while the AA furlougee holds no AE seniority.

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Sovich, who was APA President when Letter Three/Supplement W was negotiated, testified in the *Kasher* arbitration that an AE pilot with a higher AA seniority number would be recalled ahead of a junior, furloughed AA pilot regardless of whether the AE pilot had actually flown at AA. In this proceeding, Sovich conveniently changed his testimony in a phony attempt to be consistent with APA's constantly changing positions. Using a nonsensical, post-hoc rationalization, Sovich now claims that Section III denigrated the seniority rights of AE pilots unless they actually flew at AA. Yet, Sovich's prior testimony before Arbitrator Kasher was not only an admission about how APA truly interprets Section III, but also was much more reliable since the *Kasher* proceeding was closer in time to the 1997 negotiations than this arbitration. Moreover, Hunter, another APA officer, conceded that the purpose of Section III.B. was to insulate an AE pilot from harm that the pilot would endure as a consequence of serving a training freeze. The protection from harm comes in the form of a guarantee that all AE flow-through pilots are recalled in order of their AA occupational seniority. After the issuance of the *Kasher* decision, APA, for the first time, arbitrarily argued that the flow-through pilots still working at AE were not entitled to recall. Even if it was unhappy with the *Kasher* decision, APA cannot credibly change its position.

Although Section IV of Letter Three/Supplement W applies to the flow-down process, Section IV.J. connects an AE flow-through CJ Captain to an AA recall. Section IV.J. states that a "CJ Captain who accepts a recall to AA" can be frozen at AE for six months. The term "CJ Captain" encompasses the entire universe of AE flow-through pilots, especially since the express language of Section IV.I. narrows the universe to CJ Captains "on furlough from AA," a pivotal phrase which does not appear in Section IV.J. In addition, Section IV.B.2. sets the order for displacement. This process treats CJ Captains with AA seniority numbers the same as a CJ

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Captain who has been furloughed from AA. If AA seniority is used for displacement purposes, there is no reason to deviate from AA seniority for recall purposes. These provisions demonstrate that recall was not an improbable event when the parties negotiated Letter Three/Supplement W.

Besides Letter Three/Supplement W, Section II.BB. of the APA/AA Basic Agreement defines occupational seniority as follows:

Generally occupational seniority shall begin to accrue from the date a pilot is first scheduled to complete initial new hire training with the Company and shall continue to accrue during such period of duty except as provided in Section 11 and 12 of this Agreement. Occupational seniority is used for determining placement on the Pilot System Seniority list and for bidding purposes. Any references to seniority in this Agreement are to Occupational Seniority, unless otherwise specified.

Section 13 of the APA/AA Basic Agreement then provides that seniority governs "recall from furlough." AE flow-through pilots have AA seniority. Section 13 says nothing about by-passing any pilot holding an AA seniority number.

Many CJ Captains currently flying at AE hold AA seniority superior to former TWA pilots. One thousand ninety-five (1,095) TWA pilots were integrated into the AA seniority list according to the 1:8 ratio. AE flow-through pilots were not bypassed in applying the ratio. The remaining TWA pilots (about 1,225) were stapled to the bottom of the AA list. None of these staplees were trained at AA. Counting the number holding AE pilots in the 1:8 ratio cemented the career expectations for both flow-through pilots and former TWA pilots. The 1:8 ratio protected AA pilots by placing the burden of any future financial risk on TWA pilots. APA acknowledged that TWA was on the verge of bankruptcy at the time of AA's acquisition of TWA. The TWA pilots would have been unemployed but for the acquisition. It is not surprising that the staplees bore the brunt of financial risks in the seniority integration. Recalling pilots in

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seniority order satisfies all pilots' career expectations, regardless of whether they started at AE, AA, or TWA. Similarly, since AE pilots, who never flew at AA, were included in the TWA seniority integration, their seniority must be recognized for all related purposes, including recall eligibility. Furthermore, if the AE pilots are AA pilots for the purpose of TWA seniority integration, APA is estopped from arguing that the AE pilots cannot be AA pilots for recalls.

AA's application of its time-to-captain requirement demonstrates that an AE pilot's seniority is effective when his seniority number is assigned, as opposed to when the AE pilot actually comes to AA. In other words, the AE pilot's seniority date determines if the pilot meets the time-to-captain as opposed to using a later date which might have otherwise rendered several AE pilots, who went to AA, ineligible for flow-through status.

ALPA's interpretation of Letter Three/Supplement W avoids a harsh and absurd result. Under APA's interpretation, an AE pilot with a pre-September 11, 2001 AA seniority number will start active employment at AA after junior pilots with lower seniority numbers. The number-holding AE pilots will receive no reward for the risk and sacrifice caused by opting out of Eagle rights status. Letter Three/Supplement W must be interpreted as having some semblance of fairness. Finally, ALPA's interpretation avoids a forfeiture of seniority. Seniority is universally recognized in the airline industry as a valuable employee benefit and the most severe limitation on management discretion. A forfeiture of seniority should not be applied unless expressly stated. To reiterate, Letter Three/Supplement W does not contain any term excluding AE pilots from recall to AA.

B. The Position of American Eagle Airlines, Inc.

But for a mandatory training freeze, all AE pilots who flowed through to AA by acquiring AA seniority numbers would have actually commenced flying at AA in 1999-2001.

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Now, AA and the APA refuse to honor the seniority numbers of many flow-through pilots in the current series of recalls. By recalling junior furloughed AA pilots while bypassing AE pilots with higher AA seniority numbers, AA violates the sanctity of seniority. *Trans World Airlines, Inc. v. IFFA*, 489 U.S. 426, 450 n.6 (1989), *quoting* *Humphrey v. Moore*, 375 U.S. 335, 346-47 (1964). *See also, Abdu-Brisson v. Delta Air Lines, Inc.*, 239 F.3d 456, 463 (2d Cir. 2001). AA will exacerbate its continuing violation of Section III of Letter Three/Supplement W by recalling more than 1,000 former TWA pilots who have never trained or flown at AA and who also hold lower seniority numbers than AE flow-through pilots.

Sections III.B., III.G., and III.I. provide that an AE CJ Captain receives an AA seniority number and occupational seniority date. The number and date is “established as if” the pilot was able to fill an AA position. Since the AE flow-through pilot is treated as filling an AA position, AA must honor the seniority number acquired by the pilot “as if” the pilot had attended AA training when the pilot was first eligible to do so. Per Sections III.H., III.I., and III.J., the AE pilots previously accepted new hire positions. Moreover, because III.G. expressly states that the CJ Captains were “awarded a new hire position...” at AA, the flow-through AE pilots still flying at AE must be recalled in seniority order to the positions that they were awarded in 1999-2001.

