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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE: . Case No. 05-17923 (ASH)  
DELTA AIR LINES, INC., et al, . White Plains, New York  
Debtors. . Friday, September 1, 2006  
1:11 p.m. to 5:40 p.m.  
**P.M. Session**

TRANSCRIPT OF EVIDENTIARY HEARING  
SECTION 4041(c) MOTION  
**VOLUME 2**  
BEFORE THE HONORABLE ADLAI S. HARDIN  
UNITED STATES BANKRUPTCY JUDGE

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1 (Proceedings resume after luncheon recess at 1:11 p.m.)

2 THE COURT: Have a seat, please.

3 MR. HUEBNER: Your Honor, if I could begin with the  
4 tiniest of all requests?

5 THE COURT: Yes, sir.

6 MR. HUEBNER: Which is the courthouse has very kindly  
7 made available to each of the two primary litigants a small  
8 witness room/conference room.

9 THE COURT: Yes.

10 MR. HUEBNER: Would it be possible to leave our  
11 various boxes in there over the holiday weekend to avoid --

12 THE COURT: Oh, sure.

13 MR. HUEBNER: Thank you.

14 THE COURT: Absolutely.

15 MR. HUEBNER: Your Honor, with that substantial  
16 achievement accomplished, I would like to turn the podium over  
17 and introduce my partner Brian Weinstein who will be the lawyer  
18 taking Mr. Coleman through his testimony.

19 THE COURT: Okay.

20 MR. WEINSTEIN: Good afternoon, Your Honor.

21 Debtors call as their first witness Mr. Timothy  
22 Coleman.

23 THE COURT: Okay.

24 **TIMOTHY R. COLEMAN, DEBTORS' WITNESS, SWORN**

25 MR. WEINSTEIN: Your Honor, I'm being told they can't

1 hear in the back.

2 (Counsel confer.)

3 **DIRECT EXAMINATION**

4 **BY MR. WEINSTEIN:**

5 Q Good afternoon, Mr. Coleman.

6 A Good afternoon.

7 Q Would you please state your name for the record?

8 A Timothy R. Coleman.

9 Q What firm do you work for, Mr. Coleman?

10 A I work for the Blackstone Group, L.P. in New York City.

11 Q What is your title and role at Blackstone?

12 A I am a senior managing director, one of the people  
13 responsible for the reorganization and restructuring group  
14 within the firm.

15 Q What is the reorganization and restructuring group?

16 A The reorganization and restructuring group is a part of the  
17 firm that provides advice to companies and creditors and others  
18 that are having financial difficulties.

19 Q And how long have you worked at Blackstone, Mr. Coleman?

20 A I've been at Blackstone for fourteen and a half years.

21 Q Where were you employed prior to Blackstone?

22 A Prior to Blackstone, I was at Citibank, N.A. in New York  
23 City for twelve and a half years.

24 Q And what type of work did you do at Citibank?

25 A A variety of things. I was in the investment bank there

1 and I spent six and a half years in the restructuring group and  
2 spent a year running the New York real estate workout group  
3 back when New York City was having some real estate issues.

4 Q And what is your educational background, Mr. Coleman?

5 A I have a B.A. from the University of California at Santa  
6 Barbara and an M.B.A. from the University of Southern  
7 California.

8 Q And, Mr. Coleman, was Blackstone retained by Delta in 2004  
9 prior to its present restructuring?

10 A Yes. We were brought in originally into Delta to work on  
11 what was hopefully to be a out-of-court restructure which is  
12 what eventually happened. And we spent a lot of time with the  
13 company working on their business plans, working on cost saves,  
14 and in addition to that, raising approximately a billion  
15 dollars of new financing.

16 Q Was Blackstone retained again by Delta in May of 2005?

17 A Yes. After the 2004 restructure, a number of events,  
18 external events, intervened to make it clear that Delta would  
19 not be able to survive outside of a Chapter 11. So we were re-  
20 retained in May of '05 and worked with the company at that  
21 point in time doing the usual advisory work including raising  
22 the debtor-in-possession financing.

23 Q Mr. Coleman, can you briefly describe your experience in  
24 other Chapter 11 proceedings?

25 A Sure. In the fourteen and a half years I've been at

1 Blackstone, I've been all on the advisory side in the same  
2 group. And I have spent a big part of my time advising debtors  
3 and companies not in bankruptcy.

4 I have also advised creditor groups, boards of directors,  
5 special committees of boards of directors, and I served as the  
6 one and only plan facilitator in Biderman Industries which was  
7 for Judge Brozman when a crisis management firm was trying to  
8 buy the company that they were also running. And Judge Brozman  
9 became very uncomfortable with that situation because the  
10 creditors were complaining.

11 And I actually served in this role that she sort of made up  
12 where I did not have a client, I had sort of seven non-clients,  
13 all of which wanted me to do the thing that they wanted me to  
14 do. And I served in that role and we ended up selling the  
15 company to the crisis management firm for \$100 million more  
16 than they were willing to pay originally. So I think the role  
17 was a wise one of Judge Brozman to have appointed.

18 Q Mr. Coleman, can you list a few of the other major  
19 corporate bankruptcies that you've been involved in over the  
20 years?

21 A Sure. I've just recently completed Merit Energy. I've  
22 worked on Cable and Wireless USA, RCN, Flag, Williams  
23 Communications, a lot of telecom during that whole period. Way  
24 back I represented Macy's and a large number of companies in  
25 between.

1 Q Mr. Coleman, Paragraph 2 of your declaration in this case  
2 lists by my count about thirty-five corporate restructurings  
3 that you've been involved in, either advising the debtors,  
4 creditors, or special committees or boards of directors. Does  
5 that sound about right to you?

6 A I think that sounds about right. That would include  
7 bankrupt as well as non-bankrupt companies.

8 Q Mr. Coleman, can you tell the Court about your experience  
9 in raising DIP financings generally?

10 A In most bankruptcies where we represent the debtor we are  
11 responsible as part of our work to raise whatever financing is  
12 necessary for the company. And somebody going into bankruptcy  
13 typically needs a debtor-in-possession agreement to continue to  
14 operate.

15 And so every one of those deals that we've been  
16 representing the company or that I've been representing the  
17 company we would have been actively involved in some fashion in  
18 raising that debtor-in-possession financing.

19 Q And how about your experience raising exit financing, Mr.  
20 Coleman?

21 A It's a similar answer. In order to get the company out of  
22 bankruptcy it's rare that they actually can pay their debtor-  
23 in-possession agreement off. I'm sure Your Honor has seen  
24 that. So we typically need to raise money, both to pay the DIP  
25 off, but also often to provide the company additional money

1 upon the exit. So I would say pretty much every company I've  
2 represented I have raised the exit financing. And if I was  
3 representing creditors, we were actively, you know, involved in  
4 making sure that we thought the debtors' advisor was doing the  
5 right thing. So it's something that we do pretty much in every  
6 case.

7 Q Mr. Coleman, have you testified as to the feasibility of  
8 reorganization plans at confirmation hearings?

9 A Yes. Again, being the debtors' advisor, it is always  
10 incumbent upon us to provide the Court testimony about the  
11 feasibility of the plan. The only times I haven't done it I  
12 think are when my testimony has been proffered; otherwise, it's  
13 pretty much in every case.

14 MR. WEINSTEIN: Your Honor, we'd offer Mr. Coleman's  
15 testimony as an expert in corporate finance, capital markets,  
16 and corporate restructuring advisory work.

17 THE COURT: Any objection?

18 MR. KAPLAN: No, Your Honor.

19 THE COURT: Received.

20 MR. KAPLAN: In fact, we have stipulated to all of the  
21 experts previously.

22 THE COURT: All right.

23 BY MR. WEINSTEIN:

24 Q Mr. Coleman, we won't go over your original declaration  
25 today because it's already in evidence. But just to address

1 what I believe I understood Mr. Kaplan to say this morning, and  
2 he'll correct me if he thinks I'm wrong, but what I believe he  
3 suggested was that Delta's original declarations did not  
4 address in any detail the issue of exit financing.

5 Is that an accurate statement?

6 A I think that's what I heard him say and I was actually  
7 surprised to hear it because I think one of the key components  
8 of my declaration, in fact, was describing the debtors' attempt  
9 to try to find an exit lender and, in my view, their inability  
10 to do so if the pension plan continued.

11 Q Okay. And, Mr. Coleman, one other quick issue before we  
12 move to the heart of your testimony today.

13 In Paragraph 39 of DP2's objection they suggest that if  
14 there were 700 early retirements the company's EBITDAR covenant  
15 would not be violated. Is that a true statement?

16 A I don't believe that's true, no. I think it would be  
17 violated.

18 Q Would the covenant be breached at 600 early retirements?

19 A It's a minimum EBITDAR covenant, Your Honor. I believe it  
20 would still be violated at 600 pilots retiring.

21 Q Okay. And, Mr. Coleman, turning now to the heart of your  
22 testimony, are you aware that DP2 asserts that there will be  
23 far fewer early retirements if the lump sum door were to open  
24 than the 800 to a thousand that Delta projects?

25 A I am aware of that.

1 Q And in response to that argument, Mr. Coleman, were you  
2 asked to analyze the amount of exit financing that Delta would  
3 require under lower retirement scenarios?

4 A Yes. As a consequence of their materials we were asked to  
5 look at amounts all the way down to 300 potential retiring  
6 pilots taking lump sum payments.

7 Q And was a chart prepared under your supervision that shows  
8 the amount of exit financing that would be required under lower  
9 retirement scenarios?

10 A It was.

11 Q And, Mr. Coleman, if I can refer you to what has been  
12 marked as Exhibit 1 and introduced into evidence in the binder  
13 that's in front of you, it's a document called, "Financing  
14 Required at Emergence."

15 Is that the chart you're referring to?

16 A Yes, it is.

17 Q Are the exit financing numbers in this chart, Mr. Coleman,  
18 calculated in the same way that you described in your  
19 declaration for the 801,000 retirement scenarios?

20 A They are. If you look on the right-hand side, the right --  
21 furthest right columns you'll see the 800 pilots and a thousand  
22 pilots. And, if you recall in my declaration, down in the  
23 yellow shaded area at the bottom of those columns you'll see  
24 the \$5.218 billion of financing required if 800 pilots were to  
25 retire over the period of bankruptcy and twelve months after --

1 sorry, before bankruptcy and a thousand pilots would be the  
2 \$6,562,000,000 of financing required. So you can look left  
3 from those two columns and see that we did 600, 400 and 300  
4 pilot examples.

5 Q Mr. Coleman, recognizing that the pension funding numbers  
6 in this chart comes from Delta's actuary, do you believe this  
7 chart to be accurate?

8 A I do believe it to be accurate.

9 Q Okay. And how much exit financing would be required by  
10 Delta if 600 pilots, that is twenty-five percent less than the  
11 low end of Delta's estimate?

12 A Again, I point you to the yellow shaded area at the bottom  
13 of that column, which is \$4,354,000,000.

14 Q And for 400 pilots, Mr. Coleman, half of the low end of  
15 Delta's estimate?

16 A That would be next number over in the yellow, pardon me,  
17 \$3,574,000,000.

18 Q And how much exit financing would be required if as few as  
19 300 pilots retired early?

20 A One more over, \$3,321,000,000.

21 Q Mr. Coleman, if you look below the exit financing numbers,  
22 below the yellow row that you were just referring to, if you  
23 look at the 300 pilot scenario, for example, you'll see an  
24 additional nine-hundred-and-forty-million-dollar contribution  
25 through 2010. I won't ask you to derive that number precisely

1 because Ms. McDaniel will testify to that.

2 But can you tell the Court generally what that number  
3 represents?

4 A It's my understanding that DP2 had a view of when people  
5 would retire, depending on the amount of top pay that they had  
6 and how many years they had left in -- before retiring and to  
7 see -- compare that to the lump sum payment they would actually  
8 receive. So we tried to run -- we did run that scenario, which  
9 I frankly think is a very conservative scenario.

10 But as you can see, and that's the first line, "Early  
11 retirements," without 2010 funding restrictions. That would  
12 add another \$290 million of required financing over that  
13 period.

14 Q And the next line, Mr. Coleman, the \$650 million?

15 A The \$650 million deals with the pension program that was  
16 recently signed by the President. And, essentially, what it  
17 says is if the assets over the liabilities in the pension  
18 program are below eighty percent but above sixty percent, then  
19 any pilot retiring for Delta would not receive their full lump  
20 sum under the Delta calculation. They would receive a lump sum  
21 calculated using the PBGC numbers that they would otherwise  
22 receive. So it would be, obviously, a lower lump sum.

23 If the amount was below sixty percent, then no amount of  
24 lump sum would be available. This is under the new  
25 legislation. And, as a consequence, there is an assumption

1 that more pilots would retire in advance of this date, it's  
2 July 1st of 2010, and any pilot that is looking forward and  
3 realizing that this lump sum window could close, we are -- as  
4 was stated earlier, we are currently below the eighty percent  
5 and just above the sixty percent, any pilot would be looking at  
6 that and thinking to themselves, if I don't retire now and take  
7 my lump sum now, this -- others might take it and if they take  
8 it, then there will be even fewer assets which means the lump  
9 sum window, if you will, would close. And the current  
10 assumption is that it would be closed for years.

11 And once you see that it's the snowball effect of everybody  
12 worrying about what everybody else is doing regardless of what  
13 kind of shape Delta is in. They would say, if I don't take  
14 mine, he's going to take his or she's going to take hers, that  
15 will lower the assets and then I won't be able to take mine.  
16 And so there would be a view that there would be a snowball  
17 effect and a lot of people would retire at that point in time,  
18 which since only 300 pilots had retired as part of the  
19 bankruptcy period, they would expect significantly more pilots  
20 to retire, costing \$650 million of contributions the company  
21 would have to make.

22 Q Now, Mr. Coleman, just to be clear, when you say 300 pilots  
23 could retire, you're referring to just this hypothetical  
24 scenario that you were asked to model, correct?

25 A Yes. I'm just in this one column here. And these results

1 below the yellow area are assuming that 300 pilots retire now.

2 Q All right. And also to be clear, Mr. Coleman, that \$940  
3 million that you were just describing in the 300 pilot  
4 scenario, is that part of the 3.3-billion-dollar exit financing  
5 or is it in addition to that?

6 A No. That would be more. We probably should have yellow  
7 shaded this also. So the nine forty would be added to the  
8 three billion three twenty-one for a total of \$4,261,000,000.  
9 The same would be true for the 400 pilots and the 600 pilots.  
10 Obviously, the numbers are a little different. But you would  
11 add that bottom line, nine forty, seven eighty, and two eighty-  
12 five, you would add each of those respective numbers to the  
13 yellow shaded shortfall requiring financing so the number would  
14 frankly be a lot bigger.

15 Q And, Mr. Coleman, just focusing for the moment on the  
16 smaller number, the \$3.3 billion at the 300 pilot scenario, do  
17 you believe that Delta could obtain \$3.3 billion in exit  
18 financing, the amount associated with 300 pilot retirements?

19 A I believe there is zero chance that Delta could ever  
20 receive that kind of money in financing from any lender.

21 Q Mr. Coleman, have you prepared a list of the main reasons  
22 for your conclusion that would aid in your testimony today?

23 A I have.

24 MR. WEINSTEIN: Your Honor, we have put Mr. Coleman's  
25 list of his main reasons for reaching his conclusion onto a

1 trial board. Can we have permission to display that for the  
2 Court?

3 THE COURT: Yes.

4 MR. WEINSTEIN: Thank you. We also have hard copies  
5 which I'll hand to opposing counsel and to the witness and to  
6 Your Honor.

7 THE COURT: Thank you.

8 BY MR. WEINSTEIN:

9 Q Mr. Coleman, the first bullet point on your document says:  
10 "Delta's collateral base cannot support the required exit  
11 financing."

12 Before we go through the chart below in detail, can you  
13 just explain generally what that means?

14 A The only place that Delta could find new -- any financing,  
15 and in this case exit financing, would be in the secured debt  
16 market. As a consequence, and I'm sure Your Honor is familiar  
17 with this from the many bankruptcy cases that have been in  
18 front of you, secured lenders don't look for just some  
19 collateral or one-to-one coverage of collateral. They look for  
20 a factor over the amount of the loan so that they feel if at  
21 some point in time they would have to liquidate that  
22 collateral, that with the whatever it would, fire-sale nature  
23 of it or all the bad news surrounding the episode, that the  
24 collateral would still be sufficient to pay back a hundred  
25 percent of the loan.

1 And it is my view that Delta does not have anywhere near  
2 enough collateral to support any additional financing.

3 Q Mr. Coleman, let's go column-by-column. The first column  
4 just lists the number of pilot early retirements.

5 The second column says, "Exit financing required." What is  
6 that?

7 A The second column down, the \$3.3 billion going all the way  
8 down to the 6.6 billion, is the yellow shaded area that I just  
9 was showing you on this other chart, is just listing it there  
10 in column versus line order.

11 Q And, again, that's exclusive of the additional -- in the  
12 case of the 300 pilot scenario, the additional \$940 million  
13 through 2010? It does not include that?

14 A I actually -- yes. I should have pointed that out earlier,  
15 Your Honor.

16 On that chart with the yellow shading the top set of  
17 numbers was liquidity needed to exit bankruptcy and the second  
18 group of numbers was liquidity that would be required over the  
19 twelve months after bankruptcy. So the only period that we  
20 looked at to figure out how much money was necessary was just  
21 that period. And the same goes with this. So the exit  
22 financing is just talking about that period of time.

23 Q Mr. Coleman, the third column is titled, "Required  
24 collateral at 1.7 times VTL."

25 What is VTL?

1 A VTL is something that all lenders look at. It's called  
2 value to loan. Sometimes you hear loan to value. It's the  
3 same concept.

4 And it is what I was describing a couple of minutes ago;  
5 how much value is there to the collateral. In dividing the  
6 loan into that collateral, how much coverage is there, how many  
7 times other than 1.1 times is the lender protected in terms of  
8 the collateral base.

9 Q And why did you use 1.7 times VTL for this chart?

10 A When we went out to get the DIP financing, Your Honor, in  
11 front of Judge Beatty, I testified how amazed I was that we  
12 were able to get the size DIP that we got, a 2.2-billion-dollar  
13 DIP on \$3.1 billion of hard and soft collateral, which would be  
14 aircraft and ground equipment and gates and slots and things of  
15 that nature, and then the minimum cash you'd have in the cash  
16 covenant.

17 That allowed the company to borrow money at a 1.7 times the  
18 loan basis in terms of collateral. So if you took the  
19 collateral at the time the DIP was done which would have added  
20 up to three billion eight fifty and divided that by the \$2.2  
21 billion, you would see the coverage was 1.7 times, in this case  
22 1.7 times VTL, value to loan.

23 THE COURT: Right.

24 BY MR. WEINSTEIN:

25 Q So just so we're all clear, Mr. Coleman, can you please

1 just walk us through how you came to the numbers that are shown  
2 on the column under, "Required Collateral"?

3 A Okay. So the theory here was if we needed the "Exit  
4 Financing Required" column, and let's just start with the top  
5 line, the \$3.3 billion, a lender would at a minimum want at  
6 least what the DIP lenders were able to achieve in terms of  
7 coverage.

8 So we took the 1.7 times VTL, multiplied that by the \$3.3  
9 billion to come up with the \$5.7 billion. And then we did that  
10 for each number across.

11 Q And, Mr. Coleman, if you could get as high as a 1.7 times  
12 VTL ratio in raising exit financing for Delta, would you  
13 consider that a success?

14 A I think I testified that I thought the DIP was a home run.  
15 It was I think the best financing I thought I'd ever  
16 accomplished in a bankruptcy. And I would consider the same  
17 thing today.

18 We have a very aggressive financing market so I don't want  
19 to take all the credit for that. Far from it. A very active  
20 hedge fund community. Most of us in the bankruptcy world  
21 believe we are going to see an end to that at some point and I  
22 always hope it's not during whichever company I'm working on.

23 But in this case, since we went so aggressively into the  
24 market to borrow at such a low value-to-loan ratio, I don't  
25 believe -- I'm certain that we could not do better than 1.7

1 times, meaning a lower coverage. It may be we have to look for  
2 higher coverage in the future and that would mean less money to  
3 Delta, obviously.

4 Q And just to make sure I understand, Mr. Coleman, if the  
5 lenders required more coverage, more protection, in other  
6 words, a higher VTL ratio, what would that cause to happen to  
7 the numbers in the "Required Collateral" column?

8 A That would mean if instead of 1.7 you had 1.5, you would be  
9 multiplying the -- I'm sorry, 1.7 say two times, you'd be  
10 multiplying the two times the same required financing. So in  
11 the case of the 300 pilot scenario that would give you 6.6  
12 million collateral needed instead of 5.7.

13 And it's sort of funny when you look at a chart like this,  
14 6.6, 5.7, that doesn't sound like a lot of money. But, in  
15 fact, it's \$900 million, almost a billion dollars. It's a lot  
16 of money.

17 So if the lenders went the other direction and insisted on  
18 more coverage, which is possible, that would be a real problem  
19 for Delta.

20 Q Okay. Now what does the next column show, Mr. Coleman,  
21 "Available Collateral"?

22 A The available collateral is the value of the collateral  
23 today. So that's the \$3.1 billion of collateral that the  
24 company took less than a year ago and a billion dollars of cash  
25 that's on the company's books.

1 Lenders take the amount of cash that is subject to a cash  
2 covenant. In this case, we are now at a billion dollars. It  
3 used to be a seven fifty covenant. And the reason being is the  
4 lender can't do much. If the company has more cash and they go  
5 and burn all that cash, there's not much the lender can do. So  
6 when they think of it as collateral, they use the amount of  
7 collateral which they believe they have some control over. If  
8 the company is going to breach the covenant, they could run  
9 into Your Honor and say, stop, they're breaching my covenant,  
10 don't let them spend any more money.

11 So that's the amount of cash they will allow. So today  
12 it's a billion-dollar covenant. We add that to the \$3.1  
13 billion of hard and soft collateral and that's where you get to  
14 the 4.1 of collateral that's available.

15 Delta has pledged everything other than maybe the air in  
16 the offices. There is nothing left. All of the assets are  
17 pledged. They were pledged round one and if there was anything  
18 left they clearly were pledged as part of that DIP. So there  
19 isn't additional collateral sitting around waiting to be  
20 pledged that we held in reserve.

21 Q And, Mr. Coleman, the next column says, "Collateral  
22 Shortfall." Please describe what that shows.

23 A Okay. So this now takes the required collateral at the 1.7  
24 times VTL, so 5.7 billion on a 300 scenario, and it subtracts  
25 the available collateral of 4.1 billion, and it shows that we

1 have a 1.6-billion-dollar shortfall, meaning we don't have  
2 enough collateral. And that's at the 300 scenario.

3 Obviously, as you go from three to four to six to a  
4 thousand pilots retiring at Delta, we end up with a shortfall  
5 all the way up to \$7.3 billion.

6 And I want to emphasize this is only for the period up to  
7 twelve months after bankruptcy. This does not count any future  
8 waves of retirement that would or could occur post that period  
9 which would just ramp that number up even higher. For  
10 instance, the 2010 issue with the pension relief.

11 Q Mr. Coleman, the final column says, "VTL Ratio," and it  
12 shows numbers from 0.6 to 1.2 times. Can you describe what  
13 that means and what its significance is?

14 A Sure. Here what we did is we took the available  
15 collateral, 4.1 billion, and we divided it by the exit  
16 financing required to show what a lender would be getting in  
17 terms of their coverage. Instead of the shortfall, this is the  
18 -- sort of the reciprocal of it. It's what kind of coverage  
19 would you have.

20 And as you can see, for the majority of the examples we've  
21 given in terms of pilot retirement, the lender would have what  
22 we affectionately call an air ball, not enough collateral even  
23 on a one-to-one basis. And even the best one, which is the 300  
24 pilot retirement, would only have a 1.2-to-one coverage.

25 Maybe if you had gold bullion and you could supplement it

1 if gold prices fell or something you might be able to convince  
2 somebody to do that. But it would certainly be an  
3 impossibility for somebody who's pledging, you know, aging  
4 planes and slots and routes and things of that nature. So it's  
5 clearly, clearly sub-standard.

6 Q By way of comparison, Mr. Coleman, what was the VTL ratio  
7 in United Airlines's exit financing?

8 A United had a 2.3 times coverage. And most people in the  
9 industry believe that their collateral was effectively better  
10 collateral than ours, harder collateral than ours, not as soft,  
11 something that while still not gold bullion, people felt had a  
12 good market valuation ability and, therefore, they felt they  
13 could understand what it was and be able to sell it. So it's  
14 substantially higher than the value-to-loan that Delta has  
15 offered in its DIP.

16 Q And, Mr. Coleman, had United terminated its pilots' defined  
17 benefit plan before it obtained exit financing?

18 A Yes. They could not have gotten the financing without  
19 terminating that pilot plan.

20 Q And even after terminating the pilot plan, the value-to-  
21 loan ratio was 2.3?

22 A Still a lot higher than Delta's, correct.

23 Q Okay. Mr. Coleman, can you summarize what conclusion  
24 you reach from this chart?

25 A Yes. I mean, I guess it's summarized in the color. It's

1 red. I don't believe there's any way Delta could raise this  
2 money. I don't think there's any way Delta could come even  
3 close to raising this money.

4 In fact, it is my own view that if we are able to re-raise  
5 the \$2.2 billion at the time of exit just matching what the DIP  
6 was at the time we raised the DIP, that that again will be a  
7 spectacular result. And that is assuming that the current  
8 robust market for financings continues.

9 We're obviously hopefully closing in on the end of the case  
10 somewhere in the next, you know, six to twelve months. And so  
11 I would hope that that market would continue. But if it ever  
12 didn't, I think we'd be in a lot of trouble.

13 So it's my view that I don't think Delta has any ability to  
14 raise more than the \$2.2 billion it already raised once.

15 Q And, Mr. Coleman, if I can just briefly ask you to turn to  
16 your declaration. It's Exhibit 10 in your binder. Just one  
17 quick question on this, Mr. Coleman. We won't go back over  
18 your original declaration.

19 Mr. Coleman, if I could ask you to just turn to Page 12,  
20 please?

21 A Okay.

22 Q I believe you heard Mr. Kaplan suggest this morning that  
23 your original declaration which you're looking at would only  
24 apply to the 800 to 1,000 retirement scenario.

25 Can I ask you to read the two sentences towards the bottom,

1 the ones beginning with, "The existing DIP lenders"?

2 THE COURT: Page 12?

3 MR. WEINSTEIN: Page 12 towards the bottom, Your  
4 Honor.

5 THE COURT: Okay.

6 THE WITNESS: Starting after this, "Delta could only  
7 turn to the secured debt markets for exit capital"?

8 BY MR. WEINSTEIN:

9 Q Yes.

10 A "The existing DIP lenders required \$3.1 billion in non-cash  
11 collateral for \$2.2 billion in DIP financing with super  
12 priority status. Exit lenders will not provide financing  
13 materially above the outstanding DIP loans without  
14 additional collateral coverage which Delta cannot provide."

15 Q And, Mr. Coleman, could that statement relate solely  
16 to the 800 to 1,000 retirement scenario?

17 A No. This relates to how much collateral they have and how  
18 much they would be able to raise. It's not related to any  
19 amount of retirement.

20 Q Okay.

21 MR. WEINSTEIN: Your Honor, may I display the second  
22 board from Mr. Coleman's chart?

23 THE COURT: Yes.

24 BY MR. WEINSTEIN:

25 Q Turning to the next bullet point on your list, Mr. Coleman,

1 it says:

2 "Risk of future waves of early retirements, lower  
3 retirements now only increase the risk of future waves and  
4 exit financing sources will not lend into this risk."

5 Can you please describe what that means?

6 A Yes. As I stated earlier, Your Honor, we've only looked at  
7 the retirements up to twelve months after bankruptcy. If  
8 nobody retired today, zero, I didn't run these numbers, but if  
9 nobody retired today, all of those pilots are still eligible to  
10 retire immediately after bankruptcy.

11 So you saw earlier the discussion that there are  
12 approximately 1,800, a little more than 1,800 pilots that could  
13 retire today. An exit lender, forget whether it's probable,  
14 possible, whatever, an exit lender is going to look at all  
15 1,800 of those lenders and ask -- pilots and ask itself, well,  
16 could they retire today. And the answer is yes.

17 And so every step of the way the answer would just get  
18 worse and worse and worse for the lender because the percentage  
19 of pilots that could suddenly retire if nobody retires just  
20 grows. Obviously, a few will, you know, actually really retire  
21 every year not early. But the growth continues to the point  
22 where the damage that could be done to that company, the damage  
23 today if all 1,800 could retire immediately, the company would  
24 undoubtedly have to shut down.

25 And the question would be could they recover from that

1 shutdown. That's what we're talking about, which is the -- we  
2 have had all this talk about 300, 800, a thousand. It's almost  
3 irrelevant to the lender. What's relevant to the lender is  
4 what else could happen and what's the probability of that  
5 happening.

6 And so in my view Delta trying to get out of bankruptcy  
7 with knowledge that these pilots could retire would make it  
8 impossible to get financing and, frankly, I think would make it  
9 impossible to have a feasible plan of reorganization.

10 Q Mr. Coleman, can I direct your attention to Exhibit 5 in  
11 the binder in front of you, please? There are two slides.  
12 I'll ask you first about the first slide and then about --

13 THE COURT: Exhibit 5?

14 MR. WEINSTEIN: Exhibit 5, Your Honor.

15 THE COURT: Okay.

16 BY MR. WEINSTEIN:

17 Q Mr. Coleman, can you describe what is shown on the first  
18 page of Exhibit 5 and explain what its significance would be to  
19 exit lenders?

20 A Sure. This shows what I was just talking about, the 1,820  
21 pilots that could retire as of October 1st of 2006. And other  
22 than mandatory retirements that occur which are net of these  
23 numbers, these numbers are net of those, by July 1st, 2010 when  
24 this pension legislation date kicks in and nobody retires early  
25 during this period of time, 3,500 pilots could retire from

1 Delta all telling us on August 30 -- well, let's take June 30th  
2 of 2010 and they would all have been retired by the next day.  
3 So Delta would find itself with 3,517 missing pilots.

4 Again, thinking about it from the lender's standpoint, it's  
5 probably impractical to think all of those people would retire.  
6 But a lender would have to look at it from that perspective.  
7 And what's most important, Your Honor, is anybody making an  
8 exit financing loan here, we'll probably if we're lucky get a  
9 three-year loan, maybe two years, you know, three, four,  
10 whatever, somewhere in that range, but the exit lender would be  
11 looking to be refinanced.

12 And what you would find here is anybody looking to come in  
13 and refinance them would be staring at this problem. It would  
14 just be a growing problem without any protection against that  
15 problem. I don't believe they could get refinanced.

16 But, more importantly, therefore the lender looks at it  
17 today, before they make the original loan, and they say, I  
18 can't make that loan because any of these numbers would put  
19 this company out of business, any one of these if all of them  
20 went out or any percentage of them went out, so that the lender  
21 would look forward and say, I cannot take the risk that the  
22 most important asset -- maybe I shouldn't say the most  
23 important asset, but clearly an important asset, you do need a  
24 pilot to fly a plane, without that asset I don't have planes  
25 flying, I might even have planes all over the world I can't

1 even ferry back to the United States, and I can't accept that  
2 risk as a lender and, therefore, I can't make that loan.

3 Q Mr. Coleman, if you could just flip to the second page of  
4 that exhibit and just describe what that shows?

5 A This, Your Honor, takes that same page and now takes it as  
6 a percentage of the overall pilots that Delta has.

7 THE COURT: Just a second, please.

8 THE WITNESS: Sure.

9 (Court and court personnel confer.)

10 THE COURT: I have a new filing that has an emergency.  
11 This will not take long, but I'm going to have to interrupt you  
12 in just a moment.

13 (Court and court personnel confer.)

14 THE COURT: You may continue for the moment.

15 MR. WEINSTEIN: Okay.

16 THE COURT: Do forgive me.

17 MR. WEINSTEIN: Of course, Your Honor.

18 THE COURT: I have to deal with it. And it won't take  
19 long.

20 THE WITNESS: So what you see here is this is the  
21 percentage of taking those numbers and dividing them by the  
22 existing pilots that Delta has and would have in the projection  
23 over this period of time. And by the time you get out to 2009,  
24 2010, almost sixty percent of this pilot group could retire all  
25 on the same day.

1 I'm sure it wouldn't happen. But as a bank lender  
2 putting money in that your only upside is getting your  
3 interest, right? You're not trying to take some equity risk  
4 and get some fabulous equity return. This is just here is my  
5 money, please pay me back with interest. And there is no way a  
6 bank could take this risk. It's dramatic and I don't know of a  
7 bank that would make a loan to a company that could, in fact,  
8 be shut down by virtue of one day's notice. Just -- you can't  
9 do that.

10 So I think this just shows dramatically the problem  
11 that we have with continuing the pension program with this lump  
12 sum feature.

13 BY MR. WEINSTEIN:

14 Q Now forgetting 2010 for a moment, Mr. Coleman, when the new  
15 aspect of the legislation kicks in, and forgetting even 2009,  
16 but looking at 2008 and 2007, can you describe what the numbers  
17 show there and what that would mean to an exit lender?

18 A I think it's the same story. Forty-three percent of the  
19 pilots retiring, fifty-one percent of the pilots retiring '07  
20 and '08. The impact on the number of planes that would be  
21 immediately grounded and the time it would take, then, to  
22 retrain those pilots would leave an airline completely  
23 incapable of going forward.

24 And this is not an airline that's coming out of bankruptcy  
25 with so much liquidity that they would be able to withstand

1 this. And you have to remember all of this is during a period  
2 of time when you have borrowed, depending on where you are on  
3 that chart or on my chart, all of the money you could ever  
4 borrow in your lifetime. So it's not like Delta could say,  
5 oops, this happened, let's go out and get another billion  
6 dollars or let's go out and get another \$2 billion. It would  
7 be, oops, this happened, how much cash do we have in the till,  
8 and that's all we've got.

9 So this is just alarming to see and, again, I'm thinking of  
10 it more as an exit lender. And an exit lender would say, I  
11 can't take that risk, it's not worth it to me to take that  
12 risk.

13 Q And just so I'm clear that I understand you, Mr. Coleman,  
14 are you assuming that all of these pilots would have to retire  
15 in order for this to be a problem from the standpoint of an  
16 exit lender?

17 A No, I'm not. I think the exit lender would probably run a  
18 range of scenarios and look at it if ten percent retired, fifty  
19 percent, a hundred percent. Under all of those scenarios I  
20 don't think it's an acceptable risk that a lender could take.

21 Q And, Mr. Coleman, the next point on your list says:

22 "Billions in payments to pension plan provide no benefit to  
23 Delta's operations or competitive profile."

24 Can you please explain what that means and why it would be  
25 significant to exit lenders?

1 A Sure. If the pension plan continued, Delta obviously would  
2 have to make the payments that they would make as part of the  
3 exit out of bankruptcy and then continue to make the payments  
4 as they go forward as the pension requirements come along,  
5 whether those are makeup payments or the annual payments that  
6 they would make as part of the pension program.

7 What it would mean is large sums of money, billions of  
8 dollars, would be going not towards the efficiency of the  
9 airline, not towards reducing debt, not towards capital  
10 expenditures and investments in the operations of the company.  
11 It would be going towards pension payments. And so, again,  
12 think -- you know, I'm up here to talk about lenders. To think  
13 about a lender, this would mean they would be making a loan, a  
14 very high-risk loan, and let's just stick with the 2.2-billion-  
15 dollar loan with the 1.7 VTL. They would be making that loan,  
16 and yet they would be getting no relief from the risk  
17 thereunder for the entire length of that loan because the money  
18 would not be available to go to improving the operations.

19 And the best example you can think of here, Your Honor, is  
20 if you think of the three big auto makers in our country who  
21 have been suffering under OPEB and pension liabilities and all  
22 these things and not reinvesting in their physical plant while  
23 Toyota and Honda and all the Korean companies have been doing  
24 precisely the opposite. You see people in a dilemma now where  
25 they still have all those pension costs, they can't afford

1 them, they're trying to buy people out of them, but they have  
2 not been putting their money into where they should have been  
3 putting it in, which is making cars that are efficient and  
4 well-made and that people want to buy.

5 So I think we have a live example right in front of you of  
6 if Delta were to go down this path and if Delta could get  
7 financing, which I don't believe they could, but if for some  
8 reason they went forward, they would find themselves in a  
9 position where they could not in fact run the business and meet  
10 the challenges of somebody putting in video screens in the back  
11 of every coach seat or lowering prices to \$89 to one way or  
12 whatever it is. They would be hamstrung to be able to meet  
13 those challenges because they would be spending their money on  
14 these obligations.

15 Q Mr. Coleman, the next point on your chart says:

16 "Airlines are highly susceptible to external events, fuel,  
17 terrorism, and competition in the industry is intense."

18 Please describe what you mean by that.

19 A Well, it's two things. Let's start with the external  
20 events. I think we all know 9/11. We live here in New York.  
21 And, obviously, we've been living through the fuel crisis that  
22 we've been going through for a period of time. Both of those  
23 are completely out of Delta's hands, obviously, but have had a  
24 dramatic impact on the company and, as a consequence, the  
25 company has lost billions of dollars.

1 All airlines are susceptible to that. An airline that did  
2 not have good liquidity or access to more liquidity or was  
3 putting money into continuing the pension payments would not be  
4 able to withstand those events.

5 Delta finds itself in the -- partly finds itself in the  
6 position it's in today. It was investment grade shortly before  
7 9/11. And it had to borrow all this money in order to  
8 withstand two things. One was all of the costs related to 9/11  
9 and the other was the change in the competitive profile.

10 It's no secret that we now have what we keep calling LCCs,  
11 low cost carriers, I think because it's a convenient title.  
12 But the fact is they're just carriers. And the American public  
13 has proven that they don't really care if it's a legacy carrier  
14 or a low-cost carrier. In fact, in some ways they choose that  
15 low-cost carrier because some of them are newer with newer  
16 planes.

17 But the competition is such if one party starts a new  
18 airline and just starts flying point-to-point on one of your  
19 routes, you as a legacy carrier or existing carrier have to  
20 lower your prices to match them or you won't have anybody on  
21 your plane.

22 And so the airlines, and Delta in particular, has to know  
23 that it is always going to be subject to new entrants into the  
24 industry, growing competition from the various parties that are  
25 there now, and I'm sure ones we've never heard of, and future

1 terrorist events or fuel events or SARS or Avian Flu or  
2 whatever the next seemingly string of disasters hits

3       So this is something that Delta has to find itself in a  
4 position where it can withstand those events, which means it  
5 has to have liquidity and it has to have a capital structure  
6 and a cost structure which will allow it to meet head on the  
7 competition, be able to lower its prices, be able to update its  
8 planes, put in whatever the latest thing is that is driving  
9 competition. And Delta has to be in that position to be able  
10 to do that. And, if not, they would find themselves again  
11 unable to compete as whatever it is that's coming next, which  
12 we don't know, shows up.

13 Q And, Mr. Coleman, do the low-cost carriers that you've been  
14 referring to have defined benefit pension plans?

15 A No, they do not have defined benefits. Most of them I  
16 believe I have 401(k) programs.

17 Q Mr. Coleman, the last point on your list says:

18 "Delta is particularly susceptible to external events  
19 because its cash position relative to its competitors is  
20 weak."

21 Have you prepared a chart that illuminates this point?

22 A I have.

23 Q Can I refer you to Exhibit 2 in the binder of exhibits? Is  
24 that the chart you were referring to?

25 A Yes.

1 Q If you could please describe, Mr. Coleman, what the chart  
2 shows and why this would be significant to exit lenders?

3 A Bankers always look at ratios. They like to compare the  
4 loan they're making to one company and see how that company  
5 operates to all the other companies in the industry to see are  
6 they lending to a weak player or a strong player.

7 One of the measures they look at it is cash and liquidity.  
8 And two of the ways to look at it are the two items here. The  
9 first column is taking available cash, and that's unrestricted  
10 cash, Your Honor, cash you can spend, and dividing it by LTM  
11 revenue. LTM stands for last twelve months. And that's  
12 something that all parties would measure on a very regular  
13 basis.

14 This gives you a sense of how much of their revenues are  
15 actually covered in cash. And what it shows you is Delta is at  
16 the bottom of the list down with Northwest and significantly  
17 below the major competition in terms of both legacy and LCC  
18 carriers.

19 The one I think is probably more telling is the second  
20 column which is, "Annual Days Operating Expense." And this is  
21 a calculation that you take the operating expenses of the  
22 company and you divide them -- sorry. You take the operating  
23 expense -- scratch that. I started wrong.

24 You take the cash and you divide them by the operating  
25 expenses of the company, primarily the cash operating expenses.

1 So you take it non-recurring items and depreciation and  
2 amortization and things like that. So this is to show you if  
3 you had to run your airline with no revenues coming in,  
4 unlikely story but obviously after 9/11 there were no revenues,  
5 how long could somebody survive? And what you see there again  
6 is Delta is at the bottom of the list with Northwest.

7 Southwest could run their airline for over a half a year  
8 without any revenues and still have enough cash. And pretty  
9 much everybody else has about, you know, ninety days, somewhere  
10 in that range to continue to run their airline. Obviously  
11 AirTran, one of our big competitors, has ninety days. Delta  
12 would have sixty days.

13 Now the way a bank would be thinking of this is not so much  
14 that this is going to happen, not that Southwest is going to  
15 shut their revenue base down for 185 days. But it shows you  
16 who has cash power in pricing, who has cash power in  
17 competition, who has cash power to withstand. So if somebody  
18 is thinking, I think I'll make a loan to Delta, what they see  
19 here is if Delta is in any way hampered by any of these events  
20 that we were talking about earlier, external events or just  
21 competition over a period of time or whatever, Delta is in a  
22 very bad position to be able to try to sort of earn their way  
23 out of that or get their way out of it through their resources.

24 This is one of the reasons why it is so critical and has  
25 been critical for Delta to lower its costs. They've taken

1 almost now -- at the end they will have taken \$8 billion of  
2 costs out of their cost basis. That's a huge number. And the  
3 company's been turned upside down doing that. And the pension  
4 program is one element that needs to be part of it so that  
5 Delta can, in fact, be in a position to be a viable and  
6 feasible airline.

7 This would say to me if I were Southwest and I felt like  
8 coming into Delta's territory, I would be licking my chops  
9 knowing I could stand there and lose money on every route for a  
10 very long time, enjoying it, while Delta was losing money and I  
11 knew, you know, they would not have a lot of sustainability if  
12 I came in and did that. So it's a very critical issue to their  
13 survivability.

14 Q Now, Mr. Coleman, let's just imagine hypothetically somehow  
15 someone was willing to provide the exit financing that Delta  
16 needed. Notwithstanding everything you said, somehow someone  
17 came with a pot of gold.

18 In your professional opinion, would Delta be able to  
19 propose a feasible plan of reorganization under Section 1129 of  
20 the Bankruptcy Code without terminating the pilot plan?

21 A No, not one I could testify to. As I said earlier, even if  
22 they got the money and they only had whatever number of pilots  
23 retire, the ongoing potential wave of future retirements taking  
24 lump sums causing Delta, then, to have to contribute large sums  
25 to the pension programs, the issues related to fuel and

1 terrorism and all that I've testified to, Delta cannot afford  
2 to pay for a 3.3 billion or a 6.6 billion or any other size  
3 financing like that and be a viable carrier.

4 So I don't believe they would be viable and, therefore, I  
5 don't think a bankruptcy plan could be feasible.

6 Q Mr. Coleman, if I can just direct your attention once more  
7 to your declaration, the original declaration you submitted in  
8 this case, that's Exhibit 10? I'll direct your attention to  
9 Paragraph 17 and ask if you could take a look at that, please?

10 A Okay.

11 Q Can you summarize what you stated here in your original  
12 declaration?

13 A Sure. This is saying somewhat what I was just talking  
14 about. Delta needs to be viable. And to ensure viability in  
15 the face of all of the things that I've been testifying to,  
16 Delta has to have a cost structure, a revenue structure, both  
17 of which are competitive with all of the carriers that they  
18 compete with which includes the LCCs, they need to have a  
19 balance sheet which includes the amount of leverage that they  
20 have that allows them to compete with and participate in this  
21 industry, and without it, it is not a viable airline. And  
22 without that, then we don't have a plan that could be feasible.

23 Ms. Beckerman talked about her clients most likely becoming  
24 the equity holders by converting all of the unsecured debt.  
25 But that wouldn't be enough. We could -- if that's all we did

1 and yet we still had, you know, three billion or four billion  
2 or whatever the number was that this pot of gold party arrived  
3 with in terms of debt, they couldn't meet those obligations as  
4 they came due. They would be paying huge interest bills, they  
5 would be over-levered and they would be stymied. And we would  
6 have a plan which I can just tell you I would not be able to  
7 testify to as to feasibility.

8 Q Now, Mr. Coleman, did that conclusion from your original  
9 declaration in this case hinge in any way on whether there were  
10 800 to a thousand early retirements?

11 A No. No. This is unrelated to that. This is really about  
12 the viability of the airline. It's not to do with the  
13 retirements.

14 Q To sum up, Mr. Coleman, in your professional opinion in  
15 terms of Delta's ability to emerge from Chapter 11, does it  
16 matter whether there are 800, 600, 400, or even 300 early  
17 retirements if the lump sum door were to open?

18 A No. Any of those numbers are irrelevant. If the pilots  
19 have the ability to take the lump sum, an exit lender will not  
20 lend money to this airline generally, and certainly it would  
21 not lend enough to cover the amounts that we described on this  
22 chart earlier, or any amount that would cover the waves in the  
23 future. So I don't believe it would be possible.

24 Q Thank you, Mr. Coleman.

25 MR. WEINSTEIN: I have no further questions, Your

1 Honor.

2 THE COURT: Cross-examination? Thank you, sir.

3 **CROSS-EXAMINATION**

4 **BY MR. KAPLAN:**

5 Q Mr. Coleman, I believe you testified about the problems  
6 that would arise if thousands of pilots decided on the 30th of  
7 one month to retire on the 1st of the following month. Is that  
8 correct? Do you recall that testimony?

9 A I did say that, yes.

10 Q Do you know where that right comes from that allows the  
11 pilots to give one day's notice and retire?

12 A It's my understanding it's part of their pension obligation  
13 -- pension plan.

14 Q Have you ever looked at the pension plan?

15 A No. I'm not somebody that would study it in detail. I  
16 prefer -- talked to, obviously, lawyers who are expert in that  
17 field.

18 Q Okay. If I were to suggest to you that that obligation  
19 arises from the collective bargaining agreement as opposed to  
20 the pension plan --

21 A No, you're right. I made a mistake. It is the collective  
22 bargaining. Sorry about that.

23 Q So the right to retire on one day's notice is not a pension  
24 right, it's a right that's established by the collective  
25 bargaining agreement. Is that correct?

1 A I think that is right.

2 Q Okay. And the collective bargaining agreement is something  
3 that Delta negotiates with the union, with ALPA. Is that  
4 correct?

5 A Periodically, when it -- obviously, when it comes due or if  
6 there is a reason to negotiate it earlier.

7 Q And that provision has absolutely nothing to do with the  
8 plan?

9 A I don't understand your question.

10 Q The provision that allows pilots to retire in effect on one  
11 day's notice if they pick the right two days has absolutely  
12 nothing to do with the pension plan.

13 MR. HUEBNER: Your Honor, I object. Mr. Coleman  
14 testified he's never even read it. These are legal  
15 conclusions. This issue is not appropriate for a financial  
16 expert.