Similarly, Section III.A. guarantees that AE pilots “will be offered” AA positions. Section III.B. states that an AE pilot establishes a seniority date and number “as if” the pilot is able to fill a position and attend a training class. Section III.G. provides that a CJ Captain “is awarded” an AA position in conjunction with being issued an AA seniority number. The words “offered,” “awarded,” and “as if” must be accorded their ordinary and usual meanings. Consequently, each AE flow-through pilot filled a “virtual” AA position at the time the pilot obtained an AA seniority number because only the training freeze prevented the pilot from

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actually filling a position. Each pilot is now entitled to be recalled to the pilot's previously "awarded" position. AA and APA are forbidden from blatantly disregarding the seniority date and numbers held by AE pilots when recalling pilots to AA.

Between October 1999 and June 2001, 121 AE flow-through pilots were awarded AA seniority numbers, served the training freeze, and actually began flying at AA. During the same two years, about 400 other AE pilots were awarded AA seniority numbers with an AA seniority date, but were barred from attending an AA new hire training class before the September 11, 2001 tragedy due to the training freeze. Currently, 396 of these pilots remain at AE. Basset is the most senior. In the aftermath of September 11, about 600 AA furlonghees flowed down to AE. These AA pilots reaped a valuable benefit consisting of job security, while the AE pilots were indefinitely deprived of an opportunity to fly at AA despite risking their livelihoods and airline careers for seven years. Recalling AE pilots in seniority order promotes the risk versus reward policy which was the central principle in Letter Three/Supplement W. The AE pilots who elected flow-through status sacrificed a great degree of job security in exchange for future career opportunities at AA. By staying at AE (and maybe displaced from CJ Captain) for many years, they suffered extreme hardship. AA wrongly disavows AE pilots' AA seniority, which denies AE pilots access to the reward of Letter Three/Supplement W.

On January 3, 2007, AA recalled 17 pilots. One hundred three AE pilots still flying at AE had AA seniority numbers senior to the most junior recalled pilot. AA continued monthly recalls through May 2007. Each month, AA bypassed AE flow-through pilots with greater AA seniority than those pilots to whom AA extended recall opportunities. As of the date of the hearing herein, the most junior recalled pilot was Bradshaw, with AA seniority No. 9567. One hundred fifty-eight AE flow-through pilots flying at AE had seniority dates senior to No. 9567.

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These AE pilots have not been recalled. As of the date of the hearing herein, AA had not recalled any of the former TWA pilots, who had never trained or flown at AA, but AA intends to do so. These former TWA pilots, who are akin to new hire pilots, cannot supplant the more senior AE pilots.

The first and last sentences of Section III.I. of Letter Three/Supplement W state in pertinent part, “A CJ Captain who accepts a new hire position at AA...” is subject to the time-to-captain requirement imposed by AA. AA mandated that all flow-through AE pilots must satisfy AA’s current criteria for future promotion to captain at AA to be eligible to flow-through to AA. To comply with the 10-year time-to-captain standard before compulsory retirement at age 60, an AE pilot could not opt for flow-through status if the pilot was age 50 or older upon completing CJ Captain IOE. However, several AE pilots who were under or at age 50 when they completed IOE were awarded AA seniority numbers even though they were older than age 50 at the end of the training freeze when they actually began flying at AA. AA’s application of its time-to-captain requirement demonstrates that the AE pilots are vested with AA seniority when they receive the number. Otherwise, AA would have asserted that AE pilots with AA numbers who were over age 50 when the training freeze ended, could not commence flying at AA. Correspondingly, a right to recall to AA matured when an AE pilot received an AA seniority date and number, even though the pilot did not physically attend an AA training class due to the training freeze.

Section IV.J. of Letter Three/Supplement W states that a “CJ Captain who accepts a recall to AA” can be withheld from the AA vacancy with pay protection. Section III.I. addresses the consequences of a “CJ Captain” who declines an AA recall. Significantly, these are the only subsections in Section IV that identify a “CJ Captain.” The rest of Section IV alludes to either a

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“furloughed AA pilot” or a “pilot furloughed from AA.” The “CJ Captain” designation clearly connotes a broader group of pilots than merely those AE flow-through pilots who were actually furloughed from AA. Otherwise, the drafters of Section IV would have used the term “a furloughed AA pilot” in Section IV.J. In other words, the group described in Section IV.J. includes former CJ Captains who were furloughed from AA plus CJ Captains holding AA seniority numbers.

The APA/AA Basic Agreement calls for recalling pilots in seniority order. Section 13.D. unequivocally provides that seniority governs all pilot recalls. Section 17.W. of the APA/AA Basic Agreement does not mention, or even hint, that a recall is dependent on a pilot having previously flown at AA or having actually filled an active position at AA to qualify for a right of recall. Indeed, AA will be recalling many pilots who never held a position at AA. Thus, Section 17 sets forth no exception for deviating from strict seniority when AA extends recall opportunities to number-holding pilots.

Although the language of Letter Three/Supplement W is clear and unambiguous, the testimony of the negotiators of Letter Three/Supplement W supports AE’s position that AE pilots holding AA occupational seniority numbers have recall eligibility rights under Letter Three/Supplement W. During the *Kasher* arbitration, James Sovich, former APA President, made it abundantly clear that CJ Captains are recalled to AA in seniority order, even if they are interspersed with AA furloughees on the AA seniority roster. Sovich unambiguously declared that “pure seniority” controls recall. Sovich stated that AA furloughees have no priority in recall over AE CJ Captains, assuming that AE does not hold back the flow-through AE pilots. Sovich further explained that a CJ Captain is recalled to AA ahead of junior AA furloughees, even if the CJ Captain never flew at AA. In this proceeding, APA inartfully retreated from Sovich’s

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testimony in the *Kasher* arbitration. APA now portrays a befuddled and confused witness before *Kasher* (yet, perfectly lucid herein). Nonetheless, the *Kasher* transcript patently shows that there were not any objections to the form of any of the questions. Nothing on the face of the transcript indicates that Sovich was either confused or that he misunderstood the questions posed to him. No attempt was made to clarify his testimony during redirect examination. Inasmuch as Sovich was a signatory to Letter Three/Supplement W, his testimony in the *Kasher* arbitration carries great weight in revealing the negotiators' intent. His prior testimony is far more reliable than his self-serving testimony in this proceeding. Sovich's admissions fully support AE's position in this case.

Pugh, an ALPA negotiator, corroborated Sovich. The two negotiators concurred that seniority numbers are effective for all purposes unless limited by the express language in Letter Three/Supplement W. Section III.C. contains some constraints, but recall is not among the listed exceptions. Hunter, APA's lead negotiator, acknowledged in 2002 before Arbitrator Kasher that the negotiators did not have detailed discussions about recalls because they never envisioned a mass furlough from AA, a mix of TWA pilots, and an expanding flow-through CJ Captain group remaining at AE. Hunter expounded that while he had not formed any opinion on the issue, there were good arguments on both sides. Thus, APA is estopped from contending that the negotiating history supports its interpretation of Letter Three/Supplement W based on some newly formed Hunter opinion.

APA misplaces its reliance on Costello's testimony in the *Kasher* arbitration. A close examination of Costello's testimony shows that he was explaining the flow-down process, as opposed to the flow-through process, when he spoke about an AA pilot's right to recall to AE when an AA pilot had never held a position at AE and had never acquired AE seniority.

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Contrary to the flow-down process, AE flow-through pilots hold AA seniority and are treated “as if” they have continuously held a position at AA.

The *Kasher* award did not adjudicate this dispute. Before Arbitrator Kasher, APA argued that every AA furlougee flowed down to AE, even if the AA pilot spent only a “nanosecond” at AE before going to the street because the furloughed AA pilots flowed down from AA like “marbles through a tube.” APA adopted these allusions to argue that all AA pilots were entitled to recall to AE, even if they never held a position at AE. The argument ostensibly buttressed APA’s contention that the CJ Captain position was the lowest bid status for AA pilots. Arbitrator Kasher ruled against APA on this issue, but the holding has no effect on the flow-through process. Certainly, nothing in the *Kasher* award supports the proposition that basic seniority, and the rights attached thereto, is inapplicable to AE pilots covered by Section III of Letter Three/Supplement W.

Supplement CC to the AA/APA Basic Agreement fixed a 1:8 ratio for integrating the first 1,095 former TWA pilots into the AA seniority roster. Most, but not all, of these pilots were trained and hired into AA positions. The rest of the former TWA pilots were stapled, in bulk, near the bottom of the AA seniority roster.⁹ The staplees, along with some TWA pilots placed in accord with the 1:8 ratio, never trained or flew at AA. This Arbitrator’s decision in *FLO-0903* clearly adjudged that these former TWA pilots are considered new hire pilots, within the meaning of Section III.A. of Letter Three/Supplement W. A paradox arises because some TWA pilots trained and flew at AA who had seniority numbers junior to some TWA pilots who never trained or flew at AA. Thus, no single, straight line can be drawn on the AA seniority list to divide those pilots furloughed directly from TWA LLC from the TWA pilots who actually came

⁹ The mass of former TWA pilots near the bottom of the seniority list are often called the “staplees,” albeit APA now objects to this designation.

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to AA. In any event, a seniority number is a figure that cannot be meaningful for seniority integration but meaningless for recall. In *FLO-0903*, this Arbitrator ruled that great employment inequities are created and perpetuated if AA and APA could simply attach 1,000 pilots to the bottom of the AA seniority roster. The inequities frustrate the purpose of Letter Three/Supplement W. The inequities are only alleviated if AA strictly recalls pilots according to AA seniority dates and numbers.

C. The Position of the Allied Pilots Association

The APA/AA Basic Agreement is the sole source of a pilot's right to be recalled to AA. Section 13.D. states that seniority governs recall from furlough. A recall excludes AE pilots holding AA seniority numbers who have not been furloughed from AA since they are not governed by Section 13.D. The APA/AA Basic Agreement is not in conflict with the terms of Letter Three/Supplement W, which clearly and unambiguously provides a singular path for AE pilots to move to AA. An AE pilot can only come to AA through a "new hire class" as specified in Sections III.A. and III.D. Anderson confirmed that the APA/AA Basic Agreement is the sole source of recall rights and these rights only extend to those pilots furloughed from AA. Per Section I.C. of Letter Three/Supplement W, basic agreement provisions are effective unless a term of Letter Three/Supplement W explicitly trumps the basic contract provision. Since recall is not mentioned in any subsection of Section III., the APA/AA Basic Agreement exclusively controls AA pilot recalls. Furthermore, Section 17.V.5. of the APA/AA Basic Agreement refers to pilots furloughed from the Company. Thus, the recall rights only attach to pilots who have been employed by AA. AA pilots who were furloughed can point to a clear source of their recall rights. ALPA cannot point to any contractual source for recalling AE pilots who have never flown at AA. To reiterate, since Letter Three/Supplement W does not contain any provision

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granting recall rights to AE flow-through pilots, Section I.C. clearly renders Sections 13 and 17 of the APA/AA Basic Agreement the controlling provisions in this dispute.

Contrary to the novel arguments advanced by AE and ALPA, Section III.B. of Letter Three/Supplement W does not give AE pilots recall rights to AA. Rather, Section III.B. only provides that where an AE CJ Captain is unable to come to AA through the first new hire class to which he would have otherwise come, the CJ Captain is placed on the AA seniority list with an occupational seniority date and number. Anderson aptly characterized the seniority number as a placeholder. Even if Section III.B. could be construed to give an implied right of recall to all AE flow-through pilots, Section III.C. nullifies any such implication by expressly explaining that the grant of seniority in Section III.B. only operates to place the AE pilot on the AA seniority list to establish an AA occupational seniority date and number. Next, Section III.D. provides that the number-holding AE pilot has priority in filling a new hire position in a new hire class following a release from the training freeze. Section III.D. would be the natural location to specify recall rights if the parties had so intended. Sections III.H. and III.I. consistently state that when an AE pilot transfers to AA, the AE pilot occupies a new hire position. This is the exclusive means for an AE flow-through pilot to reach AA. All other avenues, including recall, are excluded.

Letter Three/Supplement W does not convert AE pilots into AA pilots once they forego AE Eagle rights status. The AE pilots are not referred to as AA pilots. Moreover, the AE pilot could not later be offered an AA position as part of subsequent AA training if the AE pilot already had an AA position on the day that the CJ flow-through Captain completed IOE at AE.

While ALPA relies on Section III.I., it is absurd to allege that an AE pilot has accepted an AA position before the pilot is even offered a new hire position. An AE pilot cannot accept an

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AA position when the CJ Captain makes an election between Eagle rights and non-Eagle rights since the AE pilot has not even commenced training in an AA new hire class.

ALPA concedes that Letter Three/Supplement W does not contain any recall terms. Instead, ALPA relies entirely on a vague, negative implication purportedly flowing from Sections IV.I. and IV.J. ALPA engages in a torturous construction of contract language to find a recall right in those two sections. However, the language in Sections IV.I. and IV.J. is hardly explicit. Nevertheless, subsections I. and J. of Section IV, like the remainder of Section IV, apply only to pilots actually furloughed from AA, as specified in the topical heading of Section IV. It would be senseless for the parties to give AE pilots, who never flew at AA, recall rights in Section IV. It would be more sensible for any recall rights for the flow-through pilots to appear in Section III. Section IV covers pilots already at AA, while the pilots at issue herein are at AE and have never been to AA.

The negotiating history and past practice support APA's interpretation of Letter Three/Supplement W, Section III.