17 MR. KAPLAN: I believe he's testified that this is an  
18 obligation of the collective bargaining agreement and I believe  
19 he also testified -- or I'm asking him if to his knowledge this  
20 obligation has any connection with the pension plan. If he  
21 doesn't know, he doesn't know.

22 THE COURT: Do you know?

23 THE WITNESS: I can tell you what I have heard  
24 listening to lawyers. I'm not the person that -- that's not my  
25 area of expertise, obviously.

1 THE COURT: Perhaps we should save it for lawyers,  
2 then.

3 MR. KAPLAN: Okay.

4 BY MR. KAPLAN:

5 Q Is the Pension Protection Act which you talked about also  
6 within your area of expertise?

7 A Is it in my area of expertise?

8 Q Yes.

9 A I would not say so, no.

10 Q I believe you said that on some given day in the year 2010  
11 a large number of pilots could retire on one day's notice. Is  
12 that correct?

13 A I described the, as I understand the new pension  
14 legislation that has been signed by the President, and I have  
15 been told again by those who are experts in that field that  
16 July 1st of 2010 is the date that that starts.

17 Q And I believe you testified that you were also told that  
18 the funding of the pension plan, assuming the plan is still in  
19 existence at that point, would be under eighty percent. Is  
20 that correct?

21 A Could you restate your question?

22 Q I believe you also testified that the pilots' pension plan,  
23 assuming it were still in existence on that date, would be  
24 funded at a level under eighty percent. Is that correct?

25 A What I testified to is that if it was -- if the assets to

1 liabilities were below eighty percent, one event would occur  
2 below sixty percent, no lump sum could be paid and that it was  
3 my understanding that when we got to that point in time, the  
4 projections were that it would be below eighty percent. You  
5 can't really testify to that because if any of the pilots that  
6 we've been describing earlier, the 3,500 pilots leading up to  
7 that point were to start retiring all in that period before,  
8 it's very hard to know what the number would be. It's very  
9 possible the number would be significantly below it.

10 Q Right. But we're talking about specific projections that  
11 you've seen, correct?

12 A No. I can't testify to that because I can't tell you how  
13 many would retire by then.

14 Q I'm not asking you that. Maybe I misunderstood you and, if  
15 so, please clarify. I believe I just heard you say you were  
16 aware of certain projections that had been made, presumably by  
17 the actuary, but you tell me, that in 2010 the plan would be  
18 funded under eighty percent.

19 A There is a chart that we provided that made some  
20 assumptions, some of them from DP2, to show you the result of  
21 certain kinds of retirements by that date. But I'm not here to  
22 project to you how many people could or would retire.

23 Q I'm not asking you to. I'm just asking if you remembered  
24 what that projection stated that we said others did.

25 A It's my understanding it's below eighty percent, but I have

1 not done that calculation. And, again, that depends on how  
2 many people have retired by that date. So, frankly, it's idle  
3 speculation at this point whether it would be above or below  
4 it. Frankly, if I think about it, it's my testimony that by  
5 the time you got to that date pilots would be so concerned  
6 about not getting their lump sum that you would have a massive  
7 snowball and when you had that massive snowball, that would  
8 throw the assets completely out of -- you know, not throw it  
9 out, but reduce the assets dramatically as these lump sums were  
10 paid.

11 So I probably could testify for you that I think it would  
12 be substantially below eighty percent just because it's logical  
13 to me that anybody looking at his peers or her peers as pilots  
14 would be thinking, I better go get mine because they're going  
15 to get theirs and I'll be left holding an empty bag. So --

16 Q I'm not asking you to speculate on pilot psychology. I was  
17 asking you specific questions about a projection that you said  
18 you have seen and read. And that specific projection you  
19 stated was below eighty percent. Is that correct?

20 A I don't think I -- if I said that, I don't recall saying it  
21 in that way. I think I said I believe I've heard it would be  
22 below eighty percent. I have not studied that.

23 Q Okay. Are you aware of what the Pension Protection Act  
24 provides for the year 2010 if a pension plan is funded over  
25 sixty but less than eighty percent?

1 A Generally aware of it.

2 Q Would it be correct to say that in such a situation the  
3 plan may pay the lesser of fifty percent of the benefit or PBGC  
4 maximum as the lump sum?

5 A That sounds accurate. What I would -- as it's been  
6 described to me, the amount that the pilot would receive would  
7 be based off of the PBGC calculations versus -- essentially  
8 PBGC insurance calculations versus what the Delta pension plan  
9 would require.

10 Q Okay. Let's go to the first prong, the lesser of fifty  
11 percent of the benefit. Are you aware that the current maximum  
12 a pilot could take as a lump sum is fifty percent of his  
13 benefit under the current plan? Are you aware of that?

14 MR. HUEBNER: Your Honor, if I could just help for a  
15 moment. It's important to understand.

16 It's not fifty percent of the benefit under only the  
17 qualified pilot plan. It's fifty percent of the total benefit  
18 that includes the non-qualified benefit as well which is  
19 actually much more than fifty percent of the qualified benefit.  
20 I would just ask Mr. Kaplan, because I'm not sure they focused  
21 on this, to be sure that he's quite precise in his questions.

22 THE COURT: Well, stop for just a moment.

23 (Court and court personnel confer.)

24 THE COURT: You may proceed.

25 BY MR. KAPLAN:

1 Q Okay. I am asking you whether it is correct that a pilot's  
2 retirement benefit under the current plan is fifty percent of  
3 his total benefit. That is the most he can take in a lump sum.

4 A I don't recall.

5 Q You don't recall?

6 A No.

7 Q And do you recall what the PBGC maximum would be in a lump  
8 sum, or is that a question better asked of the actuary?

9 A I think that's certainly a better question to ask to  
10 somebody other than me.

11 Q Okay. So basically, in what you're saying about what might  
12 or might not happen in July of 2010, the details of that are  
13 things that basically should be asked of the actuary, not of  
14 you. Is that correct?

15 A I think the details of how those plans work, yes. The  
16 details of what might occur, I think I'm the right expert for  
17 that.

18 Q Okay. I believe you testified that there was some reason  
19 for you to anticipate a massive run on the bank on that date.  
20 Is that correct?

21 A I did.

22 Q And what is that reason?

23 A The reason, I'll try to restate it as close as possible to  
24 what I said, is that with knowledge in the pilot community,  
25 that there is a date coming forward which has a test, and I

1 believe that test continues, although again, you should ask  
2 somebody who knows the field better than me, that at that point  
3 in time, as these measurements occur, if the company -- if the  
4 pension plan goes back down, as I said, below the percentages  
5 that I'm describing, that the lump-sum window could shut, and  
6 it could shut for a very long period of time. And as a  
7 consequence, I think a lot of pilots would jump forward and  
8 consider retiring early.

9 I'm not here to predict whether those pilots would do that.  
10 All I'm trying to describe is that an exit lender would do that  
11 exercise and judge for themselves what the risk was to that  
12 lender, and I believe that the lender would see an extreme  
13 risk, and be unwilling to make a loan with that kind of risk in  
14 it, where the airline could and would stop flying if a certain  
15 percentage of pilots stopped. Just if a certain percentage  
16 of --

17 Q We all know that the 2000 --

18 A I'm not finished.

19 Q Excuse me. Sorry.

20 A -- a certain percentage of pilots retired.

21 Q We all know that something will happen on that date, but  
22 wouldn't the exit lender also want to determine how likely it  
23 would be that anything might or might not happen on that date?  
24 If there was a very remote possibility, would it have any  
25 effect?

1 A The answer -- I've been doing financing for a long time and  
2 as I said, I've done it at Blackstone and I did it back when I  
3 was at Citibank, and the answer to your question is no. I  
4 think if it was so remote it was impossible, of course, they  
5 would ignore it. You know, if you were looking at a loan and  
6 saying, what if an asteroid fell on it, well, we don't need to  
7 think about that.

8 This isn't remote. This is a very strong possibility and  
9 the reason it is is the lender has evidence. There were a  
10 large number of pilots who retired as soon as any news started  
11 coming out about Delta's own financial issues. And so, the  
12 lender would look at that circumstance, I believe, and say this  
13 isn't remote. This is, in fact, a proven theory. The only  
14 question is: Is it 3,500 or is it 1,800, is it fifty percent  
15 of that? What number should I pick? And under all of those  
16 numbers, the airline is not viable, would not keep flying and  
17 the bank would then be at risk of ever being repaid, so I don't  
18 think this is a theoretical risk. This is a proven risk. The  
19 only question is, what would be the percentage under whatever  
20 circumstance was occurring at that time.

21 Q Okay. I believe the -- in your declaration, you said that  
22 the 2004 risk was based on the financial condition of Delta at  
23 the time?

24 A You would have to show me that. I don't recall those words  
25 that way.

1 Q Sorry. You alluded to the 2004 early retirement. What  
2 caused those retirements, in your view?

3 A Leading up to the financial issues that Delta was facing,  
4 there was a lot of information in the news press and obviously,  
5 in the company's public filings, about the financial issues  
6 that the company was facing. 9/11 had occurred, obviously.  
7 Delta had suffered tremendous losses as a consequence of that.  
8 The onslaught of the low-cost carriers was continuing,  
9 something that some people felt was a temporary phenomenon and  
10 like in the past, the low-cost carrier would fail and then the  
11 legacy carriers would continue.

12 So as it became more evident that Delta was, in fact, in  
13 financial trouble, that United was in financial trouble, and  
14 that others were having financial trouble, I believe that  
15 started to motivate pilots. I haven't talked to any of them.  
16 Actually, I have talked to some that had actually stated to me  
17 that they had been motivated to grab their lump sum because of  
18 the pending doom they saw coming.

19 Q But the pending doom scenario is not the same as the  
20 scenario you see in 2010, is it?

21 A Actually, it is. It doesn't have to be. I think, even if  
22 Delta -- look, if Delta was investment grade by then, I think  
23 that -- not probably even investment grade, there probably  
24 would be a concern, just because of track record. But if  
25 they're looking forward and realizing that a group of people

1 could, in fact, go get their lump sum and shut that lump-sum  
2 window to everybody else because of their own activities and  
3 the reduction of assets that would occur, I think you would  
4 find people that, who are near retirement age, anywhere within  
5 that range, making a judgment that it is safer for them to get  
6 their money and get out. Look what almost happened before,  
7 because, you know, under your circumstance, we would not have  
8 terminated the pension plan, and it would not be worth risking  
9 these large dollars that they're relying on. That's number  
10 one.

11 Number two, if something occurred leading up to that period  
12 that caused any concern, as a consequence of fuel, terrorism,  
13 you know, all of these events I've described, that would just  
14 make the snowball, I believe, earlier, so that \$290 million  
15 that I showed below that yellow line for the three-hundred-  
16 pilot retirement, I believe, we used that, I believe it was  
17 your calculation, but if it wasn't, I apologize, I believe that  
18 number would grow substantially. I think each time there was  
19 any kind of bad news, people would look around and vote with  
20 their feet. That's what happened before. I believe that's  
21 what happened again.

22 And again, let me keep turning this back because it doesn't  
23 matter what I believe would happen. What matters is what I  
24 believe the lender would do in terms of measuring that risk,  
25 and there is no way a lender sitting here today could measure

1 that and say, oh, don't worry about it. It's not going to  
2 happen. These pilots aren't going to do that, or it's only  
3 going to be five percent or ten percent or whatever. There's  
4 no way a lender could conclude that.

5 Q 2004 was not the first time Delta had financial difficulty,  
6 was it?

7 A It depends on how you define financial difficulty.

8 Q 1996.

9 A It probably had a little bit then.

10 Q Did you see equivalent people -- pilots walking with their  
11 feet in 1996?

12 A I'm sorry. I thought he was standing up.

13 Q I'm sorry?

14 A I'm sorry. I thought the gentleman behind you was standing  
15 up to say something, so I was stopping.

16 MR. HUEBNER: Could we have an exhibit on that, Your  
17 Honor, that we may want to use? We actually have a chart that  
18 is part of the evidence of this hearing.

19 THE COURT: All right.

20 MR. KAPLAN: At the moment, I want to ask what the  
21 witness's knowledge is of it.

22 MR. WEINSTEIN: Sure.

23 MR. KAPLAN: If you want to bring it up with him on  
24 redirect, you certainly are free to.

25 MR. WEINSTEIN: Okay.

1 BY MR. KAPLAN:

2 Q But do you, as you sit here today, know whether in 1996,  
3 when Delta was having financial difficulty, pilots walked with  
4 their feet?

5 A I don't recall. I don't recall looking at it. I think  
6 there is an exhibit, but I don't recall looking at that.

7 Q Okay. Let me direct your attention to your declaration, if  
8 you could have it in front of you.

9 First, with respect to Paragraph 2, which are your  
10 qualifications, in a quick read, I don't see anything there  
11 that appears to relate directly to the airline industry. Prior  
12 to your connection with Delta in 2004, had you personally --  
13 had done any work in the airline industry?

14 A Let me just look, because if TWA isn't mentioned, then I  
15 have left one out, and the number would be higher than thirty-  
16 five that Mr. Weinstein suggested. But I did work on TWA.

17 Q Do you see that on the list?

18 A Not with a quick read. No, I don't see it here, so it  
19 should have been added. It's sort of humorous, isn't it, that  
20 the -- that I left the airline out.

21 Q Okay. With the exception of TWA, have you had any  
22 experience in the airline industry?

23 A Not other than that deal, no.

24 Q With respect --

25 A Actually, I'm sorry. Let me rephrase.

1           When I worked at Citibank, I worked on financings for  
2 PanAm, large financings. I worked on financings for United.  
3 And actually, I have a fair amount of industry expertise. I  
4 thought your question was how much restructuring I had done in  
5 the airline field, but prior to my joining Blackstone, I had  
6 spent a fair amount of time doing financings for airlines.

7 Q   But you -- with the possible -- with the exception of TWA,  
8 you have not been involved in restructurings?

9 A   No. Restructurings? No.

10 Q   Okay. But you don't think that lack of expense of  
11 experience impedes your expertise? You're perfectly competent  
12 to testify?

13 A   I am a hundred percent certain about that, to tell you the  
14 truth. I'm a restructuring expert, as has been cleared, and  
15 you can look across this whole list of companies. We are hired  
16 for our expertise in knowing how to get a restructuring done,  
17 how to get a financing done. It is a sad moment if I get hired  
18 by a company and I know more about their industry than they do,  
19 because obviously, that's what they're supposed to do for a  
20 living.

21           As we go through different kinds of industries that get in  
22 trouble, we end up becoming pretty familiar with the industry  
23 as a consequence. So, as I mentioned earlier, I've done a lot  
24 of telecom deals because there's been a whole rash of those, a  
25 bunch of retail deals back in the early nineties, and the way

1 the airline business has worked is if you work for one, they're  
2 not real keen on you working for any others, and I have signed  
3 in my letter of engagement that I would not work for another  
4 airline.

5 Q Thank you.

6 Let me direct your attention to Paragraph 4 of your  
7 affidavit. I believe there you used the words "liquidity  
8 shortfall." Do you see -- on the second sentence, do you see  
9 that?

10 A Yes.

11 Q Is the sum and substance of your knowledge and testimony of  
12 a liquidity shortfall based on the declaration of Margaret  
13 McDaniel or other conversations you've had with her?

14 A I would -- it's both. I learned the definition of  
15 liquidity shortfall. I've spoken to Ms. McDaniel about it and  
16 many, many other people in this case.

17 Q Also, in the middle of Paragraph 4, where you talk about  
18 Delta's best estimate being 800 to a thousand, you cite the  
19 Bastian declaration as your source for that. Is that correct,  
20 speaking about the middle of Page 4?

21 A Right. I'm just going to read it quickly. Yes. What it  
22 says is:

23 "As described in the declaration of Edward H. Bastian,  
24 Delta anticipates that hundreds of Delta senior pilots,  
25 (Delta's best estimate being 800 to a thousand -- but the

1 number, based on Delta's analysis, could even be more)  
2 would immediately take early retirement."

3 So that is how it's written.

4 Q Okay. And so that -- the representation of 800 to a  
5 thousand is really Delta's representation to you. You did not  
6 act independently to verify that. Is that correct?

7 A No. We -- I studied the work that was done and have  
8 reviewed it. I didn't prepare it, but I've reviewed it. It's  
9 a very detailed analysis.

10 Q But you did not -- is that the analysis that formed the  
11 basis of Mr. Bastian's declaration?

12 A You would have to ask Mr. Bastian.

13 Q Okay. I will.

14 A I'm sure you will get your opportunity.

15 Q Okay. Also, in your analysis, I believe you've made it  
16 clear that if the operational failures that were described by  
17 Mr. Watson take place, that would endanger the DIP financing of  
18 Delta. Is that correct?

19 A I think the -- yes. But I would add to that, I think the  
20 possibility of it, when a bank was doing its due diligence on  
21 considering whether to provide financing, that alone would  
22 cause a bank, I think, an inability to make this loan.

23 Q I'm speaking specifically about the DIP financing, which is  
24 already in place.

25 A Oh, then I didn't understand your question. I thought you

1 were asking for exit financing.

2 Q No. I'm talking about DIP financing at the moment.

3 A Okay. So could you repeat your question?

4 Q My question is, if the set of circumstances described by  
5 Mr. Watson and Mr. Bastian in their declarations come to pass,  
6 and these people leave, they have the operational consequences  
7 discussed by Mr. Watson, that would -- would that, in your  
8 view, affect the DIP financing covenants?

9 THE COURT: The what?

10 MR. KAPLAN: The DIP covenants.

11 THE COURT: Oh. Covenants. Okay.

12 BY MR. KAPLAN:

13 A I don't really see how it could come to -- I guess it would  
14 come to pass if we were still in bankruptcy and the pension  
15 plan was not terminated, so that large numbers of pilots would  
16 start leaving.

17 Q That is correct.

18 A The answer is -- I testified to it a few minutes ago, but  
19 yes, I do believe that it would cause covenant breaches.

20 Q Okay. In Paragraph 5 of your declaration, you talk about  
21 an estimated fifty-two billion to 5.2 billion and six billion  
22 in needed extra financing. Is that correct?

23 A It says 5.2 billion to 6.6 billion, which is on the board  
24 over there on the ground.

25 Q Yes, okay. And that is under the assumption of 800 or a

1 thousand pilots retiring early. Is that correct?

2 A That is correct. It obviously talks about larger amounts,  
3 but it says if there were 1,200 pilots retiring early, it would  
4 be 7.7 billion, so --

5 Q Yes. At the time you prepared this declaration, had you  
6 considered the effects of 600, 400 or 300 pilots retiring  
7 early?

8 A I don't recall that we had done the analysis, so I had  
9 thought long and hard about how a bank would think about these  
10 waves of retirements, and frankly, the number is not that  
11 relevant to me. I think the sheer existence of the lump-sum  
12 possibility in bankruptcy or out of bankruptcy is so daunting  
13 that it's really irrelevant what the number is.

14 Q Okay. All --

15 A Or what the number of pilots are that you're studying.

16 Q Okay. So basically, if I understand you correctly, the  
17 number of early retirees is really not very relevant in your  
18 calculations, the fact of that, that is relevant?

19 A I think definitely the fact and the number is not relevant  
20 because if 300 retire now, it just means 3,200 could retire  
21 later. If a thousand retire now, it means 2,500 could retire  
22 later. So the -- you have to look at it knowing that there's  
23 no end to this possibility to an exit lender that pilots could  
24 be retiring on any given end of the month, announcing for the  
25 next day. Obviously, they could retire during the month, too,

1 which they do. But I always look at it in the worst case from  
2 how a lender would look at it, so it isn't relevant. The  
3 relevant number is the fact that it said 1,800 pilots today.  
4 It could grow to 3,500 pilots and that for a bank, that is just  
5 a daunting possibility.

6 Q Okay. On Page 5 of your declaration --

7 A Page 5?

8 Q Page 5. Near the top of Page 5, I believe you also talk  
9 about the low-cost carriers and some other legacy carriers,  
10 such as United and US Airways, not having defined benefit  
11 plans. Are you aware of any legacy carriers that do have  
12 defined benefit plans?

13 A Sure. It's my understanding that US Airways, it's the  
14 pilot plan, and certain other plans, as I understand it, you  
15 were involved in it, I think they have a couple of smaller  
16 remaining pension plans. Northwest still has a plan. American  
17 still has a plan and Continental has a plan.

18 Q Let's talk about American.

19 A Okay.

20 Q Are you aware of whether American has a defined benefit  
21 plan for its pilots?

22 A My understanding is they do. I have not gone and  
23 researched it personally, but it's my understanding.

24 Q Okay. Let me direct your attention to your Exhibit 2.

25 A Okay.

1 Q Of all the legacy carriers listed in that exhibit, American  
2 is in the best shape, is it not?

3 A I have to answer your question in this way. As far as cash  
4 is concerned, on this exhibit of the legacy carriers, American  
5 is in the best shape. Whether American is in the best shape  
6 generally, from an operating perspective, this chart does not  
7 speak to it.

8 Q I was asking about Exhibit 2 specifically.

9 A Okay. Then from a cash perspective, obviously they're in  
10 third place, right behind Southwest and AirTran.

11 Q And they are -- they're even with a defined benefit plan?

12 A Yes.

13 Q Continental also has -- does Continental also have a  
14 defined benefit plan, to your knowledge?

15 A Continental does. They obviously are lower on that chart,  
16 considerably lower on that chart, but they do have one.

17 Q Okay. They are higher than Delta, though?

18 A Yes. One step up. They're two -- I guess technically two  
19 steps up.

20 Q They're higher than US Airways?

21 A They are higher than US Airways, Delta and Northwest.

22 Q Okay. So at least -- so it is possible for legacy carriers  
23 to maintain defined benefit plans, and at least based on the  
24 mode of analysis you've used in Exhibit 2, to be in relatively  
25 decent shape, at least vis-a-vis Delta?

1 A I -- with all due respect, that is a hundred percent the  
2 wrong way to do financial analysis. It reminds me of when I  
3 used to tell my parents, well, Johnny did it. Well, that  
4 doesn't make it right.

5 Yes, they are right here, right now, with this cash. You  
6 would have to analyze these airlines in many, many different  
7 ways, looking at their earnings capability, their balance  
8 sheet, their route structure, you name it, to see if they could  
9 survive.

10 I happen to have a view that I don't believe people can  
11 survive with these benefit programs long term. Okay, American,  
12 Continental, I'm not naming names. I'm saying -- just saying I  
13 think that they are a thing that has -- that was in the past,  
14 is not in the future in terms of competitors and, therefore,  
15 those that have them have a cost structure which is no longer  
16 relevant to the people they're competing with, so if you have  
17 that, it's pretty hard to beat the competition, or even meet  
18 the competition long term.

19 Q My point is, however, that American and Continental do have  
20 the plans, are not in bankruptcy. You will agree with that?

21 A I a hundred percent agree with that, but I did not agree  
22 with the conclusion you were drawing.

23 Q Are you aware of the phrase CASM, C-A-S-M, or cost per  
24 available seat?

25 A Cost per available seat mile, yes.

1 Q Yes. Do you know what the CASM is of Delta at the present  
2 time?

3 A Boy, I just looked at it. It depends if you're looking at  
4 main line or overall, and I think my recollection is it's about  
5 10.3 cents, something in that range, 10.4.

6 Q Have you had occasion to compare the CASM of Delta with  
7 other airlines, such as American or Continental?

8 A We do it all the time. I just -- I haven't thought about  
9 it in terms of preparing to sit here, but we look at it  
10 constantly. It's a very key measure, along with many other  
11 measures, as to how Delta's performance is doing.

12 Q And do you know how Delta rates with respect to these other  
13 airlines?

14 A Delta has been at the bottom of the heap for a very long  
15 time, and with the cost cutting, it is making progress. My  
16 recollection is that Delta is still below where they would like  
17 to be. The way that we look at it and the way I testified  
18 during the DIP hearing is the better, I think, way to look at  
19 it, as EBITDAR margin. EBITDAR divided by revenues. And that  
20 allows each airline to compare itself on a margin basis, and  
21 what you see there is if Delta completes its plan, which  
22 includes getting rid of the pension program, it still does not  
23 have an EBITDAR margin as high as Southwest, AirTran and  
24 several of these other competitors, but it's at least close  
25 enough to be in the realm to be able to compete and be viable,

1 but that's without the pension program.

2 And I think if you look just at CASM, you start to get into  
3 sort of a bad analytic because CASM can be driven by very many  
4 different things. You can have a very, very low CASM and a  
5 very low RASM and still make more money than anybody, or you  
6 can have a very high RASM and RASM revenue prevails. You can  
7 have a high RASM and a high CASM and still make more money than  
8 anybody, so it's a little tricky to just look at CASM as a  
9 measuring tool.

10 Q But have you used it as a measuring tool, vis-a-vis  
11 American, for example?

12 A Sure, I have. I don't have any strong recollection right  
13 now, but we have looked at it.

14 Q Let me direct your attention to Page 6, Section 3 of your  
15 declaration. The caption says:

16 "The pilot plan, if not terminated, will trigger a  
17 crippling occupational and financial crisis."

18 Let me ask you to look at that Section 3 and say if that is  
19 based solely on an analysis based on 800 to 1,000 retirees, in  
20 Section 3.

21 A (Witness reviews document.)

22 THE COURT: May we take a brief break here? You  
23 can --

24 THE WITNESS: Step down?

25 THE COURT: Step down for a few moments, yes. I'm

1 sorry to interrupt these proceedings.

2 MR. KAPLAN: Should we clear counsel table?

3 THE COURT: Oh, no, no. Don't move. Don't move.

4 Stay right where you are.

5 (Recess taken at 2:36 p.m.)

6 (Proceedings resume at 3:05 p.m.)

7 (Court and court personnel confer.)

8 THE COURT: All right. Do forgive me. I'm terribly  
9 sorry.

10 MR. KAPLAN: Not at all. Is Your Honor ready for us  
11 to proceed?

12 THE COURT: Yes.

13 MR. KAPLAN: Okay.

14 BY MR. KAPLAN:

15 Q I believe before the recess, I had asked you to look at  
16 Section 3, beginning on Page 6, to determine whether that  
17 analysis in Section 3 was based solely on the scenario of a  
18 hundred to a thousand early retirees, combined with the  
19 operational meltdown that Mr. Watson talks about in his  
20 declaration.

21 A The paragraph, or there are three paragraphs, Paragraphs 9,  
22 10, 11, 12, are not actually based on the -- the calculations  
23 are based on the 800 to a thousand. There was a footnote that  
24 talks about whether there might be additional amounts, but the  
25 calculations that you're looking at here are in terms of

1 Delta's mainline capacity would be immediately reduced by  
2 twenty-nine percent to forty-one percent, international routes  
3 being cut down approximately forty-three to fifty percent.  
4 These numbers are based on the 800 to a thousand.

5 Q Okay.

6 THE COURT: They are, in effect, calculations that are  
7 predicated on those numbers?

8 THE WITNESS: Yes. You have to pick something to do a  
9 calculation --

10 THE COURT: Right.

11 THE WITNESS: -- and that was what was picked here.

12 THE COURT: All right. Okay.

13 BY MR. KAPLAN:

14 Q Let me direct your attention to the chart on Page 8. Did  
15 you prepare that chart, or was it prepared under your  
16 direction?

17 A Under my direction.

18 Q Did you prepare a similar chart for numbers of retirees  
19 less than 800?

20 A My recollection is we did look at it, though I don't see it  
21 in this book. Actually, this is when the declaration went in.  
22 We have since looked at it. That's correct.

23 MR. KAPLAN: Okay. I have -- I will admit, I have not  
24 had a chance to read everything in the exhibit file counsel  
25 handed me. If I can ask counsel, is there a version of his

1 chart with other numbers in the exhibit file?

2 MR. HUEBNER: No.

3 MR. KAPLAN: Okay. Thank you.

4 BY MR. KAPLAN:

5 Q Are you aware of such a chart having been actually  
6 prepared?

7 A Not a chart as an exhibit chart, but we -- when we do our  
8 work and we're looking at the other scenarios, 300, 400, 600,  
9 et cetera, we would run, obviously, the same kinds of  
10 calculations and we did do that.

11 Q Let me direct your attention to Page 9 of your declaration.  
12 You again, in Paragraph 13, about the fourth line down, assume  
13 800 to 1,000 early retirements, and then you assume 100 and  
14 other -- 126 other eligible pilot retirements. And if you look  
15 at footnote -- the footnote on that page, Footnote 4, you state  
16 that it has been assumed that all 126 individuals will accept  
17 early retirement. What did you base that assumption on?

18 A The people that make those calculations, that's something  
19 that I was given.

20 Q And who gave you those calculations?

21 A I believe it was Ms. McDaniel.

22 Q Ms. McDaniel?

23 A It might have been Mr. Bastian or Mr. Watson.

24 Q Okay. But it would be one of those individuals who would  
25 explain the basis of the assumption that all 126 would retire?

1 A Or people that work for them, correct.

2 Q Yes, okay. In Paragraph 14, the heading on Page 9, and you  
3 talk about the table of 5.2 to 6.6 billion, that range, again,  
4 is based on the assumptions of 800 to a thousand and the  
5 operational meltdown. Is that correct?

6 A Right. I think you have to be careful here. The beginning  
7 of thirteen talks about the fact that without terminating the  
8 pilot plan, the company won't be able to obtain necessary exit  
9 financing, not mentioning a number. Then we go through the  
10 calculation, saying let's assume 800 to a thousand early  
11 retirements, and then we do that calculation, fourteen  
12 continues along in that vein doing the calculation, so one can  
13 actually attach numbers and understand some of the magnitude,  
14 and that is what that chart does, showing the 5.2 billion  
15 required financing under 800 pilot retirement, early  
16 retirement, and 6.562 billion --

17 Q By that chart, you're referring to the chart on Page 10 of  
18 your declaration?

19 A I am. I assume it's part of Paragraph 14 --

20 Q Yes.

21 A -- since it continues along there.

22 Q Okay. Let me direct your attention to Footnote 10 of that  
23 chart, which is on the following page. You state that, and  
24 reading from Footnote 10, that:

25 "Table 1 reflects the enactment of the legislation recently

1 passed by Congress. If it is not enacted, for 800 pilot  
2 early retirement, this amount would be approximately 185  
3 million."

4 Do you see that?

5 A Yes.

6 Q And let me ask you to look again at the chart. The chart  
7 number is 195 million. Why did the pension legislation  
8 increase that number by ten million?

9 A I'm not the right guy to ask that to. There are others  
10 that -- that you can ask it. But this does point out what I  
11 was describing earlier, which is 185 million, if it's not  
12 enacted, and then that would grow further, to a billion nine  
13 sixty-five. So when you've been asking about the 800 to a  
14 thousand pilots, obviously this shows that it would be  
15 significantly larger than that by the year 2010.

16 Q My question, though, was why is the number is higher pre-  
17 legislation than it is post-legislation?

18 A I don't recall the reason.

19 Q Do you know who would recall that?

20 A Well, I'm sure Ms. McDaniel would be --

21 Q Could it be a mistake in the chart?

22 A No. I have grilled people on this. It's -- I find it,  
23 personally, a confusing chart because it talks about  
24 legislation not being enacted when, in fact, it has been  
25 enacted, and the guys that work for me, that are sitting in

1 this courtroom, I know, are smiling right now, without having  
2 to look at them, because I've not enjoyed this footnote, but I  
3 know it is accurate.

4 Q And Exhibit 1 of the exhibits that were filed today, is  
5 that simply a -- excuse me -- Exhibit 1, that has been filed  
6 today, is that simply an extrapolation of this chart, to  
7 include 300, 400 and 600 pilots?

8 A More or less. I testified to this earlier. You can see  
9 the right hand and last two columns, 800 and a thousand pilots,  
10 five billion two eighteen, six billion, five sixty-two. That's  
11 the same.

12 When you go left and you look at the 300, 400 and 600  
13 pilots, there is an assumption that there will be more  
14 retirements, as I testified also to earlier, so the chart isn't  
15 exactly the same. The three billion, three twenty-one, for  
16 instance, for the three-hundred-pilot retirement -- early  
17 retirement, would have to add the \$940 million in this example,  
18 so the charts are a little bit different.

19 Q Going back to your declaration and the footnotes, on  
20 Footnote 7, you say Delta is currently obliged to continue this  
21 plan, and I assume by that you're referring to the non-  
22 qualified plan, if the pilot's plan is continued. Do you know  
23 where that obligation arises from?

24 A That's my understanding of -- at this point, I don't  
25 recall. I knew at some point. I don't recall at this stage,

1 but I know they have to continue. It looks to me, if we look  
2 at the McDaniel declaration, you will find it in there.

3 Q Okay. So you believe Ms. McDaniel is the person to ask  
4 with respect to that question?

5 A That's what this footnote suggests.

6 Q And again, on Page 12, in the middle of Page 12, where you  
7 conclude:

8 "For reasons I explain below, I do not believe Delta could  
9 obtain this amount of new capital."

10 When you wrote this declaration, the amount of new capital,  
11 again, was based solely on the 800 to 1,000. Is that correct?

12 A Incorrect.

13 Q Okay.

14 A You have to read more of that paragraph. This says if  
15 there were 1,200 early pilot retirements --

16 Q Right.

17 A -- Delta's exit financing requirement would increase to 7.7  
18 billion, and for reasons I explained below, I do not believe  
19 Delta could obtain this amount of new capital, and I think it  
20 means the 7.7 billion, the 6.6 billion, the 5.2 billion and,  
21 frankly, any amount of capital in excess of the 2.2 billion  
22 that we raised as part of the DIP.

23 Q The statement that any amount of capital, that is not in  
24 this declaration, is it?

25 A I think it states it all the way through it, frankly.

1 Q Okay. In the middle of Page 33 -- 13, you state that exit  
2 lenders will not be willing to provide between three billion  
3 and 4.4 billion of borrowings in excess of this amount lent  
4 under the DIP to support --

5 THE COURT: In excess of the amounts lent under the  
6 DIP?

7 MR. KAPLAN: Yes.

8 THE COURT: Okay.

9 BY MR. KAPLAN:

10 Q Do you have any idea of how much capital exit lenders are  
11 willing to provide if the plan is gone?

12 A I would say, from two perspectives, yes. One is from the  
13 testimony I gave earlier about the 1.7 VTL and the hope that  
14 the market will be as liquid and, therefore, I am hoping and  
15 believing that we will be able to raise another \$2.2 billion.

16 We are in the market every week talking to DIP lenders,  
17 raising new DIPs, raising new exits. This is a market you have  
18 to be in to understand and I feel very confident that the  
19 market is very clear on what they, at this point, would be  
20 willing to do, and it is not over \$2.2 billion.

21 Q So in your view, 2.2 billion is the maximum you think you  
22 can get?

23 A That is my view.

24 Q Okay. And that is with the plan not in existence?

25 A That is if the plan is terminated. If the plan exists, if

1 the pilot plan is terminated.

2 Q Yes. We're talking about the pilot plan.

3 Q If it exists for any reason, I do not believe I could raise  
4 any of the financing, including the money to take out the  
5 debtor-in-possession agreement.

6 Q On Page 15 of your declaration, you speak of Delta's -- in  
7 the middle of the page, you speak of Delta's obligation to make  
8 an immediate post-exit contribution of between 1.4 billion and  
9 1.7 billion. Do you know what that obligation is based on?

10 A I think, if you go to the chart on Page 14 -- sorry. I'm  
11 in the wrong chart. If you go to the chart on Page 10, which  
12 is Table 1, you can see the amounts that would be paid,  
13 qualified pilot pension plan of a billion two, non-qualified  
14 pension plan of a hundred and thirty million, qualified non-  
15 pilot of twenty-five at emergence, and then the amounts below  
16 there are for the twelve months thereafter, and that is what  
17 that is referring to.

18 Q And if you refer to Exhibit 1, that was filed today, would  
19 there -- is that exhibit the equivalent numbers for 300, 400  
20 and 600?

21 A I think you can see the numbers there. They are, again, if  
22 you go down that list, it shows the various amounts that would  
23 need to be paid in.

24 Q Do you know if the -- are you aware that there's a hard  
25 freeze on the Delta pension plan?

1 A I am aware of that.

2 Q Do these numbers take into consideration that hard freeze?

3 A Yes.

4 Q Let me direct your attention, finally, to Paragraph 18,  
5 where you conclude that you do not believe that lenders will  
6 provide the exit financing to Delta unless the plan is  
7 terminated. That is your conclusion? You haven't tested the  
8 market specifically in this regard, have you?

9 A They're two questions. One, it is my conclusion. I  
10 wouldn't have signed my declaration otherwise, and I still  
11 stand by this conclusion. I would point out that this doesn't  
12 say anything about 800 to a thousand pilots. It says hundreds  
13 of pilots, to get to the point earlier, and I think that --  
14 what was your second question? Sorry.

15 Q Is this simply your opinion or did you test the market?

16 A And as to testing the market, we were in the DIP market a  
17 little less than a year ago. We tested it then. We are on the  
18 phone with the DIP lender, I would guess, every day, somebody  
19 in Blackstone or Delta. So we have a very close communication  
20 with them.

21 The person who led the DIP lending from General Electric  
22 Credit Corp. is now at Morgan Stanley, who is the -- was the  
23 second underwriter, so you now have two parties that have a  
24 great interest in trying to do this financing some day in the  
25 future. So we have, I think, extreme knowledge of how people

1 are thinking about the DIP market, as well as Delta, and I  
2 would stand by these words.

3 Q My question is, did you actually test the market and  
4 attempt to raise capital for Delta with the plan in place?

5 A I don't personally believe in the words "test the market."  
6 I did two years of syndications at Citibank, in its investment  
7 bank, where we raised money for leverage buy-out firms, and if  
8 I heard that word once, I heard it 400,000 times. It -- what  
9 it meant was, you call a bank and you say, would you be  
10 interested in lending money to Delta? And the answer you get  
11 back is yes. And then you say, how much? And they say, huge  
12 amounts. And then they do due diligence and they give you a  
13 very large amount of a letter of intent, and then you ask for a  
14 commitment, and that's when you, quote/unquote, "test the  
15 market." And up to that point in time, you have whatever that  
16 person's marketing skills will allow them to put on a piece of  
17 paper with a straight face.

18 As testing goes, I believe we tested every day, but in  
19 terms of a sort of market test, if you will, which used to be a  
20 popular statement, I don't believe that exists and I don't  
21 think it's valid.

22 Q Okay.

23 A For Delta or for anybody.

24 Q Let me try to rephrase the question. Did you ever make an  
25 actual attempt to try to raise capital for Delta, not the

1 financing, exit financing for capital -- for Delta --

2 A We have not gone out --

3 Q -- with the -- okay. I'm sorry.

4 A Sorry. We have not gone to the market with a request for a  
5 proposal. That is correct.

6 Q Okay.

7 A And shouldn't have done that by now, in my opinion.

8 MR. KAPLAN: May I have a moment, Your Honor?

9 THE COURT: Yes, sir.

10 (Pause in proceedings.)

11 BY MR. KAPLAN:

12 Q Let me again direct your attention to Page 8 of your  
13 declaration, and the chart that appears on that page. I  
14 believe you stated, even though no exhibit was prepared, that  
15 you ran this chart or the equivalent of this chart at other  
16 numbers. Do you recall that testimony?

17 A I did say that.

18 Q And do you recall what the numbers showed?

19 A My recollection is down to 600 early retirements, the  
20 EBITDAR covenant would be broken, but I continue to think that  
21 this chart doesn't tell the whole story, is what I described  
22 earlier. That would be assuming the period of time that we're  
23 assuming here, which is the period in bankruptcy and the twelve  
24 months after bankruptcy. I have no doubt in my mind that all  
25 EBITDAR covenants would be breached if we went beyond that

1 period of time, with any number of pilots, because of the wave  
2 concept that I've talked about. It's only a matter of time to  
3 where I think people retire early and, therefore, breach these  
4 numbers.

5 Q So if I understand the answer to my question, you're saying  
6 the break point is at approximately 600, or just below,  
7 according to this chart?

8 A I'd say just below 600, in terms of this calculation.

9 Q I'm speaking of this calculation.

10 A Yes, yes.

11 Q It's above 500?

12 A I believe it is, yes.

13 MR. KAPLAN: I have no further questions.

14 THE COURT: Redirect.

15 MR. WEINSTEIN: Yes, Your Honor.

16 **REDIRECT EXAMINATION**

17 **BY MR. WEINSTEIN:**

18 Q Briefly, Mr. Coleman, Mr. Kaplan asked you some questions  
19 about the new legislation and the July 1, 2010 date. Without  
20 the new legislation, in other words, let's assume that  
21 legislation never happened, would your conclusions today be any  
22 different?

23 A No, they would be no different. The bank would have to be  
24 looking at that same number of pilots and the risk that they  
25 would retire on bad news, so that the July 1st date gives sort

1 of a deadline, if you will, that people might create a snowball  
2 retirement time frame, but it's the same calculation. It's the  
3 same risk that massive numbers of pilots retire and the airline  
4 is not able to operate.

5 Q And that the bullet point from your list there, risk of  
6 future waves of early retirements, was that limited to 2010?

7 A No. That's true. The day that window opens, if it ever  
8 does open, again, in terms of the ability to take out lump  
9 sums, and it's true, even in the bankruptcy.

10 Q Mr. Coleman, Mr. Kaplan asked you some questions about  
11 1996. I think you heard Mr. Huebner say this morning that the  
12 plan now is \$2.5 billion under funded. Do you know whether the  
13 plan was under funded in 1996?

14 A It is my recollection that the plan was fully funded at  
15 that time.

16 Q And I know you've been asked about 1996 cold, Mr. Coleman,  
17 but would it surprise you to learn that we checked with Delta  
18 during the break, and that it actually turned a profit in  
19 fiscal year '95 and '96?

20 A You know, I was trying to remember off the top of my head,  
21 but since I wasn't advising them at that time, it's "old" news,  
22 but that wouldn't surprise me.

23 Q Mr. Coleman, Mr. Kaplan asked you whether you came up with  
24 the 800 to a thousand estimate. You said that you didn't, that  
25 it came from others. Understanding that you didn't come up

1 with that estimate, do you believe it's a reasonable estimate?

2 A I think it's -- yes, I do, as a matter of fact. If I were  
3 to personally run the numbers, I would not run them down to  
4 three, four and 600. I'd run them to 1,200, fourteen and  
5 1,600. That's what I would want to see, if I was a lender,  
6 because I think the likelihood or the risk is higher versus  
7 lower.

8 Q Mr. Coleman, Mr. Kaplan also asked you about some other  
9 legacy carriers, American and Continental, and the nature of  
10 their plans. In your understanding, have these other airlines  
11 experienced lump-sum runs on the bank, like Delta has in the  
12 past?

13 A Not to my knowledge.

14 Q And understanding that you're not an expert in every detail  
15 of these other airlines' pension plans, do you have a general  
16 understanding of how their lump-sum features compare to  
17 Delta's?

18 A I'm not great on it, but it's my understanding that they  
19 are significantly less generous than Delta's, and not the kinds  
20 of plans that would cause pilots to make a financial decision  
21 to retire early, but I don't have a great memory on those.

22 Q Mr. Coleman, Mr. Kaplan mentioned Continental. Are you  
23 aware that Continental has been in bankruptcy twice?

24 A I am aware of that.

25 Q And are you aware that American was within moments of

1 filing for Chapter 11?

2 A I am aware of that, also.

3 Q Okay. Mr. Coleman, have you spoken to financial  
4 institutions about whether they would do an exit loan for  
5 Delta, absent termination of the pilot plan?

6 A Yes.

7 Q Were they major institutions?

8 A Yes.

9 Q And how did those conversations inform your conclusions  
10 today?

11 A Well, all banks and all financial institutions are very  
12 careful about what they will say. I think, if Your Honor  
13 remembers, in United, United came out and described its two  
14 agents, Citi and Chase, as being unwilling or having covenants  
15 that kept them from making the pension payments, and Citi and  
16 Chase were quick to run to the markets and say, we didn't say  
17 that, we didn't say that. They don't want to be seen in any  
18 way where they could be committing some kind of lender  
19 liability.

20 Back Channel was very clear with those institutions and all  
21 the rest, that this is not something they believe they can  
22 finance, a company that has this, and I don't have any doubt  
23 that, from the conversations that we have in the marketplace,  
24 that any institution that we would be looking at that would  
25 have the wherewithal to lend the company the same money it has

1 out today, not more, that they would not do so with a business  
2 plan that would be as un-viable as our plan would be -- our  
3 business plan would be.

4 Q Finally, Mr. Coleman, Mr. Kaplan asked you some questions  
5 about the EBITDAR covenant and the number of retirements there  
6 would have to be in order for the covenant to be violated.  
7 Does your testimony today hinge on whether or not the EBITDAR  
8 covenant would be violated?

9 A No, no. That's -- in fact, it's sort of a dilemma for the  
10 bank. I think, Your Honor, you would find GE front and center  
11 if you lifted the veil on this pension and allowed it to go  
12 forward. They wouldn't have a covenant default, perhaps, at  
13 that moment, but they would be in here, trying to figure out  
14 how to protect their assets and their collateral, so it's  
15 interesting. It's a covenant, but I don't think it changes my  
16 testimony whatsoever.

17 MR. WEINSTEIN: Thank you, Mr. Coleman. No further  
18 questions, Your Honor.

19 THE COURT: Recross.

20 **RECCROSS-EXAMINATION**

21 **BY MR. KAPLAN:**

22 Q I believe on redirect you stated that, in your view, the  
23 likelihood of 1,200, 1,400 and 1,600 retirees is greater than  
24 three, four or 600 retirees. Is that what you said?

25 A I --

1 MR. HUEBNER: Your Honor, I think that quite  
2 mischaracterizes his testimony. If he wants to ask him a  
3 question, I think he should.

4 BY MR. KAPLAN:

5 Q Okay. Why -- do you -- okay. Let me rephrase the  
6 question. Do you believe that it's more likely that more than  
7 1,000 people will retire early if the ban is lifted, than a  
8 lower number?

9 A Let me repeat what I've been saying. I'm, first of all,  
10 trying to testify on behalf of how a lender would look at it,  
11 and what I have been saying all along is whether it's 300  
12 today, it's not going to be 300 over time. Whether it's a  
13 thousand today, it's not going to be a thousand over time. So  
14 when I think about looking at 1,200, 1,400 or 1,600, all I'm  
15 saying is, I believe if this window is opened and people can  
16 take lump sums, you will see large numbers of people that will  
17 retire, whether that's now, because they want to grab it now,  
18 or whether that's each time Delta has some bad financial news  
19 or some terrorist event occurs, like the London event that just  
20 happened. But I believe that number will just grow and grow  
21 and grow.

22 So if I were to do analysis, I think looking at three,  
23 four, six is false. There's no question in my mind the number  
24 would be higher. So if I had to be stuck with amounts, I would  
25 -- what I was trying to describe is I would raise the range

1 versus look at those lower numbers.

2 Q And the reason you would do that is for the reason that you  
3 just mentioned now?

4 A It's for the reason that's sitting on that board right now,  
5 risk of future waves of early retirement.

6 MR. KAPLAN: Okay. Nothing further.

7 **EXAMINATION**

8 **BY THE COURT:**

9 Q Mr. Coleman, could you articulate for me  
10 -- it's probably, again, because you probably did -- but could  
11 you articulate for me the economic rationale that is at the  
12 foundation of your views that you've expressed concerning this  
13 snowball effect, so called, the potential for waves --  
14 potential -- or the certainty of waves or a snowball effect of  
15 retirements in terms of what would be perceived by pilots to be  
16 in their own self interest, as you, as a financial person,  
17 would view it?