During negotiations, APA proposed that: AA pilots begin to accrue seniority after bidding into CJ Captains positions; AE pilots may immediately utilize the seniority to bid at AA; and the establishment of the CJ Captain position be the lowest-bid status for AA pilots. AA and AE rejected this proposal. AA and AE were concerned that the proposal would blur the corporate organizational boundaries of the two carriers. AA and AE wanted to maintain separate carrier status.¹⁰ Instead of adopting APA's proposals, the negotiators agreed that an AE pilot who could not come to AA to enroll in a new hire class because of a training freeze could obtain an occupational seniority date and number that would become effective when the pilot eventually

¹⁰ AE also sought to minimize training costs which would be greater if there was wholesale movement from AE to AA.

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came to AA in a future new hire class. The AE pilot accrues AA occupational seniority as a placeholder on the list. In sum, the parties constructed a scheme that gave AE pilots a future job opportunity at AA. The negotiators did not grant recall rights to AE pilots who had never accepted a new hire position. It is logical that a pilot cannot be recalled to a position if the pilot never held a position at AA.

In the past, an AE pilot received an AA occupational seniority date and number, with a priority in filling a future new hire class. Pugh, an ALPA negotiator, admitted that prior to 2001, an AE pilot's right to use AA seniority was postponed until the pilot entered the next available new hire class. In the past, an AE pilot's AA seniority did not determine pay, equipment assignment, and base before the AE pilot was finished with the AE training freeze. AA Labor Relations consistently applied the seniority referred to in Section III.B. as a placeholder. This past practice demonstrates that no AE pilot was allowed to exercise full seniority rights like an AA pilot. Nothing in the past practice demonstrates that AE pilots held positions at AA merely because they obtained an AA seniority date and number. Thus, AE pilots had only a preferential hiring right once AE released them.

ALPA and AE cannot expand the ruling in *FLO-0903*. ALPA wants to keep the (so-called) staples furloughed, while AE pilots who never held positions at TWA or AA take openings on the combined system. It is inequitable to let the AE pilots in through the back door ahead of pilots who are truly AA pilots. The ruling in *FLO-0903* cannot be broadened to control the outcome herein because the judgment in *FLO-0903* was based on the false assumption that the parties appended a large group of TWA pilots to the bottom of the AA seniority list with the intent to frustrate the spirit and intent of Letter Three/Supplement W. TWA LLC was publicly and patently indistinguishable from AA. Since TWA LLC was functionally the same carrier as

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AA, the NMB determined that the two entities were a single carrier. The NMB's ruling militates against making any distinction between TWA LLC and AA during the transition. Consequently, the TWA pilots were not new hires. The intent of the integration was that all TWA pilots would be fully and actively employed at AA.

The seniority integration process was at a ratio of one TWA pilot for eight AA pilots, starting on October 8, 1985. The remaining TWA pilots were integrated as a block on April 10, 2001. They were not stapled to the bottom of the list. Three hundred eighty-six pilots hired by AA between April 2001 and October 2001 are now at the bottom of the list. Ninety-two did not finish training. Occupational seniority never became effective for these trainees and so, they lack recall rights. Under Supplement CC, they have a preferential right to AA employment following the exhaustion of recalls.

ALPA distorts the risk versus reward analysis. The TWA pilots bore the brunt of the industry contraction. They have been on long furloughs without receiving any benefit from Letter Three/Supplement W. Yet, AE pilots continued to fly and earn compensation during the lengthy economic downturn. ALPA could have foreseen that the industry would shrink and so, there is no reason to upset the bargain struck in 1997. Furthermore, ALPA constantly trumpets the risk versus reward notion, which is immaterial to an AA pilot recall. Even if risk versus reward has some applicability to Letter Three/Supplement W, the concept applies to the risks and rewards accruing to AE pilots. Risk versus reward is wholly unrelated to furloughed AA pilots.

Both ALPA and AE seek the Arbitrator's sympathy by suggesting that the AE pilots have been inequitably and harshly treated by AA. However, the totality of the circumstances conclusively demonstrates that the former TWA pilots are the real victims because they have absorbed a disproportionate share of the financial hardship. AE pilots back in 1997 gained the

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valuable right to fly the regional jets. While the AE pilots gained contractual rights to a large quantum of work, many of the former TWA pilots were furloughed without any opportunity to take advantage of the limited protection provided by Section IV of Letter Three/Supplement W. Indeed, many AA furloughees were blocked from the flow-down process by the arbitrary institution of equipment constraints and minimum flight hour requirements.

During the *Kasher* arbitration, ALPA took the position that an AA pilot could not be recalled to AE if the AA pilot never took a position at AE. Now, ALPA inconsistently seeks recall rights for pilots who never obtained a position at AA. It is true, as Arbitrator Kasher noted, that an AA pilot who is furloughed directly to the street never acquired AE seniority. However, the AA furlougee also never filled an AE position, just like the AE flow-through pilot never occupied an AA position. The situations are virtually identical. Therefore, the AE pilot cannot be recalled to AA, just as the AA furlougee is barred from recall to AE.

ALPA failed to prove how AA applied the time-to-captain requirements prior to 2001 or why promotion is material to the flow-through process. At most, AA may have discouraged AE CJ Captains from opting for flow-through status if the CJ Captain was approaching age 60.

When Sovich testified before Arbitrator Kasher, he was looking solely at the language of Letter Three/Supplement W and was not privy to the negotiating history. Sovich was not on the APA negotiating committee. He was not asked, during the *Kasher* proceeding, about the original proposals emanating from APA and ALPA which were ultimately rejected by AA and AE. Thus, when he testified in this proceeding, Sovich had more knowledge concerning the negotiating history. Sovich plausibly testified that he has changed his opinion by concluding that AE pilots can only come to AA in new hire training classes. Hunter confirmed Sovich's understanding. After carefully studying negotiation documents, the APA/AA Basic Agreement,

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and the *Kasher* ruling, Hunter thoughtfully and reasonably concluded that AE flow-through pilots can only come to AA in new hire positions in new hire classes.

D. The Position of American Airlines, Inc.

This case concerns about 396 AE CJ Captains who have acquired AA seniority numbers but have not yet started flying at AA.

In January 2007, AA began recalling pilots per Section 17 of the APA/AA Basic Agreement. For each recall, AA went down the list of furloughed pilots until enough pilots accepted recall.¹¹ By May 2, 2007, 141 AA furlonghees were recalled. One hundred eighty-five AE CJ Captains had AA seniority numbers higher than the most junior recalled furlonghee. ALPA wants AE pilots to participate in AA recalls even though an AA pilot recall is an exclusive feature of the APA/AA Basic Agreement. Letter Three/Supplement W does not govern recalls.

Only pilots on furlough from AA are entitled to recall. AE CJ Captains, who are not furloughed from AA because they have never been employed at AA, cannot participate in an AA recall. The plain language of Letter Three/Supplement W supports AA's position. The only way for AE pilots to flow-through to AA is with a new hire training class. Section III.C. of Letter Three/Supplement W plainly provides for the placement of AE CJ Captains on the AA seniority list solely to establish an AA occupational seniority date and number; that is, the AE pilot is a placeholder on the list with inchoate seniority. In other words, the AE pilot's AA seniority is not fully formed. Occupational seniority is always assigned before a pilot is covered by the APA/AA Basic Agreement. Letter Three/Supplement W, Section III.D. addresses what it means for an AE pilot to hold an AA occupational seniority date and number. According to Section

¹¹ A pilot can defer recall as long as a less senior pilot remains on furlough.

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III.D., the flow-through process exclusively consists of AE pilots filling new hire positions in new-hire classes.

ALPA illogically claims that AA's recall of former TWA pilots, who were furloughed before being fully transitioned to AA, are in a status equivalent to AE pilots who hold occupational seniority numbers and dates. However, there is one crucial difference. Unlike the AE CJ Captains who have been awarded AA seniority numbers, the former TWA pilots were on furlough from AA when offered an opportunity of recall. Even though the former TWA pilots had not been fully transitioned to AA, all of the former TWA pilots had employment rights, including seniority and recall rights, determined by the APA/AA Basic Agreement.¹² In addition, ALPA relies on the misconception that, when the TWA pilots were integrated into the AA seniority list, a mass furlough occurred. After AA agreed to purchase TWA's assets, TWA LLC was established. On July 10, 2001, APA and AA entered into the transition agreement which contemplated the seniority integration of all the TWA LLC pilots, but not the mechanics of the integration. The integration formula was devised in November 2001 and incorporated into Supplement CC. During December 2001, the ALPA/TWA Collective Bargaining Agreement was modified to mirror the APA/AA Collective Bargaining Agreement in anticipation that the former agreement would terminate when the NMB ruled on the single carrier issue. On April 3, 2002, the NMB certified APA as the exclusive representative of the AA and TWA LLC pilots, which triggered the implementation of the Supplement CC seniority integration process. Thus, all TWA LLC pilots were covered by the APA/AA Basic Agreement. TWA pilots transitioned to AA between April 2002 and the end of 2004. All former TWA pilots either transitioned to AA or were incrementally furloughed from TWA LLC. Former TWA pilots were furloughed on

¹² No date of hire appears on the AA seniority list next to the AE CJ Captains, while there is a date of hire next to every former TWA pilot.

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a month-to-month basis starting in October 2001. Some former TWA pilots were furloughed from AA, while others were furloughed from TWA LLC. No mass furlough of staplees occurred. They went on furlough pursuant to the terms of the APA/AA Basic Agreement. It is true that some of the TWA pilots were furloughed before training and flying at AA due to operational needs. However, AA had planned that all the TWA pilots would complete training and fly at AA. In sum, the former TWA pilots were different from AE flow-through pilots since the TWA pilots were furloughed from AA or TWA LLC (a single carrier) and all TWA pilots fell within the scope of the APA/AA basic agreement.

Like Section III of Letter Three/Supplement W, Section IV does not grant AE flow-through pilots recall rights. Section IV.J. of Letter Three/Supplement W hardly supports ALPA's position inasmuch as the section does not refer to all AE CJ Captains. Rather, Section IV.J. only applies to AE CJ Captains who were furloughed from AA and flowed-down to occupy CJ Captain positions at AE. Moreover, Section IV.I. expressly provides that a pilot must be an AA furlougee.

Letter Three/Supplement W, Section I.C. states that the provisions of the basic agreements continue to apply in the absence of any conflict with a specific term of Letter Three/Supplement W. Section 17 of the APA/AA Basic Agreement, the recall provision, only applies to pilots of the "Company." The "Company" is AA. The AE CJ Captains were never pilots for AA and are therefore not entitled to recall. In sum, nothing in Letter Three/Supplement W changes the meaning of a recall as set forth in Section 17 of the APA/AA Basic Agreement.

ALPA's argument is also contrary to the settled principle that an AE CJ Captain's position is not the lowest bid status at AA. Sovich gave testimony in the *Kasher* arbitration endorsing the argument that CJ Captain was the lowest-bid status for AA pilots, but Sovich was

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not at the negotiating table. Thus, his opinion does not reflect APA's state of mind during the negotiations. Moreover, Sovich clarified his prior remarks. Presently, Sovich firmly holds the opinion that Letter Three/Supplement W does not require the recall of AE pilots merely because the AE pilots hold AA seniority numbers.

Also during negotiations, ALPA and APA proposed that AE pilots should have bidding rights at AA. After AA rejected the proposal, the negotiators agreed upon a process of giving AE pilots an opportunity for a future position at AA. So, the only way for AE CJ Captains to actually flow-through to AA is in conjunction with an AA new hire class. Otherwise, the AE CJ Captain position would be the lowest-bid status at AA; something ALPA detests. ALPA cannot have it both ways. Since an AE CJ Captain is not the lowest-bid status, AE flow-through pilots have no recall rights unless they were furloughed from AA.

V. DISCUSSION

This dispute centers on determining whether an AE flow-through pilot, who holds an AA occupational seniority number and date but never trained or flew at AA, can utilize the AA seniority to participate in a recall according to the AE pilot's relative placement on the AA seniority roster. The inquiries toward reaching this determination involve consideration of how an AE pilot can (or cannot) come through the AA employment door; how AA occupational seniority operates for an AE pilot still at AE; and, whether any provision of Letter Three/Supplement W conflicts with any pertinent term of the APA/AA Basic Agreement.

Back in 1997, the four parties probably never contemplated the accumulation of a large group of AE flow-through pilots acquiring AA seniority numbers and then spending not only the ensuing training freeze but also years after expiration of the freeze at AE. The four parties could not foresee the September 11, 2001 attacks. Arbitrator Kasher observed that since the parties

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never contemplated substantial furloughs, they did not discuss subjects like recall in any detail, if at all. [*Kasher Arbitration* at p.12] Finally, the four parties could not envision and were not fully prepared for the mixture of TWA pilots into the AA seniority roster almost coinciding with the September 11, 2001 tragedy. In sum, the waiting list of pilots seeking active employment at AA became longer than any party could possibly imagine. The waiting list is populated by AA pilots furloughed from AA; former TWA pilots furloughed from AA; former TWA pilots furloughed from TWA LLC; AE pilots, who opted out of Eagle rights status, and were serving a training freeze during the months prior to September 11; and any other AE pilot who elected flow-through status since 2001. Even though the genesis of this dispute was totally unforeseeable, the starting point for resolving the issues is the plain language of Letter Three/Supplement W. As will be discussed in the following paragraphs, the construction of the various subsections of Section III, when read in proper context and in harmony, do not entitle AE pilots who were never furloughed from AA, an eligibility for recall to AA, with an important proviso concerning how the Section III.D. “priority” may or may not operate with regard to certain former TWA pilots identified in the *FLO-0903* decision.