18 A I think that if the plan is not in liquidity shortfall, so  
19 that they can, in fact, retire and receive their lump sum, what  
20 each of those pilots would realize is that window is open right  
21 this second, and if I retire today, I know I can get the full  
22 amount of whatever my lump-sum calculation is. If 400 pilots  
23 retire, let's say this was yesterday, because I think that  
24 today is September 1st, if 400 pilots retired yesterday and  
25 were out today and drew those lump sums down, and caused the

1 plan to go into liquidity shortfall, and then I can't go get  
2 mine anymore, then I realize I'm in trouble, until maybe  
3 someday the next time the window opens.

4 So if I'm a pilot, what I want to say to myself is, I need  
5 to protect my family. What are my other alternatives to go get  
6 jobs? And I've heard they have trouble getting jobs, but I've  
7 seen the pilots on Asiana Airlines and all the ones in the  
8 Middle East and everywhere else, so -- and on private aircraft,  
9 so it seems to me they are able to. I'm not an expert. I'm  
10 not trying to pretend I am, but they would have to look at what  
11 are their alternatives to make more money as they go forward,  
12 versus giving up whatever the size of that lump sum is.

13 So far, the pilots before these existing pilots have voted  
14 with their feet, and if you look at the fact that the plan is  
15 under water by \$2.5 million, it seems coincidental to me that  
16 that's about the size of the lump sums that have been taken  
17 out.

18 If you get to 2010 with this pension date that I've  
19 described, on July 1st of 2010, there, the pilots are looking  
20 at that date and thinking, and they will be able to measure the  
21 plan and see, is it eighty percent, is it sixty percent, is it  
22 thirty percent, what is the number? I'd better beat that date,  
23 because if I don't beat that date, the number of people that  
24 will pull money out will leave it in a position where it will  
25 be in shortfall for a long period of time and I will be stuck

1 again.

2 So I think even if Delta isn't in financial trouble there,  
3 it will be a very big dilemma for a lot of pilots and all it  
4 takes is one or two to cause a gigantic snowball. I think of  
5 it, I don't know if you fly the shuttle very often, but the  
6 Delta Shuttle does not assign seats, and it takes one person on  
7 that 6 a.m. flight to stand up and get on line at about 5:30 in  
8 the morning, and suddenly, everybody jumps out of their chair  
9 and gets on line. It's the same concept, which is, if I don't  
10 get there, I'm going to be disadvantaged, and it's real money.  
11 So I believe there is a snowball effect that could happen, sort  
12 of at any time because of bad news, but definitely by that date  
13 in 2010.

14 THE COURT: Thank you. Anything else from counsel?

15 MR. WEINSTEIN: No, Your Honor.

16 MR. KAPLAN: No, Your Honor.

17 THE COURT: Mr. Coleman, thank you very much, sir.

18 THE WITNESS: Thank you. Have a good weekend.

19 THE COURT: Likewise.

20 (Witness excused.)

21 MR. HUEBNER: Your Honor, would it be possible to take  
22 a brief break --

23 THE COURT: Of course.

24 MR. HUEBNER: -- before we put on Ms. McDaniel, just  
25 to change places and gather our thoughts?

1 THE COURT: Sure.

2 MR. HUEBNER: We'd appreciate it.

3 THE COURT: Should we say ten minutes?

4 MR. HUEBNER: Sure.

5 THE COURT: Or fifteen. You ...

6 MR. HUEBNER: Fifteen would be great. Maybe we can

7 start at ten to 4 on that clock?

8 THE COURT: Splendid.

9 MR. HUEBNER: Thank you, Your Honor.

10 (Recess taken at 3:36 p.m.)

11 (Proceedings resume at 3:58 p.m.)

12 MR. HUEBNER: Good afternoon again, Your Honor.

13 THE COURT: Yes.

14 MR. HUEBNER: Marshall Huebner.

15 One small housekeeping point, just sort of so that the  
16 record is clear, and I guess one of the reasons is that we had  
17 a rather strong exchange on the issue of surprise.

18 Many of the documents that we are introducing we and  
19 we already introduced into evidence today, pursuant to the  
20 parties' written discovery agreement did not have to be given  
21 to DP2 until 12 noon on Wednesday. Nonetheless, to be as  
22 courteous as we humanly could, we actually stayed up, not only  
23 a lot of the weekend, but a lot of the night.

24 And just so Your Honor is clear, and they will not  
25 dispute it because it's clear, we actually produced most of the

1 documents at 3:21 in the morning on Tuesday night; in other  
2 words, very, very, very late Monday night, so that they could  
3 actually have them one and a half business days before we had  
4 agreed to produce them, pursuant to a written agreement.

5           They haven't said anything to the contrary, but it's  
6 important that the Court understand that when we say things  
7 like, introduce into evidence today, there should be no  
8 implication whatsoever that they are seeing them for the first  
9 time today. But even more powerfully, as to the vast majority  
10 of them, 3:21 a.m. was when the e-mail went, a full day and a  
11 half before they were actually due, out of pure professional  
12 courtesy and at great personal cost to both partners and  
13 associates at Davis Polk.

14           Your Honor, with that housekeeping point, I would like  
15 to call to the stand Ms. Margaret M. McDaniel, of the Towers  
16 Perrin firm.

17           THE COURT: Let me make clear that I look to you all  
18 to tell me when you must, need, or want to stop for the day  
19 because, failing hearing that from you, I'm prepared to go on  
20 indefinitely.

21           MR. HUEBNER: Thank you, Your Honor.

22           THE COURT: All right.

23           MR. HUEBNER: My thought for today is that we will go  
24 until 5:45 --

25           THE COURT: All right.

1 MR. HUEBNER: -- at which point I am hopeful we will  
2 have finished her direct, but if not, we'll hopefully be  
3 reasonably close to the end.

4 THE COURT: All right. Thank you, sir.

5 **MARGARET M. MC DANIEL, DEBTORS' WITNESS, SWORN**

6 **DIRECT EXAMINATION**

7 **BY MR. HUEBNER:**

8 Q Good afternoon, Ms. McDaniel.

9 A Good afternoon.

10 Q Can you please state your name for the record?

11 A Margaret M. McDaniel.

12 Q Can you please walk us through your current profession?

13 A I am an actuary with over twenty-five years of retirement  
14 in -- consulting experience in retirement and other benefit  
15 programs. I graduated from the -- from Georgia State  
16 University with a Bachelor's in Business Administration Degree,  
17 concentration in actuarial science, and I am a fellow of the  
18 Conference of Consulting Actuaries, enrolled actuary (sic), an  
19 associate of the Society of Actuaries.

20 Q Ms. McDaniel, where are you currently employed?

21 A I'm currently employed at Towers Perrin in the Atlanta  
22 Office as a principal.

23 Q Okay. And is "principal" a pretty high-level category at  
24 Towers Perrin?

25 A It's essentially like a partner in a law firm.

1 Q So all the pain and responsibility.

2 (Laughter.)

3 BY MR. HUEBNER:

4 Q Where did you work before you were employed at Towers  
5 Perrin?

6 A I've worked at two other employee benefit consulting firms,  
7 Alexander & Alexander, and Bucks Consultants (phonetic), prior  
8 to Towers Perrin.

9 Q Sure.

10 Can you tell the Court just a little bit about Towers  
11 Perrin; scope, size?

12 A Towers Perrin is a human resource consultancy that  
13 specializes in actuarial and benefit consulting. Our clients  
14 are Fortune 100 -- Fortune 1000 clients; that's what we  
15 specialize in, and we have approximately 1,200 clients  
16 worldwide.

17 Q And is Delta one of Towers Perrin's clients?

18 A Delta is one of Towers Perrin's clients, and is one of my  
19 clients, as well.

20 Q Sure. What are your responsibilities at Towers Perrin  
21 specifically?

22 A For Delta Air Lines, I currently oversee the retirement and  
23 benefits work that we provide to Delta Air Lines, including the  
24 consulting that we provide, the actuarial services that we  
25 provide, for the non-pilot and the pilot pension plans, along

1 with Delta's other employment benefit plans.

2 Q And would you describe Towers Perrin as sort of a major  
3 actuarial firm, a minor firm, by virtue of who its clients are?

4 A Towers Perrin, from a retirement and actuarial consulting  
5 point of view, is the largest consulting firm in the U.S. for  
6 Fortune 500 companies.

7 Q Ms. McDaniel, is Delta your first airline client?

8 A No. I've also worked with American Airlines. I worked for  
9 American -- I worked with American for about fifteen years  
10 prior to working with Delta in the beginning of 2002.

11 Q And when you did work with American, did you ever work on a  
12 pilot pension plan?

13 A American also has a pilot pension plan.

14 Q And were you at all involved in that?

15 A Very much involved.

16 Q Okay. So how many years experience would you say you've  
17 had dealing with airline pilot pension plans?

18 A I have worked with two airlines for twenty years over the  
19 course of my career, pilot pension plans.

20 MR. HUEBNER: Your Honor, I think we have already  
21 stipulated to this, as well, but so that the record is clear, I  
22 formally move to qualify Ms. McDaniel as an expert in actuarial  
23 and pension matters, and note that she has specific  
24 longstanding expertise, specifically with both airline plans  
25 and pilot plans.

1 THE COURT: I certainly accept her as an expert.

2 MR. HUEBNER: Thank you, Your Honor.

3 BY MR. HUEBNER:

4 Q Ms. McDaniel, Delta currently maintains the Delta pilots'  
5 retirement plan, or the "pilot plan," as it's going to be known  
6 at this hearing. Are you familiar with the pilot plan?

7 A I'm very familiar with the pilot -- with the Delta pilot  
8 plan.

9 Q Sure.

10 MR. HUEBNER: And I want to be clear for the record  
11 because there's been a little bit of looseness, of which --  
12 which is the enemy of all of us. There is the qualified pilot  
13 plan; and, as Your Honor knows, there are the two non-qualified  
14 plans.

15 THE COURT: Right.

16 MR. HUEBNER: I'm not testifying. I just want the  
17 record to be clear. The pilots' total pension benefits is  
18 calculated vis-a-vis both plans. Today, we are here talking,  
19 except where I'm specific to the contrary, only about the  
20 qualified plan, which is the 4041(c). So when we say a "pilot  
21 plan," we mean the qualified defined benefit plan.

22 THE COURT: Right.

23 BY MR. HUEBNER:

24 Q Ms. McDaniel, under the terms of the pilot plan, is there  
25 an annual benefit provided to Delta pilots upon their

1 retirement?

2 A Yes. The pilots' annual benefit is basically a percentage  
3 of their final average earnings.

4 Q That, I think, is a defined term, or it's kind of  
5 technical. Can you explain to the Court what "final average  
6 earnings" or "FAE" actually is?

7 A Sure. FAE -- I may end up going into that, so I apologize  
8 for the acronyms. But final average earnings is -- for an  
9 individual pilot, is equal to his highest three years of  
10 earnings out of the last ten, up through July 31st, 2006, when  
11 it was hard-frozen as a result of LOA-51.

12 Q And ultimately, for some people, those benefits are going  
13 to be paid partially out of the qualified plan, and then  
14 partially out of the non-qualified plan if they exceed the  
15 federal limits?

16 A Correct.

17 Q Okay. In terms of benefits being paid by the qualified  
18 plan, the pilot plan, how are those benefits paid or what are  
19 the possibilities?

20 A Pilots have two forms of -- two choices when they retire:  
21 They can choose to take a life annuity over the course of their  
22 life, along with their spouse, if they so choose; or an  
23 alternative form is what we call the "lump-sum option," which  
24 is half of their total benefit that can be paid as a lump sum,  
25 and then the remainder is paid as a life annuity to the pilot

1 and/or his spouse.

2 Q Sure.

3 So to be clear, when you say "total benefit" -- and this  
4 actually matters -- the lump sum being paid out of the pilot  
5 plan is more than half the benefit of just the pilot plan,  
6 right; it's half of the total benefit?

7 A That's correct.

8 Q Okay. So that, if someone gets their lump sum, is it fair  
9 to say that they're almost invariably going to be getting more  
10 than half of their qualified benefit in one shot?

11 A Correct. For most of the pilots who are eligible for early  
12 retirement.

13 Q So why don't we just agree -- sort of like "FAE," we'll  
14 define some terms to save time -- we're going to call that the  
15 "lump-sum option," which is the ability to elect a lump sum  
16 equal to fifty percent of your total benefit, which is paid  
17 exclusively, and only just ask the question:

18 That lump sum is paid exclusively out of the qualified  
19 plan, right?

20 A That's correct.

21 Q So even though it's partially a non-qualified sort of  
22 benefit, it's still paid exclusively from the qualified plan.

23 A Generally.

24 Q Okay. That's good enough for me.

25 Ms. McDaniel, at what age do FAA regulations require pilots

1 flying commercial passenger aircraft to cease flying?

2 A Pilots who reach age sixty can no longer fly as a  
3 commercial airlines pilot, and typically at that time they  
4 choose to retire.

5 Q And under the pilot plan, how old must a pilot be to retire  
6 early and secure a lump-sum payment at half of the total  
7 benefit?

8 A Under Delta's pilot pension plan, pilots can retire at age  
9 fifty.

10 Q And if they retire at age fifty and they elect a lump sum,  
11 what do they get?

12 A They can take a lump sum at that point, as well.

13 Q Okay.

14 A So that there is no restriction on when they can receive  
15 the lump sum if they're eligible for early retirement.

16 Q Okay. So when we say "early-retirement-eligible," in your  
17 understanding that means basically over fifty and below sixty,  
18 when generally you would mandatorily retire.

19 A Yes, it does.

20 Q Okay. Ms. McDaniel, I'd like to ask you a few questions  
21 about the funding history of the plan.

22 You said that you worked as an actuary and benefit  
23 consultant for Delta for four years?

24 A With Delta, I've worked with Delta for four years, since  
25 2002.

1 Q But I assume that you have access, either through documents  
2 or speaking to the clients at rather great length, to records  
3 that predate that four-year period?

4 A Right. And Towers Perrin was also a consultant with Delta  
5 prior to me coming onto the account, as well.

6 Q Was the pilot plan over-funded in 1996, or was it at least  
7 fully funded?

8 A The pilot -- in 1996, yes, the plan was over-funded in  
9 1996.

10 Q Was the pilot plan over-funded in 2001?

11 A Yes. The pilot plan was over-funded in 2001.

12 Q Now just so that the record is clear, when you say "over-  
13 funded" -- because actuaries sometimes use words a little bit  
14 differently than, at least lawyers do -- what do you mean by  
15 "over-funded"?

16 A In general terms, we mean that the actuarial value of  
17 assets exceeds the plan's actuarial value of liabilities.

18 Q Okay.

19 A And really, we're talking about on an accrued benefit  
20 basis.

21 THE COURT: On a what?

22 THE WITNESS: On an accrued benefit basis; those  
23 benefits that have been earned to date.

24 BY MR. HUEBNER:

25 Q So in 2001, it was over-funded. What is your best estimate

1 as a percentage of its funding status today?

2 A I have projected that, as of July 1, 2006, the pilot plan  
3 will be thirty-nine -- approximately thirty-nine percent  
4 funded.

5 Q So when you say it's approximately only thirty-nine percent  
6 funded, what does that mean, just to be very clear?

7 A It means that the assets are thirty-nine percent of the  
8 plan's liabilities.

9 Q And that's determined on an actuarial basis?

10 A Yes, it is.

11 Q Okay. And if you use the market basis for the value of  
12 assets, would that change the calculation materially?

13 A No. If we use the market value of assets, which is  
14 slightly higher, the funded status of the plan would move up to  
15 forty-one percent, or basically two percent -- would prove by  
16 two percent in its funded position.

17 Q So, in other words, the way you think about it, it's fair  
18 to say that it's sixty-one percent under-funded in actuarial  
19 terms?

20 A On a thirty-nine percent funded basis, yes, that's right.

21 Q Now let's convert those percentages to dollars.

22 How many dollars does the sixty-one percent under-funding  
23 translate to?

24 A The plan has actual -- has liabilities of \$4.1 billion, and  
25 it has actuarial value of assets of \$1.6 billion, so the plan

1 is under-funded by two and a half billion dollars.

2 Q And during the period from 2001 to 2006, what was the  
3 approximate dollar amount of the lump sums paid out to pilots  
4 who retired early?

5 A Over that period of time, the amount of lump sums that were  
6 paid out was two and a half billion dollars.

7 Q So there were two and a half billion dollars of lump sums  
8 paid since 2001, and the plan is two and a half billion dollars  
9 under-funded. Is that why, is that exactly the same number, or  
10 were there other factors that contributed to the under-funding?

11 A That's not the only factor that contributed to the decline  
12 in the fund position of the plan. There were other factors  
13 including, over the course of that five-year period, a decline  
14 in interest rates, the asset performance was not what was  
15 expected, pilots' actual earnings were greater than expected  
16 during that period of time because of they moved through the  
17 seats (sic).

18 Q Ms. McDaniel, did Delta make all of its statutorily  
19 required funding contributions to the pilot plan from 2001  
20 until the bankruptcy filing in September of 2005?

21 A Yes, it did.

22 Q Ms. McDaniel, in the thirty-four-year period between the  
23 plan's creation and the debtors' Chapter 11 filing, did Delta  
24 ever miss a single funding contribution or a quarterly  
25 contribution required?

1 A That's my understanding.

2 Q Okay. Let's move to a slightly related area, or a related,  
3 slightly different area, which is the history of pilot  
4 retirements.

5 If you could turn to Page 8 of your declaration.

6 A (Witness reviews exhibit.)

7 MR. HUEBNER: Your Honor, that's in your binder at Tab  
8 12.

9 THE COURT: All right. Just so that I got it  
10 correctly, your testimony was that Delta, prior to the filing  
11 in bankruptcy, never missed a funding obligation payment.

12 THE WITNESS: Yes, that's my understanding.

13 THE COURT: Okay.

14 THE WITNESS: I mean, I have been involved for --  
15 since 2002, I am aware for sure that during that period of time  
16 they have never missed one. And I will tell you, looking at  
17 other information, it doesn't appear that they missed anything,  
18 also.

19 THE COURT: Okay. Thank you.

20 MR. HUEBNER: Sure. Your Honor, this is -- this chart  
21 that we'll be talking about for a few minutes now is already  
22 admitted into evidence in the form of Ms. McDaniel's  
23 declaration, just so the record is clear.

24 THE COURT: All right.

25 BY MR. HUEBNER:

1 Q Can you tell me a little bit about the pattern of Delta  
2 pilot retirements and early retirements --

3 THE COURT: Is this an exhibit?

4 MR. HUEBNER: Not per se, it's just -- it's the chart  
5 that is on Page 8 of her declaration.

6 THE COURT: Oh, okay.

7 MR. HUEBNER: So if you turn to Tab 12, and then you  
8 turn to Page 8 of Tab 12 --

9 THE COURT: Okay.

10 MR. HUEBNER: -- this is right there at the text. I  
11 don't think it has pretty colors in the declaration.

12 THE COURT: Okay.

13 BY MR. HUEBNER:

14 Q Ms. McDaniel, tell me a little bit about the pattern of  
15 Delta retirements and early retirements from the period between  
16 1990, when I think lump sums first became available, and 2001.

17 A I think you can see from the chart that, during that period  
18 of time, the red, which is the early retirements, really there  
19 weren't that many -- there were a very minimal number of early  
20 retirements during that period of time, except for the  
21 1996/1997 period.

22 Q Now Mr. Kaplan, I think, asked some questions of Mr.  
23 Coleman, suggesting that Delta was in financial difficulty in  
24 that period. In fact, just to be clear -- and this is not --  
25 and Ms. McDaniel doesn't know this -- we don't believe that's

1 the case, as Mr. Weinstein elicited. Delta was profitable in  
2 those years.

3 Why don't you think then there's a very small -- not a  
4 "very small." Why do you think there is a jump in early  
5 retirements in '96/'97, and does your affidavit, of which this  
6 is a part, answer that question?

7 A Right. In 1996, Delta offered a special early retirement  
8 window for pilots as part of the 2006 contract, and the window  
9 was opened between 1996 and 1997, so it crossed over more into  
10 1997, because it was late in 1996 when it opened.

11 Q And was there a special incentive offered to people as part  
12 of that program that gave them --

13 A Right.

14 Q -- a real economic reason to leave early, compared to the  
15 typical lump sum or payment?

16 A The early window offered the pilots either five years of  
17 age or five years of service in enhancement to their benefits.  
18 So, for example, if they were age fifty and they already had  
19 twenty-five years of service, then they would be treated as if  
20 they were age sixty.

21 Q And I assume that that would be a significant emolument or  
22 increase in their pension rate. So there was a real incentive  
23 to retire early?

24 A There was an incentive to retire early.

25 Q So I guess the way I look at the chart, if you look from

1 1990 to 2001, and you take out the two years for the special  
2 program, is it fair to say that the amounts in red, which are  
3 the early retirements, were basically very small the entire  
4 period?

5 A They were very small.

6 Q Okay. Now let's focus on the next period, which is the  
7 period beginning after the horrors of September 11th, 2001,  
8 where again, just so that the record is clear, the gray on the  
9 chart is just mandatory retirement, it's people that turned  
10 sixty and are forced to leave by regulation; the red is the  
11 early retirements, the people who elected to leave before age  
12 sixty.

13 What do you describe on there as the pattern of early  
14 retirements commencing in essentially 2002?

15 A Well, I think the chart speaks for itself. It shows that  
16 there has been a dramatic acceleration of early retirements for  
17 that period of time.

18 Q And what about the twelve months before Chapter 11?

19 A The twelve months prior to Delta filing Chapter 11, there  
20 were eleven -- approximately 1,100 early retirements -- early  
21 retirements.

22 Q Now, Ms. McDaniel, the 2005 line, which has that huge slug  
23 of red, is that all of calendar year 2005?

24 A That is through the period ending for pilots' retirement by  
25 9/1/2005, which those pilots were the last set of pilots who

1 could receive a lump sum, once the lump-sum door closed in  
2 October.

3 Q And we're going to talk about that in a minute.

4 Let's just focus for a minute, though, on that period  
5 again. I'm aware of the fact that 2005 got cut off because we  
6 filed, and lump sums were no longer available.

7 Do you know what percentage of the total eligible -- of the  
8 total number of Delta pilots eligible for early retirement was  
9 that actually took early retirement in that twelve-month  
10 period?

11 A The total number of eligible pilots who could have taken  
12 lump sum?

13 Q Who did. I apologize. I was very unclear. The number of  
14 early retirements during that period as a percentage of the  
15 total universe eligible to retire early if they chose.

16 A It was approximately forty-five percent. There were  
17 approximately 2,400 pilots who were eligible, and 1,100 took  
18 early retirement.

19 Q So said a different way, almost half of Delta's pilot  
20 between age fifty and age sixty left in the twelve-month  
21 period?

22 A That's correct.

23 Q What amount of assets was paid out of the pilot plan during  
24 those twelve months as a result of the lump-sum payments?

25 A Delta paid approximately -- or paid \$865 in lump sums

1 during that same period.

2 Q I'm sorry. Just to be precise, did Delta pay it or did the  
3 plan it?

4 A The pilot pension plan paid. I apologize.

5 Q Ms. McDaniel, focusing --

6 THE COURT: How much was the amount?

7 THE WITNESS: Eight hundred and sixty-five million  
8 dollars.

9 BY MR. HUEBNER:

10 Q Ms. McDaniel, of those 1,100 in the trailing twelve months  
11 pre-filing, do you remember approximately how many of those did  
12 it during the nine months of 2005?

13 A Seven hundred and twenty pilots retired early during the  
14 nine-month period beginning January 1, 2005 through 9/1, 2005.

15 Q And of those 720, do you happen to remember about how many  
16 took lump sums?

17 A Seven hundred and ten took lump sums.

18 Q So 710 out of 720 elected lump sums?

19 A Yes, that's right.

20 Q Let's talk a little about liquidity shortfall. It was hard  
21 to go which witness to go first with, but let's elucidate  
22 something now that we've already talked about a fair bit. Can  
23 you explain to the Court what is liquidity shortfall under  
24 ERISA?

25 A Okay. A liquidity shortfall occurs when the assets of a

1 plan are less than three times the portion of the lump sums  
2 that have been paid over the last twelve months, all of the  
3 benefit payments, the monthly annuities that have been paid  
4 over the last twelve months, and any administrative expenses  
5 that have been paid over the last twelve months.

6 And the test looks at the percent of liquid assets versus  
7 the total assets. This liquidity shortfall, if the assets are  
8 less than three times these disbursements, then the plan is in  
9 liquidity shortfall and it is a quarter-end test, so we do this  
10 each end of quarter.

11 Q Sure. Let me ask two questions, sort of just say it my way  
12 because you kind of -- I think about it a little bit  
13 differently than is correct probably.

14 I said earlier today that the liquidity shortfall test was  
15 the equivalent of a cash flow test, which is different than a  
16 balance sheet test. It actually looks at outflows versus  
17 assets. I know it's not quite right, but is that -- just to  
18 get my arms around it, is that roughly correct on some level?

19 A You can use that as a reasonable analogy.

20 Q Fair enough. And is it also, just to say it a different  
21 way in case it's useful, that the plan has to have liquid  
22 assets equal to three times its adjusted disbursements --

23 A Correct.

24 Q -- made over a twelve-month period?

25 A That's correct.

1 MR. HUEBNER: I'd like to note that for the record,  
2 Your Honor. That was my 40th try to say it right the first  
3 time.

4 (Laughter.)

5 THE WITNESS: You said it so succinctly, too.

6 MR. HUEBNER: It was the first time I ever got it  
7 right.

8 BY MR. HUEBNER:

9 Q Do ERISA rules -- does ERISA apply special rules to a plan  
10 that goes into liquidity shortfall?

11 A Yes, it does.

12 Q Is liquidity shortfall a common thing in pension plans?

13 A No. Especially in plans the size of the pilot pension plan  
14 is a fairly rare occurrence, very rare occurrence.

15 Q And what happens under ERISA in this very rare occurrence  
16 which, unfortunately, we have here and have had in the past,  
17 where a plan goes into liquidity shortfall but the plan's terms  
18 provide for the payment of a lump sum?

19 A If the plan has a liquidity shortfall, then the plan, as of  
20 the end of that quarter, if the plan has a liquidity shortfall,  
21 then as of fifteen days later, it must make up that shortfall  
22 or it will be -- it will no longer be able to pay lump sums.

23 Q So when we talk about the lump sum door closing, that means  
24 the plan goes into liquidity shortfall and the required  
25 contribution to bring it out is not timely made?

1 A Correct.

2 Q Okay. There are other ways the lump sum door can also  
3 close, which we're going to talk about in a few minutes, but  
4 right now we're talking about the way they close by a liquidity  
5 shortfall.

6 When did the pilot plan approximately enter a state of  
7 liquidity shortfall for I think the first time in its history?

8 A For the first time in its history it had a liquidity  
9 shortfall on September 30th, 2005.

10 Q And had Delta not been in Chapter 11, what would it have  
11 done to respond to that liquidity shortfall?

12 A Under normal non-bankruptcy situation, Delta would have  
13 contributed \$145 million to the plan on October 15th, 2005,  
14 which the regularly quarterly contribution, minimum quarterly  
15 contribution that was due was \$31 million so they would have  
16 had to contribute a hundred and forty-five instead of the  
17 planned thirty-one.

18 Q And what would have happened if Delta, as a debtor-in-  
19 possession, had made that payment with respect to the lump sum  
20 door?

21 A Then the pilots could have continued to take lump sums when  
22 they retired.

23 Q Is it your understanding that Delta did not make this  
24 payment because it deemed it to be pre-petition in nature?

25 A That is my understanding.

1 Q And so because the payment was not made, the plan actually  
2 went into liquidity shortfall?

3 A Correct.

4 Q Ms. McDaniel, you testified a few minutes ago in the twelve  
5 months pre-filing 1,100 pilots representing more than forty-  
6 five percent of Delta's total pilots above fifty took early  
7 retirements. How many active pilots have taken early  
8 retirement in the ten months since the lump sum door closed?

9 A Fourteen pilots have retired early in the last ten months.

10 Q So we went from 1,100 in the prior twelve-month period to  
11 fourteen in the ten months since the petition?

12 A Correct.

13 Q Ms. McDaniel, based on your actuarial calculations, when do  
14 you estimate that the pilot plan will emerge from liquidity  
15 shortfall?

16 A Because we do these calculations on a quarterly basis, it  
17 is still too close to call for the June 30th, 2006, but it is  
18 virtually certain that it -- the lump sum door will reopen as  
19 of October 1st, 2006. And when I say "virtually certain," what  
20 I mean by that is that if the assets -- the lump sum door would  
21 not open if the assets had a twenty-percent-or-more decline.  
22 That's why I say virtually certain.

23 Q Okay. So if we had a 1929 stock market crash, it wouldn't  
24 open, but --

25 A Correct.

1 Q -- other than something of that magnitude, it is open  
2 October 1st if I'm not --

3 A That is correct.

4 Q -- the relief requested is granted. That's this October  
5 1st, one month from today?

6 A Yes.

7 Q Ms. McDaniel, one thing I'd just like you to explain to the  
8 Court, Delta has made very minimal payments to the pilot plan  
9 since its Chapter 11 filing because of this pre-petition-  
10 versus-post-petition issue?

11 MS. PIKOFISKY: I'm sorry, Your Honor. I have to  
12 object. Is he testifying or is the witness?

13 BY MR. HUEBNER:

14 Q Ms. McDaniel, is it your understanding that Delta has made  
15 minimal payments to the pilot plan since the Chapter 11 was  
16 filed?

17 A Delta has made minimal, small amounts of contributions  
18 since starting in October of 2005.

19 Q And can you explain then how is it if we've made very  
20 minimal payments into the plan we're about to come out of  
21 liquidity shortfall with no new basically incremental assets  
22 having been put in except for a small amount?

23 A Sure. Remember what I said about how the calculation  
24 works. It is three times the lump sums, benefit payments, and  
25 administrative expenses in the last twelve months. And so when

1 we look at a period of time and we're looking backwards now,  
2 let's say we're talking about September 30th, 2006 and we have  
3 not paid lump sums for twelve months, there are no lump sums in  
4 the calculation, so that it's a lot lower threshold that we  
5 need to have in order to not be in liquidity shortfall.

6 Q And again, just to be super-precise, you testified when you  
7 explained it long from the first time that it's adjusted lump  
8 sums?

9 A It is adjusted.

10 Q Right. Do you know -- and if you don't, say so -- whether  
11 Delta has made any contributions to the non-pilot qualified  
12 plan since the petition date?

13 A My understanding is they have not paid benefits to the non-  
14 qualified pilot retirees.

15 Q To be clear, benefits or contributions? Has Delta Airlines  
16 made any contributions into the non-pilot --

17 A I'm sorry, to the non-pilot -- I apologize, I was thinking  
18 pilots. No, they have not made contributions to the non-pilot  
19 qualified plan.

20 Q Okay. So to the best of your knowledge, the statement in  
21 DP2's objection that speculates or actually sort of states that  
22 Delta has been paying into the non-pilot plan but not into the  
23 pilot plan is wrong? It's exactly the reverse?

24 A Correct. They have made no contributions to the non-pilot  
25 qualified plans since they entered bankruptcy.

1 Q Okay. And just to be perfectly clear, your believe is that  
2 on October 1 of this year, in one month, if the relief request  
3 is not granted, the lump sum door will reopen?

4 A Yes.

5 Q Okay. How many Delta pilots will be eligible to retire  
6 early on October 1, 2006?

7 A Eighteen hundred and twenty pilots will be eligible to  
8 retire early on October 1, 2006.

9 Q Now, Mr. Kaplan referred to an additional 126 pilots.

10 THE COURT: Eighteen hundred and twenty, was it?

11 MR. HUEBNER: Yes, sir.

12 THE WITNESS: Early retirees.

13 THE COURT: Okay.

14 MR. HUEBNER: Yes, sir.

15 BY MR. HUEBNER:

16 Q In addition to the 1,820 that would be eligible to take  
17 early retirement, who are these 126 people that Mr. Kaplan  
18 referred to?

19 A There are 126 other pilots who are over age sixty who are  
20 essentially on disability who have really no economic reason  
21 not to take the lump sum other than the lump sum door has been  
22 closed.

23 Q So in other words, where your numbers assume that the early  
24 retirees plus the 126 will leave, that's because the 126, in  
25 your view as you just testified, have every incentive because

1 they're on disability and they could get a lump sum if the door  
2 opened?

3 A That's correct.

4 Q Okay. So all in, just to do the math, 1,946 pilots are  
5 actually -- would be eligible to take lump sums on October 1st?

6 A That's right.

7 Q Of the pilots eligible to take lump sums, how many would be  
8 entitled to immediate cash payments of a half-million dollars?

9 A There are 857 pilots who have at least 500,000 or more in  
10 lump sums available on October 1, 2006.

11 Q And if the plan is terminated and the administration of it  
12 is handed over to the PBGC, will the lump sum option be or ever  
13 again be available?

14 A No.

15 Q Why is that?

16 A Because the PBGC only pays very minimal lump sums, less  
17 than \$5,000, to participants where they have taken over the  
18 plan and virtually all the pilots have more than a 5,000-dollar  
19 lump sum available to them.

20 Q Okay. So you heard Mr. Coleman kind of play actuary a  
21 little bit and talk about the fact that the lump sum door  
22 closes again because liquidity shortfall happens again. Lump  
23 sums get turned back off, correct?

24 A Yes.

25 Q But now you're saying in addition, if the plan is

1 terminated, it gets turned off forever because the PBGC won't  
2 pay them if they're above 5,000?

3 A The lump sum feature is turned off permanently, yes.

4 Q Okay. Now I'd like to turn to Mr. Booth for a moment. If  
5 the lump sum door opens and lump sums are taken by a large  
6 number of pilots, and then the plan terminates thereafter, how  
7 will that impact the other plan beneficiaries, the current  
8 retirees, et cetera?

9 A If the lump sum door reopens and there is a large number of  
10 assets that leave the plan, then what will happen is, is that  
11 many of the early eligible active pilots and those retirees who  
12 have retired in the recent past will have a reduction in their  
13 benefit when the plan or if the plan terminates.

14 Q So when Mr. Booth was talking about the fact that his  
15 clients, representing most of possibly the retired pilots, were  
16 very focused on the fact that if the door opened and the lump  
17 sums went out, current retirees could lose hundreds of millions  
18 of dollars potentially in overall benefits, that's what we're  
19 talking about here?

20 A Yes.

21 Q Okay. Now, let's talk for a minute about the door opening  
22 on October 1, but then Mr. Coleman gave the analogy of running  
23 on line for the shuttle. He didn't finish the sentence in  
24 saying that if you're number 111 on line and there are 110  
25 seats, you don't fly. We're going to talk about that now.

1           If the lump sum door opened on October 1, 2006, would it  
2 take many early retirements to get it back into liquidity  
3 shortfall at the end of the calendar quarter?

4   A   We've estimated that if even 150 to 170 early retirement  
5 eligible pilots retire and take a lump sum, that the plan would  
6 then go back into liquidity shortfall at the end of 2006 and so  
7 it would be closed again 12/31, 2006.

8   Q   Sure. Are you aware that in DP2's filings -- again, they  
9 used various numbers, but let's just go with one -- they said  
10 that they think that 304 people is the number of people that  
11 have an economic incentive to retire early. Are you aware of  
12 that?

13   A   Yes, I'm aware of that.

14   Q   So in other words what you're saying is that if even only  
15 half of that number approximately, in fact, retired early when  
16 the door opened, it would slam closed again January 1?

17   A   Yes.

18   Q   And so going back to the shuttle, getting on the line for  
19 the shuttle, this also isn't a real big plan, right? Because  
20 the door is going to close again even at a very small number of  
21 early retirements.

22   A   That's correct.

23   Q   And that would happen in only three months? January 1,  
24 2007 it slams closed again?

25   A   Right.

1 Q Okay. And when it slams closed again on January 1, 2007,  
2 is it then prohibited again from paying lump sums?

3 A It can't pay -- the plan will not be able to pay lump sums  
4 if it is in liquidity shortfall and so that the door would  
5 close again once it has -- once a contribution for that  
6 liquidity shortfall is missed.

7 Q So if --

8 THE COURT: Do you mind if I ask a question?

9 MR. HUEBNER: Of course not, Your Honor.

10 THE COURT: If not 150 to 170, but 370 immediately  
11 sought to retire after October 1, 2006, this coming October 1,  
12 thereby, by your testimony, triggering the liquidity shortfall,  
13 would all 370 of those who declared their retirement prior to  
14 year end nevertheless be able to retire and take with them  
15 their lump sum amounts?

16 THE WITNESS: It would depend on how the independent  
17 fiduciary in the administration of those lump sums actually  
18 occurred. Because what happens is, is that let's say that the  
19 pilot elected to retire on November 1st. It depends on how  
20 long it takes to pay that lump sum and all of the lump sums  
21 during that quarter -- or when the lump sum door is open, you  
22 can't pay lump sums after fifteen days after the end of that  
23 quarter. So you have -- it would just depend on as long as all  
24 of those lump sums got paid by the 15th of January, then they  
25 could all get their lump sums. But if for some reason they did

1 not, then the door would close and that person would not get  
2 his lump sum.

3 THE COURT: Are you saying that it would be up to, for  
4 example, the administrator of the plan possibly to drag his,  
5 her, or its feet and thereby limit the outflow?

6 THE WITNESS: Delta has hired an independent fiduciary  
7 to make those decisions.

8 THE COURT: You would express no view as to whether  
9 that's what could or would happen.

10 MR. HUEBNER: Your Honor, can I take that one?  
11 Because it's a legal question that I actually have a lot of  
12 knowledge about.

13 THE COURT: Sure. Sure.

14 MR. HUEBNER: Delta has an independent fiduciary that  
15 makes the decisions about when lump sums are paid. Lump sums  
16 have never been held in the history of Delta for a period of  
17 anything remotely like from November 1, which is when they  
18 would be payable -- as of October 1, the time is they'd  
19 probably be paid around November 1, through all of November,  
20 all of December. That's not the world we live in. My guess is  
21 that the fiduciary would be sued 50 million ways to Sunday if  
22 that entity tried to hold the checks for two and a half months  
23 to let the plan go back into liquidity shortfall. That's just  
24 not the world we live in.

25 The average time in which these payments have been

1 made is substantially lower than -- I'm not sure where they got  
2 their data from. They just sort of said it's six to eight  
3 weeks. That's not correct, it's much shorter than that.

4 THE COURT: All right. Thank you.

5 BY MR. HUEBNER:

6 Q Ms. McDaniel, just to be clear, since you're under oath and  
7 I'm not, the lump sum door stays open all the way until January  
8 15th?

9 A It does.

10 Q So that it's not only the September retirees that are  
11 effective October 1. In other words, if people realize that as  
12 of October 1 300 had left, could there be, in your mind, a  
13 rational other wave in the next month saying, oh, my God, it's  
14 really happening, I better retire this month because I can  
15 still beat January 15 to get my payment?

16 A I would suspect that would be a likely occurrence.

17 Q Because the window stays open through January 15th, so as  
18 long as they can get retired and their payments processed and  
19 paid before then, even if the plan goes to zero on January  
20 15th, they got their lump sums and they're done?

21 A That's right.

22 Q Okay. Is it your view, as a matter of probability, that if  
23 the door opens on October 1, it actually will go back into  
24 liquidity shortfall as of January 15th?

25 A Yes, it is.

1 Q And that's because of the very low number of early  
2 retirements it would take to do that?

3 A Yes. I would expect that at least that many, if not the  
4 800 to 1,000 that we did use in our projections, would not -- I  
5 mean, would go during that period of time.

6 Q Ms. McDaniel, what is the average age of the 1,820 pilots  
7 that will be eligible to retire on October 1, 2006?

8 A Fifty-three.

9 Q Do you know what the average age is of the pilots who were  
10 eligible to retire in 2005?

11 A I believe it was fifty-three. The average age for the  
12 pilots in 2005 I believe was 53.8.

13 Q .8. So there's only a .8 age spread between the two  
14 retirement-eligible groups?

15 A Right, from then to now.

16 Q In the context of this plan and this fact pattern, do you  
17 view that as actuarially significant in terms of predicting  
18 early retirements for this period?

19 A No.

20 Q Why is that?

21 A Because given the facts that the pilots are facing today  
22 with possibility that the plan may terminate, if the lump sum  
23 door does reopen, then pilots who are under age fifty-three  
24 actually stand to lose more in the value of their pension  
25 benefits on average than those pilots who are over age fifty-

1 three.

2 Q Now, I'm going to take a good guess that what you just said  
3 is totally counter-intuitive to many people in this courtroom.  
4 You just said that younger pilots will lose more on average  
5 than older pilots if they miss the lump sum window and the plan  
6 is terminated. Can you explain to the Court why that is?

7 A When a plan is terminated, what we do is we -- under PC3  
8 regulations we look at whether a person is a priority category  
9 three or not and to be a priority category, for a PC3 you need  
10 to be age fifty-three or older.

11 What happens is, is that PC3 pilots would actually get more  
12 benefits from the plan once it's terminated versus a pilot that  
13 is younger than age fifty-three, so if he leaves before the  
14 plan is terminated and takes his lump sum, this pilot who's a  
15 non-PC3 who's younger than age fifty-three, then he takes the  
16 lump sum and he loses less that way, less in value of benefits.

17 Q Sure. So to say it a little bit differently, someone who  
18 is under fifty-three, you look back to before three years and  
19 because three years ago they were under fifty, they're not PC3  
20 eligible at all and they drop to a very different category, and  
21 if they're over fifty-three and with the three-year look-back  
22 they're above fifty, which is a bright line for the PBGC?

23 A Right. The priority category three rules require that you  
24 had to be eligible for early retirement three years ago and  
25 that's why I use it, you know, loosely as if you're fifty-three

1 at plan termination it just means that you were fifty, eligible  
2 for early, three years ago.

3 Q Could I ask you to turn to Tab 4 in the exhibit binder,  
4 please?

5 MR. HUEBNER: Which Your Honor has. It's the same  
6 exhibit binder. This is the evidence that Delta submitted in  
7 these proceedings.

8 THE COURT: Tab 4?

9 MR. HUEBNER: Yes, sir.

10 THE COURT: All right.

11 BY MR. HUEBNER:

12 Q Ms. McDaniel, is it fair to say that this is the detailed  
13 analysis that supports and lays out what we were just talking  
14 about, that people under fifty-three actually lose more than  
15 people over fifty-three?

16 A Yes, it is.

17 Q Okay. So the first page, which is titled "average PC3  
18 eligible pilot within top 600 lump sum group," your goal was to  
19 find the average pilot every way you could figure out the  
20 average -- is there a Lake Wobegon, the most-average guy who  
21 has PC3 status?

22 A Yes. For those pilots who are -- who have the highest lump  
23 sums in the top 600.

24 Q Right. So in other words the group you looked at -- I  
25 apologize, I shouldn't say that. You have to pick a reference

1 group and so you picked the top 600 as the reference group for  
2 this analysis?

3 A That's correct.

4 Q Okay. And what is the number all the way at the bottom in  
5 Number 14?

6 A Number -- the value of benefits, \$772,000, what that  
7 represents is that is the value of the benefits lost for the  
8 average PC3 eligible pilot if he decides to not retire if the  
9 lump sum door does reopen and then the plan is subsequently  
10 terminated.

11 Q Okay. So in other words, said a little bit differently,  
12 the pilot who is over fifty-three and misses the window, his  
13 overall pension recovery drops by \$772,000?

14 A Correct.

15 Q Okay. Now, let's turn to the next page, which is entitled  
16 "average pilot not eligible for PC3 within top 600 lump sum  
17 group, married, age 51.5 with eighteen years of service."  
18 Again, just so the Court is clear, you, right down the middle,  
19 found the average person as best you could from this group?

20 A We -- these are actual individual pilots that we looked at  
21 the -- as we were looking at the split, we came up with  
22 averages and said let's pick somebody who is as close to  
23 average as possible.

24 Q What is the total lost benefit value for that pilot?

25 A This pilot would lose \$861,000 in the value of his pension

1 benefits. And I would call, you know, attention to one I think  
2 important fact, which is the pension lump sum that he receives,  
3 if the lump sum door does open, it's Line 4, he would be  
4 eligible for \$636,000 worth of pension lump sum if he were to  
5 take the lump sum. And then the PC3-eligible pilot actually  
6 does have a higher lump sum. It's \$788,000. So it shows that  
7 the younger pilot has a bigger lost value of the eight hundred  
8 and sixty-one, and yet his pension lump sum is actually less.

9 Q So to say it my way, even though their lump sum is smaller  
10 than the average slightly-older person, because they fare so  
11 much worse in the hands of the PBGC, their overall pension loss  
12 is greater if they miss the window and don't retire on time?

13 A Correct.

14 Q Okay. Now, there are a lot of -- actuaries need to do --

15 THE COURT: Are you leaving Tab 4?

16 MR. HUEBNER: I was going to ask a different question  
17 about it, but if Your Honor has --

18 THE COURT: No, no, no. No. No.

19 BY MR. HUEBNER:

20 Q I want to be clear. In other words, there are assumptions  
21 in here, right? As there have to be whenever an actuary does  
22 her work?

23 A That's right.

24 Q Assumptions, for example, about what rate of return the  
25 hypothetical pilot gets on their lump sum if they invest it

1 during this period?

2 A Correct.

3 Q And did you do those assumptions in a way that was advocacy  
4 for Delta or did you do them in a way that was down the middle  
5 and actuarially appropriate in your view?

6 A We tried to be neutral in determining those, meaning that  
7 was down the middle.

8 Q Okay. And you're happy to represent to this Court under  
9 oath that the way you picked these two pilots within 600  
10 category was to find the average person in every way you could?

11 A Yes.

12 Q No one told you find me the best ones to present to the  
13 Court?

14 A No.

15 Q You found the average ones?

16 A In fact, what we did was, is we looked at the average data  
17 so we determined what the average lump sum was, the average  
18 age, the average service, the average final earnings. We did  
19 not know the answer until we did a person. We did not go back  
20 and do more people, we did two people and then we were done.

21 Q And somebody could quibble with some of these assumptions.  
22 They could say when you invest your lump sum you earn 6.9  
23 percent or 8.3 percent, not 7.5. In other words, there are  
24 assumptions in here that people can make slightly differently?

25 A Absolutely.

1 Q But at the end of the day there's a big lump sum and that's  
2 not open to challenge, right?

3 A That's correct.

4 Q And do you think that the average retiring pilot has  
5 analysis as sophisticated as this when they're making their  
6 decision?

7 A Probably not this sophisticated.

8 Q All right. Now, just to be clear, DP2's original objection  
9 didn't really deal with this, right? They just said you  
10 compare the amount of the lump sum. They didn't calculate  
11 loss, they just said amount of lump sum versus remaining  
12 earnings, right?

13 A Right.

14 Q And this is, on some level, one would hope, much more  
15 sophisticated than that because it represents actual pension  
16 losses if you miss the window, not just the much coarser amount  
17 of lump sum?

18 A That's right.

19 Q And let me just highlight that for a minute. Assume for a  
20 minute two pilots with identical salaries, identical years of  
21 service, identical everything except for one thing. One of  
22 them is fifty-two years and eleven months old at the time the  
23 pension plan is terminated. One of them is fifty-three years  
24 and one week old. Do they fare slightly differently or very  
25 differently if they've missed the lump sum window and the PBGC

1 takes over the plan?