Section III.A. of Letter Three/Supplement W sets a quota for flow-through pilots to commence the process of coming to AA (assuming a sufficient number of AE CJ Captains elect flow-through status). Section III.A. describes the type of AA position that “will be offered to the CJ Captains....” The term “such positions” in the second sentence of Section III.A. is a clear reference back to the position set forth in the first sentence; that is, “new hire positions.” Section III.A. is a critical subsection of the flow-through process because, when read in harmony with other subsections of Section III, “new hire positions” is an important element to ascertaining how an AE pilot actually comes to AA. While the Section III.A. quota determines the minimum

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number of AE pilots who must be “offered” “new hired positions” (assuming a requisite number of AE pilots forego Eagle rights status to satisfy the quota), the provision is notably silent about not only when the AE pilot will actually fill an AA new hire position, but also how the initial offer of a new hire position influences AA seniority.¹³ In other words, Section III.A. designates where AE pilots land at AA, that is, “new hire positions,” but does not state how or when an actual landing occurs.

Section III.E. sheds some illumination on Section III.A. by imposing a mandatory AE training freeze on all AE flow-through pilots. When read in conjunction with Section III.A., Section III.E. provides that even though an AE flow-through pilot may have already been offered a new hire position, the pilot cannot occupy the new hire position any earlier than two years subsequent to completing CJ Captain IOE.¹⁴ Subsection III.E. conclusively provides that an AE flow-through pilot does not come through the AA employment door until after the expiration of the training freeze. This subsection clearly segregates the offer of a new hire position referred to in Section III.A. from accepting or occupying the new hire position. Section III.E. has one escape route for an AE pilot which can bring the pilot to AA before the expiration of the applicable training freeze. AE has the discretion to release the flow-through pilot from the freeze. AE could conceivably release a pilot for the entire freeze, although the record contains no evidence this ever happened.

Sections III.B. and III.G. build onto the provisions of Sections III.A. and III.E. The introductory clause of Section III.B. constitutes an acknowledgment that CJ Captains will not be filling a “new hire position at AA” coinciding with the extension of such an offer per Section

¹³ Indeed, Section III.A. neither mentions AA seniority nor the acquisition of AA seniority for AE flow-through pilots.

¹⁴ The training freeze was 18 months for the first 125 AE flow-through pilots.

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III.A. The clause starts with the word “If” which presumably is recognition of the highly unlikely event that a CJ Captain would be able to fill an AA new hire position simultaneous with the Section III.A. offer because AE released the flow-through pilot from the training freeze. Absent such a release, Section III.B. is consistent with Section III.E. in terms of separating the offer of a new hire position from the filling of a new hire position. Next, Section III.B., in conjunction with the technical terms of Section III.G., describes the AE flow-through pilot’s acquisition of AA seniority. According to the first sentence of Section III.B., the AE pilot who is unable to fill a new hire position “...will be placed on the AA Pilots Seniority List....” The second sentence clearly enunciates that since the AE flow-through pilot cannot immediately fill an AA new hire position, the AE pilot will nonetheless obtain an “AA occupational seniority date and number...as if he were able to fill such new hire position at AA....” Due to the training freeze (which might be extended by a Section III.J. operational holdback), the AE pilot cannot fill the AA new hire position and so the pilot is awarded an occupational seniority date and number as if AE had released the pilot from the entire training freeze.¹⁵ Stated differently, Section III.B. is wholly inapplicable to any AE pilot who could fill an AA new hire position coincident with completing AE IOE and being offered the AA new hire position because such a pilot would establish AA seniority per the APA/AA Basic Agreement. But this pilot is not likely to ever exist. Section III.B. is necessary for flow-through pilots serving the freeze (and any additional operational holdback) because they cannot fill the AA new hire position. As an accommodation, they acquire AA occupational seniority with a seniority date. In sum, the AE pilot obtains an AA seniority date and number without coming to AA. However, it is important

¹⁵ Contrary to the arguments advanced by ALPA and AE, the plain language of Section III.B. does state that an AE pilot is treated “as if” occupying a new hire position. Rather, the terminology provides only for the acquisition of a seniority date and number “as if” the AE pilot was able to fill a new hire position. Thus, there is no virtual or constructive AA position.

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to reiterate that the AE pilot is not occupying any AA position even though the offer of a new hire position was extended to the pilot per Section III.A.¹⁶

Although Section III.G. contains a slight ambiguity, the ambiguity does not render Section III.B. unclear and ambiguous. Section III.G. sets forth a technical means of assigning a particular AA seniority number to a CJ Captain. The ambiguity arises out of the verb “is awarded,” which could suggest that an AE flow-through pilot actually acquires an AA new hire position when the seniority number is assigned to the pilot. In the normal parlance of airline labor relations, the award of a position means that a pilot has successfully bid for one particular position and fills that position. Yet Section III.B. clearly contemplates that the flow-through pilot is not filling an AA new hire position when acquiring an AA occupational seniority date and number. Inasmuch as Section III.G. does not state exactly what AA cockpit position is awarded to an AE pilot, the technical words in Section III.G. cannot distort the clear connotation of Section III.B. that the AE pilot is unable to fill an AA new hire position. Therefore, the word “awarded” in Section III.G. is inartful language that must be discounted. Certainly the drafters of Letter Three/Supplement W could have started Section III.G. with the phrase “A CJ Captain who is unable to fill a new hire position at AA....” Nevertheless, the fact that Section III.G. is purely a technical provision, the language therein cannot, standing alone, denigrate the clear language of Section III.B. Moreover, the Arbitrator can utilize extrinsic evidence of a past practice to resolve the ambiguity. APA and AA proffered evidence that in the past (pre-September 11, 2001), no AE pilot was awarded a particular new hire position at AA when the AE pilot acquired an AA occupational seniority number and date. Rather, the AE pilots served the applicable training freeze and thereafter were awarded and occupied a particular AA new hire

¹⁶ Also, to reiterate, if the AE pilot could immediately fill the AA new hire position, the pilot would fall within the scope of the APA/AA Basic Agreement.

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position as part of a later AA new hire class. No pilot bidding occurred when the AE pilot established AA occupational seniority per Section III.B. Indeed, Pugh, an ALPA officer, related that the AE flow-through pilot bids for a particular AA assignment when the pilot actually starts AA training. Thus, the word “awarded” in Section III. G. cannot be interpreted to mean that a CJ Captain holds an actual new hire position to which the CJ Captain can be recalled prior to serving training freeze. Such an interpretation is contrary to the past practice and would obviate the clear language of Section III.B. which provides that the AE flow-through pilot acquires an AA occupational seniority date and number because the AE pilot “...is unable to fill a new hire position at AA.”

Next, Sections III.C. and III.D. directly address how an AE pilot’s AA seniority date and number operates while the AE pilot remains at AE. Except for vacation accruals, Section III.C. speaks to seniority operation in a negative sense by excluding two benefits tied to seniority until the AE pilot “...is entered on the AA payroll.” Section III.D. affirmatively addresses how the AA seniority results in an AE pilot filling an AA new hire position. The latter subsection (III.D.) conforms to and builds upon Sections III.A., III.B., and III.E. Section III.D. takes over when the AE pilot is “...released from a training freeze or other...operational constraint.” Most notably, Section III.D. does not place the AE pilot on any previously awarded AA position or on any particular AA position that the pilot would have filled as if the pilot had been able to fill the position at the time the AE pilot obtained an AA occupational seniority date and number pursuant to Section III.B. Instead, Section III.D. unequivocally provides that an AE flow-through pilot, who can now depart AE, lands at AA by “filling a new hire position in the next new hire class...” The AE pilot is afforded “priority based on his AA seniority” in filling such a position. Nothing in Section III.D. even hints that an AE flow-through pilot can come to AA, for

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the first time, via recall. As APA persuasively argues, Section III.D. would be the natural location for the authors of Letter Three/Supplement W to grant a right of recall for the AE flow-through pilots. Since Section III.D. directly addresses the use of AA seniority by an AE pilot upon the occurrence of the condition (the release from a freeze and/or operational hold), the reasonable interference arises that Section III.D. covers the exclusive use of AA seniority.

Seniority is sacred to airline pilots. It determines the benefit status and competitive status of pilots. Many lucrative benefits, such as longevity pay, pensions, and vacations, are predicated on a pilot's accumulation of seniority. Trips, equipment, rank, furloughs, and recalls are dependent on the relative ranking of pilots, their competitive status, on the seniority roster. Section III.C. excludes an AE pilot from invoking accumulated AA seniority for pay and pension until the AE pilot is added to the AA payroll. ALPA argues that the express enumeration of these two exceptions means that no others can be implied. However, the exceptions pertain to the benefit status of AA occupational seniority for AE pilots. Two benefits (length of seniority for pay and pension purposes) that are measured by seniority were postponed. Neither of the exclusions concerns the competitive status of seniority. It stretches the recognized rules of contract construction to conclude that the drafters of Section III.C. intended to incorporate all of the competitive usages of relative seniority ranking merely by postponing the advent of two benefits measured by length of service. More significantly, Section III.B. expressly covers the competitive uses of the AA seniority. The first sentence of Section III.B. restricts the applicability of AA seniority to being "placed on the AA Pilots Seniority List." Section III.C. also uses the word "placement" and states that the "only" function of seniority is to add the AE pilot to the AA seniority roster. For competitive purposes, the AE pilot is only a placeholder on the AA seniority list. The ordinary and usual meaning of "placement" is that the AE pilot is not

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yet vested with bidding and recall rights. A placeholder on the list cannot invoke the placeholder's seniority for competitive purposes. The AE pilot cannot be furloughed from AA and consequently cannot be recalled to AA because the AE pilot is a placeholder. AA is close when it characterizes the AE pilot's placement on the AA seniority roster as inchoate seniority. The seniority is fully formed, but the AE pilot cannot make full use of the competitive status of the seniority until the AE pilot arrives at AA in accord with Section III.D.

Sections III.H., III.I., and III.J. are harmonious with Sections III.B., III.C., III.D., and III.E. AE and ALPA emphasize the identical introductory terminology of the three subsections which states: "A CJ Captain who accepts a new hire position at AA...." A close perusal of all three sections reveals that they are operative after the conclusion of the training freeze when the AE flow-through pilot is physically moving to AA. Section III.H. expressly provides that it is only applicable "...at the time of his transfer to AA." Moreover, if the flow-through pilot had already secured a new hire position when the pilot first acquired an AA occupational seniority date and number, it would not be necessary to grant the pilot a bid right to a vacancy based on the accumulated seniority. Similarly, Sections III.I. and III.J. are relevant to the flow-through pilot at the time the pilot is released from or has served the training freeze. Section III.J. allows the pilot to be withheld from AA subsequent to the expiration of the freeze with pay protection. The thrust of Section III.I. requires the AE flow-through pilot to qualify for the position to which the pilot bid and was awarded per Section III.H.¹⁷ Section III.J. is triggered when the AE pilot arrives at AA via Section III.D. The priority in Section III.D. triggers the AE pilot's right to "accept a new hire position at AA" which, in turn, permits AE to withhold the pilot for "operational reasons." The acceptance of the position occurs when Section III.D. is applicable as

¹⁷ An AE pilot must also possess an FAA First Class Medical Certificate when the pilot accepts the AA new hire position.

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opposed to when the AE pilot acquires an AA occupational seniority date and number per Section III.B. Thus, Section III.J. lends no support to AE's argument that the AE flow-through pilot is filling a virtual AA position, while the pilot is a placeholder, so that the pilot can be recalled to that position. Since the flow-through pilot does not actually accept an AA position until the pilot is transferring to AA, Sections III.H., III.I., and III.J. endorse the principle that, prior to moving to AA, the occupational seniority date and number acts as a placeholder.

AE and ALPA contend that since a flow-through pilot must satisfy the time to future promotion to AA Captain criterion in accord with the last sentence of Section III.I., the occupational seniority date and number is more than merely placeholder status since AA permitted several pilots to physically come to AA when they could not satisfy the 10 year period while they would accumulate more than 10 years of seniority before reaching age 60. Section III.I. clearly provides that the time to Captain criterion is supposed to be applied to AE pilots when they arrive at AA because, as explained in the preceding paragraph, that is the time that the flow-through pilot actually accepts an AA position. For a handful of pilots, AA deviated from the language in Section III.I. Even if AA's computation of the 10-year time-to-Captain promotion criterion, by utilizing the AE pilot's occupational seniority date and number from the time of seniority acquisition, as opposed to time of transfer to AA, constituted a past practice, such a practice cannot alter or modify the express language of Section III.I. A past practice is only relevant to interpreting a vague, unclear, or ambiguous contract provision.

In summary, when the clear and express language of various subsections of Letter Three/Supplement W, Section III. are read as a whole, and the past practice resolves the ambiguity in Section III.G., Section III does not provide AE pilots who have never trained or flown at AA, the right to be recalled to AA.