2 A The pilot who is fifty-two and eleven months, one month  
3 younger than the fifty-three-year-old, his benefit would  
4 actually be -- assuming that the lump sum door does not reopen  
5 and the plan is then terminated, his benefit, if they were both  
6 to retire the next day, would be thirty-seven percent of the  
7 pilot who was fifty-three so, no, the pilot who is fifty-two  
8 and eleven months does not fare as well as the pilot who is  
9 fifty-three.

10 Q To be clear, thirty-seven percent lower or thirty-seven  
11 percent of?

12 A Thirty-seven percent of the benefit that the pilot who is  
13 fifty-three would have received from the PDC.

14 Q So the fifty-three-year-old guy gets \$100 and the second  
15 guy gets \$37?

16 A Correct. Now, I should also add that the PDC calculations  
17 are very complex. We have a very detailed model that we've  
18 been using to determine this but, obviously, there are  
19 assumptions in developing our instruments.

20 Q But this in part explains, in no small part, why younger  
21 pilots actually might be much, much worse off than older pilots  
22 if they miss the window and the plan terminates?

23 A Correct.

24 Q Okay. Let's talk about interest rates for a few minutes.

25 Can you tell the Court --

1 THE COURT: Before you leave --

2 MR. HUEBNER: Yes, Your Honor.

3 THE COURT: -- this exhibit, may I ask a couple  
4 questions?

5 MR. HUEBNER: Yes.

6 THE COURT: This exhibit being Tab 4, what I'm going  
7 to say is for you to correct me if I'm not getting it. All  
8 right?

9 THE WITNESS: Okay.

10 THE COURT: As I understand this exhibit, it shows in  
11 the first sheet and the second sheet -- let's see, there's a  
12 third sheet.

13 MR. HUEBNER: There is, Your Honor. The third sheet  
14 is the average average person, just showing you irrespective of  
15 PC3 how that would shake out.

16 THE COURT: All right. The bottom line, that is to  
17 say, Lines 13 and 14 for each of the three sheets, am I correct  
18 that these three sheets demonstrate that there is a very  
19 material difference in the overall financial benefit to a  
20 retiring pilot who does or does not elect early retirement with  
21 the lump sum feature. Is that correct?

22 THE WITNESS: Let me say it a little bit differently.

23 THE COURT: All right.

24 THE WITNESS: If the lump sum door opens and you're  
25 looking -- and the pilot is making a decision between taking

1 the lump sum or continuing to fly until sixty, that is what  
2 this is representing, if the plan were then to subsequently  
3 terminate.

4 MR. HUEBNER: Your Honor, let me help for a minute  
5 because I think it's important. Ms. McDaniel is an actuary.  
6 This reflects only the pension part of the equation. If you  
7 were a pilot's financial advisor, you would be adding these two  
8 other things that are very important. One is, okay, but how  
9 much income do I give up by retiring from Delta during  
10 potentially very profitable -- very remunerative years for me.  
11 That's a deduct. And an add-back is what is my replacement  
12 possibility at another carrier. Right? Because if I could go  
13 to Asiana and get \$150,000 a year tax free, my income might  
14 actually be a net positive, although many people don't do that  
15 well, let me be very clear about that. And then in addition,  
16 you'd have to consider the fact, and we say this all in our  
17 papers, that this big lump sum can be put into a tax-deferred  
18 vehicle. It can be rolled, for example, into the family care  
19 savings plan and grow tax deferred like a 401(k) or an IRA,  
20 unlike salary which, of course, is going to be taxed, other  
21 than small amounts, 11,000 I think a year.

22 So the question you asked -- and I apologize. I'm not  
23 trying to testify but it's not actually a question for the  
24 witness, it's much more complicated. And ultimately she's  
25 doing the pension piece. The answer is there are huge multi,

1 multi-100,000-dollar, close to a million-dollar pension losses.  
2 Then there are other add-backs and deducts that if you were a  
3 financial advisor of frankly extreme sophistication, advising a  
4 pilot -- asking yourself what to do and you knew everything  
5 about this, I think you would add at least those things to your  
6 list also.

7           We don't disagree on that. In other words, there's no  
8 question they have one model that talks about some of these  
9 factors also, certainly not all of them. But clearly, make no  
10 mistake. You need to deduct from this your expected Delta  
11 earnings, add back in your replacement earnings. There are  
12 certainty factors, psychological factors. This is all in our  
13 papers. Most people have no idea in the world what they're  
14 going to get from PGBC. I think I heard Mr. Kaplan say before  
15 -- we don't disagree, it's just inordinately complex and  
16 uncertain. There are certainty factors of the lump sum, you  
17 know, a wire transfer tomorrow for \$810,000 into your bank  
18 account to protect the family.

19           So I apologize, but it is in our papers. It's not an  
20 actuary question, per se. That's our whole case, which is that  
21 there are enormous pressures and incentives due to a wide  
22 variety of factors that would lead pilots. Ms. McDaniel's  
23 piece of it is the pension losses themselves are not only huge,  
24 but for the below-fifty-threes, they're not only bigger, but  
25 bigger even than the lump sums themselves. So that's what this

1 shows.

2 THE COURT: All right. Well, that's both things.  
3 Your testimony, your explanation are very helpful to me. Thank  
4 you.

5 MR. HUEBNER: May be move on now to interest rates,  
6 Your Honor?

7 THE COURT: Yes. Yes.

8 BY MR. HUEBNER:

9 Q Ms. McDaniel, can you tell the Court what GATT rates are?

10 A The GATT rates are the interest rates prescribed by  
11 congress to use for determining the minimum lump sums that can  
12 be paid from qualified plans.

13 Q Are they related in any way to market interest rates?

14 A They're based on thirty-year treasury rates so in essence  
15 they're somewhat market related.

16 Q In Paragraph 5 of his declaration, Captain Morrison of DP2  
17 talks a lot about interest rates. He says, and I'll quote:

18 "One of the prime motivators, if not the prime motivator" -  
19 - for Delta pilots taking early retirements is the GATT  
20 rate. Only the quote part was an actual quote. I'm  
21 paraphrasing.

22 Do you agree with Mr. Morrison that people look at GATT  
23 rates when they're deciding whether to retire early and take a  
24 lump sum?

25 A I think that people do look at the interest rate used for

1 determining lump sums to make a decision.

2 Q Would you agree that it's a pretty important factor?

3 A Yes, it is.

4 Q Okay. Now let's get mathematical. Have you calculated the  
5 average GATT rate in 2005 when 720 Delta pilots took early  
6 retirement?

7 A The average for 2005 was 4.8 percent.

8 THE COURT: 4.8 percent?

9 MR. HUEBNER: 4.8

10 THE COURT: Okay.

11 BY MR. HUEBNER:

12 Q And what is the GATT rate today?

13 A The rate in effect for pilots retiring October 1, 2006  
14 would be 5.13 percent.

15 Q Okay. So how many basis points higher than the average  
16 last year is that?

17 A It's approximately thirty basis points.

18 Q Okay. And on a pretty big lump sum -- let's take a big one  
19 so nobody can say that we picked a small one -- \$750,000.  
20 What's the difference in the size of the lump sum between last  
21 year's average rate and right now October 1 actual certain  
22 rate?

23 A If we were to compare what the lump sum would have changed  
24 from the seven hundred and fifty, assuming that it was based on  
25 the 4.8 percent, and now we have to use 5.13 percent, it would

1 decline by \$22,500, or basically three percent from the 4.8 to  
2 the 5.13.

3 Q So that while interest rates is a whole other big deal,  
4 this decline from the average then to the current now is only  
5 three percent?

6 A Correct.

7 Q Okay. Now, what's happening for retirements effective  
8 November 1, 2006? Is the GATT yet known for that period?

9 A It is. The treasury rates have taken a downturn and so  
10 that the lump sum rate for November 1 pilot retirements would  
11 be five percent.

12 UNIDENTIFIED ATTORNEY: I'm sorry, five percent?

13 THE WITNESS: Five point oh.

14 BY MR. HUEBNER.

15 Q So in other words, GATT rates are about to go down thirteen  
16 basis points?

17 A Correct.

18 Q Okay. So that, I assume, just extrapolating, could mean  
19 the difference between the average last year and the November  
20 one is only two percent?

21 A That's right.

22 Q In other words, the 22,500 is three percent, it's 14,750,  
23 something like that?

24 A Right, fourteen.

25 Q Fourteen thousand? Okay. Something like that. Okay.

1 So in other words, if you retire November 1 --

2 A Fifteen. Sorry. Fifteen thousand.

3 Q Fifteen thousand? I apologize. I knew I was going to be  
4 wrong.

5 So if you retire November 1 on the 750,000-dollar lump sum,  
6 it's only \$15,000 lower than the average of last year?

7 A Correct.

8 Q Okay. Now there was a dip, right, the month right before  
9 the filing when lots of things were happening like the filing.  
10 It was lower than 4.8 percent, right?

11 A It was 4.29 percent, so it was a very low rate.

12 Q And is that a majority of the 720? Was it 500 or 600 that  
13 month?

14 A There were 201 pilot retirements in September, so a fairly  
15 large number.

16 Q So it's a heavy month, but it's not half or even a third.

17 MS. PIKOFSKY: I'm sorry, Your Honor. I have to  
18 object to Mr. Huebner's continuing attempts to testify. If he  
19 wants to ask the witness a question, I'd be happy to hear the  
20 witness's answers.

21 THE COURT: Has been somewhat leading, I think it's  
22 fair to say. On the other hand, it's not the usual situation  
23 where leading questions make a great deal of difference.

24 MR. HUEBNER: I will try and be more mindful of that,  
25 Your Honor. It's a fair comment.

1 BY MR. HUEBNER:

2 Q Let's move to the new legislation now that has been the  
3 subject of some discussion so far. What's the name of the new  
4 legislation recently signed by the president?

5 A The Pension Protection Act of 2006, or I may end up calling  
6 it PPA.

7 Q Okay. Does the PPA make any changes for plans that are  
8 liquidity shortfall? Does it address the liquidity shortfall  
9 obligations of qualified plans?

10 A The Pension Protection Act did not change the liquidity  
11 shortfall requirements at all.

12 Q So what did it change? Because obviously -- what did it  
13 change?

14 A It changed a number of things, however, most importantly to  
15 Delta Airlines, it changed the four airlines who have frozen  
16 their plans. They can elect special airline relief and that  
17 means that their minimum contribution requirements will be very  
18 different under PPA.

19 Q Okay. Let me take a detour just for a moment and talk  
20 about that non-pilot plan for just a couple of questions.

21 Do you think liquidity shortfall is ever going to be a  
22 problem for the non-pilot plan?

23 A The non-pilot plan converted to a cash balance. You may  
24 have heard about it in the past, but converted to a cash  
25 balance plan in July of 2003 so it pays minimum amounts of lump

1 sums now. The average account balance is about \$6,500 as of  
2 1/1/06, which means that really it can't pay huge amounts of  
3 lump sums which means that it will not -- I don't believe that  
4 it will be subject to liquidity shortfall ever.

5 Q So its contributions will be what kind of contributions?  
6 Liquidity shortfall or minimum funding?

7 A It's -- under the pension protection act Delta could elect  
8 special airline relief for the non-pilot plan and it would be  
9 under the regular minimum funding under PPA.

10 Q Okay. And if Delta elected airline relief, how much in  
11 funding obligations do you believe Delta will owe on exit from  
12 Chapter 11 to the non-pilot plan?

13 A To the non-pilot plan? Assuming that Delta elects airline  
14 relief on January 1, 2007 it would owe approximately \$25  
15 million at exit or fifteen days thereafter.

16 Q Okay. And how much would it owe all the way through the  
17 end of 2010?

18 A The cumulative contributions including the 25 million  
19 through the end of 2010 Delta would owe approximately \$400  
20 million to the non-pilot plan.

21 Q Now, if the legislation had not been passed or Delta did  
22 not elect airline relief, would it owe very substantially  
23 higher amounts to the non-pilot plan in the near term?

24 A Yes.

25 Q Did Delta, to your knowledge, take any position on its

1 ability to save or maintain the non-pilot plan were the  
2 legislation, the PPA, not enacted?

3 A Based on discussions that I had with Delta and also what  
4 was publicly said in the press, Delta said that they would not  
5 be able to maintain the non-pilot plan if congress and the  
6 president had not signed the PPA into law.

7 Q Ms. McDaniel, in your judgment, does the new legislation  
8 create a reasonably predictable and stable funding scenario for  
9 the non-pilot plan for the foreseeable future?

10 A It does and we have looked at sensitivities around that to  
11 insure that, you know, if certain assumptions aren't met that  
12 Delta would be able to afford the plan, you know, that there's  
13 not a whole lot of variability on that -- on contributions  
14 there.

15 Q Now, let's focus on the pilot plan under the new  
16 legislation. Does the new legislation in any way alter the  
17 existing liquidity shortfall contributions that a pension plan  
18 in liquidity shortfall needs to pay by statute?

19 A No. The PPA, as I said earlier, does not change the  
20 liquidity shortfall contributions or the calculation that's  
21 still in existence or the limitations around paying lump sums  
22 if the liquidity -- if the plan is in liquidity shortfall.

23 Q Now, when Mr. Kaplan was cross-examining Mr. Coleman, he  
24 referred to numbers that I think ultimately came from you that  
25 if 1,000 pilots retired, Delta would owe \$1.73 billion to the

1 pilot plan through 2010. Do you stand by the testimony in your  
2 declaration?

3 A I do.

4 Q Mr. Kaplan also asked Mr. Coleman about the \$1.5 billion  
5 that would be owed if the plan suffered 800 immediate early  
6 retirements. Do you still stand by that testimony in your  
7 declaration as well?

8 A I do.

9 Q Ms. McDaniel, Mr. Coleman, under cross-examination,  
10 testified a lot that a lot of these numbers didn't even take  
11 into account things that happened subsequent to the emergence  
12 from Chapter 11. They focused largely on the pre-emergence.

13 These two numbers, the 1.73 for 1,000 and the 1.5 for 800,  
14 do they assume any further early retirements post-emergence or  
15 do they only assume 800 and 1,000?

16 A They only assumed the 800 to 1,000 lump sums through the  
17 period through 2010.

18 Q So if there are further retirements after emergence date,  
19 the numbers could go even higher?

20 A Yes, they could.

21 Q In fact -- scratch that.

22 Will the numbers definitely go higher if there are further  
23 early retirements after the emergence date?

24 A Will the minimum funding contributions go higher?

25 Q Or liquidity shortfall, whichever is applicable.

1 A Or liquidity shortfall contributions. Yes, they could.

2 Q Okay. Now, do these numbers, 1.73 billion and 1.5 billion,  
3 include any funding for the 2010 issue? In other words, do  
4 they include getting the plan up to eighty-percent funding?

5 A No.

6 Q Okay. So this is just nothing other than if all that  
7 happens is 800 to 1,000, these are our funding calculations.  
8 In other words, they're sort of a floor, ignoring other stuff  
9 that might well need to be done after that?

10 A These are our best estimates based on 800 to 1,000 pilot  
11 retirements on 10/1/2006.

12 Q Okay. Ms. McDaniel, I'd like to turn your attention to  
13 Exhibit 3 in the binder, which is entitled "Towers Perrin  
14 forecast of contributions and expense for the pilot plan  
15 indicated August 28th, 2006." So if you turn to Page 1, just  
16 to be clear --

17 THE COURT: Tab 3 is this?

18 MR. HUEBNER: Yes, Your Honor.

19 THE COURT: Okay.

20 MR. HUEBNER: Tab 3 and then after the cover page, the  
21 first page is numbered Page 1.

22 THE COURT: Oh, yes.

23 BY MR. HUEBNER:

24 Q The light blue, the two bottom-line numbers, those are the  
25 same numbers we're talking about, right? This is the

1 cumulative funding under these scenarios?

2 A Yes, that's correct.

3 Q Okay. And it assumes only these retirements, no subsequent  
4 retirements?

5 A That's correct.

6 Q And it does not factor in 2010 funding operations under the  
7 PPA?

8 A It does not factor in additional contributions due to get  
9 the plan up to eighty-percent funded at the end 2010.

10 Q Okay. Can you tell me what's on Page 2 of this document?

11 A On Page 2, what we -- if you look at the table, what we've  
12 shown is the amount of additional contributions -- it's the  
13 first row of blue, light blue -- that would be needed to the  
14 pilot plan under the various retirement scenarios if there is  
15 an additional run on the bank in 2010 before the lump sum door  
16 closes because of the new PPA requirement -- restrictions.

17 Q Now, Ms. McDaniel, just to be clear, did you read DP2's  
18 objections filed on August 19th?

19 A I did.

20 Q And after that objection was filed, were you asked to  
21 perform additional calculations about the contributions Delta  
22 would owe for scenarios other than 800 and 1,000?

23 A Yes, I was.

24 Q And what scenarios did you run?

25 A I ran the 300 retirement scenario, the 400 retirement

1 scenario, and the 600 retirement scenario.

2 Q And that's what's listed on this chart?

3 A That's correct.

4 Q Okay. Now, what assumptions did you make in terms of post-  
5 emergence early retirements for the three new scenarios? In  
6 other words, who did you assume retires early for 300, 400 and  
7 600 after that initial wave and once we emerge from Chapter 11?

8 A What we assumed is the DP2 assumption that pilots would  
9 retire early if their lump sum is more than the top pay time  
10 the years to age sixty.

11 Q Now, why did you use DP2's assumption?

12 A Because counsel directed us to.

13 Q Who personally?

14 A Marshall Huebner.

15 MR. HUEBNER: Okay. Let me explain so the record is  
16 very clear on this. In order to avoid any disagreement on  
17 these numbers, we just said use their methodology for this so  
18 that nobody can say that the assumptions are whatever. Now,  
19 let's go back to testimony.

20 BY MR. HUEBNER:

21 Q Do you think their assumptions are reasonable?

22 A No, I do not.

23 Q So you would not use them yourself as an actuary if you  
24 were asked for yourself to estimate what the post-retirement  
25 lump -- early -- the post-emergence early retirements looked

1 at?

2 A My best estimates would have been different.

3 Q Okay. Now, let's talk for a minute about the new  
4 legislation. No, that's actually complicated.

5 MR. HUEBNER: I need to apologize for just a moment.  
6 I believe that that methodology is Mr. Schrenker's methodology,  
7 which has been pulled. So I don't want to complicate the  
8 hearing at all. I'm not sure that anybody other than Mr.  
9 Schrenker testified or declared that one should look at  
10 remaining income versus lump sum, so I apologize if that going  
11 into sort of an area that was, in fact, not part of the record  
12 today. In other words, it may no longer be the assumption  
13 because if that's gone, then they don't have any assumption, so  
14 that may have been surplusage.

15 MS. PIKOFISKY: I'm going to just object to his  
16 characterization of our assumptions, but otherwise that is  
17 fine.

18 MR. HUEBNER: Okay.

19 THE COURT: I'm a little confused. Is the testimony  
20 we have just heard relating to the Schrenker assumptions  
21 something that isn't comprehended in one of these sheets in Tab  
22 3?

23 MR. HUEBNER: Yes, Your Honor. In other words --

24 THE COURT: Which one?

25 MR. HUEBNER: For the post-emergence early

1 retirements, not the 300, 400, and 600 themselves, but the  
2 additional ones that happen after we emerge.

3 THE COURT: Where is the -- what sheet?

4 THE WITNESS: Page 2.

5 THE COURT: What?

6 THE WITNESS: Page 2.

7 THE COURT: In other words, projected impact of  
8 possible 210 run on the bank?

9 THE WITNESS: No, I apologize. It's actually built  
10 into the calculations on Page 1, so the billion, the billion  
11 eighty-five, and the billion three thirty-five for the 300, 400  
12 and 600 scenarios assumes additional lump sums in 2007, 8, and  
13 9.

14 MR. HUEBNER: I don't want to undo the -- this, Your  
15 Honor, and I apologize. This may have been -- we were just  
16 trying to avoid leading back and forth with DP2 about the  
17 assumptions used for the post-emergence early retirements, so  
18 we just used the assumption that we believe was set forth in  
19 their pleadings to show that even under their assumptions,  
20 these are the required funding contributions. It's not for the  
21 300 or 400 or 600 themselves, those just go. Then the question  
22 is who else goes once we emerge, and for that we asked Ms.  
23 McDaniel to assume what we believe was in the papers, which was  
24 if your lump sum exceeds your remaining expected earnings at  
25 Delta, you go. It's not a big deal, but I just wanted it to be

1 clear that this was an assumption embedded here that we thought  
2 would avoid discussion about it. It seems I've triggered a  
3 little bit but that was not our intent.

4 BY MR. HUEBNER:

5 Q Now, put the presentation to the side for a minute and let  
6 me ask about the new legislation.

7 THE COURT: This presentation, Tab 3?

8 MR. HUEBNER: Correct, Your Honor.

9 THE COURT: All right.

10 BY MR. HUEBNER:

11 Q Does anything in the new legislation affect the ability or  
12 obligation of the pilot plan to pay lump sums requested by  
13 retiring pilots prior to July 1, 2010?

14 A Yes. Prior to?

15 Q Correct.

16 A No.

17 Q Okay. And what happens on July 1, 2010?

18 A What happens on July 2010 for the pilots' plan if they get  
19 a delay is that if the plan is less than eighty percent funded,  
20 then there will be restrictions on the amount of lump sums that  
21 could be paid. If the plan is less than sixty percent funded,  
22 no lump sums can be paid while the plan is less than sixty  
23 percent funded. If the plan is between sixty and eighty  
24 percent funded, then the lump sum will be significantly  
25 restricted.

1 Q So let's talk about it for a minute. In the 300 and 400  
2 scenarios, do you believe that the plan would be below sixty  
3 percent funded in July 2010?

4 A Based on our estimates, yes.

5 Q Okay. So in other words, at the lower retirement  
6 scenarios, lump sums would get completely cut off in July 1,  
7 2010 because of the projections that show it to be below sixty?

8 A Correct. They would be less than sixty percent funded at  
9 that point in time, so therefore lump sums would not be able to  
10 be paid for a period of time.

11 Q In the 600, 800, and 1,000 scenarios, what's your  
12 projection about the plan's funded status? Is it below sixty,  
13 between sixty and eighty, or above eighty?

14 A For those scenarios, what we found and based on the  
15 assumptions that we used, that the plan would be less than  
16 eighty percent funded and above sixty percent funded.

17 Q Now, Mr. Coleman was asked about this, but I think you were  
18 the right person. If the plan is between sixty and eighty  
19 percent funded, is the limitation on the lump sum to an  
20 individual pilot is that he can only get is it ten percent of  
21 his otherwise expected lump sum, twenty percent, fifty percent?

22 A Based on the limit that says the pilots can't receive a  
23 lump sum of more than the PDC maximum guaranty benefit, it is -  
24 - the lump sum would be limited by at least half.

25 Q So in other words, if we're between sixty and eighty, half

1 of people's lump sum gets locked down until we hit eighty?

2 A Correct.

3 Q Okay. About half. It's different, I guess. About half,  
4 though.

5 Okay. Now let me ask you one last question.

6 MR. HUEBNER: I apologize, Your Honor. I do want to  
7 go back to her deck for one more minute, which is Tab 3, Page  
8 3.

9 BY MR. HUEBNER:

10 Q Can you just describe to the Court what Page 3 is?

11 A What we showed on Page 3 is the amount of funding that  
12 Delta would need to make in 2010 in order for the plan to be at  
13 least eighty percent funded at that point in time under the  
14 different retirement scenarios. So this is in addition to the  
15 amounts that Delta would need to fund that were shown on Page  
16 1.

17 Q Now, why is it that at the lower early retirement scenarios  
18 Delta owes much more money to the plan? I mean, the chart, it  
19 seems to kind of go the wrong way. Can you explain why that  
20 is?