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ALPA and AE cite Sections IV.I. and IV.J. as creating a right of recall for the universe of all AE flow-through pilots regardless of whether the AE pilot had been furloughed from AA. More specifically, ALPA and AE rely heavily on the slight discrepancy between the first sentences of each subsection. Section IV.I. refers to a “CJ Captain on furlough from AA” while Section IV.J. alludes to a “CJ Captain who accepts recall to AA” without stating that the CJ Captain was already furloughed from AA. For two reasons, the distinction is so flimsy that it cannot reasonably be interpreted as the genesis of a right of recall for AE pilots who never trained or flew at AA. First, Section IV governs the flow-down or flow-back process. The topical heading of Section IV announces that Section IV governs “Furlough Protection of AMR Eagle, Inc. for Pilots Furloughed from AA.” The heading makes the applicability of Section IV contingent on the pilot having been furloughed from AA. Second, Section IV.J. did not need to add the superfluous phrase “furloughed from AA” since the phrase had already been expressed in Section IV.I. Section IV.I. addresses the consequence to a pilot who declines recall if the pilot wants to stay at AE. Section IV.J. addresses the inverse; that is, the pilot who wants to return to AA. AE can, under Section IV.J., hold the pilot back at AE for up to six months. If the two sections were to create a right of recall, then Section IV.I. or IV.J. would have to state something about the consequences to an AE flow-through pilot who was not furloughed from AA. The inherent, unanswered questions include, but are not limited to, determining the length of seniority for the AE pilot; whether the pilot declining recall converts to Eagle rights status; and how does the Section IV.J. six-month period extend a training freeze? Suffice to state, these and other questions militate against using the very slight discrepancy between the opening phrases in Sections IV.I. and IV.J. to manufacture a right of recall for all AE flow-through pilots regardless of whether or not they were on furlough from AA.

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Before Arbitrator Kasher, Sovich testified that his interpretation of Letter Three/Supplement W concurs with ALPA's interpretation herein. Without doubt, Sovich reneged on his prior testimony by testifying herein that an AE flow-through pilot who was not furloughed for AA cannot use the AE pilot's AA occupational seniority date and number to gain entrance to AA via eligibility for recall. Certainly, as ALPA and AE point out, Sovich's testimony in the *Kasher* arbitration is an admission against APA's interest which is proper evidence in this proceeding. However, the opinion of an APA officer does not estop APA from advocating that AE flow-through pilots can only come through the AA employment door via a new hire position. Sovich's interpretation, as he articulated it before Arbitrator Kasher, is merely opinion evidence that does not undermine the clear and unambiguous language of Section III of Letter Three/Supplement W. His admission would be far more probative if Section III were riddled with ambiguities. Rather, to reiterate the clear language of Article III demonstrates that AE pilots who never arrived at AA lack the right to be recalled to AA.

Since Letter Three/Supplement W does not create a right to recall for AE flow-through pilots who were not furloughed from AA, Section I.C. mandates that the provisions of the APA/AA Basic Agreement control the right of eligibility of recall to AA. Stated differently, nothing in Letter Three/Supplement W modifies the provisions of Section 13.D and Section 17.V of the APA/AA Basic Agreement. These provisions provide that to be eligible for recall, a pilot must have been furloughed from the "Company," and the "Company" is AA. In addition, ALPA and AE have not raised any argument that any provision of Letter Three/Supplement W somehow places an AE pilot within the scope of the APA/AA Basic Agreement at the same time they are subject to the ALPA/AE Basic Agreement. Since there is no conflict with the terms of

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Letter Three/Supplement W, the right of recall exclusively emanates from the APA/AA Basic Agreement.

The four parties advanced strong equity arguments. ALPA and AE argue that the risk versus reward, the core principle of Letter Three/Supplement W, is unfairly thrown out of balance by bypassing the AE flow-through pilots in AA recalls. ALPA also contends that the sanctity of pilot seniority demands a strict adherence to the order of seniority numbers in a recall. APA and AA argue that most of the former TWA pilots absorbed the brunt of the economic downturn following September 11, 2001 by being furloughed to the street because they were unable to flow to AE while many flow-through AE pilots remained actively employed at AE. Even though these equitable arguments are compelling, the Arbitrator cannot dispense equity between the parties when the language of Letter Three/Supplement W Section III is clear and unambiguous. Thus, these equitable arguments are immaterial to the outcome of this case.

The Arbitrator must render several relevant observations. First, nothing in this opinion shall be construed to overrule or modify the ruling in *FLO-0903*. Second, nothing in this opinion can be construed to endorse or exclude any potential remedy in *FLO-0903*. This Arbitrator adjudged, in *FLO-0903*, that certain former TWA pilots were akin to new hire pilots within the meaning of Section III.A. The Arbitrator remanded the remedy to the parties without providing any guidance on the breadth of an appropriate remedy. Indeed, without giving the parties an opportunity to proffer further evidence, the Arbitrator would be trampling on due process if the Arbitrator were to speculate on a possible appropriate remedy in *FLO-0903*. The Arbitrator therefore declines to address the issues herein surrounding the integration of the former TWA pilots into the AA seniority roster. More specifically, the Arbitrator does not express any opinion on how the ruling in *FLO-0903* may or may not operate to trigger the "priority" in

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Section III.D. or the applicability of Section III.A. Similarly, the Arbitrator does not express any opinion on any differences in seniority among former TWA pilots as compared to any or all AE flow-through pilots. The four parties can reserve their arguments with regard to the former TWA pilots for any adjudication, if necessary, of the remedy in *FLO-0903*. The holding herein is narrow. The Arbitrator finds that Letter Three/Supplement W does not contain any right of recall to AA for AE flow-through pilots who hold an AA occupational seniority number and date, but never trained or flew at AA.

AWARD AND ORDER

The Arbitrator renders an Order by answering the stipulated issue as follows.

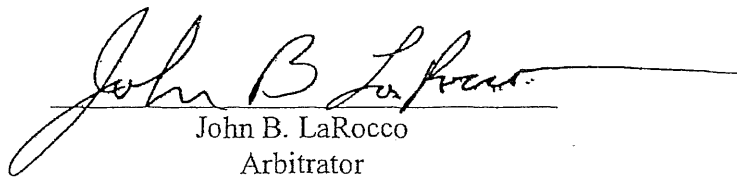
STATEMENT OF STIPULATED ISSUE

Whether AA's order of recall, which excludes some flow-through pilots holding AA seniority numbers, violates Letter Three/Supplement W and, if so, what is the appropriate remedy.

ANSWER TO STIPULATED ISSUE

Letter Three/Supplement W does not contain a right of recall for AE flow-through pilots who hold AA seniority numbers but were not furloughed from AA; provided, nothing in this answer shall be construed to overrule or modify the ruling in *FLO-0903*; and, provided further, nothing in this answer shall be construed to endorse or exclude any potential remedy in *FLO-0903*.

Dated: March 13, 2008


John B. LaRocco
Arbitrator