21 A Because what happens is, is that when there -- the fewer  
22 the number of retirements, the less contributions that are  
23 needed in the early years, so the plan is not as well funded.  
24 But if you take it to the 1,000 scenario where Delta will have  
25 contributed a billion five, basically, at exit, then the plan

1 will be better funded by 2010.

2 Q Ms. McDaniel, just to be clear, I think there may be a  
3 small mistake. At the 1,000 scenario, isn't the number a  
4 billion seven three?

5 A What I said was, is that the amount that Delta would have  
6 to fund at exit and at exit it's a billion four ninety-five,  
7 but then through 2010 it's a billion seventy-three.

8 Q Right. So in other words, the mistake was mine,  
9 unsurprising.

10 We've just already put in lots and lots of money in the  
11 1,000 scenario, which is I guess not that much more left to put  
12 in to get up to eighty percent funded?

13 A Correct.

14 Q So when Mr. Coleman kept talking about his sort of rolling  
15 wave, this is sort of -- it's either more now or less later or  
16 less now and more later?

17 A That's how I look at it.

18 Q And is it possible the lump sum door again will close in  
19 2010 because the minimum funding new rule?

20 A I'm sorry, say it again?

21 Q Is it possible that the lump sum door -- that lump sums  
22 could be unavailable or restricted in 2010 based on the new  
23 legislation?

24 A Yes. If Delta does not -- if the plan is not funded at the  
25 right level, then the lump sum door would close.

1 Q Ms. McDaniel, over the next three years how many additional  
2 pilots become eligible for early retirement each year?

3 A Approximately 550 to 650 pilots become eligible each of the  
4 next three years.

5 Q How many pilots are early retirement eligible today?

6 A Eighteen hundred and twenty.

7 Q And assuming no early retirements in the interim, how many  
8 active pilots will be eligible for early retirement in 2010?

9 A We've estimated that there will be 3,517 pilots who will be  
10 eligible to retire at that point, assuming pilots who reach age  
11 sixty do retire in the interim.

12 MR. HUEBNER: Okay. This was already admitted into  
13 evidence, Your Honor. This was focused off Mr. Coleman. I  
14 just want to put it up so that the numbers are clear.

15 THE COURT: All right.

16 BY MR. HUEBNER:

17 Q Ms. McDaniel, what is the first bar -- I'm sorry.

18 MR. HUEBNER: For the transcript we're now putting up  
19 a chart which is in the exhibit binders as Tab 5. It's the  
20 second page.

21 BY MR. HUEBNER:

22 Q Number of pilots eligible for early retirement as a  
23 percentage of all active pilots. As of October 1, 2006, the  
24 1,820 represents what percent of all active pilots?

25 A It represents 31.6 percent.

1 Q And by 2010, with the assumptions we discussed, what  
2 percent of Delta pilots are eligible for early retirement?

3 A 57.4 percent.

4 Q And all of these 57.4 percent of Delta's entire active  
5 pilots have a right to a lump sum?

6 A Yes, they do.

7 Q So do you think that the potential unavailability of lump  
8 sums or a potential severe restriction on lump sums for an  
9 extended period beginning in 2010 is something that a pilot in  
10 this 57.4 percent would think about rather seriously in  
11 deciding what to do at that point in time?

12 A I would expect that pilots would consider that.

13 Q Ms. McDaniel, I'd like to now ask you a few questions that  
14 were raised by the declaration of Ian Altman (phonetic). Just  
15 why don't you conceptually turn to that?

16 A (Witness reviews documents.)

17 Q Ms. McDaniel, as we've already talked about at some length,  
18 including Mr. Kaplan's crossing, you know, Mr. Coleman, Delta  
19 believes -- Delta's best estimate is that hundreds, with its  
20 best estimate being 800 to 1,000 pilots, would retire early  
21 when the lump sum door opens. Is it your understanding that  
22 that is Delta's assumptions?

23 A Yes.

24 Q To be clear, Ms. McDaniel, were you ever asked to opine or  
25 certify the number of Delta pilots that would actually retire

1 if the lump sum door opened?

2 A No.

3 Q So where do those estimates come from? They come from?

4 A The 800 to a thousand Delta provided to me and asked me to  
5 -- or asked Towers Perrin to prepare the estimate of liquidity  
6 shortfall based on 800 to a thousand pilot retirements.

7 Q So you were asked to run funding projections based on  
8 assumptions provided to you by your client?

9 A Correct.

10 Q Ms. McDaniel, have you read Mr. Altman's declaration?

11 A I have.

12 Q I'd like to refer you --

13 (Counsel confer.)

14 BY MR. HUEBNER:

15 Q In Paragraph 8 of Mr. Altman's declaration he states that,  
16 and I quote, you:

17 "-- made no independent effort to verify the projection  
18 that 800 to a thousand pilots would immediately retire if  
19 the plan is not terminated."

20 That's what he says in his declaration. You made no  
21 independent effort to verify the projection.

22 Is that a true statement to your belief?

23 A No.

24 Q Did Mr. Altman ever call you and ask you whether you made  
25 any independent efforts to verify Delta's assumption?

1 A No.

2 Q Did Mr. Altman ever e-mail you and ask you whether you made  
3 any independent efforts to verify Delta's assumption?

4 A No.

5 Q Did you produce any document that would have indicated to  
6 anyone that you affirmatively did not take any steps to verify  
7 this assumption?

8 A No.

9 Q Do you have any idea how he would have declared under  
10 penalty of perjury that you made no independent effort to  
11 verify this assumption?

12 A No, I don't.

13 Q Did you make any independent efforts to verify this  
14 assumption?

15 A Yes.

16 Q Ms. McDaniel, while I know it was the company's assumption,  
17 do you think that the company's estimate of the pilots likely  
18 to want early retirement in 2006 if the lump sum door reopens  
19 was reasonable?

20 A I think 800 to a thousand pilots retiring on 10/1/06 after  
21 the lump sum door has been closed for a year is a very  
22 reasonable assumption.

23 Q Okay. Ms. McDaniel, when you thought about this, did you  
24 consider the fact that Delta is in Chapter 11?

25 A Correct.

1 Q Did you consider the fact that Delta stopped making pre-  
2 petition contributions to the pilot plan last September?

3 A I did consider that.

4 Q Was one of the things that you thought about that the plan  
5 enter liquidity shortfall for the first time in its thirty-two-  
6 year history?

7 MS. PIKOFISKY: Your Honor, I would object.

8 THE COURT: Sustained. Leading.

9 BY MR. HUEBNER:

10 Q Okay. Ms. McDaniel, why don't you tell us some of the  
11 factors that you considered? I guess I could have done an  
12 mnemonic like Mr. Blackstone -- like Mr. Coleman, but let's see  
13 if you can remember some of the other things.

14 A Okay. I'm going to start over.

15 THE COURT: That's all right.

16 THE WITNESS: Go back a year. Delta files for  
17 bankruptcy; the lump sum door is closed. Along with that, the  
18 -- Delta files for a notice of intent in June. And with that -  
19 -

20 THE COURT: Notice of intent to terminate?

21 THE WITNESS: Notice of intent to terminate the plan.

22 THE COURT: Right.

23 THE WITNESS: And I think that is a really critical  
24 key factor in the -- what pilots will do in October. Along  
25 with that, looking at what happened in the eleven months or the

1 twelve months preceding filing of bankruptcy that 1,100 pilots  
2 retired which was approximately forty-five percent of the total  
3 eligible pilot retirements at that time. And I think that's  
4 all I can remember at this point.

5 BY MR. HUEBNER:

6 Q Ms. McDaniel, are you aware that Mr. Altman testified at  
7 his deposition that he did not know that ALPA had stated  
8 multiple times that the plan would be terminated?

9 A Yes. I was at his deposition and I remember that.

10 Q Ms. McDaniel, you testified a minute ago that one of the  
11 factors that you thought about was that the lump sum door has  
12 been closed. How long has it been closed for?

13 A As of October 1st, 2006 it will have been closed for twelve  
14 months.

15 Q Are you aware of any other plans where the lump sum door  
16 was closed for a year and then reopened?

17 A I'm not aware of any plan where the lump sum door has been  
18 closed for -- because of liquidity shortfall.

19 Q Ms. McDaniel, how does Delta's estimate of 800 -- now we'll  
20 take the 800 out, the 800 to a thousand, compare to the actual  
21 number of retirements in the first -- actual number of early  
22 retirements in the first nine months in 2005?

23 A There were 720 pilots who retired early in 2005. So it was  
24 close to the 800.

25 Q And how does the 800 compare to the actual number of early

1 retirements in the twelve months prior to the filing date?

2 A There were 1,100 pilots who retired in that twelve-month  
3 period.

4 Q What percent of the pilots currently eligible to retire  
5 does 800 represent? I can ask it again, if you'd like.

6 A No, that's all right.

7 Q Oh, you want to just do it?

8 A Yes. Thank you.

9 MR. HUEBNER: Your Honor, I assume that she's allowed  
10 to use a calculator?

11 THE COURT: I hope so.

12 THE WITNESS: Well, I can say it this way. I can use  
13 a calculator. Am I allowed to, though, maybe is the thing.

14 THE COURT: You may.

15 THE WITNESS: Thank you. It's slightly less than  
16 forty-five percent.

17 BY MR. HUEBNER:

18 Q Okay. And what percent of the pilots actually retired in  
19 the twelve months pre-Chapter 11?

20 A Slightly more than forty-five percent.

21 Q How many early retirement eligible pilots have lump sums  
22 above \$500,000?

23 A There are 857 pilots who have lump sums in excess of  
24 \$500,000.

25 Q Are these all things that you actually knew?

1 A I did know these things.

2 Q When you saw Delta's estimate of 800 to a thousand?

3 A Yes.

4 Q Do you think these things are actually the things you  
5 listed and the like are relevant to your view about 800 to a  
6 thousand?

7 A Yes. That's the reason why I said that I believe that the  
8 800 to a thousand was a reasonable number.

9 Q So you actually do think that 800 to a thousand is  
10 reasonable?

11 A Yes.

12 Q Ms. McDaniel, I just want the record to be clear because I  
13 think we talked about it before, but I'm not sure that it was  
14 under oath.

15 Have pilot retirees always strongly preferred a lump sum as  
16 opposed to an annuity?

17 A Yes. Since the pilot pension plan has offered lump sums in  
18 the early 1990s approximately ninety percent of pilots who have  
19 retired have elected the lump-sum option.

20 Q Do you think that there is some uncertainty about how the  
21 PBGC will ultimately do its calculations and spit out annuity  
22 numbers for each individual pilot?

23 A I think that the PBGC calculation is a very complex  
24 calculation and so, therefore, there is a lot of misinformation  
25 about it.

1 Q And why don't you explain to the Court what impact, if any,  
2 you think the uncertainty and complexity of a PBGC annuity  
3 would have on a pilot's decision to prefer a lump sum?

4 A The complexity of the calculation, not knowing how much  
5 he's going to get at retirement as far as the Priority Category  
6 3 benefit will weigh heavily on his decision to decide to leave  
7 or not.

8 Q Ms. McDaniel, I'd like to move to an area now which we're  
9 going to call the age of cohort analysis, which is something I  
10 didn't understand, but hopefully now I do.

11 THE COURT: Age cohort analysis?

12 MR. HUEBNER: Yeah. Your Honor, that's a really fancy  
13 way of saying how many fifty-year-olds, how many fifty-one-  
14 year-olds, how many fifty-two-year-olds. And we're going to be  
15 looking at Tab No. 6 for this part of the examination.

16 BY MR. HUEBNER:

17 Q Ms. McDaniel, since you read the declaration of Mr. Altman  
18 over the last two weeks or so, have you undertaken any  
19 additional analysis that suggests to you, or that further  
20 suggests to you because we've listed quite a few things  
21 already, that Delta's 800 to a thousand estimate of immediately  
22 early retirements is a reasonable one?

23 A Yes. Mr. Altman suggested a demographic analysis by age  
24 that that's what he would have thought was a reasonable  
25 approach to look at the number of pilot retirements.

1 Q So how did you do this? What does it mean to say I went  
2 and looked at it by age?

3 A What we did was is we looked at the pilots who were  
4 eligible to retire in the preceding twelve months prior to  
5 bankruptcy and looked at it by every early retirement age to  
6 see how many were eligible. And then we also looked at the  
7 number of pilots who actually retired early at each one of  
8 those age cohorts and determined the percent of those who  
9 retired -- who actually retired.

10 And then what we then did was is we applied that to those  
11 pilots who were eligible to retire on 10/1/2006, the 1,820  
12 pilots.

13 Q So to sort of just make sure I get it, though I'm pretty  
14 sure I get it --

15 MS. PIKOFISKY: I'm sorry, Your Honor. It's not Mr.  
16 Huebner's job at this point to clarify the witness's testimony.  
17 I'm going to object.

18 MR. HUEBNER: Okay, that's fine. As long as the Court  
19 is clear, I just really don't need to do that. I was just -- I  
20 found myself getting lost almost every time the actuarial stuff  
21 was explained to me. If the Court is clear I'm happy to move  
22 to the next question.

23 THE COURT: Okay. Well, let me just make sure I do  
24 understand it. So the numbers in Tab 6 are actual experience  
25 numbers?

1 THE WITNESS: Correct.

2 THE COURT: Real world numbers?

3 THE WITNESS: Real world. This is -- the second  
4 column are the actual pilots who are eligible to retire in the  
5 twelve months preceding bankruptcy, the twenty-four twenty-  
6 five. The 1,092, the 1,100 that we talked about, those are the  
7 pilots who actually retired in the twelve months preceding  
8 bankruptcy. And then we then compared that to the pilots who  
9 are eligible retire on 10/1/2006.

10 THE COURT: All right. I think I do understand it.

11 BY MR. HUEBNER:

12 Q So the left side of it is actual and then the right side  
13 applies that to the current population to see what it spits  
14 out?

15 A Correct.

16 Q Okay. And looking at it on an age-by-age basis and  
17 applying the actual experience of last year, what does it spit  
18 out in terms of the number of early retirements?

19 A Using this approach, it predicts that 657 pilots would  
20 retire on 10/1/2006.

21 Q And how does that compare to Mr. Altman's declaration in  
22 which he expected there to be 229 to 300?

23 A It's approximately double or triple the number that he  
24 expected.

25 Q And that's doing the analysis he said one should go do?

1 A Correct.

2 Q Okay. Which to the best of your belief, I mean, maybe  
3 they'll say that he meant something else, but --

4 A That was my understanding of how he described --

5 Q -- this is what you as an actuary believed he said should  
6 have been done?

7 A Correct.

8 Q Ms. McDaniel, when you ran this analysis, did you take into  
9 account any of the factors we discussed that you believe are  
10 very different than last year?

11 A No. I did not take -- coming back to these are the pilots  
12 who retired in the twelve months preceding bankruptcy, so prior  
13 to 9/14. So all of the factors that have occurred since 9/14,  
14 the filing of the bankruptcy, the liquidity shortfall, Delta  
15 not making contributions to -- not making post-petition  
16 contributions to the pension plan, Delta not paying lump sums  
17 for a year, Delta not -- or Delta filing a notice of intent to  
18 terminate the plan, the LOA-51 concessions; I didn't take any  
19 of that into account in developing this.

20 Q Now you didn't hit that one before. And I -- I think after  
21 five objections I start to get sad so I didn't ask it.

22 Why are the LOA-51 concessions relevant to a pilot  
23 being more interested now in retiring than they were last year?

24 A Because LOA-51 had further concessions as far as cuts in  
25 pay and cuts in benefits and a hard freeze to the pension plan.

1 THE COURT: And that would affect the high three out  
2 of the last five?

3 THE WITNESS: It froze the --

4 THE COURT: And it would also affect the anticipated  
5 future earnings as an offset to the lump sum. Is that correct?

6 THE WITNESS: It did freeze the final average  
7 earnings. It also had obviously a number of other concessions  
8 within as far as pay for pilots, as far as the other benefit  
9 programs that they had.

10 BY MR. HUEBNER:

11 Q Ms. McDaniel, to be clear, the judge's question was, was  
12 there an offset with respect to the future earnings, not final  
13 average earnings. Did LOA-51 change future earnings? That's  
14 what he asked you.

15 A I'm sorry. You're talking about actual compensation?

16 THE COURT: Right.

17 THE WITNESS: Correct. So their compensation was  
18 reduced.

19 BY MR. HUEBNER:

20 Q And, Ms. McDaniel, when you look at what we think was what  
21 Mr. Altman suggested coupled with these many, many factors  
22 you've listed that make this very different than last year,  
23 what does that tell you about Delta's best estimate of 800 to a  
24 thousand?

25 A It tells me that the 800 to a thousand is a very reasonable

1 estimate.

2 Q Ms. McDaniel, why didn't you run this analysis prior to  
3 reading Mr. Altman's declaration?

4 A Because I didn't feel it was necessary given the other  
5 information that I had on hand, including all of the  
6 bankruptcy, the lump sum. I mean, those things were very  
7 critical pieces to determining what a reasonable number was.

8 Q Did he suggest -- in other words, did you view what he  
9 suggested as a methodology or the methodology?

10 A I think it was a methodology.

11 Q And you used others?

12 A Sure.

13 Q To verify.

14 A Yes, I did.

15 Q Okay.

16 MR. HUEBNER: We're not going to make it, Your Honor.  
17 And I am deeply embarrassed and apologetic, but I cannot stay  
18 more than a few more minutes. I'm about to get into some  
19 totally new areas, so ...

20 THE COURT: All right. Then why don't we break for  
21 the day?

22 Now what arrangements are the parties making with  
23 regard to transcripts, trial transcripts?

24 UNIDENTIFIED: We are picking up the audio tape after  
25 the hearing, so ...

1 (Participants confer.)

2 THE COURT: Let's put it differently. I'd like a  
3 transcript as promptly as possible.

4 (Court and court personnel confer.)

5 THE COURT: You'll work it out. One-day turnaround?

6 MR. HUEBNER: Whatever it is, we will do it. I assume  
7 the parties will split the cost? I assume you want a  
8 transcript, also?

9 MS. PIKOFSKY: Yeah. I apologize. We're not familiar  
10 with this Court's procedure with respect to transcripts.

11 THE COURT: I'm hardly familiar with it myself.

12 MS. PIKOFSKY: Okay.

13 THE COURT: We don't have a lot of hearings like this.

14 MR. HUEBNER: It's electronically recorded. We then  
15 pick up literally the CD and get it to the transcription  
16 service, which then transcribes it overnight. That costs a  
17 bunch of money. And in the morning or sometime tomorrow we  
18 have a transcript.

19 THE COURT: Okay. Well, let me put it this way.  
20 Apparently, the methodologies for getting transcripts done  
21 downtown are a little different than what we have pursued here  
22 in the past. And I have tried assiduously not to become  
23 involved in that figuring that it's not my job.

24 But however it's done, I want a transcript by Tuesday  
25 morning first thing.

1 MR. HUEBNER: Yeah. Again, I assume that the parties  
2 will just split the cost of whatever expedited transcript is  
3 necessary and get it both for themselves and for the Court.

4 THE COURT: Fair enough. All right, good.

5 MR. HUEBNER: Your Honor, I'd like to end on an  
6 entirely unrelated note.

7 THE COURT: All right.

8 MR. HUEBNER: Which is that your chambers and Judge  
9 Beatty's predecessor chambers has been very responsive to this  
10 mega, mega, mega case and I would just like to express a note  
11 of personal appreciation for the services of Ms. Lahaie whose  
12 last day I believe it is today who we have turned to very often  
13 with innumerable filings and orders and discs and CDs and e-  
14 mails and has always, like the rest of both your staff and  
15 Judge Beatty's staff, conducted herself with the utmost  
16 courtesy and professionalism. She's had a hell of a last day I  
17 would say between a new mega case, an emergency hearing, a  
18 four-billion-dollar trial, but I think that the grace with  
19 which she has handled the rest of her assignments appears to  
20 have shown through yet again.

21 THE COURT: Well, I think I would join in that myself.

22 MR. HUEBNER: So we will see you Tuesday, Your Honor.

23 THE COURT: Thank you, everybody.

24 MR. HUEBNER: I believe we're on for two o'clock if  
25 that's still the Court's preferred start time. We are,

1 obviously, very flexible about starting somewhat earlier if the  
2 Court's pleasure is in that direction.

3 THE COURT: Well, let's see. Could you all be ready  
4 to start by let's say one? I don't know what kind of a  
5 calendar -- how much of a calendar I have. It's big?

6 (Court and court personnel confer.)

7 THE COURT: I have a significant calendar.

8 MR. HUEBNER: We'll call it two? Whatever the Court -

9 -

10 THE COURT: Probably two o'clock.

11 MR. HUEBNER: Okay. We'll see you at two o'clock.

12 THE COURT: And don't make opera plans for the  
13 evening.

14 MR. HUEBNER: No, Your Honor.

15 MR. KAPLAN: Might I ask the Court's schedule for the  
16 rest of the week after Tuesday with respect to this matter?

17 THE COURT: Well, the trial will be concluded on  
18 Tuesday -- excuse me, Wednesday at the latest.

19 MR. HUEBNER: What we understood, and what I believe  
20 they know and I think we also discussed it on the call the  
21 other day, was currently, at least, we start Tuesday at two,  
22 Wednesday at two, although again, if --

23 THE COURT: We may well make it earlier.

24 MR. HUEBNER: And then Thursday from nine or 9:30 on  
25 until we're done.

1 THE COURT: Right.

2 (Court and court personnel confer)

3 MR. HUEBNER: I think we're all agreed, and you are as  
4 well, Your Honor, that if Wednesday is a lighter morning  
5 calendar and we can start a bit earlier, we're happy to do  
6 that, or not.

7 THE COURT: Well, I would be happy to do that, too.

8 MR. HUEBNER: And we'll discuss that, I assume, on  
9 Tuesday.

10 THE COURT: Yes.

11 MR. HUEBNER: Perfect.

12 THE COURT: But it is going to be extremely important  
13 for everybody to know that this trial must be concluded on  
14 Wednesday. It may be a late night if that's what it takes.

15 MR. HUEBNER: Yeah. Your Honor, just to quickly  
16 sketch it out, because I do have a few more minutes, I think I  
17 am intuitively inclined to think that should be fine. I have a  
18 few more areas, but I can't imagine going more than an hour  
19 with Ms. McDaniel. So I would think Tuesday we do her direct.  
20 I would hope we would long since be finished with her cross and  
21 be well into Mr. Bastian's direct.

22 That leaves Wednesday to finish Bastian which will be  
23 largely DP2, and then all day Thursday, however many hours we  
24 need. They have two witnesses. One is a retired pilot, one is  
25 an actuary. So unless --

1 THE COURT: How long do you think those two witnesses  
2 will be on the stand on direct? Well, wait a second. You have  
3 their direct statements? Is that right?

4 MR. HUEBNER: Yes. They both have declarations and  
5 we're not doing any of the repetition of the direct.

6 THE COURT: Okay.

7 MS. PIKOFISKY: I think, though, Your Honor, there will  
8 be additional direct, just as there was today to respond to the  
9 reply that debtors filed at noon on Wednesday. But there will  
10 not be any repetition of what's already in the declarations.

11 THE COURT: All right. I must emphasize to you the  
12 importance of cutting it as to the bare minimum, everybody.  
13 Everybody.

14 MR. KAPLAN: We will do that, Your Honor. But that  
15 goes on both sides.

16 THE COURT: Absolutely.

17 MR. KAPLAN: We don't want to be jammed at the end if  
18 we can help avoid that.

19 THE COURT: Absolutely.

20 MR. HUEBNER: We agree.

21 THE COURT: The cross needs to be very, very focused.  
22 It is not a time for simply inquiring for something by way of  
23 an analogy to discovery. You've had that, albeit on a  
24 shortened schedule. I expect the cross to be focused entirely  
25 to bring out specific points, very specific points.

1 All right. Thank you all very much. Have a good  
2 weekend.

3 (Proceedings concluded at 5:40 p.m.)

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CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

*Jennifer Linnartz*

September 2, 2006

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